

Prison Economics:

An Examination of the Variables Impacting the Costs of Louisiana's Penal System

by Ronald Marshall



This project will examine the variables that may or may not have had an impact on the density of Louisiana's prison population. The writer will attempt to discover whether Truth-in-Sentencing and Three-Strike-laws are more related to acquiring federal money or

maintaining public safety or [prison for profit ventures] (Alexander, 2012). In addition, the writer will evaluate the unique legislative ties of Louisiana's Sheriff's Association, which has enormous political clout in Louisiana. The parish prisons and local jails receive state money for housing state offenders; therefore, local sheriffs have a vested interest in criminal justice legislation. Clearly, efforts at sentencing reform would adversely affect the local jails' bottom line (Chang, 2012), keeping the prison beds filled.

I. Status of the Current System

Legislators across the state typically run on platforms of being tough on criminal activity with a *Lock-em up and throw away the keys* stance on crime, and for the past two decades, Louisiana legislators, under the guise of public safety, have passed laws to ensure that offenders would remain incarcerated with extended sentences. When the incarceration rate was half of what it is now, the state witnessed a dramatic increase in the offender population during the 1990s; as a result the state found itself at a crossroads (Chang, 2012).

The state had two choices: lock up fewer people or build more prisons. The state's solution was to build three more prisons and allow private contractors to operate two of them. Secretary Stalder also encouraged rural sheriffs to use state bonds to either finance huge expansions of their parish jails or build new detention centers capable of housing Department of Corrections (DOC) offenders. These expansions would allow the sheriffs to house more state prisoners at a bountiful \$20 plus per head/per day, compared to the \$2 or \$3 per day they receive for housing local prisoners (Moller, 2012).

The financial incentives were so attractive, and the corrections jobs so sought after, that new prisons sprouted up all over rural Louisiana. The

national prison population was also expanding at a rapid clip; however, Louisiana's grew even faster. Louisiana had no need to rein in the growth by keeping sentencing laws in line with those of other states or by putting minor offenders in alternative programs. The new sheriffs' beds were ready and waiting. Despite the rapid growth in the offender population, overcrowding became a thing of the past. As a result of the approach, more than 22,000 of Louisiana's 40,000 plus offender population are now housed in parish prisons or local jails at a cost of \$24.39 per day. The area sheriffs relish the opportunity to house state prisoners because it infuses much needed cash into the local coffers (Chang, 2012). At present, approximately nineteen parishes and four municipalities have lucrative contracts with the state to house offenders (See Appendix A) (Tomaswell, 2010).

An unfortunate strike against the parish prison and local jail system is that it is filled with young black men who are in the prime of their lives, wasting away in prison. There are 17 local jails in Louisiana that house state offenders, and these facilities are largely filled with uneducated, poor, inner-city blacks who are miles and miles away from home, a huge inconvenience for most poor families (Chang, 2012). Approximately seventy percent of the offenders in Louisiana's prisons are black. This group makes up a disproportionate percentage of the prison population (U.S. Department of Commerce, 2013). According to the latest statistical data posted in the Angolite-an offender publication produced at Louisiana's State Penitentiary, the largest Louisiana prison located in Angola, Louisiana- seventy percent of DOC offenders are African-American (Myers, 2012).

The result, especially in the inner city, is that many single women are now responsible for the rearing and provision of their children while the fathers are incarcerated. Throughout Louisiana, approximately one in fourteen black men is incarcerated. However, in my hometown, the city of New Orleans, one in seven black men is either in a state prison or on parole or probation (Reckdahl, 2012). Five thousand black men from the New Orleans area are serving time in one of Louisiana's prisons as compared to only four-hundred white men (DeBerry, 2012). This inequality can be problematic because children who lose parents to prison often grow up in neighborhoods where incarceration is commonplace. These affected children often, end up repeating the cycle.

According to a report released in 2003 by the

(Continued on page 11)

(Continued from page 10)

U.S. Dept. of Health and Human Services, children of prisoners are more likely to go to jail than to graduate high school, and are seven times more likely to go to jail than children whose moms or dads have not served time behind bars (Williams, 2010).

Parish jails do nothing to address these problems; these jails are hotbeds for cell phones, guns, knives, drugs, rapes, and fights. Some of these jails have huge offender populations, which are frequently larger than most of the state facilities. One example of this is the Orleans Parish Prison, OPP, which has a population of about 7,500 total offenders, and almost half of these are DOC offenders (Reckdahl, 2012). The conditions in OPP were so terrible that U.S. District Judge Lance Africk ordered a consent decree to oversee the running of the prison. In an article published in *The Atlantic*, author Andrew Cohen, labels OPP as one of the worst prisons in America with rapes, stabbings, little provision for medical or mental health concerns, and staff corruption (Cohen, 2013).

Most local jails are no different than the previously mentioned parish prisons. They are infested with security problems that create a dangerous atmosphere for both offenders and staff. The only advantages to housing state offenders in these facilities is that it is cheap housing, and the parishes are able to hire local guards for the facility (Cohen, 2013).

Other issues affecting the current system are the Truth-in-Sentencing and Three-Strike laws that were implemented in the 1990s. The Truth-in-Sentencing concept required restricting or eliminating parole eligibility and limiting the awarding of good-time credits. To ensure that offenders serve larger portions of their sentence, the U.S. Congress authorized funding for additional state prisons and jails if any state met eligibility criteria for Truth-in-Sentencing programs (See Appendix B).

Additionally, Louisiana and 23 other states as well as the federal government enacted new habitual offender laws between 1993 and 1995. These new laws, which varied slightly in their content from state to state, all fell into the Three-Strike category. These sentence enhancement laws mandated longer prison terms or life sentences for all offenders convicted three times of felonies, even if they had no prior history of violent convictions.

Proponents of such law reforms predicted that the laws would curb crime and protect society by warehousing the worst offenders for a long period of time. Opponents argued that defendants facing lengthy mandatory sentences would be more likely to avoid plea bargaining and demand trials, thereby slowing the processing of cases. In addition, convicted offenders would serve long terms, causing

prison populations to explode (Austin, 1994).

II. Resistance to Change

Prisons are not just big business in Louisiana; they enrich America's economic and political system. Some wealthy and powerful people, including former vice president Dick Cheney, have invested millions in private prisons (Sherman, 2008). House Speaker John Boehner (R-OH) and Senator John McCain (R-AZ) were also among the private prison lobby's top benefactors. Private prisons have been found guilty of abuses ranging from understaffing facilities to bribing judges to sentencing juveniles with minor offenses to disproportionately long terms in privately-owned correctional facilities. (Aviva Shen, *Think Progress Justice*, 2012)

According to Tara Herivel and Paul Wright, the authors of *Prison Profiteers*, Corrections Corporation of America, (CCA) is the world's largest private prison company and runs the nation's fifth-largest penal system with sixty-three correctional, detention and juvenile facilities with a total design capacity of approximately seventy thousand beds in nineteen states. No private stakeholder has a greater interest in for-profit prisons than CCA. In a filing with the Security and Exchange Commission CCA explained:

Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities. This possible growth depends on a number of factors we cannot control, including crime rates and sentencing patterns in various jurisdictions and acceptance of privatization. The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted and sentenced, thereby potentially reducing demand for

correctional facilities to house them. (Herivel and Wright, 2008)

Corrections Corporation of America currently operates two facilities in Louisiana and was the leading candidate to take over two additional prisons if Governor Jindal had succeed with his proposal in this past legislative session. However, legislators rejected Jindal's proposal, predicting that once CCA gained control of these facilities, an increase in CCA's fees to house state offenders was inevitable (Tomaswell, 2010).

For-profit prisons are not the only entity that stands to lose huge amounts of money if this

(Continued on page 12)

(Continued from page 11)

system is dismantled. There is a wide array of businesses with vested interests in keeping the status quo. For example, phone companies, such as City Tele Coin and Securus Technologies, charge the families of prisoners' exorbitant rates to communicate with their incarcerated loved ones (Motel, 2013). Other for-profit entities that will lose if this system is dismantled are (1) private health care providers contracted by the state to provide health care to prisoners, (2) the U.S. military, which relies on prison labor to provide military gear to soldiers in Iraq, (3) corporations that use prison labor to avoid paying decent wages, and (4) the politicians, lawyers, and bankers who structure deals to build new prisons, often in predominately white rural communities (Herivel and Wright, 2008) (Chang, 2012).

Now that the system of housing Louisiana state offenders in parish prisons or local jails has been in operation for many years, effecting a change is very difficult. There are several obstacles to impede change. One of these is the cost factor. Because DOC facilities are able to offer services and programs that are not offered in the local or parish jails, housing an offender in one of the states facility costs about \$55.00 dollars per day (Chang, 2012).

Housing a state offender in a local jail is much cheaper, about \$24.39 per day as compared to \$55.00 in a state DOC facility (Moller, 2012). There are approximately 40,000 DOC offenders scattered around the state. During the past two years, Governor Jindal has closed three state prisons because of budgetary constraints. The end result was that the offenders from these prisons were relocated and crammed into existing prisons or local jails. Ultimately, this produced a situation with more offenders being crowded into the same space, often with fewer security officers watching them.

With slightly more than 20,000 offenders in parish prisons and local jails (Appendix C), moving these offenders to state run facilities or attempting to provide similar programs and services would cost the state over \$550,000 per day or \$200,750,000 dollars a year. The Louisiana 2013 budget is a little over \$25 billion dollars a year.

Another major obstacle to change is the pressure applied by the Sheriff's Association to maintain the status quo. Initially, sheriffs across the state were reluctant to get involved with housing state offenders. However, their unwillingness soon subsided after realizing the profit to be made from what the state was willing to pay for housing state offenders (Chang, 2012). Now, according to former senator Donald Cravins, without the blessings of the Sheriffs Association, nothing gets done when it comes to penal reform (Moller, 2012). The Sheriff's Association repeatedly blocks even modest legislative attempts to reduce sentences for non-violent offenses or to increase the possibility of

earning additional good-time (Connor, 2012). By doing so, the sheriffs ensure that their jails are filled to capacity. According to Cindy Chang, in an article published in the New Orleans Times Picayune:

Today, wardens make daily rounds of calls to other sheriffs' prisons in search of convicts to fill their beds. Urban areas such as New Orleans and Baton Rouge have an excess of sentenced criminals, while prisons in remote parishes must import inmates to survive.

The more empty beds, the more an operation sinks into the red. With maximum occupancy and a thrifty touch with expenses, a sheriff can divert the profits to his law enforcement arm, outfitting his deputies with new squad cars, guns and laptops. (Chang, 2012)

Unfortunately, these offenders are offered little to no rehabilitative opportunities. In these parish jails, offenders are often caught up in the wardens' daily bartering system and can be transferred arbitrarily to another facility as a favor among wardens. Usually, skilled laborers, such as plumbers, auto mechanics, and carpenters, are valuable commodities (Chang, 2012).

In addition, when local sheriffs run for office, they often promise jobs for those who support them (Moller, 2012). When state offenders are sent to local jails, the sheriffs can hire additional officers whom they hope will vote for them in the next election (Rackendahl, 2012). Even though salaries for correctional officers in the local jails often start at \$8 an hour, the jobs are in high demand because of the benefits, which include a fully funded pension. In a 2012 Times Picayune article, Richland Parish Sheriff, Charles McDonald, is quoted as saying, "I hate to make money off the back of some unfortunate person; the fact is somebody's going to keep them, and it might as well be Richland Parish" (Chang, 2012).

Therefore, any attempt to reduce the number of state offenders in the parish prisons or local jails has been met with fierce opposition. For example, if the Orleans Parish Prison would lose its approximately 1,025 state offenders, that would amount to a loss of approximately \$25,600 per day, that in turn would necessitate a reduction in staff by the hundreds (Rackendahl, 2012). It is understandable why Orleans Parish Sheriff Marlin Gusman is fighting against a reduction of bed space in the parish jail (Moller, 2012).

In another example, the small town of Mangham, Louisiana, located in Richland Parish has a township of 672 residents according to the 2010 census. This is astonishing given that the local prison houses 782 offenders at full capacity. According to the town's mayor, Robert Neal Harwell, everyone he knows works at the prison (Chang,

(Continued on page 13)

(Continued from page 12)

2012). Removing state offenders from these jails would be an economic disaster to this rural community. However, the profiteering goes beyond the sheriffs:

You have people who are so invested in maintaining the present system—not just the sheriffs, but judges, prosecutors, and other people who have links to it. According to Burk Foster, a former professor at the University of Louisiana-Lafayette and an expert on Louisiana prisons, they don't want to see the prison system get smaller or the number of people in custody reduced, even though the crime rate is down, because the good old boys are all linked together in the punishment network, which is good for them financially and politically. (Connor, 2012)

Another major obstacle to changing the Louisiana penal system is pressure on the legislature. In Louisiana, a socially conservative red state, many legislators run their campaigns based upon their tough stance on crime. Public servants cannot afford to be known as soft on crime. They frequently make public announcements affirming that they want criminals to stay behind bars, and they are fervently working to ensure the public is safe. Republican Governor Bobby Jindal is generally opposed to any type of parole or pardon. The governor is known to have higher political ambitions and does not want to do anything that would potentially hurt his future political career (Moller, 2013).

The final major obstacle to changing the current system is Louisiana's codified laws. In September 1986, the U.S. Congress passed legislation that allocated \$2 billion to the anti-drug crusade. The Anti-Drug Abuse Act was signed into law by then president Ronald Reagan. This legislation included mandatory minimum sentences for the distribution of cocaine and a more severe punishment for possession and distribution of crack as opposed to a slap on the wrist for possession and distribution of powder cocaine (Alexander, 2012).

As criminal punishments increased throughout the United States, Louisiana went to unheard-of extremes, which were accomplished through three policy changes that were sweeping the country: Truth-in-Sentencing, Three-Strike laws and Mandatory Sentencing (Tomaswell, 2012). Truth-in-Sentencing laws were designed to combat a spiking crime rate by requiring offenders to serve a substantial portion of their prison sentence (Ditton and Wilson, 1999). Parole eligibility and good-time credits were either restricted or eliminated. The movement was encouraged by the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants Program, part of the federal government's 1994 Crime Act that offered funds to support the

state costs associated with creating longer sentences. To qualify for the federal funding, states were required to change sentencing guidelines to ensure violent offenders served at least eighty-five percent of their prison sentences. Congress allocated to the fifty participating states nearly \$11 billion in federal funding for this program through fiscal year 2001; since then, no funds have been allocated (See Appendix B) (Ditton and Wilson, 1999).

In 1995, Louisiana legislators changed the state's sentencing guidelines to ensure that everyone convicted of a violent crime was in compliance with the federal mandate. At the same time, Louisiana legislators changed the state's version of the habitual offender law to ensure that it also complied with the federal guidelines outlined in the three-strike portion of the bill (1995 La. Criminal Code of Procedures).

While these changes were welcomed, the three-strike policy is controversial because a person convicted of a minor felony can receive a life sentence. In these cases the judge has little to no discretion at all. Three-strike laws have an undeniable political appeal to legislators being pressured by their constituents to "do something about crime". Yet, even if these laws possibly thwart crime, any effort to deter criminal behavior through tough laws is not without costs (Chang, 2012).

Criminologist and Sentencing Project Director, Marc Mauer, a leading opponent of the three-strike law, finds that this approach may satisfy the public's hunger for retribution, but makes little practical sense. Furthermore, *three-time losers* are on the brink of aging out of crime; consequently, locking them up for life would have little effect on the crime rate. In addition, current sentences for chronic violent offenders are already severe, yet they seem to have had little effect on reducing national violence rates. The Three-Strike policy also suffers because criminals typically underestimate their risk of being apprehended while overestimating the rewards of the crime (Austin, 1994).

Even if such policy could reduce the number of career offenders on the street, the drain in economic resources that might have gone for education and social welfare ensures that a new generation of younger criminals will fill the shoes of their incarcerated elders. Mauer suggests that a three-strike policy would enlarge an already overburdened prison system, driving up costs and reducing resources available to house non-three-strikes offenders. Mauer also warned that African Americans face an increased risk of being sentenced under three-strike statutes, expanding the racial disparity in sentencing (Alexander, 2012). In Louisiana, 73.3 percent of the state's lifers are African Americans (Nellis, 2010).

Several studies, including those by the RAND

(Continued on page 14)

(Continued from page 13)

Corporation and the National Institute of Justice, have concluded that states with three-strike laws do not appear to have experienced sharper declines in crime since those laws have been implemented than states without such laws. Nor have three-strike states experienced a greater increase in incarceration rates (Austin, 1994). The law has, however, had significant fiscal impacts on the states budgets as well as on prison sentences. Prisoners added to the prison system under the three strike policy in one decade will cost taxpayers an additional \$8.1 billion in prison and jail expenditure over the term of their incarceration. Offenders who are currently in prison across the nation who were sentenced under the three-strike policy for nonviolent offenses will serve 143,439 additional years than if they had been convicted prior to the passage of the three-strike policy (Justice Policy Institute).

The astronomical increase in Louisiana's incarceration rate began with the passage of these *get tough* laws, in the 1980s and the early 1990s. Nothing in the data suggests these reductions are related to the changes in the sentencing guidelines. In contrast, the data does support the notion that these changes are responsible for the spike in Louisiana's incarceration rate and all associated costs.

Conclusion

Louisiana is the world's leader in locking up its own citizens. This sad fact has spawned a burgeoning, for-profit incarceration industry in this impoverished state. While this *lock-em-up* tactic has certainly enriched some, it has resulted in a devastating financial and social cost, both individually and collectively to its citizens, leaving Louisiana poorer but no safer. To be sure, criminals who commit heinous acts deserve serious punishment, but the jails in this state are filled with people who have committed lesser crimes. This makes no sense either fiscally or judiciously. Louisiana's leaders need to invest more into the rehabilitation and the reformation of its incarcerated citizens rather than continuing down its current course (DeBerry, 2012).

Louisiana consistently ranks highest for the percentage of residents who are locked up; one in every eighty-six adults in the state is serving time; this is more than twice the national average (Chang, 2012). Louisiana has the highest percentage of offenders serving life sentences without the possibility of parole, and some of those who will die in prison have never been convicted of a violent crime. This wasteful approach to dealing with crime and punishment denies any possibility of redemption, not only throwing away the lives of some of its citizens but also throwing away much of its limited resources.

Louisiana changed its Three-Strike policy in

2001, but the changes were not retroactive. Therefore, in 2006, the policy was revisited making the changes retroactive. However, the courts have not recognized this statutory change in policy. Giving credence to the notion suggested by ULL professor Burk Foster that there are others besides the sheriffs who have a vested interest in the state maintaining the current course of massive incarceration. Offenders who fall into this group are serving life sentences without benefit of parole according to a statute that is no longer on the books. If Louisiana's judicial system continues on this present course, this group of offenders will die in prison. This injudicious policy is astonishing when considering the fact that a person convicted of the same crimes today does not have the slightest chance of receiving a life sentence (La. 2013 Criminal Code). The recidivism rate for individuals serving a life sentence is considerably lower than that of the general offender population. A 2004 analysis found that individuals who were released from a life sentence were less than one third as likely to be rearrested within three years as all released individuals (Nellis, 2010).

The use of Draconian methods in sentencing might be justified if they effectively deterred crime, but the numbers do not support this hypothesis. Instead, sending offenders away for protracted periods feeds into an endless cycle of repeat offenses.

More than half of Louisiana's incarcerated population is housed in parish prisons or local jails run by sheriffs or for-profit companies that are enriched by keeping prisons full and spending as little as possible on offenders.

High recidivism is hardly surprising; this is bad news for the crime-ridden communities and the people who will be victimized by ex-offenders who have returned to their old ways. It is also bad news for the families of these offenders. Children lose parents to jail and grow up in neighborhoods where incarceration is commonplace. The affected children all too often end up repeating the same criminal cycle.

Louisiana is caught in a vicious cycle that relies on keeping a steady supply of prisoners flowing to what has become a profitable local prison industry. In the rural northern parts of the state, communities rely on prisons to provide employment and generate revenue for law enforcement. However, these prisons only serve to further strengthen already powerful public officials who enjoy the resulting patronage, and the overall societal and financial cost to the state far outweighs the small gains of these rural communities. It is hard to imagine an economic development model that is less productive or more damaging (Tomaswell, 2012).

In the 1990s, faced with a federal court order to reduce the overcrowding of state prisons, former

(Continued on page 15)

(Continued from page 14)

secretary of corrections Richard Stalder encouraged sheriffs to house more prisoners by offering state bonds as an incentive. Sheriffs and the private companies, who colluded to run local prisons, quickly realized that money was to be made on top of what the state was willing to pay to house prisoners. A prison-building boom followed, but in order for the business to work, jails needed to keep costs down and beds full, a demand that created fierce opposition to any attempts to reform sentencing in this state (Chang, 2012).

Louisiana needs to break this destructive cycle and invest resources into more rehabilitative efforts, not just in warehousing its imprisoned citizens. That can only happen if state leaders are willing to admit that the *lock-em up* model is an expensive failure and enact more meaningful sentencing reforms (DeBerry, 2012).

Louisiana's Sentencing Commission needs to look at how the state deals with habitual offenders. Louisiana hands out much stiffer sentences for crimes than other states. This is a major reason for the exorbitantly high and costly incarceration rate. Louisiana is one of six states where a life sentence is, in effect a death sentence, because of the ineligibility for parole. The use of life sentences reflects a loss of confidence in personal reformation, which guided prison reforms as far back as the late 1800s, in favor of a misguided preference for retribution. Louisiana's current course of action also rejects the view that individuals who commit crimes, even serious crimes, often mature out of their criminal behavior and become a reduced threat to public safety over time, despite the fact that social science, medical, and behavioral research that has reliably established this outcome.

According to Louisiana State Representative Joe Lopinto, who introduced the Sentencing Commission's reforms to the legislature, "The bottom line is, if locking everybody up and throwing away the key works, then we should have the lowest crime rate in the United States; however, we don't". It is understandable that no one who is in office or who is seeking an office wants to appear soft or easy on crime and criminals, but Louisiana's approach is not succeeding. Instead, it creates a supply chain of prisoners, impoverishing the state and leaving damaged lives and devastated communities in its wake. It is time to find a new, viable, and cost-efficient approach to a problem that will only get worse if left unchanged.

If the state's policy-makers are serious about shedding its label as the incarceration nation, there are several options available. The state legislators should repeal its eighty-five percent good-time standard by returning to the previous version of fifty percent standard without the stipulations that were enacted as a result of the Truth-in-Sentencing grant because violent offenders have the lowest recidivism

rate among all committed crimes. Legislators should ask themselves whether the state would have changed its sentencing guidelines if the federal government had not made these funds available. The obvious answer would be, No. State legislators should also provide parole eligibility to all non-homicidal lifers who have served at least twenty-years of incarceration because parole eligibility can serve as an incentive for personal reform and the parole process can be used to delve into a prisoner's suitability for a return to society. Parole eligibility also serves as a way to instill hope into someone who is in a very lonely and desperate situation.

Finally, a pardon recommendation granted by the governor's appointees should automatically go into effect after ninety-days if it has not been vetoed by the governor. It makes no sense for a recommendation for a pardon by the board to languish on the governor's desk, awaiting his signature for 4 years, only to be denied. Pardon board members have been appointed by the governor to evaluate an individual and make a recommendation based upon an offender's readiness to re-enter society as a productive citizen. However, if the recommendations are not going to be acted upon by the governor, why should an offender go through the pardon process, or why even have a pardon board?

Sadly, the state of Louisiana views its incarcerated population as a commodity that is bartered and traded like chattel. People should be treated as people regardless of their status. It is time to revisit this egregious practice of locking people up for extended amounts of time and implement cost-saving legislation that will effectively deal with those incarcerated and curb recidivism.

About the Author: Ronald Marshall was wrongfully convicted for armed robbery and is serving a 50 year sentence in Louisiana's Department of Corrections. He has entered his seventeenth year on incarceration; he's a self-taught legal assistant and unpublished author of several urban novels. Upon his release, he plans to publish his books and launch his own paralegal service, specializing in criminal law, post conviction relief and federal habeas corpus practice. He hopes to create a relief generating engine for deserving prisoners and eliminate the practice of duplicitous attorneys who exalt financial gain over ethical obligations owed to the legal profession. He intends to partner with a licensed attorney whose passion and commitment for criminal justice is strong and determined as his own.

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(Continued on page 16)

(Continued from page 15)

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