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“FILE ON 4”

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SHAW: Our prisons have run out of room.

SOUND OF PRISON DOORS SLAMMING

SHAW: The number of prisoners in England and Wales has almost doubled in the past fifteen years to 82,000 - outstripping capacity. The Government's taken emergency action, housing inmates at great expense in police stations and court cells. Since last summer, 18,000 offenders have been released early to relieve the overcrowding. Even ministers admit there's a problem.

HANSON: We have a high prison population, we have a high number of prisoners being brought into the system. Because we're bringing more people to justice, we're having longer sentences. We are in challenging times.

SHAW: Over the next six years, it's estimated the prison population will carry on increasing by between 15,000 and 20,000. The Government's answer - provide more places and build three large-scale prisons, so-called Titans, holding 2,500 inmates each. We've been given exclusive access to a Titan prison in France. Staff there tell us it's a failure. And we report on the Government's long-term solution – a

SHAW: There's under-floor heating, the guard replies. But the window's open.

Outside the prison cells, I notice on the floor there's a lot of rubbish, people have thrown a lot of stuff out there. How did they get it through the windows?

GUARD: [Speaking French]

SHAW: Some windows don't have metal grilles and they throw it out, he says. But the bins pass by outside twice a day.

GAUDICHEAU: [Speaking French]

SHAW: One prison officer who knows Fleury-Merogis better than most is Bernard Gaudicheau. He's spent almost twenty years here - leaving him well-placed to deliver a verdict.

GAUDICHEAU: [Read in translation] The size of the prison makes it hard for management. But for us guards, managing the wings is difficult. When I first arrived I had to look after around one hundred prisoners; it can be intimidating when we have so many doors to open on a shift. Sometimes there are two or three, sometimes even four inmates per cell. When you open a cell when there is only one inmate, their behaviour is totally different from when there are three or four in a cell, they are more difficult to control. A group of inmates feel stronger - it is more difficult to reason with them. They're bolder. In a corridor, ten or fifteen inmates could provoke a guard.

SHAW: What are the advantages of having a very big prison like this with so many inmates?

GAUDICHEAU: [Read in translation] I can't see much advantage. The only advantage I can see is the sports ground, but even that's not big enough. On a block where there are 750 inmates, only eighty would go out to a sports field in a week, so not everyone benefits.

SHAW: In one word - this prison: success or failure?

GAUDICHEAU: [Read in translation] Failure.

SHAW: You wouldn't expect the French Prison Service to admit that Fleury-Merogis is failing. But none of the twenty-two new prisons they're building to tackle their own overcrowding crisis is on the same scale. Julien Morel d'Arleux is a spokesman for the director.

The prison building programme: how big are the prisons that you're going to build? How many prisoners will they hold?

MOREL D'ARLEUX: They will hold between six and seven hundred inmates. That's the average size of a prison in France now.

SHAW: Why was it decided to build prisons with a capacity of seven hundred prisoners, instead of very, very big prisons of one thousand, two thousand, three thousand?

MOREL D'ARLEUX: Well we have very few prisons of one thousand inmates, only for the big cities. And what the Government wants in France since more than fifteen years is to build the prison nearby the cities so that we can maintain the relationship between the inmates and the relatives and the family, so that's why six or seven hundred inmates is the maximum we have.

SHAW: That's also the average size of a prison in England and Wales. Of the 139 establishments, only seven are designed to hold more than a thousand. None is anything like as big as Fleury-Merogis, though one recent development is that some small prisons in the same area are grouping together to pool facilities and cut administrative costs. Last year, the Government turned to the businessman, Lord Carter of Coles, for advice on building cost-effective new jails. He was known to be interested in large-scale Titans - so the Chief Inspector of Prisons for England and Wales, Anne Owers, sent him her notes from a visit to Fleury-Merogis.

OWERS: Our impressions were that it was a prison which was incredibly difficult to manage safely and decently. That there were just too many balls to be kept in the air to be able to run it as the director would have wanted, and indeed as the head of the French prison service wanted.

SHAW: There are advantages of having large prisons - you can share facilities, you can share administrative back up?

OWERS: There are certainly economic advantages to large prisons, but it is very difficult to run them effectively as well as efficiently. And by effectively, I mean to make sure that the prison is run decently and safely, but also that the needs of each individual prisoner are, as far as possible, dealt with within that prison - to make it less likely that they're going to offend once they're out. The more people you've got then, the more difficult that becomes to do that individually, and particularly if you've got scarce resources. In a smaller prison, you can make up for some of the deficiencies in the environment or the resources because of personal relationships.

SHAW: It sounds like your mind is up about Titans - if it was down to you, you wouldn't go ahead with the idea.

OWERS: My mind's not made up in that sense. I run an inspectorate that works on an evidence base. Now our evidence is showing us at the moment that small prisons in England and Wales work better than larger prisons.

SHAW: In Lord Carter's report, published in December and adopted by the Ministry of Justice, he says Titan prisons make economic sense. At a cost of £350 million each, he calculated that, in the long run, Titans would be two to three times cheaper than building temporary prison accommodation or installing blocks on existing prison sites. Construction costs of the Titans would be borne by the private sector, which is also likely to be invited to bid to manage them. John Smith is Director of Prison Operations at the private security firm, SERCO, which currently runs four English prisons.

SMITH: Large prisons do offer the opportunity of a slightly better price, in terms of the cost to the public, and they do also offer the public the opportunity of a better service within the prison. They have the benefits of scale, where you can have a greater range of interventions to help reduce crime, in a larger prison than you can have in a smaller prison.

SHAW: What evidence is there that large prisons are more effective than small prisons?

SMITH: Um, I've not visited large prisons anywhere in the world. There's nothing which I, in terms of my experience of prisons, which lead me to believe that if a large prison is properly designed, properly run, with proper organisation of staffing arrangements, that you can't get the same benefits of scale as you would with other organisations.

SHAW: Isn't it about money? It's not really about the benefit of the prisoner. All the evidence seems to suggest, certainly if you read the inspection reports of Her Majesty's Chief Inspector of Prisons, Anne Owers, and hear what she has to say, that small prisons are more effective than big prisons.

SMITH: The, I don't accept that as a principle. I think the big question here is how we get the best outcomes from the limited amount of money available. And if money wasn't an issue you might have sort of hundreds of very small units. But there's always got to be a balance between the money available and the outcomes sought.

ACTUALITY IN PRISON COURTYARD

SHAW: Exercise time at Fleury-Merogis. A couple of hundred prisoners are in the courtyard. Some are kicking a ball about. Others are jogging. But there are groups huddled together in the shadows and there's little in the way of surveillance. Official figures show there's no greater risk of disturbances or escapes than in other prisons. But the governor at Fleury-Merogis, Joaquim Pueyo, says when large numbers are together like this, it's difficult to maintain control. Have you had any serious disturbances?

PUEYO: [Read in translation] Sometimes we have two hundred to three hundred inmates involved with group activities in the exercise yards. It's then we have problems, because our exercise yards aren't sufficiently adapted to allow the guards on the lookout tower to have a good sight of inmates. Sometimes there is friction between inmates. Some inmates refuse to go out because they're too scared. As we're over-populated, the number of inmates out in the yard is doubled, so we do have some problems with control, and if there's a fight it's not very easy to break up.

SHAW: If you had a visit from the Prisons Minister, the Director General of the Prison Service for England and Wales, about building a big new prison, what advice would you give them? Would you say - do it, or don't do it?

PUEYO: [Read in translation] I think prison establishments are better and more adapted to our mission if they are of a medium size – say six hundred inmates. That's my recommendation. But if a decision is taken to create a big prison, design blocks for no more than four hundred prisoners, with one per cell. Each small building would have to be autonomous, with a team of management and a team of officers and guards dedicated to each building, which would allow individual relationships.

SHAW: In London, the Prisons Minister, David Hanson, told me Titan prisons would comprise five or six separate blocks, holding five hundred prisoners each. He pointed to Fleury-Merogis, which he has been to, as a success.

HANSON: There's a prison near Paris in France which I visited recently.

SHAW: Fleury-Merogis?

HANSON: Fleury-Merogis - which is a very large-scale prison which I looked at, which had a number of key interventions, which we could not offer on the scale that they can offer, here in England and Wales.

SHAW: They're not building, the French, any prisons on that scale anymore.

HANSON: Well, these are decisions and we have to make judgments. We've made a judgment which we believe to be right, that indicates that we need to look at a range of prison establishments across the estate. But we do believe that there is a need to try to bring together in one block some efficiency savings by management and by interventions for the benefit of the prisoners, but ultimately for the benefit of the taxpayer, and ultimately to make sure that we prevent re-offending.

SHAW: I asked one of the senior prison officers at Fleury-Merogis whether the prison had been a success or a failure, and he said without hesitation – a failure. He struggled to list any of the advantages of a prison that size, apart from the economies of scale that you talked about.

HANSON: We've taken a decision that that size prison is an additional valuable capacity issue for us.

SHAW: You're convinced that the move to go ahead with Titans is correct? That's the path you're going to take?

HANSON: As a Government minister, Danny, you would not expect me to promote a policy which I didn't believe in and which we didn't support. But I also would point to the fact that the proposed Titan prisons, as I've mentioned, are large-scale prisons, but within them will be essentially small scale establishments operating on a block-by-block basis.

SHAW: But the Prison Governors Association is worried that even divided into smaller units, security could be compromised in Titan prisons. The President, Paul Tidball, has written to ministers warning of the danger of disorder.

TIDBALL: What we're concerned about is that they might not be stable, or the challenge of keeping them stable will be a lot greater than it is in smaller prisons, where prisoners themselves feel a bit of ownership. In a good small prison they will respect what it's doing for them.

SHAW: What are the particular problems of control in a large prison?

TIDBALL: Well it's recognised by even those who espouse Titan prisons that it would be necessary to have separate units within that prison, to try and prevent any disturbances turning into a serious riot. But there seems to be some naivety around about, that if you actually do separate the units within the perimeter, that there will be no problem of copycat riots or copycat disturbances in the different units.

SHAW: What do you base that claim on?

TIDBALL: Just logic. If these prisons are within the same perimeter and there's movement of staff from one to another, which there will be, that's what economies of scale are all about, that all sorts of intelligence will spread from one to the other in a way it won't with separately run prisons.

SHAW: But, as the Government prepares to reveal more details next month of its plans for Titans, David Hanson insists security will be the number one priority.

HANSON: I would not be, nor would the Prison Service, nor would the Secretary of State, nor would Lord Carter be recommending anything if we didn't believe that we could maintain order and discipline in the prison estate, because our first duty is to protect the public.

SHAW: But the Prison Governors Association have got a point, haven't they, about a large institution - even if you split it up into five or six units - word will spread from one to another, if there's a disturbance in one unit, and disturbances do happen in prisons, and you create an atmosphere and you create tensions?

HANSON: There will always be dangers to society from individuals who are in prison, but we are confident that we can manage good order and discipline in large-scale prisons.

SHAW: The Government is also exploring another radical proposal from Lord Carter. To combat the problem of prison overcrowding in the long term, he suggested setting up a Sentencing Guidelines Commission, which would have

SHAW cont: more control over the number of people going to prison and how long they serve. His inspiration for the idea came from Minnesota, in America.

ACTUALITY OF GAVEL

COURT CLERK: All rise.

SHAW: At Ramsey County courthouse in the city of St Paul, Minnesota, a group of offenders are about to learn their fate. One by one they approach the bench. Most of the cases dealt with by Judge Diane Allshouse are drugs or alcohol-related.

ALLSHOUSE: A quart of vodka? That's not a one time thing. Most people couldn't do that unless they had built up some tolerance. So it's pretty hard for me to believe you stayed sober all along and all of a sudden one night you drink a quart of vodka and eight beers. It would be pretty tough for most people to do. So my concern, sir, is that you don't really want to give it up ...

SHAW: Although she has a unique, conversational style, when Judge Allshouse passes sentence, she has little room for manoeuvre.

ALLSHOUSE: ... having pled guilty to the offence of burglary in the second degree, I accept your plea of guilty and it is the sentence of the court and the sentence of law that you be sentenced, according to the Minnesota Sentencing Guidelines to the Commissioner of Corrections for a term of twenty-eight months. However, I will stay the execution of that sentence and place you on probation for ten years under the standard terms and conditions

SHAW: All serious offences - felonies - contrary to Minnesota State law carry penalties agreed by the Sentencing Guidelines Commission. It's an eleven-strong panel of judges, lawyers, police, prison officers, probation staff and members of the public:

ALLSHOUSE: I think the sentencing guidelines keep us all behaving the same way. It gives you a standard list to consider when you're sentencing someone in Minnesota on a felony.

SHAW: And otherwise what would happen if you didn't have the guidelines, do you think?

ALLSHOUSE: I think that each judge would bring their own background into the courtroom and how one judge treats a case would differ from another and it would simply not be fair to the defendants or to society.

SHAW: But you don't find them too restrictive though? Because that is the concern of the judiciary would be that there's no room for discretion, there's no room for moving out when you've got a particularly troublesome case or an unusual case, you don't find them too restrictive?

ALLSHOUSE: Oh I think sometimes we do. As a judge I would like to think I always have the best choice, I can make my own choices, but I think the guidelines keep me sane, and kinda give me something to consider. I can still depart if I feel strongly about a case.

SHAW: And you have to give reasons?

ALLSHOUSE: I have to give reasons. But sometimes there is a compelling reason not to send someone to prison, whether it is mental illness, whether they have gone into treatment, whether they have just gone out of their way to make that restitution whole before they were sentenced.

SHAW: How often do you depart from the guidelines?

ALLSHOUSE: My guess is I depart and don't send someone to prison maybe once or twice every couple of months, it isn't real often.

SHAW: And have you ever been appealed against because of departing from the guidelines?

ALLSHOUSE: Not yet. [Laughs] But I expect to be!

SHAW: Recommended minimum and maximum sentences are displayed in a grid. Down one side is a list of eleven categories of offence, from murder to theft. Across the top of the grid are seven boxes relating to the offender's criminal history score, based on previous convictions. The higher the score and the more serious the offence, the longer the sentence. Because sentences are more predictable under this system, it's easier to work out how many people will be in prison and how the prison population will be affected if sentences go up.

ACTUALITY AT COMPUTER

SHAW: In his office at Minnesota's Department of Corrections, research manager Grant Duwe is compiling the latest estimates of the State's prison population for the next ten years.

DUWE: We are looking at a list of male and female adult offenders who were in the Minnesota State Prison population on the first day of our forecast period, which in this case is July 1st 2007.

SHAW: And this is the starting point for trying to predict what the prison population is going to be in the future?

DUWE: That is correct, yes.

SHAW: When you compare the prison population forecast with the actual population, how accurate are the forecasts?

DUWE: For 2007, which is our most recent forecast, our projections were off by an average of 0.15% per month, which works out to an average of seventeen offenders per month.

SHAW: How does that compare to other projections in other states?

DUWE: Well, based on state and federal projections reports, the average is usually between 1-2%. So 0.15% is considerably better than other forecasting models.

SHAW: What benefits does that have?

DUWE: It increases our credibility in terms of being able to forecast our prison population for operational and budgetary purposes.

SHAW: The Sentencing Guidelines Commission has a statutory duty to ensure that sentencing practices match the funds available. When a new sentencing policy is proposed, a fiscal note is prepared, detailing the impact on prison numbers and resources. It's believed to have contributed to Minnesota's comparatively low incarceration rate - it imprisons proportionately fewer people than any other American state, apart from Maine. Professor Richard Frase from the University of Minnesota.

FRASE: Its goal was never so much to have zero population growth of the prisons, it was to control growth - to avoid overcrowding, to stay within the available resources. It's held the line at a time when I think there was reason to think that Minnesota's ranking in incarceration would rise, so in that sense it is a success.

SHAW: So what is exactly, what is the recipe for holding the line on prison population that the Sentencing Commission has?

FRASE: It's the ability to predict future prison populations, because guideline sentencing is more predictable than discretionary sentencing, combined with the institutional capacity of an independent commission to model the system, to collect data, to constantly improve its prediction formulas so that everyone knows at the beginning that a particular severe penalty proposal will have a particular economic consequence. If it looks as if this proposed change is going to cause prison overcrowding, then the Commission can say, we don't want to allow that, and in many cases - this has happened over and over again - the legislature will see the dollar signs and see that what this actually costs and they'll say, well let's tinker with that, let's scale that back, let's refine that, so that it doesn't cost nearly as much.

COOK cont: clean-cut, articulate individuals standing in front of you who are talking about personal discipline, personal responsibility, their plans for their future and it is quite an astonishing change.

KRASKY: My name is Jeffrey Krasky and I've been in boot camp for almost six months now. I was incarcerated a year ago for selling cocaine. I had a six year two month sentence, so I did six months in prison, and I'll have done six months in boot camp.

SHAW: Rather than six years in prison?

KRASKY: Yes, rather than six years in prison.

SHAW: That's a no-brainer, isn't it?

KRASKY: Pretty much, yes sir!

ACTUALITY IN CAR

SHAW: But there is a view that Minnesota, with its Sentencing Commission and eagle eye on resources, is too soft on criminals. Policewoman Catherine Casey's 16-year-old daughter Dianna was killed on an interstate highway, in a crash caused by a drunken driver, who later tried to pretend he wasn't at the wheel.

CASEY: I was hoping, with looking at the guidelines, that he would get 57 months in prison.

SHAW: And what happened in court?

CASEY: In court he did not get 57 months the 57 months was stayed.

SHAW: Suspended?

CASEY: Correct. He received 365 days in the local jail and then he only had to serve two-thirds of that, and then after that he would be placed on probation for ten years.

SHAW: Was that really what you wanted or did you really just want him to be in prison for quite a long time?

CASEY: What I really would have liked for him to go to prison for the rest of his life, but that's not the way our system works. I understand our system, because I am in law enforcement, and so I wanted the 57 months. But being a human being, the pain of losing a child, you're not supposed to have to bury your children, so when I got that phone call that said that Dianna was dead, I was devastated, and to have to bury your child, it is hard to describe how painful it is.

SHAW: Drink-driving crashes are a huge problem in Minnesota: one person is killed every two days. Campaigners say the sentencing laws must be tougher. Lynne Goughler from the group Mothers Against Drunk Driving.

GOUGHLER: We're a very liberal state. We try to forgive people, we try to give them another chance, that is the culture we are brought up in.

SHAW: And is that a good thing, do you think?

GOUGHLER: I think it can be. But I think that when people commit a crime - and I consider killing someone by being drunk with a car or causing great bodily harm - there has to be some very severe repercussions. We know for a fact that drunk driving costs the state \$238 million a year. That's a great deal of money and that each life that's lost through a drunk driver is about a million dollars.

SHAW: Do you think the costs of drink-driving are not taken into account when people are weighing up the sentences, and realising that if they raise the sentences there will be more people in prison, that's more prison beds, that's more costs?

GOUGHLER: I think that legislators look at it that way. I don't think they actually see the \$238 million that it's costing in what I would call hidden costs - the ambulances, the police response that could be doing other things.

EBBLAD: I've always looked at the statute, and the statute talks about our primary mission is public safety. I am cognizant of the financial ramifications and I am cognizant of the bed space issues and we have to look at that and we have to respect that. But when push comes to shove, we are there, in my mind, to follow the statute for public safety.

SHAW: District Attorney Jeff Edblad is the head of Minnesota's Sentencing Guidelines Commission. It's not soft on offenders, he told me - and people who think it is are misinformed. One of the concerns about Sentencing Guidelines Commission is that it could lead to a reduction in the use of imprisonment, in some ways. It might be a device to try and achieve a cap on prison numbers.

EDBLAD: It was a concern that is not uncommon. A lot of the problem was there needed to be effective early communication and education with regard to all interested parties and players within the system.

SHAW: But have you ever amended proposals because of concern about prison space, or has the legislature ever amended proposals because they've been told about the cost that would be involved?

EDBLAD: One of the functions that we undertook last year was looking at a potential reduction in certain controlled substance offences, and that was directed by the legislature. And in good faith, when the statute says your primary concern is public safety, I don't know how you can come back and look someone in the eye that's talked about their child running the gauntlet of drug dealers and being solicited to get involved with the drug dealers and the gangs. How you can look that mother in the eye and say that you have acted in the best interest of public safety by reducing drug laws. We had significant discussion, it was an incredibly emotional meetings in dealing with that, and ultimately we as a Guidelines Commission voted, and the majority of commissioners

SHAW: So, the judiciary's view now. Is there anyone amongst the judges that you speak to who thinks that they should go back to a system where they had more discretion, more leeway?

ANDERSON: I don't think so. I think that most judges support the rationale for the guidelines - that sentencing of our citizens should have a rational basis to it. And that people should not be discriminated against based on race or gender or financial circumstance or social status, and those kinds of considerations are prohibited under the guidelines.

SHAW: The judicial working group looking at the feasibility of the Sentencing Commission, will report back to the Prisons Minister David Hanson in the next few months.

The fact you've asked the judiciary to look at it first would suggest that you see them possibly as the stumbling block?

HANSON: The judiciary are partners in the criminal justice system. The judiciary are people who send people to prison.

SHAW: But if they don't agree to it, it's not going to go ahead, is it?

HANSON: Well the judiciary are independent of Government, and sentencing has always been independent of Government, so there has to be an understanding and agreement. I'm not going to pre-empt what happens with that outcome of those discussions. We have a process which is simply saying Carter Review and Government have both said there could well be merit in a Sentencing Commission, but there are practical issues such as sentence lengths, a whole range of practical issues we need to examine. That's what we're doing at the moment and I am very confident that a sensible outcome and consensus will emerge during the summer.

SHAW: The evidence from Minnesota is that, although they believe the Sentencing Guidelines Commission has worked well, the prison population has continued to increase, so it hasn't put a lid on the prison population.

HANSON: The idea of the Sentencing Commission would not necessarily be to look at putting a lid on the prison population. It would be looking at whether we need to increase or decrease the prison population, and what we need to do in terms of sentencing to match that need. And it will be a longer term view of the facilities that we require.

SHAW: But law professor Michael Zander says successive governments have grappled with prison overcrowding without success.

ZANDER: Every bit of evidence of the last fifty years suggests that no one has the faintest idea how to control this situation, and criminal justice sentencing has been a shambles. Year on year on year it's just, it's appalling and the judges are in despair, everyone's tearing their hair. So I wouldn't hold out any great hopes for any solutions. There are so many factors that go into the number in prison - the crime level and the economic situation has an effect on the crime situation, which has an effect on the numbers in prison. Which of course is completely beyond the control of any Sentencing Commission, so it's not a magic wand.

SHAW: A Sentencing Commission, similar to the one in Minnesota, may well bring greater consistency and predictability to the sentencing system and custody levels. But there's only limited evidence to show it will slow down the rising prison population. And if the Commission does go ahead, the Government could even find that the Titan prisons they've enthusiastically embraced will fill up rather more quickly than they intended.

SIGNATURE TUNE