1992

Addressing Recidivism: Legal Education in Correctional Settings

Justin P. Brooks

ADDRESSING RECIDIVISM: LEGAL EDUCATION IN CORRECTIONAL SETTINGS

Justin Brooks[*]

Table of Contents

---

* Justin Brooks is the Clinical Teaching Fellow for Georgetown University Law Center's Street Law Corrections Clinic. For more than fifteen years, under close clinical supervision, second and third year law students enrolled in the clinic have taught classes on basic law in six Washington, D.C. prison facilities, and in the Washington, D.C. jail. The classes cover a full spectrum of legal subjects including constitutional rights, governmental structure, housing law, consumer law, family law, parole, employment law, mediation, and criminal law. This paper is based largely on the model of teaching law to inmates that has been developed by the clinic.

The author wishes to thank: his research assistant, Anne Kragness, for completely immersing herself into the field of corrections; the Director of the Street Law Corrections Clinic, Professor Richard Roe, for his support and assistance in completing this article, and his tireless work in directing the clinic; Jeffrey Chinn, for his substantial insight during the editing process; Heidi Brooks, for her comments on early drafts; the Georgetown University Law Students who have made teaching law to inmates a substantial portion of their legal education; and the men and women incarcerated by the District of Columbia Department of Corrections.

I. INTRODUCTION

> The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of any country. A calm, dispassionate recognition of the rights of the accused and even of the convicted criminal against the state; a constant heart-searching by all charged with the duty of punishment; a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment; tireless efforts towards the discovery of curative and regenerative processes; unfailing faith that there is a treasure, if only you can find it, in the heart of every man; these are the symbols which, in the treatment of crime and the criminal, mark and measure the stored-up strength of a nation and are sign and proof of the living virtue in it.
>
> . . . . . .
>
> —Winston Churchill[1]

In a democratic society decisions about how we will treat each other are articulated through our collective voice in the form of laws. Ideally, correctional systems should also be a reflection of this voice, and they should be structured to provide the greatest possible benefit to society that creates them. In the United States, however, the democratic process has failed to create the most beneficial correctional system, because of a lack of information and understanding regarding correctional issues. Problems include poor contact between correctional systems and communities, an abuse of clear correctional goals, a system that reacts too readily to political pressures, and misconceptions regarding the value of education and rehabilitation in terms of decreasing crime and recidivism.

Our correctional systems reflect apathy and ignorance as large numbers of our citizenry join the ranks of inmates every day.[2] Presently, more than four million Americans are under

---

1. John Marsh, *Philosophical Considerations of Prison Education: "Pro and Con"*, *in* SCHOOL BEHIND BARS: A DESCRIPTIVE OVERVIEW OF CORRECTIONAL EDUCATION IN THE AMERICAN PRISON SYSTEM 1, 2 (Michael V. Reagen & Donald M. Stoughton eds., 1976).

2. *See* Louis Jankowski, *Probation and Parole 1989*, BUREAU OF JUST. STAT.

some type of correctional control[3] including prison,[4] jail,[5] probation,[6] and parole.[7] With more than one million people in

---

BULL. (U.S. Dept. of Just., Office of Just. Programs, Bureau of Just. Stat., Washington, D.C.), Nov. 1990, at 1, 1-2 (explaining that the number of people in the United States under some form of correctional supervision, whether in prison, jail, or probation, or on parole, is growing each year).

3. *Id.* at 1. At the end of 1980, approximately 1.8 million adults in the United States were incarcerated, on probation, or on parole. By 1989, that number had increased to a record 4,053,946. *Id.* at 4. Of these, 1,076,670 were held in jails and prisons, 2,520,479 were on probation, and 456,797 were on parole. *Id.* In 1989 alone, prison population grew 13%, the probation population grew 5.6%, and the parole population grew 12.1%. *Id.* at 1, 4. *See also Prison Population Climbs to Record 755,425 Inmates*, CORRECTIONS COMPENDIUM, Nov. 1990, at 6, 6 (stating that the population of American prisons increased 6% in the first half of 1990 to 755,425 inmates, which was the "largest annual growth in 65 years of prison population statistics" (quoting Bureau of Justice Director Steven D. Dillingham)).

4. The United States prison system is composed of state and federal facilities. State prisons housed 577,672 inmates as of December 31, 1988, whereas federal facilities housed 49,928 prisoners. U.S. DEP'T OF JUST., SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 586 (Timothy J. Flanagan & Kathleen Maguire eds., 1990) [hereinafter SOURCEBOOK].

5. Jails serve different functions than prisons and are usually locally-run. They serve as temporary holding facilities for people charged with a crime, but not yet tried. While jails do house inmates, jail inmates are usually awaiting sentence or transfer to prison, serving shorter sentences, housed under writs of habeas corpus, witnesses in protective custody, or serving contempt penalties. *See, e.g.*, Bell v. Wolfish, 441 U.S. 520, 524 (1979) (describing such a facility). The 1988 Justice Department Census of Jails defined "local jail" as "a facility that holds inmates beyond arraignment, usually for more than 48 hours, and is administered by local officials." Facilities specifically excluded from this definition are "temporary lockups that house persons for less than 48 hours, physically separate drunk tanks, other holding facilities that did not hold persons after they had been formally charged, and Federal or State administered facilities." SOURCEBOOK, *supra* note 4, at 571.

6. As a result of an overburdened correctional system, judges are increasingly using probation as an alternative to prison terms. While on probation, convicted individuals serve their time on the streets subject to a probation officer's supervision. More than two-thirds of those convicted of crimes in the United States are placed on some form of probational supervision. In fact, "[p]robation is 'now the dominant place to put drug traffickers and people convicted of drug possession.'" Stephen Labaton, *Glutted Probation System Puts Communities in Peril*, N.Y. TIMES, June 19, 1990, at A1, A16 (quoting Mark A. Cuniff, Executive Director of the National Association of Criminal Justice Planners). As a result, probation offices are seriously understaffed. With the increased usage of the probation option, more serious offenders have been placed on probation and the number of probation violations has increased. This fact places probation officers in more of a policing role than in the productive role of a counselor. *See id.* at A1.

7. Parole is similar to probation in that it allows a convicted person to serve time on the street. The distinction is that, unlike probation, parole is granted

prisons and jails, the United States incarcerates a higher proportion of its citizens than any other nation in the world.[8]

Historically, the four goals of corrections have been incapacitation,[9] retribution,[10] deterrence,[11] and rehabilitation.[12] In recent years, however, there has been a shift in the balance among these goals, with the punitive aspects overwhelming rehabilitative efforts.[13] One of the primary reasons for this shift has been the publicity associated

---

after a portion of a sentence has already been served and the parolee is released subject to the supervision of a parole officer. Federal inmates are not eligible for parole, *see infra* note 77 and accompanying text, and each state has its own regulations regarding parole. In the District of Columbia, inmates are eligible for parole once their minimum sentence has been served, if they have substantially observed the prison rules and are not seen as a threat to society. D.C. Mun. Regs. tit. 28, § 200.1 (1987).

8. A 1991 report issued by an organization called "The Sentencing Project" noted that in the United States, an average of 426 of every 100,000 people are incarcerated. South Africa had the second highest rate of incarceration with an average ratio of 333 to every 100,000, and the former Soviet Union was third with 268 per 100,000. Sharon La Franiere, *U.S. Has Most Prisoners Per Capita in the World*, WASH. POST, Jan. 5, 1991, at A3.

9. Incapacitation is the act of controlling offenders so that they cannot commit further crimes. Jacqeline Cohen, *Incapacitating Criminals: Recent Research Findings*, RES. IN ACTION (Nat'l Institute of Just., Washington, D.C.), Dec. 1983, at 1, 1.

10. Retribution is the infliction of punishment upon someone for having committed a crime. *See generally* IMMANUEL KANT, THE PHILOSOPHY OF LAW (W. Hastie trans. 1887).

11. Deterrence relies upon the example punishment sets for the rest of society to decrease crime. *See generally* JEREMY BENTHAM, *Principles of Penal Law*, *in* J. BENTHAM'S WORKS 396, 402 (J. Browning ed., 1843).

12. Rehabilitation is the process whereby an inmate acquires skills or values necessary to function in society without turning to criminal activity. *See* Robert Blecker, *Haven or Hell? Inside Lorton Central Prison: Experiences of Punishment Justified*, 42 STAN. L. REV. 1149, 1150 (1990).

13. There has also been a shift in governmental control over the goals of the correctional system as privatisation of prisons has become a reality. *See* Ira P. Robbins, *Privatization of Corrections: Defining the Issues*, 40 VAND. L. REV. 813, 814-15 (1988) (reprinted from 69 JUDICATURE 325 (1986)) (discussing whether or not the government will control correctional goals in the future given the trend toward privatisation of prisons); *see also* Robert G. Porter, *The Privatisation of Prisons in the United States: A Policy that Britain Should Not Emulate*, 29 HOWARD J. CRIM. JUST. 65, 70 (1990) (analyzing the debate concerning privatisation and ultimately urging that lack of control over prisons is one of the primary reasons why the United Kingdom should not follow the United States down the privatisation path).

with the escalation of drug-related crimes,[14] which has resulted in the political mood of the country shifting from one supporting rehabilitation programs to one demanding purely punitive goals.[15]

Punishment as the correctional system's guiding force has resulted in harsh mandatory sentences and inadequate facilities, but the reality still remains that most inmates will eventually return to the streets.[16] The increased focus on punishment as the primary objective of corrections, combined with negative attitudes towards inmates and ex-inmates,[17] has simply created a population of unrehabilitated ex-inmates returning to the streets to commit more crimes. Within three years of their release, 62.5% of all inmates are rearrested, and 41.4% are reincarcerated.[18]

Lack of effective primary and secondary education has contributed to a cycle of criminal behavior, while lack of

---

14. Candidates for public office have manipulated the public's fear of drug-related and other crimes, portraying inmates in the most unfavorable light. Such manipulation was epitomized in George Bush's 1988 presidential campaign's use of Willie Horton who, while on furlough, raped and assaulted a Maryland woman. JACK W. GERMOND & JULES WITCOVER, WHOSE BROAD STRIPES AND BRIGHT STARS?: THE TRIVIAL PURSUIT OF THE PRESIDENCY, 1988, at 10-12 (1989). *See also* Mu'Min v. Virginia, 111 S. Ct. 1899, 1910-12 (1991) (Marshall, J., dissenting) (explaining that the Willie Horton case intensified the explosive public reaction to the charges against Mu'Min, a prisoner who killed a woman after escaping from a prison work detail).

15. Andrew H. Malcolm, *More and More, Prison is America's Answer to Crime*, N.Y. TIMES, Nov. 26, 1989, § 4, at 1. *See also U.S. Has Highest Rate of Imprisonment in the World*, N.Y. TIMES, Jan. 7, 1991, at A14 (reporting Representative John Conyers, Jr.'s statement, "We've got to stop jailing and start rehabilitating. We can build all the jails we think we need and slam the doors down on thousands of people, but it won't make a bit of difference until we address the fundamental causes of crime.").

16. Andrew H. Malcolm, *More Cells for More Prisoners, but to What End?*, N.Y. TIMES, Jan. 18, 1991, at B16. James Waite of the Oklahoma penal system is quoted as saying "Ninety-eight percent of all prisoners will be back on the street someday . . . . If they don't go out any better prepared to face life, then we've just warehoused them for a time. And at a cost of about $15,000 a year per inmate, it would be cheaper to send them to college than keep them in here." *Id.*

17. Negative attitudes towards inmates and ex-inmates hamper rehabilitation efforts. As psychologists have held for more than fifty years, when negative or derogatory descriptions attach to a person or a class of persons, they respond in such a way as to fulfill those negative expectations. *See generally* FRANK TANNENBAUM, CRIME AND THE COMMUNITY (1938).

18. SOURCEBOOK, *supra* note 4, at 618.

education and rehabilitation in prisons has led to recidivism.[19] Shifting the correctional system's objectives from retribution back to rehabilitation is the only way to break out of these cycles.

Legal education can play a significant role in rehabilitating inmates and decreasing recidivism by: (1) changing inmates' perceptions of law and society; (2) developing inmates' cognitive and analytical abilities; and (3) imparting basic legal skills and knowledge. I will explore each of these components after I contextualize the role of legal education through an examination of the state of American corrections in the 1990's and the history of prison education and rehabilitation programs.

II. THE STATE OF AMERICAN CORRECTIONS IN THE 1990'S

Overcrowding is the primary problem in the nation's prisons and jails.[20] Prisons are operating well beyond their intended capacity, with populations in close to one-third of the prisons at more than 120% capacity, and only 14% operating at less than 95% capacity.[21] Over one-half of the jails hold more inmates than their rated capacities,[22] and in the last seven years, 22% of the nation's largest jails have been ordered to increase their housing capacity or reduce their inmate population, while 24% were under court order to improve

---

19. *See* James P. Comer, *Educating Poor Minority Children*, SCI. AM., Nov. 1988, at 42, 42 (explaining the correlation between the lack of education, specifically education focused on the development of citizenship skills, and criminal behavior).

20. For discussions of the serious problems which overcrowding causes for prison and jail administrators, see ALFRED BLUMSTEIN, *Prison Crowding*, CRIME FILE: PRISON CROWDING, NAT'L INST. OF JUST. 1 (1986) (one of a series of 22). (For information, contact Nat'l Inst. of Just./NCJRS, Box 6000, Rockville, MD 20850); Robert C. Grieser, *Wardens and State Corrections Commissioners Offer Their Views in National Assessment*, RES. IN ACTION (Nat'l Inst. of Just., Washington, D.C.), Aug. 1988, at 1, 1; and Randall Guynes, *Nation's Jail Managers Assess Their Problems*, RES. IN ACTION (Nat'l Inst. of Just., Washington, D.C.), Aug. 1988, at 1.

21. Grieser, *supra* note 20, at 1.

22. The Annual Survey of Jails reported that the jail population in the United States increased from 223,551 inmates in 1983 to 395,553 inmates as of June 30, 1989 (a 54% increase). The survey also found that, on average, the 3,316 jails surveyed were occupied at 108% of capacity. SOURCEBOOK, *supra* note 4, at 571.

conditions of confinement related to overcrowding.[23]

Overcrowding is a major problem because the more crowded a prison or jail facility is, the more difficult it is to control the resident population.[24] Correctional facilities must contend with larger and more discontented populations. Space previously used for recreational and educational programs has been converted into dormitories,[25] leaving inmates with little or nothing to do in their free time. This phenomena is quite frustrating to administrators who must contend with all of the problems associated with accommodating a larger population. These factors combine to create a less manageable atmosphere within the facilities, with increased violence among inmates and between inmates and staff.[26]

In addition, the correctional system has had to deal with a variety of problems that did not exist in the past. Most notable are the dramatic rise in AIDS cases in correctional facilities, which has contributed to an unparalleled crisis in correctional health care,[27] and the changing composition of correctional

---

23. Andy Hall, *System-wide Strategies to Alleviate Jail Crowding*, RES. IN BRIEF (Nat'l Inst. of Just., Washington, D.C.), Jan. 1987, at 1; *see also Jails Being Jammed Faster Than Being Built, U.S. Finds*, N.Y. TIMES, Mar. 26, 1990, at A15 (reporting the Bureau of Justice Statistics that between 1983 and 1988 housing space for each prisoner in jails decreased 6% despite a 43.7% increase in total jail space, and also noting that in 1988, 28% of jails in the United States housed more than 40% of their inmates in cells smaller than the recommended 60 square feet).

24. BLUMSTEIN, *supra* note 20, at 1. Instead of addressing ways to solve the overcrowding problem, the courts and the federal government have recently created the potential for an even more ummanageable situation. The Supreme Court ruled in Rufo v. Inmates of Suffolk County Jail, 112 S. Ct. 748 (1992) that consent decrees designed to control prison and jail populations could be modified. Further, the Justice Department announced that it would assist state correctional facilities in releasing the states from these consent decrees. *See* Ruth Marcus, *Supreme Court Rules on Prison: Federal Judge's Standard on Overcrowding Said to Be too Strict*, WASH. POST, Jan. 16, 1992, at A1.

25. *Id.*

26. *Id. See also* Su Perk Davis, *Inmates Who Kill in Prison*, CORRECTIONS COMPENDIUM, Nov. 1990, at 1, 7. Between 1984 and 1989 at least 411 people were killed in federal and state prisons—21 staff members and 390 prisoners. *Id.* During this period, from the few cases that were prosecuted, 20 inmates were sentenced to death, 8 for killing staff members and 12 for killing inmates. *Id.*

27. Reported AIDS cases among inmates have increased over 600% during the last four years. *AIDS Commission Reports Prisons Fail to Provide Adequate Care for HIV-Infected Inmates*, CORRECTIONS COMPENDIUM, Apr. 1991, at 13. "[P]risons

populations, with the increased rates of incarceration for minorities, women, and juveniles.[28] The corrections system is struggling to function even though, predictably, it is spending massive amounts of money to offset costs associated with overcrowding, longer sentences, health care, and population control. Annual spending on federal and state prisons has risen from $12 billion in 1980 to an estimated $20 billion in 1991.[29]

---

are failing to provide adequate health care and education for prisoners infected with AIDS, [even though] 'no other institution in this society has a higher concentration of people at substantial risk of HIV infection . . . .'" *Id.* (quoting NAT'L COMM. ON AIDS, HIV DISEASE IN CORRECTIONAL FACILITIES 18 (March 1991)). Studies show that those entering the corrections system have an HIV infection rate between 2.1 to 5.9%. The infection rate can be much higher, however, and in New York state the rate has been as high as 17.4%. *Id.* The Commission also found that despite high rates of HIV infection, administrators are forgoing the opportunity to educate inmates about HIV, and inmates are re-entering society with little or no added knowledge about the disease or its prevention. *Id.* In an attempt to check the spread of the HIV among inmates of the District of Columbia's correctional facilities, officials there are considering the distribution of condoms to inmates even though sodomy is prohibited by District of Columbia law. Fifty inmates in the District of Columbia have died of AIDS since 1985, and 119 are being treated for AIDS-related illnesses. Advocates of condom distribution believe that education about the dangers of AIDS is insufficient in the correctional environment. Mary Ann French, *D.C. Officials Urged to Give Inmates Condoms*, WASH. POST, June 13, 1991, at C5.

28. Increases in juvenile and female populations in correctional facilities create administrative difficulties given that these groups must be segregated from the adult male population. Increases in minority groups within correctional facilities exacerbate security problems because of the rise in inter-racial conflicts. Bureau of Justice statistics reveal that in 1984 the jail population in the United States was 93% male and 7% female while in 1989 those figures changed to 91% male and 9% female. In 1984 the jail population was 59% white, 40% black, and 1% other (Native American, Alaskan Natives, Asians, and Pacific Islanders) while in 1989 the jail population was 51% white, 47% black, and 2% other. Hispanics comprised 13% of the population in 1984, and 14% in 1989. SOURCEBOOK, *supra* note 4, at 573. In 1975 there were 74,270 juveniles held in juvenile facilities in the United States while in 1987 there were 91,646. *Id.* at 559, 563.

29. Dirk Johnson, *More Prisons Using Iron Hand to Control Inmates*, N.Y. TIMES, Nov. 1, 1990, at A18. To accommodate the burgeoning population of inmates, prisons' budgets have been steadily increasing. In 1991-1992, corrections departments in the United States requested approximately $20 billion in funding. *Id.*; *see also* Su Perk Davis, *Prison Construction Reaches $6.8 Billion; Rate of Increase Down*, CORRECTIONS COMPENDIUM, Mar. 1991, at 9. Fifty out of 52 federal and state prisons responded to a 1991-92 construction survey and reported that approximately $6.8 billion was allocated for new federal and state facilities or additions, an increase of 14.5% over the $5.93 billion reported by the same facilities in 1989-90, and nearly a 73% increase from the amount allocated in

The increase in drug-related crimes is undoubtedly a significant factor in the increased rate of incarceration and its associated correctional problems.[30] While drugs have changed the composition of prison populations, and have compelled the system to confront more and more prisoners addicted to drugs,[31] recidivism due to lack of rehabilitation is the true

---

1987-1988. *Id.* The average cost of construction per bed in 1990-91 was $53,100. *Id.* The statistics show that prison spaces are being filled faster than they are being created. In 1985 there were 424,000 bedspaces for 463,378 inmates in state prison. Edwin W. Zedlewski, *Making Confinement Decisions*, RES. IN BRIEF (Nat'l Inst. of Just., Washington, D.C.), July 1987, at 1.

30. *See* Malcolm, *supra* note 15, at 1; *see also* Stephen Labaton, *Glutted Probation System Puts Communities in Peril*, N.Y. TIMES, June 19, 1990, at A1, A16 (indicating that drug related crimes are by far the most common offense of probationers).

31. "[D]rug-involved offenders repeatedly circle through the corrections system. Breaking the cycle of drug use, crime, and incarceration" through drug treatment programs is recognized as an essential part of corrections because many of these offenders commit very serious crimes over long periods of time and are hard, if not impossible, to rehabilitate without chemical dependency treatment. Marcia R. Chaiken, *Prison Programs for Drug-Involved Offenders*, RES. IN ACTION (Nat'l Inst. of Just., Washington, D.C.), Oct. 1989, at 1, 1. Drug treatment was de-emphasized in the 1970s and 1980s, but the Federal Bureau of Prisons began a comprehensive look at drug treatment in 1988. Marjorie Marlette, *An Essential Part of Corrections—Drug Treatment Programs for Inmates*, CORRECTIONS COMPENDIUM, Aug. 1990, at 1, 5. Today, more than 85,400 prisoners in the United States are in drug treatment programs and 15,000 are waiting treatment. *Id.* at 1, 5. *See also* Labaton, *supra* note 30, at A1. In 1980, drug offenders comprised 25% of the federal prison population, and by 1988 that figure rose to 50%. In 1995 it is estimated to be 70%. Marlette, *supra*, at 5. In the state system, 35% of inmates reported having used more than one major drug (heroin, methadone, cocaine, LSD, or PCP) regularly before their arrest, and over 250,000 reported having used other drugs, primarily marijuana. Chaiken, *supra*, at 1. Forty-two state systems reported that they spent a total of $108 million on drug rehabilitation in 1989, and 41 reported expenditures of $148 million in 1990. This represents an increase of over 33%. Marlette, *supra*, at 5. Some characteristics of successful drug treatment programs include: acquiring funding specifically earmarked for drug treatment; incorporating change of lifestyle counseling along with drug treatment; holding sessions run by drug treatment professionals rather than people in the corrections field; and providing follow-up and aftercare. Chaiken, *supra*, at 2. Drug use among prison inmates has increasingly become a major problem in the United States. There is a captive drug market in prisons and jails, where drugs can bring three times their street value. Drug use among inmates is particularly dangerous because it undermines rehabilitation efforts and causes gang-like violence inside the prison walls. *See* Andrew H. Malcolm, *Explosive Drug Use Creating New Underworld in Prisons*, N.Y. TIMES, Dec. 30, 1989, at A1.

culprit behind the increased populations.[32] Overcrowding has strained the resources available for rehabilitation programs, and has diminished the space available for rehabilitation programs. Without these programs, inmates are being sent back to the streets in the same, if not worse, condition as when they were incarcerated.[33] The same individuals continue to come in and out of the system, clogging both the courts and the correctional facilities.[34]

It has been shown, however, that recidivism rates vary with educational achievement. The more education inmates receive, the more likely it is that they will not commit further crimes.[35] To rehabilitate prisoners and lower recidivism rates, we must rethink our correctional system in terms of incorporating rehabilitative educational programs.[36] Correctional education and rehabilitation are not new ideas, but they have never reached their full potential.

III. CORRECTIONAL EDUCATION

> "[E]ducation is the fundamental method of social progress and reform."
>
> —John Dewey[37]

---

32. *See supra* notes 18-19 and accompanying text.

33. *See* Sue Rochman, *Alternatives to Prison Violence*, CORRECTIONS COMPENDIUM, June 1991, at 1, 6-7 (suggesting that prison society has its own set of violent rules that inmates will take back onto the streets upon their release).

34. *See* SOURCEBOOK, *supra* note 4, at 623 (noting that 28% of offenders that commit murder are either on probation or parole at the time they commit their offense while 68% have prior felony convictions, thus showing that unrehabilitated prisoners continue to commit violent crimes).

35. *See id.* at 618 (reporting that recidivism rates correlate inversely with educational achievement). *See also* Russell G. Dugas, *An Education Program that Lowers Recidivism*, AM. JAILS, July/Aug. 1990, at 64, 64 (reporting that 557 inmates who earned their High School General Equivalency Diploma (GED) while incarcerated in Louisiana had less than a 4% recidivism rate).

36. *See* Emily Herrick, *The Prison Literacy Connection*, CORRECTIONS COMPENDIUM, Dec. 1991, at 1, 5 (reporting the overwhelming correlation between education, especially literacy training, and incarceration).

37. JOHN DEWEY, MY PEDAGOGIC 15 (1929).

A. *Historical Perspective*

The United States' first prison school was started in 1798 at Philadelphia's Walnut Street Jail.[38] The Quakers founded the school as the first project of their "Philadelphia Society for Alienating the Miseries of the Public Prisons." The Quakers, believing that even "the most hardened criminal could be reformed," changed the jail from merely a place of confinement, and added components of penitence, education and labor.[39] However, this rehabilitation model was not widely followed, and it was only shortly after education was introduced into corrections that a more punitive correctional model, known as the Auburn approach, was developed.[40] The Auburn approach focused primarily on "security, custody, and punishment," but not rehabilitation.[41]

Even within the Auburn approach, however, there was some attempt at rehabilitation, with a focus on religion.[42] This was primarily accomplished by teaching inmates how to read the bible, addressing literacy problems while imparting a moral code.[43] A penal theory ultimately developed which envisioned a correctional system functioning as one of punishment and custody combined with education, labor, and contemplation.[44]

Until 1870, rehabilitation in the correctional system was achieved informally and was primarily a by-product of religious

---

38. ALBERT R. ROBERTS, SOURCEBOOK ON PRISON EDUCATION PAST, PRESENT AND FUTURE 3 (1971); *see also* Marsh, *supra* note 1, at 4.

39. Marsh, *supra* note 1, at 4.

40. *Id.* at 4-5.

41. *See* Marsh, *supra* note 1, at 5 (explaining that the Auburn system was one of regimentation and hard labor where inmates were isolated at night and held to strict silence during the day). Sing Sing was built in 1825 based on this approach, and despite much research and more progressive attitudes towards punishment, there is still strong evidence of the Auburn approach in our prison system today. *Id.*

42. ROBERTS, *supra* note 38, at 4-5.

43. Louis Dwight was one of the guiding forces in introducing religious education into the correctional system. Dwight created the Boston Prison Discipline Society which espoused rehabilitation through religious study. Sabbath schools created by the Society were established throughout the northern United States. *Id.*

44. Kenneth T. Martin, *A Brief History of Prisoner Education, in* SCHOOL BEHIND BARS, *supra* note 1, at 36-38.

training.[45] In that year, the American Prison Association (now the American Correctional Association) was formed. The Association adopted a Declaration of Principles integrating behavioral science into the process of rehabilitation.[46] Most of their progressive principles, however, largely remained only principles, and were not put into place until nearly 100 years later.[47]

In 1876, the first prison school to focus primarily on education without a religious orientation was established at the Elmira Reformatory in New York.[48] A decade later Elmira opened the first vocational trade school, and in the early 1900's, reformatories opened across the United States with their educational programs modelled after those at Elmira.[49]

Despite the reforms made in prison education throughout the early 1900's, a survey of all of the correctional educational programs across the country, conducted by Austin MacCormick in 1927-28, revealed that these programs were far from adequate.[50] In response to this study, there was widespread educational reform in correctional systems on both the state and federal levels.[51] In the 1930's, both New York and the federal prison systems made educational courses for illiterate prisoners mandatory, and many state prisons established relationships with state education departments.[52] More importantly, as the prison education systems improved, correctional educators recognized that each inmate had individual needs.[53]

---

45. *Id.*

46. *Id.* at 38. The American Prison Association intended to "professionalize" the corrections field through the expansion of prison educational and vocational programs. *Id. See also* ROBERTS, *supra* note 38, at 6.

47. Martin, *supra* note 44, at 39, 42.

48. ROBERTS, *supra* note 38, at 7-8.

49. *Id.*

50. *See id.* at 10; *see also* Martin, *supra* note 44, at 42.

51. *See* Martin, *supra* note 44, at 42.

52. *Id.*

53. *See* N. L. Englehardt, *Fundamental Factors of Governing the Success of a Correctional Education Program, in* CORRECTIONAL EDUC. TODAY 33 (1939) (the Commission on Education in Correctional Institutions reported that the primary objective of prison education should be socialization with a focus on inmates' individual needs).

In 1949, Justice Black stated that "[r]etribution is no longer the dominant objective of criminal law."[54] Then, throughout the 1950's, the focus on inmate individuality stirred a change in the prison education system whereby individual behavior modification and resocialization began to surpass the development of academic and vocational skills as the ultimate goal.[55] This trend culminated in the 1960's with the development of the "medical model."[56]

The medical model was based on the premise that offenders are "sick" and in need of treatment to cure their sickness.[57] Criminality was described as a sickness stemming from a "deprived social environment."[58] It was thought, therefore, that inmates could be reformed if given the correct "treatment," and that their sentences ought to be determined by whether or not they were cured.[59] Judges were given unrestrained power to fashion indeterminate sentences according to an individual's condition,[60] and the role of parole boards was to decide when a "patient" was cured.[61]

The medical model was problematic in that if there was no accepted cure for an inmate's particular sickness, then that inmate would be incarcerated for an indefinite period.[62] Also, there was an inherent sense of injustice in the fact that offenders who had committed identical crimes were actually incarcerated for different lengths of time.[63] Ultimately, it seems that treatment programs were simply not sophisticated

---

54. Williams v. New York, 337 U.S. 241, 248 (1949).

55. ROBERTS, *supra* note 38, at 19.

56. Alfred Blumstein, *American Prisons in a Time of Crisis*, *in* 4 LAW, SOC'Y & POL'Y 13, 13-14 (Lynne Goodstein & Doris Layton MacKenzie eds., 1989).

57. *Id.*

58. *Id.* at 14.

59. Michael Vitiello, *Reconsidering Rehabilitation*, 65 TUL. L. REV. 1011, 1016 (1991).

60. *Id.* at 1022.

61. *Id.* at 1016.

62. *Id.* at 1023. For example, there is still no known cure for alcoholism or drug abuse. Therefore, a person incarcerated for an offense associated with an addiction could be held indefinitely. *Id.* at 1018-1019 (analyzing the plurality opinion in Powell v. Texas, 392 U.S. 514 (1968)).

63. *Id.* at 1025.

enough to sustain such a sentencing structure.[64]

By the late 1970's, there was clearly a sense among commentators that the sentencing structure needed a complete overhaul.[65] There was fear among liberals and conservatives alike regarding discretionary sentencing.[66] Because the medical model and indeterminate sentencing were seen as unworkable, commentators set aside rehabilitation as a goal of the correctional system in favor of purely punitive goals.[67] Thus, rehabilitation would no longer be the driving force behind sentencing.[68]

A heavy blow to remaining rehabilitative efforts came in 1974, when Robert Martinson published the results of his research team's analysis of 231 studies, conducted between 1945 and 1967, of correctional treatment programs.[69] Martinson concluded that "[w]ith few and isolated exceptions," the rehabilitative programs that have been developed have "no appreciable effect on recidivism."[70] Martinson's study received significant attention, and is among the most cited correctional studies to date.[71]

In 1979, Martinson, rebuking his earlier conclusions, withdrew his claim that rehabilitative programs were ineffective in terms of reducing recidivism.[72] Unfortunately,

---

64. *Id.*

65. Blumstein, *supra* note 56, at 15.

66. Francis T. Cullen & Paul Gendreau, *The Effectiveness of Correctional Rehabilitation: Reconsidering the "Nothing Works" Debate*, *in* 4 LAW, SOC'Y & POL'Y, *supra* note 56, at 23, 28-29. The late 1960's and early 1970's were a period of political and social upheaval, and there were clear lines drawn between liberals and conservatives. When it came to discretionary sentencing, however, both liberals and conservatives feared discretion. Basically, conservatives wanted long determinate sentences while liberals believed that the state would abuse this discretion and, because of personal or societal prejudices, arbitrarily extend sentences. *Id.*

67. *See* Blumstein, *supra* note 56, at 15-16 (describing the rise in the call for greater punishment, as the control over sentencing policy shifted from rehabilitation professionals to the public arena and the legislatures).

68. *See id.*

69. Robert Martinson, *What Works?—Questions and Answers About Prison Reform*, 35 PUB. INTEREST 22, 24 (1974).

70. *Id.* at 25.

71. *See, e.g.*, Cullen & Gendreau, *supra* note 66, at 24-26.

72. Robert Martinson, *New Findings, New Views: A Note of Caution Regarding*

Martinson's later results were virtually ignored.[73]

By the mid-1980's, disillusionment with the rehabilitative model culminated in Congress's passage of the Sentencing Reform Act of 1984 (the "Act"), as part of the 1984 Comprehensive Crime Control Act.[74] The Act classified types of crimes, and prescribed a range of sentences for each category.[75] Judges could only deviate from the guidelines if "aggravating or mitigating" factors were present that were not considered when the guidelines were created.[76] Because the Act's purposes were to inject certainty and mete out stronger punishment, it abolished parole for federal prisoners.[77]

Throughout the 1970's and 1980's opponents of rehabilitation greatly overstated their case.[78] More current research has shown that some rehabilitation programs are in fact successful at reducing recidivism,[79] and that inmates who develop key skills while incarcerated are more likely to stay out of prison.[80] Rehabilitative models were never given a fair

---

Sentencing Reform, 7 HOFSTRA L. REV. 243 (1979). Martinson, recognizing that some programs are indeed beneficial, wrote "new evidence from our current study leads me to reject my original conclusion . . . . I have hesitated up to now, but the evidence in our survey is simply too overwhelming to ignore." *Id.* at 252.

73. Cullen & Gendreau, *supra* note 66, at 26.

74. The Sentencing Reform Act of 1984 was enacted as chapter II of the Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (1984) (codified as amended at 18 U.S.C. §§ 3551-3586, 3621-3625, 3742 (1988) & 28 U.S.C.A. §§ 991-998 (West Supp. 1991)).

75. 18 U.S.C. §§ 3559, 3581 (Supp. 1991).

76. 18 U.S.C. §§ 3553(a)-(e) (Supp. 1991).

77. *See* 18 U.S.C.A. § 3624(a)-(b) (West 1988 & Supp. 1991) (a prisoner must complete his sentence, reduced only by limited good time). *Cf.* Harmelin v. Michigan, 111 S. Ct. 2680 (1991) (holding that a sentence of life in prison without possibility of parole was not cruel and unusual punishment for possession of 650 grams or more of cocaine).

78. *See* Cullen & Gendreau, *supra* note 66, at 26-27.

79. *See* Robert R. Ross, Time to Think: A Cognitive Model of Offender Rehabilitation and Delinquency Prevention 1 (Research Summary, Feb., 1990) (Unpublished report available through the Department of Criminology, University of Ottawa).

80. For example, Oklahoma has instituted a program of pre-parole release which allows prisoners to go home before they are eligible for parole. Nancy Hicks, *Preparole Release in Oklahoma*, CORRECTIONS COMPENDIUM, Aug. 1991, at 1. "Offenders who are literate, have vocational skills and abstain from alcohol and drugs are most likely to succeed . . . . Employment [has been found to be] particularly important to success." *Id.* at 5.

chance in the 1970's and 1980's because, even when there was public confidence in the concept of rehabilitation, lack of funding caused programs to be ineffective.[81]

Furthermore, even though scholars of the late 1970's adopted retributive theories of punishment, they did not altogether abandon rehabilitation as a goal of the criminal justice system. Rather, they advocated the retention of vocational training and educational skill programs.[82] In the 1990's, however, as drug-related crimes have increased, citizens have reacted angrily and have supported retribution as the sole purpose of incarceration. The general public has supported this objective without understanding that most inmates will one day re-enter the community, bringing with them the problems that prison fosters—antisocial behavior, anger, diminished job prospects, and weaker family ties.

B. *Correctional Education Today*

The problems in correctional education today are diverse and profound. Although educational programs such as GED preparation courses, basic literacy, and vocational training are in place within institutions across the country, there is no consistency in participation, quality, or quantity.

The most fundamental problem with correctional education is that few inmates actually participate. Even though some states, and many individual facilities make edcuational classes mandatory, nationally only 9% of adult inmates are enrolled in basic education classes, and only 7% are enrolled in G.E.D. classes.[83]

Even where there are education programs in place, there is no consistency in the quality and structure of the programs.[84] This lack of uniformity stems primarily from the absence of an umbrella authority regulating correctional education. Such authority could give the programs professional status.[85] Schools within correctional facilities are normally neither

81. Vitiello, *supra* note 59, at 1018.
82. *Id.* at 1030.
83. *See* Herrick, *supra* note 36, at 6.
84. *See generally* Marsh, *supra* note 1.
85. *See id.* at 27.

accredited nor affiliated with the public school system.[86] Instead, correctional education programs are usually nothing more than ad-hoc combinations of courses with no continuity.[87]

Issues of power within a correctional facility can also hamper educational efforts as prison officials often use education to control inmates. These officials have the power to regulate and supervise educational programs because they have the power to approve curriculum and select resident participants and instructors.[88]

Along with these problems, correctional education suffers simply as a result of all the problems prevalent in corrections generally. Lack of adequate resources, including funding, space, teachers and teaching materials, has taken a significant toll on the quality and quantity of educational programming.[89] Fiscal stress due to overcrowding, combined with the low priority given to correctional education, has resulted in correctional educational budgets comprising on average only 1% of the nation's corrections budgets.[90] Increased populations in prison and jail facilities have multiplied the time needed for "counts,"[91] which cuts into time spent on programming.[92] Increased prison violence has made "lockdowns"[93] more common, thus keeping inmates in their cells, and out of correctional education classes, for days or

---

86. *Id.* at 26-27.

87. *See id.* at 27.

88. *See id.* at 17-18.

89. Randy Welch, *Doing Time—Education Plays a Role*, CORRECTIONS COMPENDIUM, Feb. 1988, at 1, 1. Within prisons, teachers are few in number and are on the low end of the administrative hierarchy. They are isolated from others in their profession and have little control over their programs and curriculum. *Id.* at 6.

90. *Id.* at 5.

91. "Counts" are literally counting each resident in a corrections facility. Counts are held at regular intervals throughout the day and require the population to freeze until the count "clears" (all residents have been accounted for). Farrel Corcoran, *Pedagogy in Prison: Teaching in Maximum Security Institutions*, COMM. EDUC., Jan. 1985, at 49, 50.

92. *Id.*

93. "Lockdowns" are literally locking prisoners in cells for extended periods. *Id.*

even weeks at a time.[94]

Moreover, the prison environment itself is a very difficult place in which to learn. During educational courses, there are constant interruptions for various security reasons.[95] The cell blocks are noisy, crowded, and tense, which decreases inmates' ability to concentrate,[96] and the psychological impact of being confined presents a huge obstacle to real learning.[97] Stress is caused by the predatory nature of all aspects of prison life, particularly exposure to physical assault, rape, extortion, and constant harassment.[98] This stress results in riots, murders, and suicides,[99] and manifests itself in the classroom in the form of depression and lack of concentration.[100]

As the purpose of our correctional system has shifted philosophically from rehabilitation to retribution,[101] the importance of correctional education has deteriorated, and the goals of correctional education have become unclear.[102] There is a close link between rehabilitation and educational programs, and shifts in political and public sentiments about the value of rehabilitation can cause these programs to be discontinued.[103] Because of all these problems, individuals who are illiterate when they enter prison often remain so. Approximately 10% of all inmates are absolutely illiterate, and almost 60% test below the eighth-grade level.[104] Statistics show that 62% of prisoners in state institutions in 1986 have received less than 12 years of education,[105] and in federal institutions, 20% of inmates cannot read at the eighth-grade level.[106] When inmates are released without basic reading

---

94. *Id.*

95. *Id.* at 52.

96. *Id.* at 53.

97. *See* Bruce Gribben, *Prison Education in Michigan City, Indiana*, PHI DELTA KAPPAN, May 1983, at 656-57.

98. *See* Blecker, *supra* note 12, at 1156-59.

99. Corcoran, *supra* note 91, at 50-51.

100. *Id.* at 53-54.

101. *See* Vitiello, *supra* note 59, at 1012-13.

102. Marsh, *supra* note 1, at 27.

103. Corcoran, *supra* note 91, at 49.

104. Welch, *supra* note 89, at 5.

105. SOURCEBOOK, *supra* note 4, at 590.

106. *Federal Prisoners Required to Complete High School*, CORRECTIONS

and writing skills, they are much less likely to find jobs, and have more difficulty reintegrating into society.[107]

Correctional education is simply not treated as a primary function of corrections.[108] It works around a structure run by administrators whose concerns lie in security and not in education.[109] Rehabilitation can take place within a correctional facility, but only if educators and education play a larger role.[110]

IV. REHABILITATION THROUGH LEGAL EDUCATION

"If a prisoner want[s] to change his character, he must first change his way of thinking, he can only do this by gaining knowledge."[111]

Education is the key to rehabilitation because it gives inmates the tools to deal with personal and societal issues that often lead to criminal behavior. Without an education, inmates have neither the analytical skills nor the store of information necessary to handle problems in daily life. Absent too are the qualifications needed to secure decent employment upon release. Even with its numerous problems, all correctional education has value, because it provides inmates the opportunity to learn skills and develop their intellects. There is particular rehabilitative value in inmates learning law.

A study conducted in 1987 by the Colorado Juvenile Justice and Delinquency Prevention Council concluded that legal education classes in schools reduce crime.[112] Legal education

---

COMPENDIUM, Dec. 1990, at 23. The Justice Department has recently recognized the illiteracy crisis in prisons, and has initiated a plan which will require federal inmates to attend classes until they can complete a high school equivalency degree and read at the 12th-grade level. Ten federal prisons are now enforcing the 12th-grade standard as part of a pilot program which was expected to be used in all federal penal institutions early in 1991. *Id.*

107. *See* Herrick, *supra* note 36, at 5; *see also* Hicks, *supra* note 80, at 7; Gribben, *supra* note 97, at 656-58.

108. *See* Marsh, *supra* note 1, at 26-28.

109. *See id.*

110. *See id.*

111. Taken from an essay by Keith D. Little, an inmate at the Occoquan facility, District of Columbia Department of Corrections, Lorton, Virginia (Jan. 1990).

112. *See* Grant Johnson & Robert M. Hunter, Using School-Based Programs To

classes in a correctional setting can similarly reduce crime, and thereby recidivism, by changing inmates' perceptions and attitudes, developing their cognitive and analytical skills, and imparting the rudimentary legal skills and knowledge necessary to deal with daily problems both inside and outside of a correctional setting. It is important to structure correctional legal education courses around these goals, and therefore, the pedagogical approach of the instructor is critical.

A. *Pedagogy*

"The thing I liked most about the course is that the instructor didn't talk at me, and instead involved me, and all of the students in conducting the classes."[113]

Law classes can be stimulating, exciting, and engaging, or they can be dry, boring, and tedious. The success of a law class depends greatly on the focal point of the instructor. When instructors focus on what they themselves want to say in a class, the result is a lecture. Lectures reach students who have the intellectual ability, attention span, and desire to follow every word that the lecturer is saying, but they lose students who do not possess these qualities. In the correctional environment, with all of its distractions,[114] and with the general lack of education among the inmate population,[115] lecturing is a particularly ineffective teaching method.

Participatory learning focuses on the learner, and is much more effective in a correctional environment.[116] The basis of

---

Improve Students' Citizenship in Colorado: A Report to Colorado Educators 19 (Oct. 1987) (Available through the Colorado Juvenile Justice and Delinquency Prevention Council, 700 Kipling Street, Denver, CO 80215). The study reported results of a law-related education program in which junior high school students addressed the issue of legalizing marijuana. The students explored pros and cons of marijuana use, and debated and drafted legislation. The study reported that after the program, there was a significant drop in the instances of marijuana use by students who had participated. *Id.*

113. Taken from a Street Law Corrections graduation speech by an inmate in the Occoquan facility, District of Columbia Department of Corrections, Lorton, Virginia (December 2, 1991).

114. *See supra* notes 95-100 and accompanying text.

115. *See supra* notes 104-07 and accompanying text.

116. *See* Arlene Fingeret, *The Social and Historical Context of Participatory*

participatory learning is that instructors focus their lessons on the goals of their students, as opposed to simply what the instructor wants to say.[117] Thus, both the program's methodology[118] and its evaluation techniques[119] must be

---

Literacy Education, Participatory Literacy Education, New Directions for Continuing Legal Education (A. Fingeret and P. Jurmo eds.) No. 42, at 5 (1989). Participatory teaching strategies are developed and practiced in weekly two-hour seminars in the Georgetown University Law Center's Street Law Corrections Clinic (the "Corrections Clinic"). Portions of text and a number of notes refer to lessons that have been developed in the clinic which utilize participatory methods. These references are designed to focus the reader on *how* to teach law to inmates.

Research on juveniles has shown that teaching law in a participatory way can make a significant difference in the effectiveness of reducing crime. A study of 1600 elementary, junior high school, and high school students taking law-related, participatory education classes from 1981-1983 revealed a substantial reduction in delinquent offenses. Robert M. Hunter, *Law-Related Educational Practice and Delinquency Theory*, INT'L J. OF SOC. EDUC., Autumn 1987, at 52, 59-62. *See also* Johnson & Hunter, *supra* note 112, at 19 (reporting that participatory teaching is a key component in the success of a legal education class in terms of reducing crime).

117. For example, one of the introductory lessons used in the Corrections Clinic, and adopted from the textbook used by inmates enrolled in the program, is called "Shipwrecked Sailors." *See* LEE ARBETMAN ET AL., STREET LAW - A COURSE IN PRACTICAL LAW (4th ed. 1990). The lesson involves three sailors adrift in a life raft who draw straws to decide who will be consumed to save the other two from starvation. The sailor who loses objects, but the other two proceed to kill and eat him, only later to be tried for murder when they are rescued. The inmates are asked to evaluate whether or not the sailors have committed murder, and how punishing the sailors fulfills or contradicts correctional goals. *Id.* at 4-6.

Learner-centered goals for this class could be structured so that, by the end of the lesson the inmates should be able to: (1) conceptualize at least five reasons why society incarcerate and/or punish people for breaking laws; (2) apply these reasons to a factual situation and see how they work in real life; (3) apply a law to a set of facts and act as judges using their sense of morals, their common sense, and their personal experience in helping to decide the case's result; and (4) realize that not all "immoral" acts are necessarily illegal and vice versa. *See* JUSTIN BROOKS & RICHARD ROE, INTRODUCTORY MATERIALS FOR TEACHING STREET LAW CORRECTIONS 135, 138 (1991) (available from Georgetown University Law Center, Street Law Corrections Clinic, 111 F. St., N.W. Suite 330, Washington, D.C. 20001).

118. No one methodology is correct. Several possibilities follow: (1) have volunteers read the case and have a student paraphrase the situation for the class; (2) split the class into small groups to answer questions from the Street Law textbook regarding whether the conduct meets the definition of murder, whether defendants should be tried for murder, what arguments they would make as advocates for the state, what arguments they would make on defendants' behalf, the purpose for convicting the defendants, and the relationship between laws and morality; (3) regroup and have volunteers prepare to be judges,

designed in terms of the learner's goals. The methodology should, insofar as possible, assist the learner in achieving those goals, and the learner as well as the program should be evaluated to determine how successful the learner has been. These methods and evaluative techniques make the difference between a traditional class, in which an instructor lectures and gives exams, and participatory teaching, where inmates actively participate in their own education.

B. *Changing Inmates' Perceptions of Law and Society*

"It gives me great pleasure and honor to think that I could even be involved in something that would change my views [about] this system that I've been fighting for a very long time [, a system] that can work if I apply myself in good faith."[120]

Not surprisingly, inmates have very negative attitudes towards law and the legal system. They perceive law as their enemy, and feel alienated from the society which it represents. As long as they hold law in disregard, emancipated inmates will continue to violate laws.[121]

Inmates' perceptions that they are unrepresented by the law needs to be changed. Inmates need to gain a sense that they are part of the society that creates laws, so that they will respect society's laws when they return to the streets. Acceptance of laws is a process of socialization that will not come simply by presenting inmates with the laws that they are

---

prosecutors, and defense attorneys; (4) conduct a mock trial based on these facts; (5) debrief the mock trial highlighting the different arguments that were made relating to law and morality and theories of punishment; (6) tell the students how the English courts resolved this issue when they were faced with this case, Regina v. Dudley and Stephens, 14 Q.B.D. 273 (1884). *See* BROOKS & ROE, *supra* note 117, at 178.

119. The techniques for evaluating the Shipwrecked Sailor lesson could include: (1) asking the students for five reasons for incarceration; (2) moving around the classroom and participating in discussions in the small groups; (3) listening attentively to the arguments made during the mock trial; and (4) follow up (homework, essay, quiz, exam etc.). *See* BROOKS & ROE, *supra* note 117, at 178.

120. Taken from the essay "Why I Took Street Law?", written by Jerome Brown, an inmate in Central Facility, District of Columbia Department of Corrections, Lorton, Virginia (Nov. 28, 1990).

121. *See* TRAVIS HIRSCHI, CAUSES OF DELINQUENCY 198-205 (1969) (Hirschi's theory of social control holds that weak societal ties lead to criminal activity.).

to follow.[122] Rather, it will come from gradually changing the attitudes and perceptions of inmates.

1. Why Do We Have Laws?

To accept the legal system, inmates must first accept the necessity of laws, and society's role in creating them. Requiring inmates to evaluate questions related to the reasons laws exist challenges their perceptions about those laws and their relationship to them. Why do we legislate to control certain behavior? Why can an individual be married to only one person? Why do we zone property? Why do we monitor manufacturing? Why do we enforce contracts? Why do we allow people to sue each other? Why must children go to school?[123]

When inmates start to explore reasons for laws, as opposed to merely studying the face of laws, they will gain a perspective that will more readily lead to acceptance of the law itself, and the power of society to create it. While exploring laws' bases, inmates will see how laws reflect many considerations, including policy choices, effects of actions on individuals, effects of actions on society, society's sense of morality, and evolving standards of decency.[124] They will begin to see how their own values are reflected in laws.[125]

---

122. *See* Lon L. Fuller, *Some Presuppositions Shaping the Concept of "Socialization", in* LAW, JUSTICE, AND THE INDIVIDUAL IN SOCIETY: PSYCHOLOGICAL AND LEGAL ISSUES 33 (June Louin Tapp & Felice J. Levine eds., 1977) (explaining that "[s]ocialization is the process whereby a person comes to understand and accept the norms of conduct that a society imposes on its members").

123. One approach that stimulates inmates to rethink their own conclusions on why we have laws is to allow them to act as legislatures in their own fictional society. By creating a fictional society and its governing laws, the inmates' preconceived notions and associated biases about what is legal and illegal are removed. The inmates may then present to the class their fictional society, its goals, and its accompanying legislation. The class then evaluates the practical effect of these laws by determining if they will succeed at fulfilling their societal goals. *See* BROOKS & ROE, *supra* note 117.

124. The Supreme Court has stated, for example, that the breadth of Eighth Amendment protection should reflect "evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86, 101 (1958).

125. *See* Ernest L. Boyer, *The Goal of Civic Education—Connections*, PUB. MGMT., Sept. 1988, at 15, 15 (opining that for civic education to succeed, students must be encouraged to think independently and creatively about the roots of democracy and apply its values to their own lives).

It is important that the process of teaching law to inmates begins by questioning the legal system's very foundation. This will permit the inmates to think about law without the biases they have acquired through personal experience. For example, by initially focusing on why society creates laws, inmates may then contextualize criminal law and see how it corresponds with societal goals. Upon entering a law class, inmates will typically know a great deal about the law in terms of crime and punishment. They will, however, neither understand the justification of punishment nor have a sense of the democratic nature of law.[126]

2. The Lawmaking Process

Inmates almost always feel alienated from the lawmaking process, and before inmates perceptions can be changed, this barrier must be broken down. In conjunction with evaluating the reasons for laws, inmates should be introduced to the process of lawmaking. That is, how are laws made and how are they enforced?[127]

Inmates generally do not understand how laws are made. They often see the laws as systemically arbitrary or completely within their particular judge's discretion. While inmates should be introduced to discretionary areas in law making and en-

126. Poor grasp of democratic principles is not limited to inmates. A 1987 survey of United States citizens regarding public knowledge of American democratic principles revealed that: only 54% of Americans know that the purpose of the Constitution was to create a federal government and define its powers; only 41% know that the Bill of Rights is the first ten amendments to the Constitution; 49% think the President can suspend the Constitution in the event of war or national emergency; and 85% believe that any important case may be appealed to the Supreme Court. *The American Public's Knowledge of the U.S. Constitution: A National Survey of Public Awareness and Personal Opinion* (The Hearst Corp., 959 8th Ave., New York, N.Y. 10019), 1987, at 3, 16, 24.

127. An effective means of introducing the lawmaking process is to have inmates themselves create laws for a hypothetical society. This approach is similar to the one, discussed above, regarding the reasons for laws. *See supra* note 123. To focus the inmates on the lawmaking process rather than on the laws themselves, ask the inmates: What problems do you foresee and how would you deal with them? Will there be leaders in the hypothetical society? Who will make laws? Who will enforce laws and how will they be enforced? Will there be pre-arranged interpretive guidelines? Who will interpret these laws? *See* BROOKS & ROE, *supra* note 117.

forcement, by learning about the law-making process they will begin to appreciate the procedural safeguards inherent in that process.

Furthermore, a primary goal of teaching inmates the law-making process is to illustrate their relationship to it. A common belief is that teaching inmates their role in the process permits them to exploit "the system."[128] The goal is not to teach them to fight the system but to become part of it. This is best accomplished by showing inmates that they can have a voice in shaping that system.[129]

3. The Law As a Changing Entity

Inmates' perceptions that the law is static and unchangeable should be challenged. They should learn that the law is a changing entity because the law's changeable nature provides meaning to the citizens' role in shaping a democratic society. Knowledge concerning the lawmaking process is only the first hurdle to a full understanding of law's evolutionary nature. Another is the concept of interpretation.[130]

---

128. It is ironic to think that teaching such things as the Bill of Rights to inmates provokes hostility because inmates "discover" that their rights are or have been violated. Generally the opposite is true. Typically, inmates have vague ideas about their rights coming into a law class and feel that at some time or another, those rights have been violated. Through an exploration of the Bill of Rights inmates more fully understand their rights and begin to appreciate how countering administrative and societal interests limit those rights. *See infra* notes 149-65 and accompanying text.

129. Inmates must learn not only their rights as citizens, but also the responsibilities associated with citizenship. One such responsibility is to exercise their voice in the lawmaking process in prison, in their local community, and at a national level.

130. One approach to teaching evolving interpretations of laws is to have the inmates actually interpret a law. A hypothetical exercise that the Corrections Clinic has used for many years is called "No Vehicles in the Park." In this hypothetical there is a law prohibiting vehicles from being in a park. The instructor tells the inmates that the law's purpose is to maintain the park's serenity and beauty. The instructor then gives the class several examples of vehicles and asks the class if they violate the law. The examples include a bicycle, a wheelchair, a tank monument, a police car chasing a felon, an ambulance, a garbage truck emptying the trash in the park, and a commuter's car. The inmates must balance the law's underlying purpose against its plain language as well as explore the definition of "vehicle." Questions that can be addressed in class include: (1) Do each of the examples involve "vehicles?"; (2) Do any of the examples violate the letter of the

Inmates should learn that judges, through the judicial and appellate processes, reinterpret laws. If laws were static, some issues could not be appealed. Thus, inmates learn that the appellate process provides a safeguard against both presumed systemic arbitrariness and inviolable judicial discretion. This knowledge reinforces notions already gained through learning about the lawmaking process.[131]

4. Challenging Laws

Acceptance of laws and society's power to create them cannot simply come from learning the black letter law. To accept society's right to make laws, inmates must go beyond a basic knowledge and directly challenge laws. By doing so, inmates get behind the law's rationales and ultimately gain a higher level of acceptance.[132]

When inmates challenge laws, they will not, however, accept that all laws are just. Indoctrination into the perfectly infallible nature of the law is not a worthy or realistic goal.[133] Inmates will inevitably discover that some laws are discriminatory, and some are shortsighted. Inmates are more likely, howev-

---

law?; (3) How does the hypothetical relate to the intent of the law?; and (4) Do you think the example ultimately violates the law? *See* ARBETMAN, *supra* note 117, at 16. The Corrections Clinic has developed an exercise where inmates actually participate in an in-class basketball game to learn the difference between issues of fact and issues of law. Acting as referee, the instructor calls a foul on one player and then allows the other player to shoot several free-throws. The instructor then asks the class which call would be appealable to the basketball commissioner, the foul call or allowing the other player to shoot too many free throws. The class can readily see that a foul call involves judgment, and unless the referee has abused his discretion, it should be non-appealable. They can also easily see that allowing a player to shoot too many free throws is a violation of the rules and should be appealable. The instructor can then use this exercise to apply the same analysis to other hypotheticals to distinguish between issues of fact and issues of law and thus, appealable and non-appealable issues. *See* BROOKS & ROE, *supra* note 117.

131. *See supra* notes 127-29 and accompanying text.

132. *See* Johnson & Hunter, *supra* note 112, at 19. The authors' study demonstrates the importance of challenging laws directly. In their study, students challenged marijuana laws directly and ultimately there was a significant drop in the use of marijuana by the students enrolled in the program. *Id.*

133. In all legal pedagogy, instructors should avoid teaching that laws are perfect or worthless. Rather, the instructor should use an even-handed approach that allows her to convey the value in laws while acknowledging their imperfections. *Id.* at 12.

er, to accept laws when they understand them, the weaknesses as well as the strengths.

5. Viewing the Law from Different Perspectives

Viewing the law from different perspectives opens inmates' minds to new views. Participatory teaching techniques, such as mock trials, roleplays, and other participatory exercises can help to achieve this goal.[134] During mock trials, inmates act as judges, prosecutors, defendants, public defenders, witnesses, and victims.[135] During roleplays, inmates become couples getting divorced, guardians ad litem for abused children, police officers stopping suspected felons, and parole board members.[136] By viewing a spouse abuse case from the judge's, prosecutor's, and victim's perspective, inmates see the effect of spouse abuse without being lectured.[137] Playing the role of police officers stopping suspected felons, inmates think about what goes through an officer's mind. Acting as a parole board member, inmates appreciate both the intricacies of the parole process and the difficult decisions that parole board members make. Unquestionably, participatory exercises go far in effecting change in attitudes and perceptions because they force

---

134. *See supra* notes 113-19 and accompanying text.

135. The Corrections Clinic regularly uses a small claims mock trial at the beginning of each semester. Inmates play the roles of judges, corporation counsel attorneys, and plaintiffs. *See* JUSTIN BROOKS & RICHARD ROE, *Garrick Smith v. District of Columbia Department of Corrections in Teaching Materials for Street Law Corrections* 2 (1991) (available from Georgetown University Law Center, Street Law Corrections Clinic, 111 F. St., N.W., Suite 330, Washington, D.C. 20001). *See also* NATIONAL INST. FOR CITIZEN EDUC. IN THE LAW, STREET LAW MOCK TRIAL MANUAL (Patricia McGuire ed., 1984) (available from the National Institute for Citizens Education in the Law, 711 G St., S.E., Washington, D.C. 20003) (containing several mock trial examples which have been used with inmate populations and detailing methods and procedures for conducting mock trials).

136. At the end of each semester instructors in the Corrections Clinic conduct simulated parole board hearings with the inmates playing the roles of parolee, parole board members, attorneys, and parole officers. *See* BROOKS & ROE, *supra* note 135, at 444.

137. In one exercise used by the Corrections Clinic, inmates actually conduct a civil protection hearing. The inmates are given a hypothetical abuse scenario and then are asked as judges to develop a remedy and actually fill out a civil protection order. As judges they must consider the abused spouse, children, the abuser, and the law. BROOKS & ROE, *supra* note 117, at 175a.

inmates to look at the law from perspectives other than their own.

C. *Legal Education as a Tool for Developing Cognitive and Analytical Skills*

"Judges [have] to weigh the situation at hand from both the citizens' and the law enforcement officer's [perspective]."[138]

For eighteen years, Professor Robert Ross of the University of Ottawa Department of Criminology has been researching correctional rehabilitation programs to find out why some programs succeed while others fail.[139] He has concluded that effective programs focus on inmates' cognitive and analytical skills in, addition to their environment, feelings, behavior, and vocational skills.[140]

Cognitive and analytical skills go beyond mere retention of information. They encompass actual thinking skills[141] (i.e., analyzing and problem solving skills).[142] Cognitive development is the process of building knowledge through an inter-active learning process in which the learner solves problems.[143] Learning law in a participatory-learning environment develops these skills because inmates are asked to solve problems actively as opposed merely to responding with answers memorized from a textbook.[144]

When inmates re-enter society, they face many problems getting their lives back on track. Lack of employment and housing, family problems, and parole restrictions can all pose daunting obstacles.[145] Inability to deal with these problems

---

138. Taken from the essay "The Exclusionary Rule" by Rodney Honesty, an inmate in Maximum Security, District of Columbia Department of Corrections, Lorton, Virginia (1991).

139. Ross, *supra* note 79, at 1.

140. *Id.*

141. *See* TAXONOMY OF EDUCATIONAL OBJECTIVES, HANDBOOK I: COGNITIVE DOMAIN 7 (Benjamin S. Bloom ed., 1956) [hereinafter BLOOM'S TAXONOMY].

142. *See* Krathwohl, *Cognitive and Affective Outcomes of Learning, in* 2 THE ENCYCLOPEDIA OF EDUCATION 196 (L. Deighton ed., 1971).

143. *See* Richard L. Roe, *Valuing Student Speech: The Work of the Schools as Conceptual Development*, 179 CAL. L. REV. 1269, 1293-94, 1299-1301 (1992).

144. *See supra* notes 113-19 and accompanying text.

145. *See* Su Perk Davis, *Prisons Release 474,500 Inmates in 1990 - Most Under*

leads to further criminal activity, and often violent solutions.[146]

To prepare inmates to re-enter society, and deal with their day-to-day survival inside prison, their problem solving skills need to be developed. Legal education classes develop problem solving skills, and inmates thereby learn how to develop legal, non-violent solutions to problems that occur in everyday life.

1. Analytical Frameworks

Analytical frameworks are skeletal structures which distinguigh components of issues and ideas. A great deal of law is taught through the use of analytical frameworks. These analytical frameworks serve as a tool through which the instructor presents the processes, rules, and philosophical fundamentals involved in lawmaking and enforcement.[147] They work as a conduit of factual information, but more importantly, they serve the function of developing problem solving skills.

The majority of inmates have always learned on the level of read and recite or memorize and regurgitate. It is of little importance, however, for a student inmate to memorize that there are three branches of government, twenty-six amend-

---

Supervision and with Gate Pay, CORRECTIONS COMPENDIUM, Aug. 1991, at 9 (explaining that upon release from prison, inmates typically receive nothing more than a small amount of gate pay, clothes, if needed, and a bus ticket to an in-state destination).

146. For example, Jack Abbott, Norman Mailer's protege who wrote *In the Belly of the Beast* while incarcerated in a maximum security facility in Marion, Illinois, was released from prison in June of 1981 after having spent all but 13 of his 46 years in prison. When he entered a halfway house, caseworkers noticed "he just didn't have a clue" about how to survive on the outside. While in the halfway house, he thought someone had stolen his new pair of shoes and reacted by declaring "whoever took those shoes, I'm going to kill them." In July of 1981, while dining at a Manhattan restaurant approximately a month after his release, he killed a waiter for informing him that he could not use a restroom reserved for staff members. Kevin Cullen, *Litigants Enter Belly of Beast; Jury Awards $7.5 Million in Abbott Case*, BOSTON GLOBE, June 18, 1990, at 1P. *See also* Hicks, *supra* note 80, at 5 (reporting that releasees who are literate, have vocational skills, abstain from drug use, and, most importantly, have stable employment, are most likely to succeed once they are out of prison).

147. There is an old cliché among first year law students that they do not learn any factual information (in terms of laws), they "learn to think like a lawyer." SCOTT TUROW, ONE L 10 (1977).

ments to the Constitution, and 100 senators. Such learning is very low level.[148] Analytical frameworks are designed to develop inmates' cognitive and analytical abilities by developing their abilities to apply and analyze facts and approach problems logically. The emancipated inmate will undoubtedly find these skills to be more useful than simple, evanescent facts.

The "balancing test" is a classic legal analytical framework used to evaluate components of a legal problem and competing interests. In the study of constitutional due process protection, for example, the courts balance the government's interest against the individual's in deciding what process is due.[149] As the situation or interests change, the only way to evaluate how much protection is available to the individual is by applying a balancing test.

The First and Fourth Amendments effectively illustrate this process and are particularly appropriate teaching vehicles, as governmental interests vary greatly inside and outside of a correctional setting.

a. First Amendment

There is rehabilitative value in learning about the First Amendment,[150] both substantively and as a way of developing cognitive and analytical skills.

---

148. *See* BLOOM'S TAXONOMY, *supra* note 141, at 18. Bloom's taxonomy of educational objectives has six major classifications: (1) Knowledge; (2) Comprehension; (3) Application; (4) Analysis; (5) Synthesis; and (6) Evaluation. Memorization would fall into the knowledge category, the lowest level of learning in the hierarchy of educational objectives. *Id.*

149. In terms of correctional litigation, the government's interest is generally based on institutional concerns. For example, in determining the scope of an inmate's Fourth Amendment protection against unreasonable searches and seizures, the United States Supreme Court in Hudson v. Palmer, 468 U.S. 517 (1984) balanced an inmate's right to privacy against the institutional needs and objectives of prison facilities, particularly internal security and safety. The Court determined that prisoners have no reasonable expectation of privacy in their prison cells entitling them to Fourth Amendment protection against unreasonable searches and seizures because their interest in privacy is outweighed by a correctional institution's interest in prison safety. *Id.* at 530.

150. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. CONST. amend. I.

Substantively, inmates are often confused about the First Amendment's scope. Inmates often believe that because the First Amendment protects speech and the exercise of religion, that these rights are absolute.[151] This belief often serves to alienate inmates from law because they think that their First Amendment rights are being violated daily inside correctional facilities.[152]

Furthermore, some inmates have only seen the First Amendment protect organizations with interest that are not aligned with their own.[153] By exploring its full range of protection, inmates gain a greater appreciation of the First Amendment and inevitably feel less alienated from the system that effectuates it.

In terms of developing analytical and cognitive skills, the core of the First Amendment is the balance between an individual's freedom of expression and the government's interest in restricting certain forms and means of expression.[154]

---

151. The Supreme Court has repeatedly stated that extensive time, place, and manner restrictions can be imposed on First Amendment rights in various situations. In Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988) the Supreme Court wrote that "[a] school need not tolerate student speech that is inconsistent with its 'basic educational mission' even though the government could not censor similar speech outside the school." *Id.* at 266 (quoting Bethel School District No. 403 v. Fraser, 478 U.S. 675, 685 (1986)).

152. In Turner v. Safely, 482 U.S. 78 (1987), the Supreme Court held that prison regulations restricting inmates' First Amendment rights need only be reasonably related to a valid correctional goal. *Id.* at 89.

153. A debated First Amendment issue involves the right of the Ku Klux Klan to march and to speak its views publicly. In one Street Law Corrections class an inmate stated that "the city of Washington D.C. is 80% black and black tax dollars pay for the police protection so the Ku Klux Klan can march in our streets. I have an eight year old daughter, I thought their time had passed." Indeed, many inmates still believe that protection of the Ku Klux Klan is racially motivated, even after exploring the rationale behind the First Amendment and the full range of speech and groups it protects. Without any understanding of the First Amendment, this particular inmate is totally alienated from his government and its laws. Perhaps after studying the First Amendment he will still not agree that the Ku Klux Klan should be allowed to march. He will, however, know that the First Amendment similarly protects other forms of speech and groups with which his interests are more aligned.

154. The "value" of speech and whether the government has a heightened interest based on the content of speech are common themes in Street Law Corrections classes. Should the states have a "legitimate interest in prohibiting dissemination or exhibition of obscene material when the mode of dissemination carries

Weighing these countervailing interests, inmates exercise and develop cognitive and analytical skills. Moreover, by first applying the First Amendment balancing test to situations outside of a correctional setting, inmates realize that First Amendment protection is not absolute. Inmates can later use the acquired skills to recognize competing interests, including the strong governmental interest in restricting First Amendment rights within a correctional setting.[155]

Even if after studying the First Amendment inmates still feel that they should have more First Amendment protection inside correctional facilities, they will at least recognize and focus on the government's interests. They will no longer see restrictions on their First Amendment rights as completely arbitrary, and negative feelings about their treatment will decrease while their newly acquired skills help them evaluate different First Amendment scenarios both inside and outside of a correctional facility.

---

with it a significant danger of offending the sensibilities of unwilling recipients or of exposure to juveniles"? Miller v. California, 413 U.S. 15, 18-19 (1973). In *Miller*, the Court established a three part test for determining whether speech is obscene or not:

> (a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Id. at 24 (quoting Kois v. Wisconsin, 408 U.S. 229, 230 (1972)).

155. The Supreme Court has held that there are heightened security interests inside prison that warrant certain restrictions of the First Amendment if the restrictions are reasonably related to legitimate security interests. *Turner*, 482 U.S. at 89. In *Turner*, the Court stated that in evaluating the reasonableness of a prison restriction, one must examine: (1) whether it is a neutral restriction; (2) whether there are alternative means of exercising the right still open; (3) the impact that accommodation of the asserted constitutional right will have on correctional staff and other inmates; and (4) the absence of ready alternatives. *Id.* at 89-90. The Court then evaluated these four factors and validated a regulation which permitted correspondence between immediate family members who are inmates at different institutions and between inmates "concerning legal matters," but allowed other inmate correspondence only if it is deemed in the best interest of the parties. The Supreme Court found that this restriction was justified because, *inter alia*, "mail between institutions can be used to communicate escape plans and to arrange assaults and other violent acts." *Id.* at 91.

b. Fourth Amendment

The Fourth Amendment[156] also offers unique learning opportunities both substantively and as a way of developing cognitive and analytical skills. Substantively, inmates are generally confused about the standards which the Fourth Amendment prescribes. Confusion over these standards often leads inmates mistakenly to believe that their Fourth Amendment rights have been violated. Furthermore, just as with the First Amendment, inmates often have the mistaken impression that the Fourth Amendment provides absolute protection both inside and outside correctional facilities.[157]

In terms of developing analytical and cognitive skills, inmates can explore the standards used in Fourth Amendment analysis through an analytical framework similar to the balancing test discussed above. This analytical framework focuses on what the government must know or do before it may intrude into varying levels of an individual's privacy. For instance, a "reasonable articulable suspicion"[158] must exist before an officer may conduct a "stop and frisk,"[159] "probable cause" is needed for a search or an arrest,[160] and the govern-

---

156.

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

157. *See* Hudson v. Palmer, 468 U.S. 517, 530 (1984) (deciding that in contrast to an individual's expectation of privacy in their home, *see, e.g.*, Mapp v. Ohio, 307 U.S. 643 (1961), inmates have no reasonable expectation of privacy in their prison cells entitling them to Fourth Amendment protection).

158. Reasonable articulable suspicion has been defined as "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot." Terry v. Ohio, 392 U.S. 1, 30 (1968).

159. A "stop and frisk" must be "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby, and may realistically be characterized as something less than a 'full' search." *Id.* at 26.

160. There must be sufficient facts to warrant a belief that a person has committed or is committing a crime. *Id.*

ment must prove its case "beyond a reasonable doubt" for a criminal conviction.[161] By examining these standards through an analytical framework inmates discover the rationales that permeate the criminal justice system and develop cognitive and analytical skills while working through the analytical framework and posing associated questions.[162] In this way, inmates learn, for example, that police officers do not need to have knowledge beyond a reasonable doubt to conduct a search or an arrest.

The analytical framework should incorporate a complete picture of Fourth Amendment protection to enable inmates to understand more fully Fourth Amendment jurisprudence, including concepts such as the exclusionary rule[163] and warrant exceptions.[164] Working with this framework, inmates develop problem solving skills and shed some animosity for the government because they will more clearly understand its

---

161. "No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is assumed." MODEL PENAL CODE § 1.12(1) (1962).

162. An effective way of simplifying the Fourth Amendment's procedural requirements is by using a graph. The graph should portray levels of proof and procedural protection on one axis and levels of intrusion or interests on the other. Starting with a simple encounter between a police officer and a citizen, which requires no proof of wrongdoing, the graph can chart the full realm of criminal procedure. From a simple encounter, the graph can visually show how there are increasing levels of protection and proof as the criminal process moves through the stages of a *Terry* stop, search, arrest, preliminary hearing, trial, and even post conviction remedies. In addition, this graphic tool is an excellent means by which the instructor may introduce rules of evidence and appellate process. The chart can also be used to develop an analytical framework for distinguishing between criminal and civil trials. By contrasting civil and criminal trials, the chart can display how the differing burdens of proof - "beyond a reasonable doubt" versus "preponderance of the evidence" - reflect the premium which the system places on individual liberty. *See* BROOKS & ROE, *supra* note 135, at 89a.

163. If a search or seizure is made without authority or is otherwise unreasonable in violation of the Fourth Amendment, both federal and state courts are prevented from using any evidence obtained from the search or seizure. The policy behind this judicially created rule is that the suppression of illegally obtained evidence will deter government officials from the proscribed conduct. See Weeks v. United States, 232 U.S. 383 (1914) (federal proceedings); Mapp v. Ohio, 367 U.S. 643, 655 (1961) (making the exclusionary rule applicable to the states).

164. For example, a search based on an invalid warrant is not a Fourth Amendment violation if the officer, in good faith, executes the search pursuant to the warrant and the officer reasonably and objectively believes that the warrant and search are valid. United States v. Leon, 468 U.S. 897, 918-22 (1984).

compelling interest in conducting thorough searches within prisons.[165]

2. Grappling with Issues and Taking Positions

Participatory learner-centered education stresses grappling with issues and taking positions. This process also develops analytical and cognitive abilities, as well as problem solving skills. In a learner-centered educational environment, information flows between the student and the teacher, and between the students themselves. This process develops critical thinking.[166]

Inmates can learn from both defending and advocating positions.[167] Participatory learning provides the means for the inmates to formulate their own opinions on issues and effectively teach themselves. They develop analytical and cognitive skills through formulating their own ideas, and continue to develop these skills by later defending them.[168] Debates are

---

165. *See* Hudson v. Palmer, 468 U.S. 517, 526-30 (1984) (discussing administrative and security issues which make the government's interest compelling).

166. Critical thinking skills are developed in law classes, because the inmates are constantly evaluating behavior against societal standards. *See* Frederick A. Rodgers, *Using Law-Related Education to Facilitate Students' Learning in Critical Thinking*, *in* LAW-RELATED EDUCATION AND THE PRESERVICE TEACHER 35-39 (Charlotte C. Anderson & David T. Nayler eds., 1991).

167. *See* Karl A. Smith, *Structured Controversies*, ENGINEERING EDUC., Feb. 1984, at 306, 306-09 (outlining how to conduct value structured controversies in a classroom setting); *see also* David W. Johnson et al., *Academic Conflict Among Students: Controversy and Learning*, *in* THE SOCIAL PSYCHOLOGY OF EDUCATION: CURRENT RESEARCH AND THEORY 199, 205 (Ronald Feldman ed., 1986) (explaining the cognitive educational value of structured controversies).

168. In one exercise used by the Street Law Corrections Clinic, adopted from ARBETMAN, *supra* note 117, at 52-53, inmates are given a number of crimes and asked to rank them from most serious to least serious. The crimes include possession of cocaine, selling marijuana, armed robbery, environmental pollution, not wearing a helmet while operating a motorcycle, prostitution, stealing to support one's family, homosexual sex, turning back odometers, drunk driving, and crimes of omission. It is fairly easy for inmates to label crimes as minor or serious, but much more difficult for them to actually rank them in a logical order. Engaging in that process requires true critical thinking. The inmates must look closely at the factors that compose the crime to differentiate between them. They must evaluate the societal costs, the persons effected by the crimes, the moral considerations, and the jurisprudential elements, including the goals of the penal system. Once the inmates have created their own lists and taken their own positions, the instructor can then chart their answers on the blackboard and have them engage in a mean-

powerful teaching vehicles because inmates must often defend positions that are different from their own.[169] Consequently, they are forced to look closely at issues to formulate arguments; they must break issues into components and evaluate those components in terms of both personal and societal concerns.

Law provides an ideal foundation in terms of critical thinking. Participatory teaching is a vehicle which is well suited to the study of law. Law is a product of society's collective moral reasoning and critical thinking: all of the social and political policies that shape our society and our lives stem from law. It is through critical thinking, including grappling with issues and taking positions, that inmates' cognitive and analytical skills can be developed.[170]

D. *Legal Skills and Knowledge Necessary to Deal with Daily Problems*

"There's an old saying, 'what you don't know can't hurt you' . . . I'm here to say what you don't know can and certainly will hurt you."[171]

To rehabilitate inmates and decrease recidivism, it is important that inmates learn how to legally cope with everyday dilemmas, both inside and outside of correctional facilities. Without these skills there is increased crime and violence inside correctional facilites, and inmates continue to come in and out of the system because they cannot deal with their problems in society.[172]

---

ingful debate. The instructor can ask inmates why they made certain choices and then ask inmates with different answers to explain their reasoning. The inmates develop analytical and cognitive abilities through the process of internally evaluating and listing the offenses and through the process of actively engaging in debate.

169. For a discussion of how inmate involvement in the learning process acts as a catalyst for skills development, see *supra* notes 134-37 and accompanying text.

170. *See* L. Kohlberg, *Stage and Sequence: The Cognitive Developmental Approach to Socialization*, Handbook of Socialization Theory and Research 347-480 (D.A. Guslin ed., 1969).

171. Taken from the essay "What I Learned in Street Law" by Haze Buchanan, an inmate in Lorton (1990).

172. *See supra* notes 16-18 and accompanying text.

1. Inside a Correctional Facility

a. Institutional Issues

Inmates need to be given the legal skills and knowledge to deal with their individual day-to-day institutional problems. There is a common sense of helplessness among prisoners in terms of dealing with these issues, and this feeling must be combatted.[173]

There are obviously many rules and regulations within prisons that do not exist in mainstream society.[174] A lack of understanding regarding the prison rules and processes leads to conflict, frustration, and diminished self-esteem that accompanies feelings of powerlessness.

For example, within most prisons, there are systems for dispute resolution.[175] These systems are structured to deal with conflicts, discipline prisoners, and supervise staff activity. Their primary goals are to maintain control and minimize violence. The only way these systems work effectively, however, is if inmates understand the regulations and the due process protection that they afford.

---

173. *See* H. JACK GRISWOLD ET AL., AN EYE FOR AN EYE 188-91 (1970), *reprinted in* SHELDON KRANTZ, THE LAW OF CORRECTIONS AND PRISONERS' RIGHTS 8 (2d ed. 1981) (explaining how men surrender to the despair of prison upon seeing that there is "no escape from the total inevitability of despair and hopelessness").

174. For example, the District of Columbia Department of Corrections has numerous regulations and requirements for inmates, including grooming standards, mail privileges, retention and disposition of residents' personal property, dispute resolutions procedures, identification cards, operation of institutional canteens, libraries, and educational programs. Many of these rules are complex and some have complicated procedural requirements. *See infra* note 175. *See generally Index to Department Directives*, Jan. 1990 (Government of the District of Columbia Department of Corrections Office of Policies and Procedures, Washington, D.C. 20001) (listing Department of Corrections regulations).

175. The District of Columbia Department of Corrections Department Order Number 4030.1 establishes an "administrative procedure by which residents and ex-offenders . . . may seek formal redress of complaints relative to their incarceration or supervision by the Department of Corrections." Complainants must be filed within 15 days from the date of injury on which the complaint is based, on a D.C. Administrative Remedy Procedure form. Administrators have up to 15 days to take action on the complaint, unless it is of an emergency nature, in which case the administrator has 48 hours to respond. If the issue is sensitive, the inmate may file directly with the Director, along with an explanation. *Id.*

In the turbulent world of American correctional facilities an inmate can die in an argument over a pair of sneakers.[176] To effectuate the security goals of maintaining control and minimizing violence, inmates must be taught how to resolve disputes in non-violent ways. Teaching inmates how to utilize prison processes alleviates prison conflict. Inmates will deal with their frustrations one way or another. Thus, teaching inmates law introduces them to the appropriate forums for dispute resolution, and gives them the skills to use those forums. If an inmate feels he is being harassed by a particular inmate or a particular officer, the frustration often will be vented through physical confrontation. By learning how to use the grievance system, however, inmates are not taught how to "beat" the system, but instead are taught how to "use" the system for its intended purpose.

Similarly, by teaching inmates, in the non-confrontational setting of a law class, about the correctional regulations associated with visitation, religious practice, law libraries, and other day to day situations, they learn what they can and cannot do, and gain a sense of self-esteem and power which comes with that knowledge. Once again, they may not believe that all prison regulations are just or fair, but they will learn the rationales behind them.

b. Legal Problems

Inmates have legal problems beyond those associated with their crime or the conditions of their incarceration. Like all citizens, they need to be able to solve their legal problems, and therefore must be afforded access to legal and judicial processes and resources. The Supreme Court has held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and

176. Many prisoners grow up in violent neighborhoods and are taught to solve all conflicts by using violence. This learned behavior often carries over to prison where violence can be greater than it is on the streets. "Society in prison has very rigid rules," points out an inmate at the Elmira Correctional Facility in New York. "For instance, if someone takes my sneakers, I'm supposed to hit them." Rochman, *supra* note 33, at 7. On Christmas Eve 1990, an inmate was killed at the prison because he owed two other inmates two packs of cigarettes. *Id.*

filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."[177] The Court has also acknowledged that "adequate law libraries are one constitutionally acceptable method to assure meaningful access to the courts."[178] States have thus been permitted to provide law libraries in lieu of any other legal services as the means for assuring prisoners' access to the courts.[179]

Despite the public perception, inmates use the court system for reasons other then securing their release. Access to courts, and the processes and resources associated with that right, allows inmates the opportunity to deal with landlord/tenant problems, family law problems, and various other civil actions, as well as actions associated with conditions of incarceration. According to a 1981 study, 43 of 102 prisons surveyed provided no legal assistance to inmates, and 19 used only inmates to provide legal assistance.[180]

Realistically, inmates' right of meaningful access to the courts cannot rest upon adequate law libraries alone. There is no meaningful access to courts unless inmates know how to use law libraries. That is, they must be proficient in reading and writing English, have legal research skills, and have

---

177. Bounds v. Smith, 430 U.S. 817, 828 (1977). The Court also stated that states are required to shoulder "affirmative obligations to assure all prisoners meaningful access to the courts," including the provision of paper, pens, notarial services, and postage stamps. *Id.* at 824-25.

178. *Id.* at 830. The Court continued, however, that other means may also be constitutionally acceptable. *Id.*

179. The Supreme Court has not delineated what constitutes an adequate law library and only requires that a library or any other type of legal access program "must be evaluated as a whole to ascertain its compliance with constitutional standards." *Id.* at 832. The *Bounds* decision did not insist that prison libraries adhere to the American Association of Law Librarys' list of recommended collections for prison and other institutional law libraries. Consequently, it is not surprising that the quality of prison libraries varies greatly. For a discussion of the relationship between law library resources and prisoner motivation, see also Christopher E. Smith, *Legal Education in Prisons: Special Problems and Opportunities for Correctional Education*, J. CORRECTIONAL EDUC., Dec. 1987, at 132, 132.

180. *See* Richard E. Ducey, *Survey of Prisoner Access to the Courts: Local Experimentation a'* Bounds, 9 NEW ENG. J. CRIM. & CIV. CONFINEMENT 47, 105-18 (1983) (detailing both a survey questionnaire regarding prison legal facilities and the results of this survey).

knowledge of the court system and legal procedure.[181] Consequently, legal education programs improve inmates' effectiveness in utilizing the legal process and provide them more meaningful access to courts.[182]

2. In Society

Just as within a correctional facility, frustration over simple matters often leads to criminal activity on the street. Teaching inmates about legal means of redress reduces frustrations and thereby reduces criminal activity. Teaching inmates how to use the courts does not necessarily encourage action, but it does encourage legal as opposed to illegal action.[183] One way or another, frustrated ex-inmates will deal with their problems. An understanding of the law will help them choose better, and legal, alternatives.

Even a cursory understanding of consumer law can give ex-inmates the confidence to deal with consumer complaints responsibly and obtain satisfaction. Along with teaching inmates about available remedies, inmates also learn their own contractual responsibilities and will show more prudence when entering into contractual obligations.[184]

Another area of supreme importance to ex-inmates is housing law. Every day, defendants go unrepresented in landlord/tenant courts. A rudimentary understanding of local housing codes and rights and responsibilities under a lease can keep ex-inmates from joining the ranks of the homeless.[185]

---

181. The Supreme Court noted in *Bounds* that prisons may use means other than a law library to assure meaningful access to the courts. Suggested alternatives included training inmates to be paralegal assistants or using paraprofessionals and law students, either as volunteers or in formal clinical programs. *Bounds*, 430 U.S. at 831.

182. Smith, *supra* note 179, at 132.

183. In the Corrections Clinic, each semester begins with a section on small claims. Small claims court is the most accessible court to citizens and can be used without an attorney. Therefore, the inmates learn how they can adjudicate their claims through a legitimate process. BROOKS & ROE, *supra* note 135, at 1.

184. Contract law can be taught using practical consumer hypotheticals such as buying and financing a car. While it may be difficult to get a classroom full of inmates interested in contractual jurisprudence in the abstract, it is very easy to get them interested in how to buy and finance a car and what their rights and responsibilities are in a financing contract.

185. In the Corrections Clinic inmates work with actual leases in the classroom

Employment problems are also common among ex-inmates. A knowledge of the rights and responsibilities of an employee/employer relationship could be critical for an ex-inmate seeking or maintaining employment.[186] Additionally, almost all inmates incarcerated in a state system will eventually have to deal with parole.[187] Inmates need to know what will be expected of them and understand that parole is a privilege and not a right.[188] Without this understanding, or an awareness of their obligations while on parole, ex-inmates are more likely to violate parole and wind up back in prison.

In sum, basic "how-to" skills in buying a consumer product, financing a car, filing consumer complaints, reading a lease, filing a tax return, dealing with employment issues, and maintaining parole give inmates the confidence and skills needed to deal responsibly with everyday legal situations.

V. CONCLUSION

We do not have the resources to lock all inmates up for the rest of their lives. Therefore, we must address recidivism by making rehabilitation the major focus of our correctional system. Legal education classes can play a role by developing various essential survival and thinking skills, as well as by changing inmate attitudes.

Knee jerk policies focused on retribution and punishment have left us with an overburdened corrections system, a clogged judicial system, and escalated violence and crime. Charitable and humanitarian notions need not be the catalyst

---

and roleplay as landlords and tenants negotiating a lease. Through the roleplay the inmates explore the rights, wants, and needs of landlords and tenants. In conjunction with the housing classes, the inmates are given a summary of D.C. housing law for both their own personal use and for their families to use. *See* HARRISON INSTITUTE FOR PUBLIC LAW, WASHINGTON, D.C. TENANT SURVIVAL GUIDE (4th ed. 1989) (available from Georgetown University Law Center, 111 F. St., N.W., Washington, D.C. 20001).

186. There are clearly misconceptions among inmates regarding how their criminal record effects their ability to obtain certain jobs. These misconceptions may lead inmates to lie on their employment applications, only later to be found out and dismissed.

187. *See* Jankowski, *supra* note 2, at 3.

188. *See* Morrissey v. Brewer, 408 U.S. 471, 477-80 (1972) (discussing the development of the modern parole system).

for focusing the correctional system on rehabilitation, because a system based on rehabilitative goals is in our collective best interest. We need to remember that today's inmate is tomorrow's neighbor.