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A COMMENT ON THE MODEL ACT

CHARLES MANN*

*A Model Act for the Protection of Rights of Prisoners*¹ (*Model Act*) attempts to enroll the courts in more vigorous efforts to improve the treatment of inmates, to encourage inmates by broadening access to the courts for redress of grievances, and to provide the courts with a more precise measure of permissible and nonpermissible treatment of inmates. It is doubtful that a model act is the best vehicle for accomplishing any of these goals. A model act that does not address itself to the agency that has the authority to carry it out and that fails to require that agency's conformance, under pain of penalty, is too passive and therefore doomed to failure.

The courts have historically ignored or rejected their responsibilities in relation to the programs, problems, and practices of correctional institutions. There is little evidence of any significant change in that general attitude. Any widespread change will most likely occur as a result of enforced orientation and training of the judiciary.

Inmates are rapidly becoming aware of their constitutional rights, and the current flood of prisoner litigation is evidence of their response to actual or alleged violations of those rights. The *Model Act* does not appear to expand the rights, nor to provide easier entree to the courts. A provision requiring an independent source of legal counsel and advocacy is essential to any formidable acceleration of access to the courts.

There is wide variation in the detailing of rights for prisoners by the groups who have presented them. Most provisions include rights that are generally recognized as essential to maintain reasonable standards of health, fairness, and humane treatment. None seems to include the right to a positive program of corrections, one that prepares an inmate for productive and satisfying community living. Despite the pervasive necessity for decency and equity, the basic reason for committing an offender to an institution is presumably correction. No-

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1. NATIONAL COUNCIL ON CRIME AND DELINQUENCY, *A MODEL ACT FOR THE PROTECTION OF RIGHTS OF PRISONERS* (1972).

where in the *Model Act* is that provided as a right of the inmate, but it should be the primary one.

We should have serious reservations about placing major reliance for protecting the rights of prisoners on a minimum-standards act designed for that specific purpose. It appears more likely that the purpose could be achieved more certainly and more consistently by the simple process of including as a requirement for appointment that each state and local corrections administrator commit himself and his staff to policy guidelines and operational practices in conformity with the standards in the *Model Act*, the *Standard Minimum Rules for the Treatment of Prisoners*² adopted by UNESCO, or the policy guidelines recommended by the Association of State Correctional Administrators.³

It has always been clear that it is not only the administrator, who sets the policy, but the line staff which carries it out, who determine how inmates are treated. The crucial factors to ensure fair and humane treatment are staff selection and training. Pre-service and in-service training must include extensive concern for human relations. Staff members should be selected on the basis of their general competency and their ability to understand and cope with all inmates with dignity and courtesy.

Private correctional service agencies, of which the St. Louis Bureau for Men is an example, have long been advocates not only of the rights of prisoners, but of productive correctional practices. That effort has not been confined to the esoteric flights of fancy of our academic friends, but has occurred in direct relationship with correctional administrators and their staffs. One example that demonstrates the ability to achieve, voluntarily, a progressive change in the administration of a correctional facility concerns the Bureau for Men and the Department of Social Services of the St. Louis Maximum Security Institution. The Department is the direct result of the Bureau for Men's activities in providing help to a select group of men over a period of years, followed by the placement of a staff member in the Institution for six months to demonstrate the desirability and value of prison social services.

The Warden, the Commissioner of Adult Services, and the Director of Welfare were unanimous in their acclaim for the program. A social

2. FOURTH UNITED NATIONS CONGRESS ON PREVENTION OF CRIME AND TREATMENT OF OFFENDERS, *STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS* (1955).

3. AMERICAN CORRECTIONAL ASSOCIATION, *MANUAL OF CORRECTIONAL STANDARDS* (3d ed. 1966).

worker was added to the Warden's staff in April 1967 and the service has been in operation since. There are now six full-time social workers employed in the Institution. This program will materially affect the lives of thousands of men who pass through the Institution. Formerly, the Institution concerned itself solely with men *as inmates*. Now there are efforts to resolve or modify some of the problems that were at least in part the cause of the inmates' getting in trouble.

While it is obvious that fair, sensitive, and thorough administrative procedures are more likely to enhance the treatment of prisoners than reliance on court actions, it is certainly necessary for the courts to concern themselves with abuse cases. Behavior on the part of prison officials that violates the spirit of constitutional guarantees and basic human rights is an additional ingredient tending to defeat the purpose of correctional treatment, and is an affront to the community to which the prisoners will return—more hostile, bitter, and anti-social.

An overly simple conclusion might be that we have enough laws, but we do not have enough personnel—either in the courts or in the correctional institutions—with those essential qualifications of sensitive awareness and competence to appropriately fulfill the demands of their positions. It is easy to punish, blindly and self-defeatingly, but very difficult to restore and redirect into productive channels the social and legal cripples who make up our offender population. It requires both great commitment and extensive training to be salvagers of men. There is nothing more urgently needed in the field of justice than a mammoth program of manpower training and development to replace the "old guard," who are as obsolete as the dodo bird.

