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**LONG-TERM CORRECTIONS IN THE
DEPARTMENT OF DEFENSE:
THE BUREAUCRACY & A SAVINGS UNREALIZED**

III Essay

BRUCE R. CONOVER/CLASS OF 1995
CORE COURSE 3
SEMINAR LEADER DR. BRESLIN
FACULTY ADVISOR COL COLLINS

Report Documentation Page

Form Approved
OMB No. 0704-0188

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1. REPORT DATE 1995		2. REPORT TYPE		3. DATES COVERED 00-00-1995 to 00-00-1995	
4. TITLE AND SUBTITLE long-Term Corrections in the Department of Defense: The Bureaucracy & a Savings Unrealized				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) National War College, 300 5th Avenue, Fort Lesley J. McNair, Washington, DC, 20319-6000				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT see report					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES 11	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

In November 1989, after receiving a General Accounting Office (GAO) report highlighting excess unoccupied bed space in military corrections facilities, the Secretary of Defense directed the Army to lead the Services in developing recommendations to achieve greater efficiency in the conduct of military corrections operations. In the ensuing months, a Joint Working Group (JWG) composed of corrections and legal representatives of the four military Services, deliberated a myriad of alternatives designed to eliminate the excess and to reduce the overall cost of maintaining the system. In the end, however, the alternative recommended in the final report to the Secretary, represented not the most cost-effective, reasoned solution, but instead, a negotiated "best we can get" agreement based upon the parochialisms and self-interests of the bureaucratic institutions charged with the analysis. Given those interests, and an understanding of how organizations contribute to the policy-making process as described by Morton H. Halperin, the outcome was predictable.

The authority to incarcerate military offenders rests in the Uniform Code of Military Justice. "The original purpose of military confinement was to provide unit commanders with a deterrent for such offenses as AWOL (Absent Without Leave), petty larceny, and other violations of the Articles of War. Confinement was seen as an alternative to more cruel punishments such as whipping."¹ Until 1870, long-term military prisoners served their sentences in state facilities. Those with short sentences and those convicted of purely military crimes were confined in local installation stockades. "However, because of the deplorable conditions and disparity of treatment . . . the Army was able to secure legislation authorizing the establishment of a military prison at Fort Leavenworth, Kansas, in 1870."²

The new maximum security facility remained under military control until 1895, when Congress directed that it be transferred to the Justice Department. Justice's Bureau of Prisons remained in control of all long-term military prisoners at the penitentiary until 1906, when the facility was returned to the supervision in the Army. The Army secured its long-term prisoners, and those of the Air Force and Marine Corps until 1929, when because

of declining manpower and reduced military prisoner populations, the facility was again returned to control of the Justice Department. In 1940, with the nation preparing for war and prisoner populations increasing rapidly, the Fort Leavenworth penitentiary was returned to the Army and it was permanently renamed the United States Disciplinary Barracks.³ Throughout the entire period, short-term prisoners remained confined in local, Service operated stockades and shore brigs.

In April 1970, following Congressional criticism of the conditions in military stockades and prisons, the Secretary of the Army chartered a civilian committee of corrections specialists to study the Army Confinement System and make recommendations for improvements.⁴ Recommendations contained in the Committee's report established the foundations for the current legislative Service Secretary authorization to prescribe military confinement at " ... any place of confinement under the control of any of the armed forces or in any other penal or correctional institution under control of the United States, or which the United States may be permitted to use."⁵ The legislative initiative further provided Service Secretaries the authority to establish "... such military correctional facilities as may be necessary for confinement of offenders ..", and mandated that when such facilities were established the Service Secretary would "... provide for the education, training, rehabilitation, and welfare ." of those confined.⁶ It was clearly Congress's intent to permit Service Secretaries to incarcerate prisoners in any penitentiary, but that if a Service Secretary chose to establish a facility, rehabilitative treatment must be made available.

By 1988, military corrections operations had become embedded in all the Services. Although each confined short-term prisoners in their own local facilities, the Army's Military Police Corps assumed the predominant role in the Department of Defense as custodian of the long-term corrections function. The Army invested heavily in the mission, establishing a unique cadre of military policemen to operate its facilities and an array of comprehensive rehabilitative and training programs to support correctional treatment of military offenders. The history of transferring long-term prisoners to civilian control had

been lost. In total, some 3000 soldiers, airmen, marines and sailors were committed to corrections duties at 41 facilities throughout the Department of Defense. Annual operating costs, not including the cost of manpower, exceeded \$160M.⁷

Amid this setting in November 1989, the General Accounting Office reported to the Secretary of Defense that the military corrections system was underutilized.⁸ In total, only 4,528 of the 7,174 available beds in military corrections facilities were occupied. The Secretary, in response, directed the Army, the Service with the greatest commitment to the function, to assume the lead among the Services to formulate recommendations for the consolidation of corrections activities within the Department. As enunciated in the Secretary's memorandum, the study was to " ... eliminate inefficiencies and reduce overhead costs ..."⁹

Between November 1989 and May 1990, the Joint Working Group developed three options, each with the potential of achieving varying degrees of greater efficiency and cost savings. Each option included provisions for the confinement of military prisoners on a regional basis, regardless of Service affiliation, and the closure of excess facilities. The contentious issues throughout the negotiations, however, centered upon the transfer of prisoners to the Federal Bureau of Prisons and functional leadership among the Services after functional consolidation.

The first option stipulated that the Services would retain all long-term prisoners. This alternative would have resulted in no significant savings, other than that associated with the closure of unneeded facilities after implementation of the regional confinement concept agreed upon by all participants. The second option provided for discretionary transfer of long-term prisoners to the Federal Bureau of Prisons based upon criteria established by each Service. Consistent with the Navy's decision several years earlier to transfer all their long-term prisoners to the federal system and the Army's projection of limited transfers, this option would have reduced overall operating costs by only \$11M with a minimal savings of manpower. The final option described the transfer of all long-term prisoners to the Bureau

of Prisons at a savings of approximately \$30M annually and a 31% reduction in corrections dedicated manpower.¹⁰ Both the Army and the Navy remained prepared to serve as the Department of Defense Executive Agent for corrections after consolidation.¹¹

Given the Secretary's guidance, the history of transferring long-term military prisoners to the Justice Department during periods of reduced populations, and the significant savings afforded by such transfers, the third option clearly appears the most desirable. However, there was considerable disagreement among the members of the Joint Working Group. The Navy, since it was already transferring prisoners to the federal system, was adamantly opposed to maintaining long-term prisoners.¹² The Marines opposed any proposal which would limit their discretion, as they had also begun to consider using federal facilities.¹³ The Air Force representatives were less opinionated, in that they had independently decided to close all their existing facilities and utilize the facilities of the other Services or those of the Justice Department to confine all their prisoners.¹⁴ Army representatives, composed of military police officers and lawyers with a strong commitment to the function, opposed the transfer of long-term prisoners to the Bureau of Prisons.

With Service positions firm, the Army offered to accept the long-term prisoners of all Services on a nonreimbursable basis in an effort to break the gridlock. The proposal provided that both the Air Force and the Marines would be free to eliminate their corrections staff at the United States Disciplinary Barracks at Fort Leavenworth, and that the Army would assume total responsibility for the long-term corrections function within the Department at no expense to the other Services. In return, the Army asked the other Services to concur with a recommendation to the Secretary of Defense to retain most long-term prisoners in the Department of Defense system and with designation of the Army as the Department's Executive Agent for the function. Recognizing the reduced costs to their Services, Navy, Air Force, and Marine representatives to the Joint Working Group agreed. The projected additional costs to the Army associated with the new proposal amounted to approximately \$11.5M annually.¹⁵ Although the total savings to the Department of

Defense still equated to approximately \$11M annually,¹⁶ the agreement did not achieve the \$30M savings possible had the entire function been transferred to the Justice Department.

In November 1990, Deputy Secretary of Defense Atwood approved the Joint Working Group's recommendations. The Army has since accepted responsibility for the long-term prisoners of all Services and is now confronted with the requirement to replace the rapidly deteriorating long-term confinement facility at Fort Leavenworth, Kansas. Although the requirement remained unpredictable at the time of the decision, the estimated cost of the new construction exceeds \$68M.

Why did the Army offer such an expensive proposal to achieve consensus? The answer supports Morton Halperin's observation that "Career officials, ... often develop their positions ... in terms of the organizational interests of the career service to which they belong."¹⁷ In this case, the Army members of the Joint Working Group were military police and staff judge advocate officers who represented elements of the Army with strong commitments to the mission, and who likely perceived elimination of the long-term corrections function as a threat to their organizations.

Critical to understanding the positions of the military police officers at the table during the negotiations is a grasp of the mentality that permeates the Military Police Corps. In the late 1970's, during the drawdown after the Vietnam War, the Army attempted to reduce its size while maintaining its combat strength. In the period that followed, all combat support and combat service support organizations of the Army were considered for significant reductions in manpower. The Military Police Corps, in particular, came under severe scrutiny, and only through development of convincing arguments supporting its combat role, was it maintained as a separate entity. This scrutiny, and the repeated challenges to its existence since, contribute to a siege mentality which exists among all senior military police officers to this day. Undoubtedly, those representing the Military Police Corps and the Army on the Joint Working Group entered the planning and analysis process intent upon giving up as little as possible.

As described earlier, the Army's Military Police Corps made a major resource commitment to the corrections function in the late 1960's, following Congressional criticism of the system. At the time of the Group's work, some 1600 specially trained staff were committed to securing and supporting prisoners. Corrections budgets exceeded \$80M annually. The Military Police School at Fort McClellan maintained an entire curriculum to train soldiers and officers in corrections activities. Officers regularly obtained Army funded graduate degrees in the corrections discipline. A significant reduction in the scope of the corrections mission would have seriously jeopardized the tremendous resource pool controlled by military police managers. "Career officials examine any proposal for its effect on the budget of their organization. All other things being equal, they prefer larger to smaller budgets and support policy changes which they believe will lead to larger budgets."¹⁸ In this case, the larger budget was associated with retention of the function.

Elimination of the long-term corrections function would have also adversely affected the Military Police Corps' prominence in the corrections area within DoD. Since the Army had by far the vast majority of long-term inmates, the transfer of those prisoners would have realigned the centers of influence for corrections activities within the Department. The Navy remained " ... ready to assume the role of coordinating agency in a DoD consolidated system ... DON would have the largest percentage of remaining DoD prisoners after long-term prisoners are transferred."¹⁹ It would be naive to not suspect that the likely shift in prominence did not impact upon Army representatives. As Halperin suggests, " ... career officials calculate how alternatives and patterns of action will affect future definitions of roles and missions."²⁰

Another consideration in analyzing the Army position remains that associated with the senior officer charged with representing the Service on the Joint Working Group. For two years preceding his assignment as the senior Military Police officer on the Department of the Army Staff, he commanded the United States Disciplinary Barracks at Fort Leavenworth. This assignment undoubtedly affected his commitment to the long-term

corrections mission. In fact, shortly after his assignment to the Army staff, he directed a comprehensive study of the Army Corrections System which recommended significantly greater emphasis and expansion of the long-term corrections function in the Army.²¹ Although recommendations in the report were not acted upon, his influence in developing the Army position cannot be discounted.

Finally, the Army position must be analyzed in consideration of what the Military Police Corps views as its essence. Although the Corps touts its role as a combat multiplier in battle, internally its leadership views its essence as law enforcement. It is its unique law enforcement capabilities that differentiate it from the infantry. Eliminate the special law enforcement capabilities and the military policeman looks like, smells like, and acts like an infantryman. Army literature describes the corrections element as a critical function of law enforcement and the military justice system.²² To the Army lawyers serving on the Group, transfer of the long-term corrections mission to the Justice Department might lead to recommendations to civilianize aspects of the Uniform Code of Military Justice system.²³ As Halperin contends, "An organization resists efforts to take away from it those functions viewed as part of its essence. It will seek to protect these functions by taking on additional functions if it believes that foregoing these added functions may ultimately jeopardize its sole control over the essence of its activities."²⁴

Having postulated reasons for the positions assumed by the Army representatives, what caused the other Services to agree in view of their previously strong opposition. The obvious answer rests in the fact that the Army proposal resulted in no cost to them. In fact, there was additional unprojected savings to both the Air Force and the Marines. The Marines, in previously considering the transfer of long-term prisoners to the Bureau of Prisons, anticipated giving the Justice Department property or other excess facilities in exchange for the transfer. The Air Force similarly expected to have to offer compensation to whomever their prisoners were transferred. The offer the Army had proposed required

no reimbursement and resulted in recovery of the manpower that each had committed to operations at Fort Leavenworth.

Beyond the savings , however, the alternative recommended by the Army allowed each Service to pursue its own corrections agenda with minimal restrictions. Their behavior was consistent with Halperin's view that, "In negotiations among organizations ... each prefers an agreement which leaves it free to pursue its own interests even if this appears to an outside observer to lead to an ... inefficient policy." ²⁵ Because the Services had earlier agreed on general, non-threatening consolidation principles early in the Joint Working Group process, the final Army proposal remained acceptable.

The Army representatives expended considerable effort convincing the Army leadership of the appropriateness of their recommendation. Their justification played upon the strong Army commitment to soldiers, even to those that had gone bad. They articulated the adverse conditions which existed in the federal penitentiary system, and the impression that sending young men and women to the Federal Bureau of Prisons would create among fathers and mothers who sent their sons and daughters off to serve their country. They referred to the rehabilitation mandate which appears in Title 10, and articulated the rehabilitation potential among these prisoners in the event that mobilization was required. Such strong emotional arguments were sufficient to gain the support of the Army leadership.²⁶

It is not surprising that Deputy Secretary of Defense Atwood approved the recommendation of the Joint Working Group. The emotional arguments for retaining long-term military prisoners in the Department are strong and , in many ways, describe the fabric which makes military service to the nation unique. In the Department of Defense decision-making process, consensus remains a critical factor. Although the decision was not the most cost-effective, it achieved a savings while retaining the prerogatives of the individual Service Secretaries. However, in a period of drastically reduced resources, one must question its current wisdom.

Had the Army selected more objective representatives, untainted by the organizational self-interests, it remains likely the decision would have been different and that the greater savings could have been achieved. Less parochial participants would have placed greater emphasis upon our history of transferring prisoners during periods of reduced Army strengths, overcoming many of the emotional arguments which pictured the transfer as an entirely new concept. They would have clarified the requirement for rehabilitative services, and explained that rehabilitative services were only required if the Service Secretary elected to maintain prisoners in a military facility. Most importantly, they would have accentuated the considerably greater savings which would have been achieved if a policy of transferring long-term prisoners was pursued. In an exceptionally austere environment, greater objectivity was required.

If nothing else, the decision process in this instance demonstrated that "... policy is not made but emerges from a competition between bureaucratic actors, most of whom take positions that reflect their organizational interests."²⁷

ENDNOTES

- ¹ Lipka, Daniel K., "Army Corrections" Thesis (Sam Houston State College, 1993) 11
- ² Lesson Plan for Introduction to Army Corrections, CA 101, US Army Military Police School Officers Advanced Course, (Fort McClellan, AL, 1992) 4
- ³ Lesson Plan for Introduction to Army Corrections, 5
- ⁴ US Government, Department of the Army, Report of the Special Committee for the study of the United States Army Confinement System, Wash, DC, 1970, 1.
- ⁵ 10 U S C Chapter 47, Section 858, Article 58
- ⁶ 10 U S C Chapter 48, Section 951
- ⁷ US Government, Department of Defense, Executive Report to the Secretary of Defense for the Consolidation of Corrections Within DoD, Wash, DC, 1989, iv-v
- ⁸ US Government, General Accounting Office, Briefing Report to Congressional Requesters, Prison Crowding Issues Facing the Nation's Prison Systems, GAO/GGD-90-1BR, Wash, DC, 1989, 25
- ⁹ Memorandum, Department of Defense, Consolidation of Corrections in DoD, Nov 1993.
- ¹⁰ Executive Report to the Secretary of Defense for the Consolidation of Corrections within DoD, vi-xi.
- ¹¹ Memorandum, Department of the Navy, Assistant Secretary for Manpower and Reserve Affairs, Recommendation of Joint Working Group for Consolidation of Corrections Under DoD, 5 Jan 90.
- ¹² William Peck, Director, Navy Corrections, USN Bureau of Naval Personnel, 15 Dec 94
- ¹³ CW3 James Hart, Chief, US Marine Corps Corrections, HQ USMC, 15 Dec 94
- ¹⁴ Gathered from conversations with Air Force participants following my assignment as Chief, Corrections Branch in Jul 92.
- ¹⁵ Based upon Army Audit Agency estimates of costs amounting to \$65 per day/per long-term prisoner at the USDB
- ¹⁶ US Government, US Army Audit Agency Report, Audit of the Army Corrections System, May 1991, 16.
- ¹⁷ Morton H. Halperin, Bureaucratic Politics and Foreign Policy, (Washington, Brookings Institute, 1974) 62
- ¹⁸ Halperin, 56-57
- ¹⁹ Memorandum, Department of the Navy, Assistant Secretary of the Navy for Manpower and Reserve Affairs, Recommendation of Joint Working Group for Consolidation of Corrections under DoD, 5 Jan 90,
- ²⁰ Halperin, 50.
- ²¹ US Government, Department of the Army, Army Corrections in the Year 2000, Wash, DC, 31 Mar 94
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- ²³ LTC Richard Higgenbotham, Criminal Law Branch, Headquarters, Department of the Army, Staff Judge Advocate, Feb 93
- ²⁴ Halperin, 39
- ²⁵ Halperin, 52-53
- ²⁶ Obtained from conversations with participants of the Group upon my assignment as Corrections Branch Chief, ODCSOPS, HQDA in June 1992.
- ²⁷ National War College Course III Syllabus, Topic 1, Introduction. The National Security Policy Process, 1