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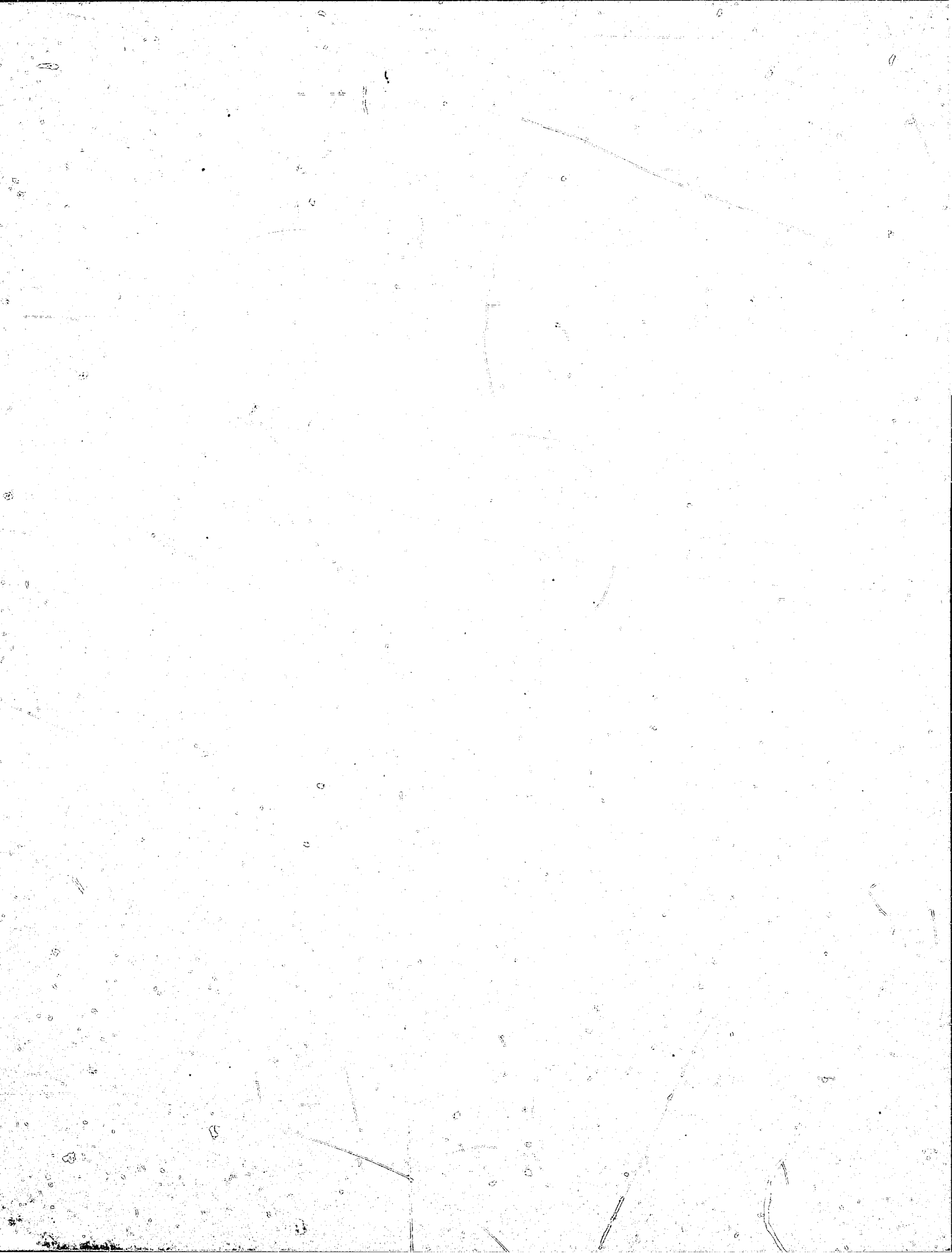


PRISON GRIEVANCE MECHANISMS

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MANUAL

OFFICE OF DEVELOPMENT, TESTING,
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NATIONAL INSTITUTE OF LAW ENFORCEMENT
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LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE



Office of Development, Testing, and Dissemination
National Institute of Law Enforcement
and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

PRISON GRIEVANCE MECHANISMS

MANUAL

By J. Michael Keating, J.D., M.A.

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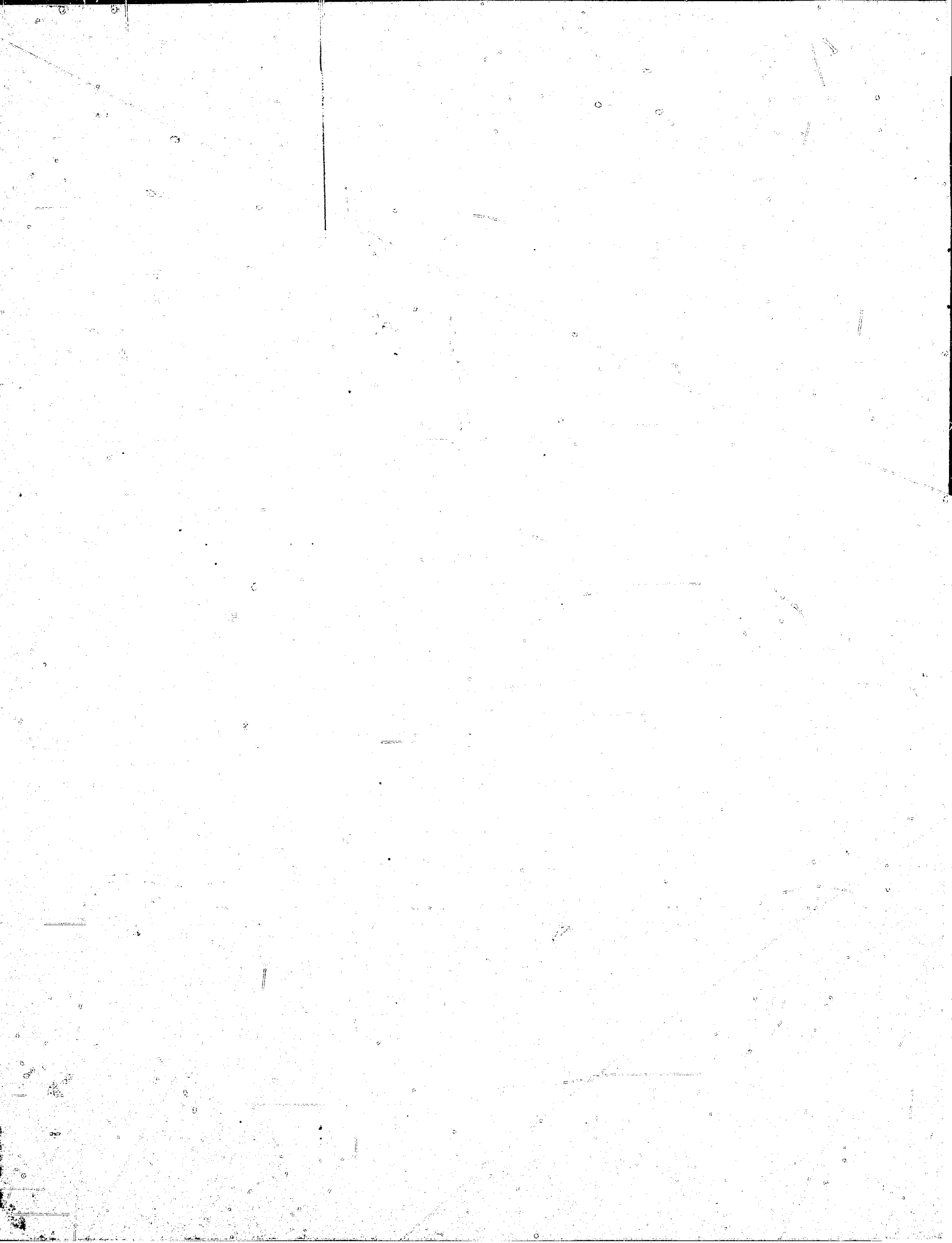
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PREFACE

This manual is the basic reference work for the Executive Training Program's workshop series on Prison Grievance Mechanisms. The Executive Training Program in Advanced Criminal Justice Practices is sponsored by the National Institute of Law Enforcement and Criminal Justice (NILECJ), Law Enforcement Assistance Administration, United States Department of Justice.

The manual is designed to serve several purposes. First, it provides participants in the Executive Training Program Workshops with a general, overall view of the procedures involved in carrying out an effective prison grievance mechanism. Second, it provides principles and guidelines for designing and implementing a mechanism.

Third, it can be a valuable aid to those who did not participate in the workshop but are desirous of implementing or improving prison grievance mechanisms.

Finally, the manual can be used as a reference source by workshop participants who attempt to implement the techniques and use the strategies outlined during the course of the Workshop.

This manual was written by J. Michael Keating, J.D., M.A., Prison Grievance Mechanisms Workshop Team Leader, Center for Community Justice.

Editorial assistance was provided by Carolyn Davis, Media Director for the Executive Training Program, Paul Mathless, and Patricia A. Bryant, all of University Research Corporation.

NILECJ's Office of Technology Transfer sponsors the Executive Training Program in Advanced Criminal Justice Practices. The aim of the Program is to help criminal justice executives and policymakers bring about improved courts, corrections, and police practices that have been identified or developed by the National Institute. The Institute is responsible for the research, evaluation, and technology transfer activities of the Law Enforcement Assistance

Administration, U.S. Department of Justice. The Executive Training Program is one effort the Institute conducts to impart information and skills to criminal justice leaders throughout the nation.

LEAA, operating the Executive Training Program, offers training in new technology through workshops for policymakers in the hope that what they learn will be replicated widely. The technology presented in the workshops is derived from Exemplary Projects, Prescriptive Packages, and other research activities of the Institute. The Workshop on Prison Grievance Mechanisms, like those on other topics offered by the Executive Training Program, is being delivered in the 10 Federal LEAA regions for two and one half days, followed by some limited follow-up training.

A. Background on the Prison Grievance Mechanisms Topic

NILECJ published the Prescriptive Package on Correctional Grievance Mechanisms, a review of grievance mechanisms in use in prisons for adults all across the country. The Prescriptive Package contained a series of recommended principles essential to the establishment of an effective correctional grievance mechanism.

NILECJ also designated the grievance mechanism of the California Youth Authority (CYA) as an Exemplary Project. The CYA mechanism incorporates the principles enumerated in the Prescriptive Package and is highly successful. It represents a practical test of the research findings from the Prescriptive Package--a test that worked.

The purpose of the Workshops on Prison Grievance Mechanisms--and of this manual--is to inform others in the corrections field of the principles and encourage them to adopt them in their own jurisdictions. The goals of the Workshops and of the Manual are to motivate correctional system executives to incorporate proven, successful principles and concepts into existing or new grievance procedures in their jurisdictions.

The manual seeks to help participants and other readers acquire:

- An understanding of the principles essential to creating effective prison grievance mechanisms.
- An awareness of the potential benefits--both direct and indirect--of effective grievance mechanisms.
- An appreciation of the importance of thorough planning and implementation in achieving effective grievance mechanisms.
- A grasp of the techniques that are helpful in solving the problems of planning and implementing these mechanisms.
- A knowledge of the resources available to a correctional system that is about to introduce and implement its own grievance mechanism.

Participants in the Workshops include correctional administrators, judges, attorneys general, public defenders, legal aid attorneys, legislators, governors' aides, and specialists from LEAA State Planning Agencies.

B. About the Authors and the Workshop Leaders

The Workshops on Prison Grievance Mechanisms have been designed and conducted by the Center for Community Justice (formerly the Center for Correctional Justice). This group was formed in 1971 by a group of attorneys and correctional administrators to develop new ways of dealing with prison grievances.

Since 1973, the Center has conducted extensive research in the field and has helped a number of jurisdictions develop and implement prison grievance mechanisms. The Center has worked directly with correctional administrators in the District of Columbia, Massachusetts, California, New York, Colorado, and South Carolina.

The Center also has conducted surveys of grievance mechanisms in 1,000 institutions for juveniles (for the American Bar Association and the Institute of Judicial Administration); surveys of mechanisms in 250 prisons for NILECJ; and a variety of studies and technical assistance projects in grievance procedures throughout the country.

One product of the Center's research was the Prescriptive Package, Grievance Mechanisms in Correctional Institutions. The Center also worked with the CYA in the implementation of its Exemplary Project.

Thus, the principles set forth in this manual do not represent disembodied theory. They have been applied successfully and have formed the framework for a mechanism that has handled more grievances more effectively and at less cost than any other system currently used in corrections, according to NILECJ evaluators.

The Center for Community Justice has prepared this manual and is conducting the Executive Training Program workshops under contract to University Research Corporation (URC). For more than a decade, University Research Corporation has managed federally sponsored national training programs to encourage local development and implementation of human service delivery techniques that have been developed nationally or in outstanding local programs.

URC training programs are process-oriented programs designed by nationally recognized experts who have successfully used a variety of new approaches to service. URC has provided national training programs for LEAA as well as other federal agencies, including the U.S. Departments of Health, Education, and Welfare; Housing and Urban Development; and Labor. University Research Corporation is responsible for the development and presentation of all phases of the Executive Training Program.



CHAPTER 1. SOME BASIC DEFINITIONS

Before considering the need for prison grievance mechanisms and ways of establishing effective ones, it may be well to define some underlying concepts. One of the most troublesome terms involved in this topic is the seemingly simple word, "grievance." The term represents an unhappy choice of words because it is intrinsically negative and conjures up visions of querulous grouching. However, an effective grievance mechanism is an essentially positive means for resolving problems; its operations and effects are designed to promote the cooperative resolution of problems, not to provide a sounding board for bellicose or empty complaints.

Whatever the adverse psychological connotations of the word, we seem to be stuck with it. Within the framework of a prison grievance mechanism, the term ought to be defined broadly: A grievance is a complaint about the substance or application of any written or unwritten policy or regulation, about the absence of a policy or regulation, or about any behavior or action directed toward an inmate.¹

The important fact is that almost anything can be potentially grievable. Virtually every contact between an inmate and the institution or program, its policies and personnel, can become the raw material for a grievance.

Sometimes there is a strong temptation in initial thinking about grievance mechanisms to establish a distinction between "frivolous" and "substantial"

¹ Throughout this Manual, the term "inmate" is intended to include any individual--juvenile or adult--who is under the supervision of any correctional institution or program. While much of the material in the Manual evolves from experience in the institutional situation, the principles of design and implementation described here are being applied currently in noninstitutional correctional programs such as parole.

grievances. The intention generally is to exclude those grievances identified as frivolous so that those responsible for operating the mechanism will be free to focus on substantial grievances. The problem with the distinction is that the determination of whether a grievance is frivolous is largely subjective. What strikes a correctional officer or administrator as "frivolous" is apt to be thought of as "substantial" by inmates who, denied a responsive administrative structure within which to air and resolve "frivolous" complaints, may seek an alternative and more costly means for expressing them. Thus, it is much better to let the people operating mechanisms decide on the merits of grievances on a case-by-case basis rather than leaving a preliminary decision regarding the substance of grievances to the discretion of an administrator.

While it is best to define "grievance" broadly, there obviously are limitations. Some departments of correction, for example, have no control over the parole process, a constant source of legitimate inmate grievances. Where authority over parole is vested in a separate state agency, no corrections department can establish an administrative mechanism to review parole decisions and policies. Thus, to a certain extent, structural political factors may operate to narrow the definition of a grievance in a particular jurisdiction.²

A "grievance mechanism" can be any administrative means for the expression and resolution of inmates' complaints. The administrative aspect of a mechanism distinguishes it from legislative or judicial approaches and suggests that attempts to create legalistic administrative mechanisms may be counterproductive. "Mechanism" is a generic term and embraces the wide range of possible approaches to the handling of grievances, including ombudsman programs, inmate councils and formal, multilevel grievance procedures. The term also applies to more primitive and less formal ways of handling grievances, such as systems for mailing or submitting complaints directly to administrators.

Most difficult of all the terms to be defined in this early discussion is the concept of an effective grievance mechanism. Based equally on direct experience in the evaluation and design of grievance mechanisms and the absence of any definitive empirical research on grievance mechanisms, the following definition (which is more a description of potential benefits than a formal definition) is offered tentatively: A grievance mechanism is effective if it:

- Operates fairly and is perceived by inmates and line staff to be fair,
- Is used, and
- Actually solves problems, including those that require the review, clarification, and change of policies.

² There is additional discussion of what factors should be considered in determining the jurisdiction of a specific grievance mechanism and, thereby, the definition of a grievance within that mechanism, in Chapter 3.

Fairness seems to be a key factor in creating a willingness among inmates to use a specific mechanism. Because line staff can subtly but effectively kill any mechanism for the handling of grievances by making it futile or painful to use the mechanism, it is also vitally important for them to view the mechanism as fundamentally fair.

Obviously, any mechanism that is not used cannot contribute to the resolution of problems and the reduction of conflict. But, determining the point at which use becomes sufficiently broad and frequent to indicate effectiveness is difficult. The criterion of use necessarily is flexible and contingent upon the environment in which a particular mechanism is operating.

Finally, it is important from the perspective of both inmates and administrators that a mechanism deal not just with complaints arising from the application of policies but also with those that involve the substance of policies. Unless the mechanism permits review of policy, inmates will dismiss it as tokenism. A mechanism that excludes policy questions, moreover, will be of considerably reduced value to an administrator who seeks to use it as a means for monitoring more effectively the daily operations of his system, institution, or program.

Measuring the extent of these elements of effectiveness is a difficult task. Discussion of this task will be taken up again in Chapter VI when the importance of evaluation in the implementation of a mechanism is covered.

Definition of these basic terms provides at least a general notion of what is meant by a "prison grievance mechanism." As we shall see, the usefulness of such mechanisms has long been understood.



CHAPTER 2. THE NEED FOR PRISON GRIEVANCE MECHANISMS

A. Recognition of Need

The need to establish administrative grievance mechanisms for the handling of prisoners' complaints has been articulated frequently. In 1967, the President's Crime Commission urged the establishment of procedures "both fair in fact and perceived to be fair by offenders" to provide a channel for the expression and equitable settlement of inmates' grievances.¹ This early recommendation has been repeated by virtually every recent major study group and commission on corrections. In January 1973, the National Advisory Commission on Criminal Justice Standards and Goals observed:

A formal procedure to insure that offenders' grievances are fairly resolved should alleviate much of the existing tension within institutions.... Peaceful avenues for redress of grievances are a prerequisite if violent means are to be avoided. Thus all correctional agencies have not only a responsibility but an institutional interest in maintaining procedures that are, and appear to offenders to be, designed to resolve their complaints fairly.²

Whether motivation for establishing grievance mechanisms for inmates proceeds from a desire to reduce violence, dissatisfaction with litigation, or the desire to promote justice, such mechanisms are now recognized by both

¹President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections, 1967, p. 13.

²National Advisory Commission on Criminal Justice Standards and Goals, Volume on Corrections, 1973, p. 57.

professional and reform organizations as a fundamental requirement in correctional institutions. In its examination of the nature and causes of disturbances in correctional institutions, the American Correctional Association observed:

Prompt and positive handling of inmates' complaints and grievances is essential in maintaining good morale. A firm "no" answer can be as effective as granting his request in reducing an individual inmate's tensions, particularly if he feels his problem has been given genuine consideration by appropriate officials and if given a reason for the denial. Equivocation and vague answers create false hopes and thus increase the man's anger when nothing is done. A most dangerous situation arises, however, when inmates have grievances they feel can be corrected if only the proper officials are made aware of their problems. Inmates know that disturbances are certain to give their complaints wide publicity when less drastic measures fail.³

In a comprehensive statement of principles for correctional policy published in 1974, the Group for the Advancement of Corrections, a body composed primarily of present and former correctional administrators, included the declaration:

Grievance procedures must be made available to all offenders. At a minimum, these procedures must provide for guaranteed responses to all grievances within specified time limits and review by some person or body outside the correctional agency and acceptable to both offenders and employees.⁴

The National Council on Crime and Delinquency, in its "Model Act for the Protection of the Rights of Prisoners," identified as fundamental the right of a prisoner to have access to a grievance procedure:

The director of the State Department of Correction (or the equivalent official) shall establish a grievance procedure to which all prisoners confined within the system shall have access. Prisoners shall be entitled to report any grievance, whether or not it charges a violation of this Act, and to mail such communication to the head of the

³ American Correctional Association, Riots and Disturbances in Correctional Institutions, 1970, p. 23.

⁴ The Academy for Contemporary Problems, The Group for the Advancement of Corrections, Toward a New Corrections Policy: Two Declarations of Principles, 1974, p. 10.

department. The grievance procedure established shall provide for an investigation (aside from any investigation made by the institution or department) of all alleged grievances by a person or agency outside of the department, and for a written report of findings to be submitted to the department and the prisoner.⁵

In late 1972, the American Assembly, a national nonpartisan educational institution, brought together a group of representatives from government, medicine, communications, foundations, and civic organizations for a public discussion in depth of the American correctional system.

In its report of the meeting, the Assembly said:

There should be adequate grievance procedures to safeguard the rights of prisoners in confinement or under supervision in the community. Governors and legislators should establish independent ombudsmen offices. Correctional systems should employ such devices as inmate councils or other forms of prisoner representation.⁶

These American professional and reform organizations echo principles included in the Standard Minimum Rules for the Treatment of Prisoners issued by the Fourth United Nations Congress on Prevention of Crime and Treatment of Offenders.

Every prisoner shall be allowed to make a request or complaint...to the central prison administration, the judicial authority or other proper authorities through approved channels.... Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without delay.⁷

Finally, after a thoughtful evaluation of one specific disturbance, the seizure of Attica, the Correctional Association of New York, a statutorily established panel of independent overseers of the New York correctional system, concluded:

⁵ National Council on Crime and Delinquency, A Model Act for the Protection of Rights of Prisoners, 1972, p. 17.

⁶ Report of the 42nd American Assembly: Prisoners in America, 1972, p. 8.

⁷ Standard Minimum Rules for the Treatment of Prisoners, Rule 36, 1955, in American Bar Association and Council of State Governments, Compendium of Model Correctional Legislation and Standards, August, 1972, p. IV-11.

It is now two calendar years since the awesome tragedy of Attica. Since that time in September, 1971, there has grown almost universal agreement that essential to the prevention of another Attica is an effective system for hearing and dealing with the grievances of individuals in the State's correctional institutions.⁸

Agreement is virtually universal. Moreover, elementary psychology and fundamental concepts of justice dictate that, wherever large numbers of human beings are confined involuntarily in close quarters, there must be effective, credible machinery to provide an outlet for their complaints and dissatisfaction.

B. The Relationship Between the Manual and the Executive Training Program Workshops

The Executive Training Program workshop series on Prison Grievance Mechanisms has sought to familiarize participants with the principles identified as essential for the creation of effective prison grievance mechanisms and, further, to motivate them to introduce mechanisms based on these principles in their own jurisdictions.

The process of designing and introducing an effective grievance mechanism is long and complex. Rather than providing extensive detailed training in the design and implementation of a specific model of mechanism, the workshop has concentrated on the potential value of mechanisms, the concepts on which effective ones must be based, and the problems generally encountered in introducing them.

This Manual covers in detail the subject matter of the workshop. In addition, it provides guidance for those who have decided either to establish a grievance mechanism based on the principles or to incorporate the principles into an existing mechanism. This additional material concentrates on the nature and benefits of a mechanism based on the principles and on implementation strategies.

⁸ The Correctional Association of New York Newsletter, January-March, 1973, p. 2.

CHAPTER 3. THE PRINCIPLES OF ESTABLISHING AN EFFECTIVE GRIEVANCE MECHANISM

Experience indicates that there are two equally important considerations in introducing an effective grievance mechanism into a correctional institution or program. The first consideration focuses on theoretical and practical design questions; the second concerns administrative issues in the implementation of a design mechanism.

A. Design Principles

The following design principles, taken together, comprise a framework for a grievance mechanism that is flexible enough to be tailored to the needs of disparate correctional institutions and programs.

1. Written Responses (Including the Reasons for the Decision Taken) Must Be Made to All Grievances

Assurance that there will be a response to a complaint at every level is a fundamental requirement for an effective grievance mechanism. If the complaint is rejected, a written reply with reasons for the rejection is all the more important. Only in this way can a grievant or other interested party know the grounds on which decisions were based or decide whether an appeal is warranted. Written replies are also needed to determine whether a grievance has been handled properly within established time limits. In all, written replies are an index of the fairness of a procedure, as the Supreme Court has noted:

The provision for a written record helps to insure that administrators, faced with possible scrutiny by state officials and the public, and perhaps even the courts, where fundamental constitutional rights may have been abridged, will act fairly.¹

¹ Wolff v. McDonnell, 418 U.S. 539, 565 (1974).

The necessity of providing a written reply applies at every level at which a grievance is considered, including informal resolution of complaints.

2. Grievances Must Be Responded to Within Prescribed, Reasonable Time Limits: Special Provisions Must Be Made for Responding to Emergencies

Brief, enforceable time limits are essential at every step in an inmate grievance mechanism. They put all involved parties on notice that they must act on complaints. Mechanisms without time limits are an invitation to responsible parties to avoid dealing with tough questions and issues. Time limits should be realistic, but any procedure that requires much more than the 30 days from start to finish suggested by the National Advisory Committee on Criminal Justice Standards and Goals probably will not be used or trusted by inmates.²

To have meaning, time limits must be enforceable. If a response at one level is delayed beyond the time limit, a grievance should automatically be forwarded to the next level of the mechanism. If necessary, the time limit at one level may be extended for a specified, brief period, but only with the written consent of the grievant.

Mechanisms must also have special provisions for handling emergency grievances. Some complaints may allege an immediate threat to the inmate's health or welfare or the imminent loss of visits, furloughs, or other privileges that may be irretrievable. In such cases, time limits must be shorter, and some levels of the mechanism may have to be bypassed to expedite handling of the grievance.

3. Outside Review of Grievances Must Be Available

To be effective, an inmate grievance mechanism must include some form of independent review--that is, review by a person or agency independent of the correctional system. This requirement reflects the reality of life in correctional institutions, where the power exercised by administrators and staff over prisoners is so great that any administrative procedure created to handle grievances must be safeguarded against abuse.

Objective review of complaints by impartial outsiders is essential if a mechanism is to be credible to prisoners. In addition to providing the unemotional perspective of a neutral party, outside review imposes at the lower levels of a grievance mechanism the necessity of responding reasonably, since unreasonable responses and faulty logic will be detected.

If it is to work, outside review cannot be done by extra-institutional personnel who are hired by and responsible to the corrections department,

²National Advisory Committee on Criminal Justice Standards and Goals, Volume on Corrections, 1973, p. 23.

because many grievances will involve the substance or application of departmental policies and regulations. The outside reviewers must be completely independent of the correctional department.

It is not necessary for the opinion of the independent outside body to be binding on correctional administrators for the procedure to be effective. The independence and fairness of the outside review and the good faith of correctional administrators, rather than the threat of binding sanctions, make mechanisms effective. There is no theoretical reason, however, for not making the decision of the outside reviewer binding in cases involving the application--as opposed to the substance--of policy.

4. Inmates and Line Staff Must Participate in the Design and Operation of the Mechanism

The most effective way to promote credibility in a grievance mechanism is to give line staff and inmates a central role in making it work. Such a role must have meaning; line staff and inmates must have a hand in designing the mechanism, as well as the opportunity to work together at the living-unit level (or at least at the institutional level) to decide matters within their jurisdiction and to offer persuasive recommendations to administrators.

This participatory approach enables those people who must live with the solutions to problems to share a role in developing those solutions. Staff and inmate participation promotes a commitment to it on their part and guarantees that those who know the daily prison routine best will have a say in the process of altering that routine. Inmate participation also makes it less threatening for other inmates to bring up legitimate grievances (especially against staff), at the same time that it discourages the submission of frivolous grievances and other potential abuses of the system.

5. All Inmates Must Have Access to the Mechanism, with Guarantees Against Reprisal

Fear of reprisal is the objection to grievance mechanisms most often voiced by inmates. Of course, there can never be an absolute guarantee that threats or reprisals will not be applied informally against someone who uses the system, but some safeguards can be built into the mechanism. For example, the importance of ensuring that no record of a grievance be placed in the complainant's central file cannot be overemphasized. The form of reprisal most feared by inmates is unfavorable intervention by prison authorities in the decision to grant parole. Belief that a complaint about policy, programs, or staff will appear in an inmate's file that goes to the parole board will frequently deter him/her from making the complaint if he/she is already hesitant to use the mechanism. More subtle pressures can also be applied, especially by line staff members on living units, who can make life difficult for grievants or inmates with participatory roles in the procedure. Another test of the good faith of administrators is whether they prevent harassment of inmates who use the system.

6. The Mechanism Must Be Applicable to as Broad a Range of Issues as Possible and Must Contain Means for Deciding Whether a Specific Complaint is Grievable

Some institutions may already have, say, a disciplinary appeals process and may wish to retain it, or there currently may be a method of questioning program classifications. Once the scope of the mechanism has been agreed upon, the mechanism itself must contain a means for determining whether a specific grievance is grievable. Thus, when a grievance is dismissed because it is not within the ambit of the mechanism, an inmate must be allowed to appeal that ruling through every level of review. The mechanism thus would have jurisdiction over questions of its own applicability.

B. Model Mechanisms Based on the Design Principles

It may be helpful to show what sort of framework the principles create for a grievance mechanism. A mechanism for an institution with long-term (three months or longer) inmates that conforms to the principles might operate like this:

STEP ONE: A committee composed of an equal number of prisoners and line staff members, run by a neutral, non-voting mediating chairperson, (either an outsider, a staff member, or a prisoner) hears grievances. The committee decides issues, where possible, or makes recommendations to the appropriate administrator. (If appropriate, this committee might be an existing inmate liaison council or a committee appointed from its membership.)

STEP TWO: The administrator, whether superintendent, program director, or commissioner, considers recommendations from the committee and makes a decision. He/she also reviews appeals and decides on them.

STEP THREE: Step Two decisions may be appealed to outside review conducted by an ombudsman, a professional arbitrator, a volunteer citizen from the general community, or a panel of such persons. The outside reviewer hears the grievance and makes a recommendation for solution, which the administrator may accept or reject. Rejected recommendations and the administrator's reasons for rejection may be made public.

A variation on this process that fits an institution with short-term (three months or less) inmates might operate like this:

STEP ONE: An institutional or living-unit grievance mediator (staff member) receives and investigates complaints and presides over a hearing with one voting staff member and one voting inmate (selected randomly). This ad hoc committee makes recommendations to the appropriate administrator.

STEP TWO: The administrator reviews recommendations (and appealed complaints) and makes a decision.

STEP THREE: Appeals to outside review might be decided by an ombudsman, a professional arbitrator, a volunteer citizen from the general community, or a panel of such persons. The outside reviewer hears the grievance and makes

a recommendation for solution, which the administrator may accept or reject. Rejected recommendations and the administrator's reasons for rejection may be made public.

These models are described here with some reluctance. Experience indicates that a prepackaged procedure simply does not work. Administrators will do much better to leave the details of a mechanism to be filled in by representative line staff and inmates from each institution or program in their system.

C. Implementation Principles

The principles enumerated above and the suggested structures are intended as guidance for the design of a mechanism. A program or institution that installs a mechanism adhering to all of these principles has a good chance of creating a workable procedural structure. Designing a mechanism, however, is only half the job. Implementation of the design is just as critical and just as demanding. Moreover, it is easy for administrators to overlook the importance of implementation and leave it totally in the hands of institutional or program personnel. Such a course is almost always a mistake.

There are basic principles to be observed in the implementation of a grievance mechanism, just as in its design. Some of these principles may seem commonplace, but the Center for Community Justice in its review of grievance mechanisms throughout the country, has found them ignored far more often than followed. The principles of implementation are:

1. The Administrator Must Lead the Overall Planning Process

Correctional administrators must take a central role in ensuring effective planning and leadership. Planning necessarily involves an accurate assessment of needs, determination of resource requirements, and the allocation of sufficient resources to create successful mechanisms. Administrators also must participate actively in an effort to win the commitment of subordinate administrators to establishing effective mechanisms.

2. Everyone Who Will Be Involved with the Mechanism Must Be Trained

Administrators, line staff, and inmates who will be key participants in the procedure must be thoroughly trained in the skills and techniques needed for effective investigation, hearing, and disposition of grievances.

3. Staff and Inmates Must Be Introduced to the Mechanism and Kept Informed About It

Every institution and program with a grievance procedure must develop an effective, persuasive, continuing program for the orientation of staff and inmates to the nature, purpose, and functions of the mechanism.

4. Operations Must Be Monitored and Evaluated

There must be a continuing system for monitoring and evaluating the effectiveness of the procedure. At a minimum, the monitoring and evaluation

system should operate at the institutional and departmental levels. Some outsider monitoring should be done at least occasionally.

5. The Mechanism Should Be Activated in Increments

Mechanisms must be introduced on an incremental basis--that is, first on a single living unit or in a single institution or program, then gradually extended to other units, institutions, or programs after a period of testing.

The reasons for each of the implementation principles in this list derive from common sense, basic management science, and experience. The rationale for the principles will be spelled out at greater length in subsequent pages.

If administrators will apply both the design principles and the implementation principles enumerated here, they can be reasonably sure that the resulting mechanism will be an effective means for the expression and resolution of inmate grievances.

CHAPTER 4. BASIC REASONS FOR ESTABLISHING AN EFFECTIVE GRIEVANCE MECHANISM

One of the most difficult tasks in establishing a correctional grievance mechanism is convincing everyone involved that such a mechanism is both necessary and beneficial. Line staff and inmates in many institutions remain skeptical about grievance mechanisms. The former tend to view them as a new means for "coddling" inmates; the latter frequently view them as "pacifiers," intended only to stifle valid protest.

Fortunately, within the past five years there has been a dramatic change of attitude at least among administrators, who recognize in ever-increasing numbers the need for and value of administrative grievance mechanisms. In a 1973 national survey of 209 correctional institutions for adults, responding administrators acknowledged overwhelmingly the importance of grievance mechanisms. Of the responding institutions, 71 percent reported having a legal services program; 31 percent, an ombudsman; 77 percent, a formal grievance procedure; 56 percent, an inmate council; and 12 percent, all four of these means for dealing with prisoners' grievances.¹ A majority of the programs had been initiated since 1971.

While the survey uncovered a great deal of activity in developing ways of dealing with prisoners' grievances, many of the mechanisms reported were more shadow than substance. Some did not keep records; others did not require complaints to be put in writing; some of the procedures characterized as "formal" by the respondents were not even available in writing. When the most innovative of all the procedures surveyed were identified and studied in detail, many turned out to be inadequate and untimely.

¹Virginia McArthur, "Inmate Grievance Mechanisms: A Survey of 209 American Prisons," Federal Probation, December, 1974, p. 46.

New York State's attempts over the past few years to introduce effective grievance mechanisms in its correctional system illustrate the gap between written formulations and performance. The New York Division for Youth created an ombudsman program for its institutions in 1972, the same year in which the New York State Department of Correctional Services established its own "Inspector General." Also in 1972, the Commission of Correction was reorganized to oversee state and local correctional institutions and prevent abuse of inmates. That Commission was entirely revamped and given broader power in 1975. Finally, legislation mandating the establishment of procedures for the submission of grievances to arbitration in state correctional institutions for adults was enacted and went into effect in February 1976. The State of New York obviously is still looking for an effective way to handle the grievances of its prisoners.

The reason most cited in the general literature for the obvious interest of administrators in having grievance mechanisms is a desire to avoid violence and litigation. Administrators themselves, however, claim other priorities. Among the 209 respondents to the survey described above, the reasons cited most often for having grievance mechanisms were "to provide all inmates opportunities to voice grievances and receive an official response" (143 respondents), "to assist management by identifying institutional problems" (136), "to reduce inmate frustration" (132), and "to aid in rehabilitation of inmates" (126). Reduction of litigation and prevention of violence were cited far less often--only 50 and 60 times, respectively.

These responses demonstrate that an effort to obtain widespread staff and administrative approval of a tough, effective grievance mechanism must include appeals to other motives besides the desire simply to avoid violence and lawsuits. This is especially true if the institution or program is unlikely in any case to be bothered much by either disturbances or litigation, like, for example, most community or juvenile programs.

A. Improved Management

One of the most important reasons for adopting an effective grievance mechanism is the potential improvement in management it can bring to an institution or program. Most administrators in corrections are desperate for tools that will make their system more manageable.

Professional literature on management and organizational theory has documented the growing realization that bureaucratic structures are subject to a natural cycle of growth, productivity, and decay. The older an organization is, the more likely it is to decompose. Practically, this means that command, control, and communication break down and people at the line level become the effective policymakers for the system, applying self-made rules on a case-by-case basis. In reaction, administrators characteristically issue more and more regulations that have less and less impact. Moreover, to draft and promulgate the increasing number of regulations, more central office administrators are hired, with the result that coordination and communication difficulties increase further as the bureaucracy becomes steadily more top-heavy.

One result of this process of organizational decay in corrections is an ever-growing reliance on charismatic management. Administrators who want to control or reform their system, institution, or program experience mounting frustration as they realize that their authority and power stop outside the door of their office. They can no longer count on the organization to carry out their directives, so they rely increasingly on direct intervention. In an institution, this means the superintendent or warden spends much time "behind the wall,"--that is, circulating through the institution.

The difficulty with this highly personal approach to management is that, in order for it to succeed, administrators must spend most of their time gathering information, thereby leaving little opportunity to deal administratively with the problems they uncover. In addition, their contacts are limited to those prisoners sufficiently bold and articulate to approach him/her directly, and they undermine whatever communication channels remain open in the organization, leading to the demoralization of their middle managers. What is needed is another means of reviving the organizational life of prisons without relying on charismatic leadership.

Perhaps in no other area is the need for revitalization of organizational life greater than in the way correctional systems deal with the complaints of inmates. Responses that are standard in any bureaucracy are heard with ritual frequency in corrections: "We do it this way because it's policy," or "I don't know but I'll look into it." The latter reply is usually flung over the shoulder of the rapidly retreating correctional supervisor or officer.

The problem is less the deliberate desire to be unresponsive than it is the incapacity of organizational staff to respond otherwise. Inmates however, faced with what seems like little more than willful neglect, grow increasingly discontent with unresponsiveness and they revolt or, in the jargon of the psychologists, act out their discontent. If the lack of institutional response to their grievances is to be rectified, the channels of communication must be made more effective. That is one of the principal benefits of an effective grievance mechanism.

To fully understand the potential of a grievance mechanism, it is necessary to consider the organizational obstacles to a steady flow of information to administrators. Typically, when a prisoner complains about the substance or application of a policy or about the actions of a particular staff member, he/she takes the grievance to the nearest available supervisor. Supervisors, especially in prisons where security and control are primary concerns, tend to support their subordinates automatically. This tendency creates enormous bias against an individual prisoner's complaint. Under some circumstances, of course, the supervisor's bias can be overcome, but doing so usually requires egregious circumstances that are uncommonly well substantiated.

Once a supervisor's decision is made, review generally ends. Only when the supervisor wishes to ventilate the matter will the problem rise higher, for in most circumstances, he/she determines whether further review will be permitted. Even in the event a supervisor permits further review of his/her decision, he/she retains control over the flow of information that will accompany the case, since his/her explanation of the situation is generally the only one that will be accepted by his/her superiors.

In some jurisdictions a prisoner is given the right to appeal the decision of a supervisor directly to the superintendent or, occasionally, to the director of the department. While superficially a significant advance over the standard way of handling appeals, this approach offers the inmate little more in the way of results. Almost always, upon receipt of a direct complaint from a prisoner, the institutional or departmental administrator refers it for investigation back to the supervisor who has already reviewed and rejected the original complaint. If an individual staff member has been assigned to handle complaints within the institution or department, he/she most often goes to the same supervisor for information on the appeal. The same supervisor thereby retains his/her monopoly on the flow of information, and the bias in favor of supporting the decision of a subordinate continues to operate.

The result is that administrators often ~~do not~~ know what is going on in their institutions or programs. The channels of communication are controlled, for all practical purposes, by line officers. Time after time, administrators whose institutions have exploded in violence have lamented that they had little idea of the extent of prevailing unanswered grievances. In addition, administrators frequently have no idea whether their own policies have been implemented effectively on the living units of an institution. It is not uncommon to hear administrators candidly confess that they are powerless to enforce various policy changes in certain units or institutions.

An effective grievance mechanism can break the log-jam of communications and provide a means of destroying the control over information flow currently enjoyed by line staff. The operative word here, obviously, is "effective," since an inspector-general or ombudsman (either of whom must depend largely on the supervisor for facts), is unlikely to restore the flow of information within correctional organizations. A grievance mechanism can provide a willing administrator with an invaluable tool for obtaining control over a system, an institution, or a program by making sure he/she has sufficient information to understand and direct it.

There are other administrative payoffs in a properly functioning grievance mechanism. It is an ideal means of bringing clarity and rationality to policies which, under the scrutiny of a grievance mechanism, must daily be explained, justified, eliminated, modified, or replaced. "Customs" and "traditions" are exposed as such and can be either eliminated or made into evenly enforced policy.

Skillful administrators can use the neutral components of an effective grievance mechanism to help sell policy reform that they support to a reluctant staff or middle management. For example, if a departmental director's desire to ease dress and grooming regulations encounters resistance from part of the staff, he/she can accede "reluctantly" to the opinion of a neutral outside party who recommends, in the name of community standards, more relaxed regulations.

The very fact that a supportive, outside constituency will be created through exposure to the monumental administrative problems of correctional managers is a strong plus for the administrator who knows how to use such support. It is in the interest of administrators to make the creation of a powerful outside constituency for corrections an important byproduct of a grievance mechanism.

B. Antidote to Violence

Institutional violence, like crime, seems to defy attempts to explain its causation. One recent survey on the subject attempted to pinpoint the key variables that might account for the repetitive occurrence of prison riots, including the security classification, capacity, and age of the institution; the education of staff and prisoners; the extent of warden-inmate contacts; job assignments for prisoners; recreation facilities and opportunities; and extent of use of administrative/punitive segregation. The survey was far from conclusive and indicated that no single cause could be identified as the principal villain in igniting disturbances.²

While the precise causes of prison violence cannot be pinned down, one important factor contributing to such violence is generally acknowledged to be "absent or restricted communication patterns which seriously impair the airing of legitimate inmate grievances and the detection of impending unrest."³

Not all disturbances, of course, reflect a drive for redress of legitimate grievances, but many do. Underlying most recent major prison riots, from Attica to McAlester to the Tombs to Moundsville, West Virginia, have been festering, unanswered grievances. Rioting prisoners repeatedly say that under normal circumstances no one will listen to their complaints or that, once heard, their grievances are ignored. Although recognizing that they themselves will be hurt the most by their violence, they refuse to eat or work, burn their mattresses, break their television sets, and endanger lives with their protests. "It may seem stupid," explained one rioter, "but this is the only time someone ever listened to us."

One indirect effect of a successful resort to violence on the part of prisoners is the discouragement of inmate initiative in fashioning legitimate, nonviolent means of expressing discontent and seeking reform:

While displaying our displeasure in a manner we thought lawfully appropriate (exercising our right not to work was deemed lawful a long time ago), things have been taking place that make us wonder indeed if "orderly expression" is the answer, as opposed to disorderly destruction and violence, which never fails to draw quick attention and wide-spread news coverage.⁴

²South Carolina Department of Corrections, Collective Violence in Correctional Institutions: A Search for Causes, 1973.

³Edith Flynn, "Sources of Collective Violence in Correctional Institutions," National Institute of Law Enforcement and Criminal Justice, Criminal Justice Monograph: Prevention of Violence in Correctional Institutions, 1973, p. 28.

⁴"The Prison Strike: A Peaceful Alternative," printed in Fortune News (monthly newspaper of the Fortune Society, an organization of ex-convicts and other interested persons located in New York City), April, 1973, p. 7.

This rueful perception is not limited to cynical inmates. In its examination of the causes of riots in correctional institutions, the American Correctional Association endorsed the observation of Christian Century magazine:

The riots result, we believe, not from bad prison conditions or practices but from the belief of prison inmates that the only way in which they can gain public interest in improving such conditions is by rioting. Non-violent protests or requests for remedial action, prisoners believe, never accomplish anything. Riots sometimes do.⁵

Concern over violence, especially collective violence, is limited usually to prisons for adult males. In institutions for female offenders and youth, as well as in community programs for all offenders, violence rarely becomes a serious problem, primarily because it is not expressed collectively. Talk to psychologists and social workers about violence as expressed in the "acting out" of individual frustration, however, and one quickly becomes aware of a different perspective on the extent of violent behavior even in what are considered benign programs and institutions. As in the case of collective violence, at least part of the explanation for individual "acting out" can be found in the inability or unwillingness of the bureaucratic correctional structure to hear and respond to grievances.

An effective grievance mechanism will not end violent behavior in prisons and other correctional institutions and programs. Anyone who promises or claims that it will do so will be viewed by correctional personnel as a charlatan--and rightly so. What a mechanism can do, however, is provide a steady flow of information on grievable matters to administrators, enabling them to understand and anticipate problems and provide solutions or explanations for the lack of solutions. A mechanism can, as one observer put it, "avoid the predisposing causes of riot."⁶ Given the costs of both collective and individual violence in the correctional environment, that is no small benefit.

C. Alternative to Litigation

The need for administrative responsiveness to inmates' grievances does not derive solely from the rising level of institutional violence. Beginning in the mid-1960s, the courts began to abandon their "hands-off" attitude towards the prisoners' claims, with the result that inmates and reformers alike increasingly focused on judicial intervention as a primary vehicle for change in corrections. While there have been some dramatic legal victories for inmates, the fruits of 10 years of judicial intervention have been disappointing to inmates, judges, and correctional administrators.

⁵American Correctional Association, Riots and Disturbances in Correctional Institutions, 1970, p. 66.

⁶Vernon Fox, "Why Prisoners Riot," Federal Probation, March, 1971, p. 9.

Because of the length of time and the resources required to pursue a case through the courts, the continued reluctance of judges to deal with problems that do not raise constitutional questions, and the difficulty of enforcing court orders in closed institutions, prisoners have become increasingly disillusioned with the judicial process as a means of dealing with their grievances.

Litigation arising out of efforts to bring change to the Arkansas prison system illustrates some of the reasons for disillusionment. In a series of decrees in 1969 and 1970, a federal district judge ordered the wholesale re-vamping of Arkansas' correctional system.⁷ Yet, after five years of litigation, the United States Court of Appeals for the Eighth Circuit, in an opinion handed down in November 1974, confirmed that conditions in Arkansas correctional institutions continued to be unconstitutional in many respects and that Arkansas was in substantial noncompliance with the original judicial decrees.⁸

From the beginning of increased judicial activism, correctional administrators have doubted the appropriateness of court intervention as a means of achieving reform--in part because responding in court to prisoners' complaints is both time-consuming and expensive. Moreover, administrators have long been convinced that courts have no special expertise qualifying them to dictate changes in corrections.

The courts themselves have not been indifferent to arguments that judicial intervention in the day-to-day operations of correctional institutions constitutes an overextension of their authority and capacity. Chief Justice Warren E. Burger relates with dismay the case of a prisoner who engaged the primary attention of "one district judge twice, three circuit judges on appeal, and six others in a secondary sense--to say nothing of lawyers, court clerks, bailiffs, court reporters, and all the rest--in an attempt to recover seven packs of cigarettes allegedly taken improperly by a guard."⁹

Other judges have echoed the Chief Justice's concern over the appropriateness of the judicial process as a means of resolving the gamut of prisoners' complaints. In November 1974, the United States Court of Appeals for the First Circuit cited cases brought before federal judges that were considered inappropriate for the exercise of judicial intervention. Examples included the claimed right to keep a pet in a correctional institution, the right of an inmate to receive personal clothing from the state, and the duty of the institution to repair broken toilets.¹⁰

⁷ Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970); Holt v. Sarver, 300 F. Supp. 825 (E.D. Ark. 1969).

⁸ Finney v. Arkansas Board of Corrections, 505 F. 2d 194, 200 (8th Cir. 1974).

⁹ Speech delivered to the American Bar Association, Washington, D.C., August 6, 1973. The case referred to is Russell v. Bodner, 478 F. 2d 1399 (3rd Cir. 1973).

¹⁰ Sparks v. Fuller, 506 F. 2d 1238 (1st Cir. 1974).

The subject matter of cases brought by prisoners--particularly to federal courts--is one source of judicial vexation; far more critical, however, is the ever-rising volume of petitions being filed by prisoners. In his latest annual report on the judiciary, the Chief Justice announced that of the 117,000 cases on the civil docket of federal courts in fiscal year 1975, 19,000, or one-sixth, represented petitions from prisoners, including habeas corpus petitions. He ended his observations on the problem of prisoner petitions with a refrain he often has sounded in the past: "Federal judges should not be dealing with prisoner complaints which, although important to a prisoner, are so minor that any well-run institution should be able to resolve them fairly without resort to federal judges."¹¹

The Chief Justice, in addition to criticizing the rise in the number of prisoner petitions, has offered several suggestions for remedy. One suggestion he has returned to often is the implementation in correctional institutions of the same kind of grievance mechanisms common in industrial plants:

This, in essence, is what every penal institution must have--the means of having complaints reach decision-making sources through established channels so that the valid grievances can be remedied and spurious grievances exposed.¹²

Judge Donald P. Lay of the United States Court of Appeals for the Eighth Circuit, which has reviewed three of the major decisions¹³ of the last five years dealing with correctional problems, also has pointed to the establishment of credible administrative mechanisms as one important means of reducing judicial intervention in corrections:

The second and perhaps more immediate solution to many of our problems is to create within the prison system an administrative grievance adjustment policy which will be attractive to the prison population. As prisoners come to realize that their complaints will be processed on an administrative level in a fair, expeditious and impartial manner, and that relief will be afforded where justified, inmates will begin to elect their administrative remedy rather than the delayed process of the courts.¹⁴

¹¹ 62 A.B.A.J., 189, 190 (1976).

¹² Speech delivered to the National Conference of Christians and Jews, Philadelphia, Pa., November 16, 1972.

¹³ Wolff v. McDonnell, 418 U.S. 539 (1974); Morrissey v. Brewer, 408 U.S. 471 (1972); Holt v. Sarver, 442 F. 2d 304 (8th Cir. 1971).

¹⁴ "Corrections and the Courts," Resolution of Correctional Problems and Issues (published by the South Carolina Department of Corrections), Vol. 1, No. 1, Fall, 1974, p. 10.

In some jurisdictions where administrative grievance mechanisms have been introduced, courts have been quick to grant approval and encouragement. In a recent case denying Connecticut prisoners the right to form a union, a federal district judge described the newly established ombudsman program as providing amply opportunity for the presentation of inmates' grievances for review by an objective, outside body.¹⁵ In a little-noted 1974 decision of the United States Court of Appeals for the Fifth Circuit, the court suggested strong approval for a lower court requirement that federal prisoners exhaust administrative channels for remedy of grievances before going to court. The lower court referred to the newly implemented and then-experimental Federal Bureau of Prisons' grievance procedure.¹⁶

D. The Justice Model

While the search for alternatives to violence and litigation has done much to foster interest in administrative grievance mechanisms, a more positive influence, the so-called "justice model," has emerged recently to promote their development. The justice model is a byproduct of growing disillusionment with the "rehabilitative ideal," a conceptual framework that has dominated corrections for most of the Twentieth Century. The central element of the justice model, which is still in its infancy as a unifying rationalization of overall correctional policy, is an emphasis on the importance of fairness and equity both in correctional policies and in their application.

The philosophical basis for the justice model has been provided by the English philosopher John Rawls, who urges unmistakably the primary importance of justice:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.¹⁷

The principal theoretical proponent of the justice model in corrections is David Fogel, who in both practice and writing has pushed for adoption of the model in corrections. As applied in corrections, the justice model involves the imposition on inmates of a share of responsibility in ensuring a climate of fairness:

¹⁵ Paka v. Manson, 387 F. Supp. 111, 117 (D. Conn. 1974).

¹⁶ Ross v. Henderson, 3 Prison Law Rptr. 338 (5th Cir. March 15, 1974).

¹⁷ A Theory of Justice, 1971, p. 3.

The justice model seeks to engage both the keeper and the kept in a joint venture which insists that the agencies of justice shall operate in a lawful and just manner. It simply means that we believe that the prisoners did not use lawful means to guide themselves outside the prison and should therefore be provided greater (not lesser) opportunities to learn lawful processes to achieve his ends. This also implies that the convict accept the legal responsibility for the consequences of his behavior. In the absence of a continuum of justice in the prison, most ends are reached unlawfully. When unlawful behavior is detected, it is frequently dealt with in the absence of the very standards of due process we insist upon outside the prison. The result is a further indication to the convict that lawful behavior has little pay-off. He can be dealt with arbitrarily and usually responds by treating others in the same manner.

The justice model insists that, at least during the period of incarceration, the prisoner and the staff, as society's agents, will deal with problems in strict fairness--something we expect of each other outside of prison. Further, it points to a way of engaging both the keeper and kept in a rhetoric-free, manageable prison experience.¹⁸

One active correctional administrator who subscribes to the "justice model" approach to corrections is Allen F. Breed, Director of the California Youth Authority. He frequently cites the need for an atmosphere of justice in correctional institutions as one of the main reasons he became interested in the introduction of a grievance mechanism in the CYA:

No treatment program that exists...today in the field of corrections (is) successful, and, basically, they are not successful because they are operated in an environment that is not fair.... (W)e believe in fairness...and we ought to be demonstrating it in those areas that govern the greatest part of the kid's life--his everyday activities and (his) interaction with staff.¹⁹

¹⁸"We Are the Living Proof...": The Justice Model for Corrections, 1975, p. 207.

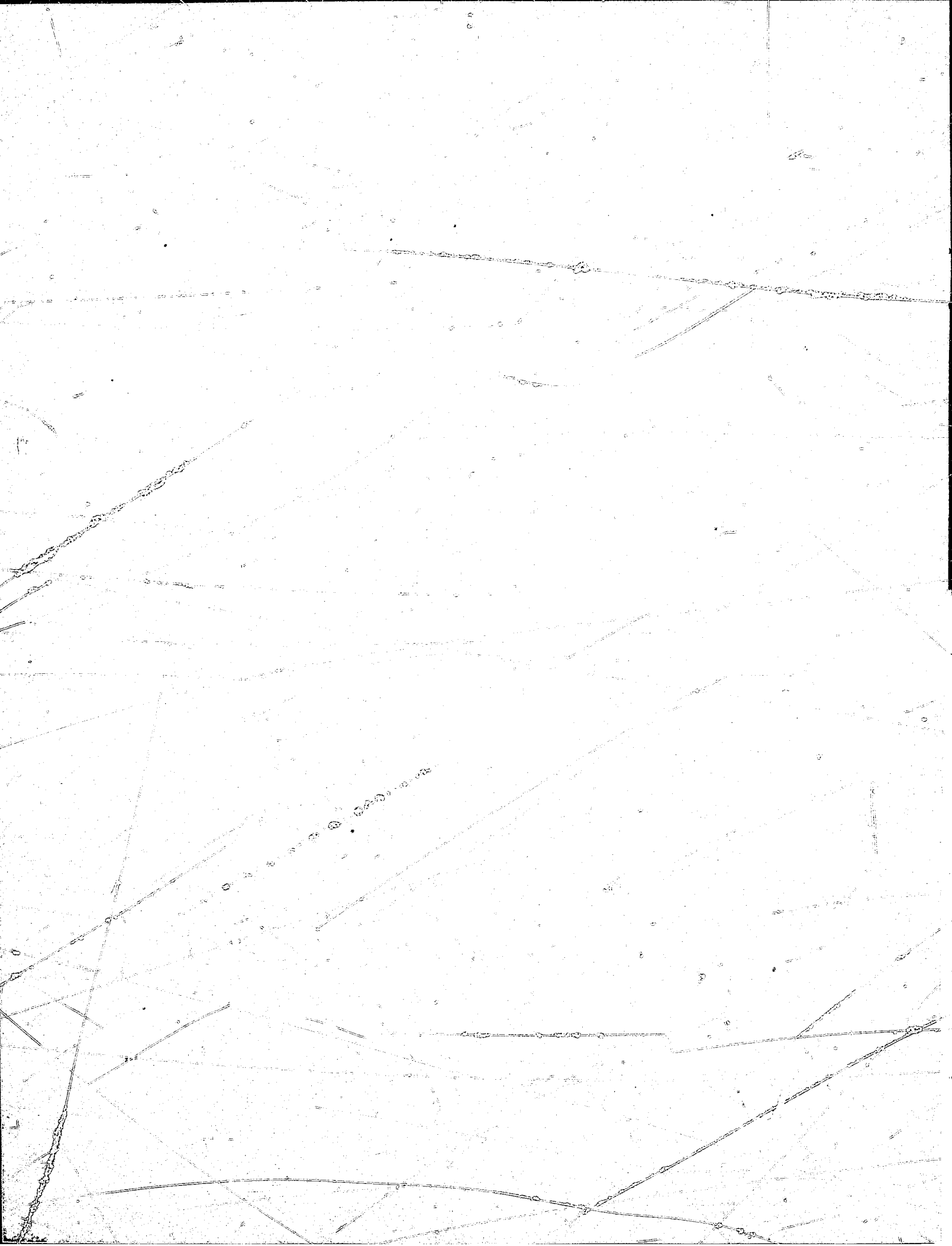
¹⁹R. V. S. Ria Denenberg, "Prison Grievance Procedures," Corrections Magazine, January/February, 1975, at 41.

In most respects the need in corrections to improve management, to avoid violence, to find alternatives to litigation, and to promote justice and fairness reflect overlapping concerns. Filling any one of these needs inevitably does much to fill the others. The prescription of one commentator for dealing with institutional violence illustrates the point:

The constructive use of inmate leadership is an obvious way to avoid riots. Some type of inmate self-government that involves honest and well supervised elections of inmate representatives to discuss problems, make recommendations and, perhaps, even take some responsibilities from the administration could be helpful.... Regardless of how it (pattern of inmate self-government) is organized, it should promote upward and downward communication between inmates and prison administration and it should provide the inmate leadership with a vested interest in the status quo.²⁰

The establishment of an effective mechanism can help promote justice, reduce litigation, limit violence, and improve management. That represents a substantial list of correctional needs, and no prudent correctional administrator can afford to ignore a procedural reform that is responsive to those needs.

²⁰ Vernon Fox, op. cit., at p. 13.



CHAPTER 5. RESPONDING TO PRINCIPAL OBJECTIONS TO THE INTRODUCTION OF AN EFFECTIVE GRIEVANCE MECHANISM

Simple identification of the positive effects of a grievance mechanism based on the principles described in Chapter II may not fully persuade reluctant correctional personnel to implement a mechanism. Prison staff are often apprehensive about the impact of a grievance procedure on an institution's security or treatment program or on some other strategy recently inaugurated to provide a wider measure of fairness within the institution. An administrator seeking to persuade his or her staff would do well to generate discussion of these areas if they have not been addressed earlier.

A. Grievance Mechanisms and Security

An overriding concern at many correctional institutions is the maintenance of security and order. Line staff, working in daily proximity to prisoners, often are concerned with this issue above all others, and their concern is reflected in the power and deference normally given within an institution to administrators in charge of security. Almost any new program for inmates will arouse fear among staff that the institution will become less orderly and controlled and, hence, less secure.

Almost 40 years ago, management specialists began to theorize that there was more to authority than simply issuing orders in stentorian tones. Out of this rethinking came the so-called "acceptance theory" of authority, which posits that the source of authority resides not in the person or position of the superior party but in the acceptance or rejection of the superior's authority by the subordinate.¹ Thus, the refusal (whether overt or covert) to obey an order represents a direct rejection of the superior's authority by the subordinate. Since the 1940s, management--both in business and in government--has struggled to comprehend and, in some measure, adapt to the acceptance theory.

¹See, e.g., Chester I. Barnard, The Functions of the Executive, 1938, pp. 163 ff.

The application to prisons of such notions naturally has come much more slowly. Yet the experience of corrections in the past decade in trying to apply traditional concepts of authority to increasingly militant inmates has begun to undermine reliance on covert custodial coercion to maintain order. As George Nicolau, a mediator and arbitrator with considerable prison experience, puts it:

Prison administrators seem to agree that prisons can run only with the consent of the inmates and that the power of prison officials is less total than it appears. For one thing, power in prisons is inherently divorced from authority in the sense that prisoners, perceiving themselves as living under a regime imposed by a ruling few, have virtually no internalized sense of duty to obey.²

A correctional institution that attempts today to deal with problems of security and order through the coercive use of raw power is doomed to failure. Such strategy is becoming obsolete, as evidence against its effectiveness mounts:

Repression is unsatisfactory because of its inherent limitations in reaching the core of the problem at hand. It usually produces no more than a resumption of order and quiet at a very shallow level. This is the great drawback of repression: it is a stopgap measure that does not so much resolve issues as bury them just below the surface, only to have them arise again at other times and in different forms. In addition, repression impairs long-term effectiveness because it antagonizes prisoners, nurtures resentment, and perpetuates the advocacy of violence as a viable, justified option. Its use often contributes to the vicious circle of repression, protests against repression, and increased repression.³

The principal alternative to repression in virtually every correctional setting is a form of informal and unofficial bargaining based on the mutual recognition by staff and inmates of each other's power to make things difficult in the event of a breach of terms. Such bargaining provides a measure of custodial efficiency and superficial order. Typically, however, the ambiguities of bargaining leave the line correctional officer in a quandary:

²"Grievance Arbitration in a Prison: The Holton Experiment," Resolution of Correctional Problems and Issues, Spring 1975, p. 11.

³Vincent O'Leary, Todd Clear, Carlisle Dickson, Henry Paquin, William Wilbanks, Peaceful Resolution of Prison Conflict: Negotiation as a Means of Dealing with Prison Conflict, NCCD, 1973, pp. 5 and 6. A recent study of the effects of extended lockups (i.e., confinement to cells) in one California institution (Soledad) indicated that even the maximum use of security measures resulted in increased violence in the institution. "Effects of Increased Security on Prison Violence," Journal of Criminal Justice, Spring 1975, p. 33.

Facing demands from above that he achieve compliance and stalemated from below, he finds that one of the most meaningful rewards he can offer is to ignore certain offenses or make sure that he never places himself in a position where he will discover them. Thus the guard... often discovers that his best path of action is to make "deals" or "trades" with the captives in his power.⁴

Bargaining in prisons clearly and inescapably undermines the concepts of justice, fairness, and equal treatment. It promises special treatment to inmates who "deal" with staff and threatens harsher treatment of those who refuse to do so. Needless to say, it is entirely antithetical to the justice model.

The key to order in prisons is not reliance on coercion or bargaining; administrators concerned about enduring order in their institutions must look elsewhere. More and more theorists and practicing administrators are pointing to shared responsibility with inmates as the path to enduring order:

An administration that relies solely on its own coercive resources can make little contribution to the reconstruction of prison life or to the creation of environments that encourage autonomy and self-respect.... Quiescent conformity imposed from above is a parody of social order, not its fulfillment. A system that validates the humanity of its participants, and engages their full resources, accepts the risk of disorder and even, from time to time, of searing confrontations.⁵

General argument about a "philosophy" of security will only occasionally be the major concern of correctional personnel. They are much more apt to be concerned that inmates will use the grievance mechanism primarily to "get" staff; that it will become a device for staff harassment, thereby compromising attempts to maintain control, order, and security.

The proper response to such a fear is a frank acknowledgement that a grievance mechanism can, indeed, be subjected to such abuse. In fact, however, experience indicates that instances of abuse in jurisdictions that have adopted effective grievance mechanisms have been extremely rare. Moreover, it is both possible and beneficial to build into the mechanism protections against abuse--for example, by providing accused staff with a right to representation by counsel or union representatives, by allowing appeals of decisions at each level by all parties to a grievance, by leaving the disposition of grievances involving charges against staff in the hands of administrators. This will not convince everyone; the best argument is an operating mechanism in which such abuses are rare.

⁴Gresham M. Sykes, The Society of Captives, 1958, pp. 56-7.

⁵Philip Selznick, Introduction to Elliot Studt, Sheldon L. Messinger, Thomas P. Wilson, C-Unit: Search for Community in Prison, 1968, p. viii.

An unspoken fear that line staff often have about a mechanism is that it will enable administrators to monitor more effectively each individual officer's job performance. After enjoying literally generations of cell-block autonomy, staff view the prospect of a system that reaches into living units for an inmate-initiated review of policies and their application as most uninviting. The fear is rarely voiced, since even outspoken staff members are embarrassed by it. An end to autonomy is absolutely essential, however, if institutions are to be made more manageable and humane.

Administrators and line staff alike may worry that a grievance mechanism will force unwanted and disruptive policy changes upon them--that decisions detrimental to security will be dictated by inmates and/or by "outsiders" acting as outside reviewers. It is true that administrators will have to be willing, on occasion, to implement changes suggested initially by inmates and endorsed by an outside reviewer. It is also true that some of these changes may disrupt settled institutional routine and require a variety of adjustments. But policy changes will not be made at the expense of legitimate security considerations.

Experience has shown that people involved in a prison grievance mechanism, from inmates to line staff to outside reviewers, have been extremely sensitive to security needs. Moreover, a grievance mechanism can create healthy pressure to re-examine existing policies and distinguish real from imagined threats to institutional order. This pressure may be unwelcome to some staff members, but they should be assured that the multiple stages in a mechanism give ample opportunity for legitimate security needs to be considered, especially since an outside reviewer's finding is advisory and the chief correctional administrator retains the final say.

A more difficult objection concerns the dangerous arousal of expectations among prisoners that inevitably accompanies the implementation of a program that directly benefits inmates. Frequently, such programs are presented as a panacea for all inmate difficulties, and when the difficulties somehow survive the new program, the let-down can be severe--and violent. A grievance mechanism cannot itself resolve a single correctional problem. It offers, rather, a procedural means through which people who have the desire and knowledge to solve some of their problems may work together to do so. It is best to make clear from the beginning to inmates and staff alike that a grievance mechanism is less a penal reform than a bureaucratic or organizational one. To avoid the problem of arousing expectations that cannot be fulfilled, the grievance mechanism must be recognized for what it is and promoted as such--a limited, procedural reform whose ultimate success depends on the good will and intelligence of those who use it.

A grievance mechanism will affect security to some extent, even if only to cause a reappraisal of traditional security practices. Experience shows, however, that a grievance mechanism is compatible with a secure institution. Major New York State institutions like Attica, Auburn, and Green Haven are operating with grievance mechanisms without serious undermining of security.

B. Grievance Mechanisms and Treatment

The "rehabilitative idea" recently has been subjected to critical reappraisal by social scientists and criminologists, who now doubt whether prisons

can ever be expected realistically to "rehabilitate" large numbers of prisoners, prevent recidivism, or reduce the crime rate. Nevertheless, whatever the validity of such doubts, it seems unlikely that the correctional system as currently structured will abandon its commitment to rehabilitating inmates. On the contrary, the number of vocational, religious, psychological, and educational programs conducted for prisoners has been rising steadily and will probably continue to do so regardless of the mounting criticism. The best prescription for a proper mix between reform of the rehabilitative ideal and retention of some sort of rehabilitative effort already may have been suggested:

Rehabilitation, whatever it means and whatever the programs that allegedly give it meaning, must cease to be a purpose of the prison sanction. This does not mean that the various developed treatment programs within prisons need to be abandoned; quite the contrary, they need expansion. But it does mean that they must not be seen as purposive in the sense that criminals are to be sent to prison for treatment. There is a sharp distinction between the purposes of incarceration and the opportunities for the training and assistance of prisoners that may be pursued within those purposes. The system is corrupted when we fail to preserve this distinction and this failure pervades the world's prison programs.⁶

A fundamental fact of inmate life is powerlessness. Inmates traditionally have had no formal control over the details of their lives; the multitude of rules under which they must live is imposed by a detached staff and administration. An inmate hierarchy, as we have seen, may develop, based on an informal system of favors and cooperation with guards, but such a system usually is unjust, arbitrary, and paternalistic. Most inmates remain alienated from staff and nurture a growing resentment at their powerlessness to alter conditions of confinement that may be--or seem to be--capricious, arbitrary, or oppressive. This resentment not infrequently embitters the released inmate against established society as a whole and retards his or her ability to deal successfully with society's institutions.

A properly functioning inmate grievance mechanism, however, may bring about important changes in traditional institutional life. The first such change is that the mechanism gives inmates a regular, formalized system for complaining about conditions and suggesting improvements generally without fear of reprisal. Inmates also may have, often for the first time, some measure of responsibility for shaping the conditions of their environment. Second, polarization between inmates and staff is reduced as the two groups work together within a mechanism to find mutually agreeable solutions to problems. Staff realize quickly that improving conditions for inmates may well mean a substantial improvement in their own situation. Third, through a mechanism some inmates have an opportunity to develop clerical, negotiating, mediating, and investigatory skills, all of which clearly are useful in the outside world.

⁶Norval Morris, The Future of Imprisonment, 1974, pp. 14-15.

These changes can have an important payoff in the area of rehabilitation. An LEAA description of one successful grievance procedure noted:

It can be argued that the grievance system serves as a logical adjunct to any rehabilitative strategy. The grievance mechanism provides a means for wards to use verbal problem-solving techniques and to practice manipulating institutions (almost the essence of successful middle-class behavior). Presumably use of the grievance procedures should increase the inmate's skills in this type of behavior, his tendency to use this sort of approach in the outside world, and also increase his perception of control of the environment.⁷

A grievance mechanism, then, may itself be a directly rehabilitative program, although it would be difficult to quantify its contribution in this respect. More important, however, is the help a mechanism can provide in creating a climate of fairness in an institution or program, without which any sort of rehabilitative treatment is unlikely to succeed.

Increasingly, corrections is becoming aware of the need for justice and fairness as prerequisites for effective rehabilitation. While almost all administrators are willing to concede the need for justice in a general way in structuring rehabilitative programs, the crunch may come when procedures to ensure fairness collide with some forms of rehabilitative group psychotherapy practiced with inmates, which emphasize the integrity and autonomy of the therapeutic group or community.

The major concern of responsible therapists confronted with a formal grievance mechanism is the possibility that the group's decisions may be appealed to outside reviewers, who may criticize and reverse group decisions, thereby undermining essential group integrity. Believers in the need for justice as a prerequisite to successful rehabilitation respond that unfair decisions of a group ought to be criticized and reversed; available recourse to objective review of unjust decisions will encourage the group to make fair judgments and avoid unfair ones. Moreover, in today's prisons, participation in therapeutic groups frequently is coerced, either directly or indirectly, and proponents of the justice model contend that there is accordingly a special need for ensuring that psychotherapeutic programs are subject to review for fairness.⁸

⁷ Daniel McGillis, Joan Mullin, Laura Studen, An Exemplary Project: Controlled Confrontation; the Ward Grievance Procedure of the California Youth Authority, May, 1976, p. 87.

⁸ It is interesting to note that the "model" institution constructed by the United States Bureau of Prisons in Butner, North Carolina, will not compel inmates to participate in rehabilitation programs, and inmates assigned to the institution will have a fixed exit date, thereby reducing indirect pressures to participate.

There is room for accommodation between the group therapists and the advocates of a justice model. No reason exists, for example, why the group itself cannot serve as the first level of a multi-tiered mechanism that permits outside review only after the group has had ample opportunity to respond to the complaint. That much is already permitted on substantial issues through the inmate's right of recourse to the courts.

The principal challenge posed by an effective grievance mechanism to a treatment group is that of exposing group pressures and dynamics to outside influence. However, growing emphasis on fairness in correctional institutions, the increasing criticism of correctional rehabilitation efforts in general and of coerced rehabilitation in particular, and expanding intrusiveness of the courts, especially in the review of treatment programs and issues, make it almost inevitable that the autonomy of psychotherapeutic forms of rehabilitation will be circumscribed in the future. It makes sense for those involved in the administration of such programs to try to fashion for themselves the form outside intervention will take by adopting early a grievance mechanism that minimizes disruption of their program.



CHAPTER 6. THE PROCESS OF IMPLEMENTING A GRIEVANCE MECHANISM BASED ON THE DESIGN PRINCIPLES

A. Initial Education

The process of initial education begins as soon as any top-level administrator decides to establish within his/her jurisdiction a mechanism based on the principles, or to improve an existing mechanism in line with the principles. The education process continues throughout the design phase and will become an integral part of implementation and operational plans.

Different personnel involved directly or indirectly with the creation of a mechanism will require different amounts of exposure to the principles underlying the mechanism. It may be useful to consider the requirements peculiar to different personnel involved in the procedure:

1. Institutional and program administrators. Many of the generally persuasive arguments discussed in Chapters IV and V will have to be repeated with virtually every other administrator involved in the mechanism. This can be accomplished in informal meetings with individuals or in small groups. The director or commissioner of a system would do well to spend as much time as possible orienting institutional or program administrators and appropriate central office personnel before launching the actual implementation process. This period of basic orientation for key administrators should focus directly on the general apprehensions of those administrators.

Depending on the size (and tendency to resist) of the target system, institution, or program, it may be useful to hold a seminar or workshop for key administrators that duplicates the material and approach of the Executive Training Program workshop. The seminar should be structured to explain basic concepts rather than to design a specific mechanism.

Several organizations around the country have sufficient knowledge and experience to help shape and conduct such a seminar. Some of the most experienced of these organizations, together with the names of appropriate individuals within each to contact, are:

American Arbitration Association
Division of Training
140 West 51st Street
New York, New York 10020
(Arthur King--(212) 977-2000)

Center for Community Justice
918 - 16th Street, N.W.
Washington, D.C. 20006
(J. Michael Keating, Jr.--(202) 296-2565)

Community Relations Service
550 - 11th Street, N.W.
Washington, D.C. 20503
(Patricia Mortenson--(202) 739-4075)

Federal Mediation and Conciliation Service
2100 K Street, N.W.
Washington, D.C. 20427
(Jerry Barrett--(202) 653-5260)

Institute for Mediation and Conflict Resolution
49 East 68th Street
New York, New York 10021
(George Nicolau--(212) 628-1010)

This list is not exhaustive; there well may be local groups (for example, state mediation and conciliation agencies) with the background to help conduct a useful seminar. Some of the listed organizations have regional, state, or local offices, which can be contacted directly for assistance. If the seminar is skillfully conducted, most administrators will come to an understanding of and appreciation for such difficult concepts as outside review and inmate and line staff participation.

The seminar should be conducted in comfortable facilities outside the correctional environment. Neutral surroundings promote an openness of mind among participants and remove correctional administrators from the immediate vicinity of the pressures under which they operate. Whoever conducts the seminar ought to be familiar with corrections in general, as well as with the target correctional system, institution, or program, since the credibility of the trainers in such a seminar is crucial.

The seminar should provide participants with an insight into the use and value of outside review in the projected mechanism and should emphasize the advantages of outside review as a far less troublesome choice than litigation. In addition, the introduction of outside reviewers can be described as a necessary ingredient for ensuring the credibility of a procedure among inmates. Finally, the potential for creating a new and powerful constituency for corrections among those recruited to serve as outside reviewers should not be overlooked.

Whatever methods are employed to convince administrators, as well as staff and inmates, of the value of a grievance mechanism, nothing will succeed like an operating mechanism that is both effective and beneficial. This is the primary reason for the implementation principle of incrementalism. Experience has shown that the simultaneous imposition of a new program throughout an entire system can be counterproductive; all of the latent hostility of staff and suspicions of inmates rise to meet the program with a surge of resistance. Persuasive efforts to achieve acceptance are necessarily spread thin, and the degree of neutrality needed for a fair trial of the program is unlikely to be found.

On the other hand, incremental implementation permits everyone to watch and evaluate the mechanism in operation on a manageable scale. If it is effective and fair, the power of example will win for it an opportunity to work elsewhere as staff and inmates suspend their natural skepticism. The incremental approach provides an opportunity to work out administrative or other procedural kinks before systemwide or institutionwide implementation, perhaps saving the administration from later having to make unilateral changes that are accomplished at the cost of all credibility for the procedure. And if the mechanism is plainly ineffective and unfair, the experiment can be terminated with a minimum of aroused expectations and subsequent frustration. These arguments for an incremental approach are equally persuasive whether a new mechanism is being introduced or an old one revamped.

After informal discussions with administrators and the delivery of a seminar, it is time to select the initial experimental institution or program. The variables involved in this choice are so numerous that it is difficult to provide broadly applicable guidance. Primary consideration probably should be given to staff personnel. Generally, where staff are most competent and open to innovation, the procedure will succeed most easily. Obviously, for the initial experiment the institution or program that has the best chance of creating an effective mechanism should be selected.

If, on the other hand, the system, institution, or program has a long history of disturbances and unrest, and each component seems to possess approximately equal advantages and drawbacks, it may be reasonable to select the institution or program that seems most intractable. The example of a successful grievance procedure in an institution known for its volatile nature can be extremely persuasive.

The ideal size of an experimental site is somewhere between 150 and 400 inmates or participants; the site should be typical of institutions or programs in the system for which the mechanism is projected. Success in a minimum security institution, for example, may not convince personnel in medium or maximum security institutions that the mechanism can be effective for them.

Selection of a test site marks the end of the initial education phase for administrators. It is important that the administrator of the experimental site and his/her chief deputies be fully aware of the basic concepts underlying the mechanism and be convinced of the importance of creating an effective initial experiment..

2. Line staff and inmates. Before the beginning of design work, and depending to an extent on the receptivity of the target site, it might be advisable to try further to win over key members of the line staff and the inmate population.

Among line staff, key personnel will include union or other employee association representatives; living-unit custodial or security supervisors, such as sergeants; training officers; minority staff members; and any others who are perceived as possessing a measure of influence over fellow staff members.

It is especially important to meet early in the developmental stage with union or employee association leaders, who may have a profound effect on future reactions of a major portion of the staff. If the staff union is fairly strong at the sites, the staff is more likely to understand and accept an inmate grievance mechanism that includes outside review, since this procedure will resemble the arbitration clause in the union members' own working agreement with the administration. On the other hand, relatively new employee organizations that have had little experience with arbitration may be quite hostile to the idea of a grievance mechanism with outside review for inmates.

Among the inmate population, it is equally important to identify early the bona fide inmate leaders and begin an effort to educate them about the nature, purpose, and functions of the mechanism. It may be difficult at times to identify genuine inmate leaders. It might be assumed, for example, that the elected members of a liaison or advisory council of inmates constitute the leadership in an institution or program. As often as not, however, members of such a council are viewed with skepticism and scorn by the general inmate population, which may see them as administration lackeys or self-aggrandizing opportunists.

One way to contact bona fide leaders, at least in an institution, is to determine who heads the most aggressive minority self-help groups, such as Black or Chicano cultural associations or ethnic religious groups (for example, the Muslims). Usually such leaders will learn about plans for implementation of a procedure rather quickly and will seek to exercise some control over its development.

Much of the predesign persuasive effort with staff and inmates can be conducted in small groups. In some instances, it may be possible and useful to bring in inmates (former or otherwise) and staff members from other jurisdictions with experience in developing and operating grievance mechanisms based on the principles to share their experiences with individuals in the target institution or program. The sharing of experiences between institutions, staff members, and inmates sometimes can neutralize hostility and apprehension to the point where people are willing to give the procedure an opportunity to prove itself.

If the chief administrator elects to seek help from consultants (perhaps the same people who delivered the seminar for institutional administrators and central office personnel) in the process of implementing a grievance mechanism, the outsiders also should hold predesign meetings with small groups of line

staff and inmates. These meetings will give the consultants a feel for the institution, the people in it, and their problems, while providing line staff and inmates with an opportunity to check the credentials and motives of the consultants.

Initial meetings of consultants with the inmate leadership can be particularly difficult. Outsiders, whatever their apparent sympathies, are viewed with distrust by inmates, who have little confidence in most of society's institutions and conventional associations. Consultants should not be surprised, therefore, to hear some tough questions about their motives for participating in the development of a mechanism. Inmates will want to know who is paying for the consultants' participation and the details of their "arrangement" with the administration. In the view of most inmates, the very presence of consultants means that the administration approves of them—and that approval alone is sufficient cause for suspicion.

In these initial meetings, it is important that the consultants speak with equal frankness and accuracy to both sides. While sometimes it may be possible for them to meet with inmates and staff separately and alone; the usual course is to have staff present at most meetings with inmates. The most important objective of these early meetings is to establish the consultants' credibility as neutral, sympathetic, flexible, and scrupulously honest technicians.

It is helpful for consultants to think of themselves as servants of a process. Their task is to introduce as efficient and smoothly operating a mechanism as possible. While they will be inundated with requests for help in solving individual, specific problems from both staff and inmates, they must turn these aside and narrow their focus to the work at hand.

B. The Design Process

Much of the basis for successful implementation of a mechanism can be set during the design process. The key is the active participation of line staff and inmates.

1. Selection of a design committee. Since the design committee will have the task of taking the design principles and molding (or remolding) a mechanism that conforms both to the principles and to the needs, programs, physical layout, and schedule of the target institution or program, it is important that the committee members be selected carefully. They should be intelligent and articulate enough to deal comfortably with the relatively new concepts involved in the mechanism; they should be representative of a cross section of their respective constituencies; finally, it would help if they were, in some sense, leaders of the staff and inmate communities.

Staff selections to the design committee usually will be made by the institutional or program administrators. The value of including on the committee some key personnel from the officers' union or employee association is obvious. It is equally clear that staff members thoroughly disliked by the inmate population should be kept off the committee.

There is no set pattern for appointing inmate members. In some instances, they have been elected, but the voting population is generally so uninformed about the intended operation that the election is little more than a popularity contest. Some places have used the existing inmate council for design work, while others have made up a committee from the leadership of various self-help or ethnic and cultural groups. The method of selection to the design committee can be explored in preliminary meetings with inmates, whose views on the matter probably should prevail.

2. The importance of line staff and inmate participation in design.

The temptation is strong for administrators to retire to an office and construct a detailed procedure that will be capable of responding to most conceivable problems submitted to it. In this approach, it is only after the mechanism has been worked out thoroughly in advance that inmates and staff are introduced to it. While this approach to devising a mechanism is administratively easy to accomplish, it rarely works.

Inmate and staff participation in the design of a mechanism, on the other hand, produces many favorable results. It ensures that at least a basic cadre of inmates and staff will have a thorough understanding of the mechanism's purpose and operations. Those who participate in the design process, in addition, develop a vested interest in working hard to see that "their" mechanism succeeds. Almost always the people selected to serve on the design committee end up in key positions during the initial operations of the mechanism, where they tend to serve with incredible vigor.

Given the design principles, which must be adhered to by the design committee, there is not much opportunity for the committee to put forward unworkable or inappropriate provisions for incorporation into the procedural structure. Adherence to the principles means, for the most part, that one mechanism will look pretty much like another, with major variations coming in the composition of the first and last levels. Nevertheless, design committees repeatedly have labored to fit the principles to their own institution or program and have finished their work with the firm conviction that the mechanism they have designed is a custom-made unique product. Not surprisingly, people are proud of their own custom-made mechanism and quickly become its most stalwart defenders and proselytizers.

Central to the integrity of this process is a clear understanding of the origin of the principles. The most thorough research to date in the field of correctional grievance mechanisms indicates that unless these principles are observed, a grievance mechanism will not work. The objective of the principles is to ensure a system that is credible among both staff and inmates. Without any one of the principles, the procedure simply will lack credibility. Inmates will not use procedures that have no credibility; an unused procedure is a failure.

3. Design of an appropriate procedure. Sample models for particular procedures have been given above in Chapter II, each of which responds to different kinds of institutions with different, peculiar needs. Inmates and line staff repeatedly claim absolute uniqueness for their particular system, institution, or program. While the reality of the uniqueness may be questionable,

their belief in it must be responded to with more than skepticism or denial. Once again, the importance of participation is evident; by leaving design in the hands of local people, allowances can be made for both the perceived and the real differences. Thus, for example, there is no reason why the first-level committees for different living units within the same institution cannot differ widely in composition and structure. The design committee should have the maximum allowable freedom to tailor the mechanism to fit the needs and desires of its members.

Particular kinds of programs or institutions may pose special problems in design. The most obvious problems arise from rapid turn-overs (such as in detention facilities) and limited contact (such as in parole or community programs). There is no best way to handle such variations; the most successful mechanisms in these difficult situations always have been designed directly by staff and inmates involved in the program or unit, rather than by outside experts or central office administrators.

Another important aspect of design is respect for existing procedures and programs. As often as possible, the design should build on whatever exists in an institution. Inevitably, inmates or staff or administrators will have invested their time and concern in existing mechanisms or programs that may parallel or duplicate the functions of a grievance mechanism. To avoid alienating supporters of these existing mechanisms, it is better to build on their work if at all possible. Obviously, if existing programs are substantively incompatible with a grievance mechanism based on the principles, it would be unwise to try to incorporate them. The objective of this consideration for existing programs is to avoid the arbitrary and thoughtless dismissal of previous efforts that may create enemies for the mechanism.

The design committee should meet regularly, perhaps most profitably with a consultant who is well-versed in the field of correctional grievance mechanisms. If a consultant is not available, there is sufficient literature on the subject that administrators can digest to help the committee with intelligent guidance. Any outsider should be careful not to dominate these sessions, but, rather, should allow the committee to range freely in discussing different ideas and approaches. The expert can provide the committee members with information on what has been tried elsewhere in similar situations and with what success.

The intervals between meetings of the design committee should leave both staff and inmate members time to discuss developments in the design with their respective constituencies. If the administration is not directly represented on the committee, it should be informed of developments and invited to participate in future meetings if it has problems with the developing design. It can be fatal if line staff and inmates work for weeks hammering out agreement on difficult design aspects only to have their product rejected summarily by the administration. Either directly or indirectly, the administration must be part of the design committee's work.

At the completion of its task, the design committee should have prepared a procedural blueprint detailed enough to inform any reader of the purpose, nature, jurisdiction, and operations of the mechanism. See, for example, the mechanism designed by inmate/line staff committee at the Kirkland (South Carolina) Correctional Institution in July 1976, described in Appendix A.

C. Training

A vital aspect of successful implementation of a grievance mechanism is the initial training given to people involved in its operations. The purpose of the training should be to transfer to involved inmates and staff not only knowledge about the operations of the mechanism, but also the skills required for fulfillment of their roles in the mechanism.

1. The selection of trainees. At the first level of the mechanism, in whatever form emerges from the design committee's work, there generally will be staff members and inmates whose primary function is to meet to consider inmates' complaints from the viewpoint of their respective constituencies. In addition, there may be a nonvoting chairperson designated to preside over committee hearings. Finally, there often will be inmate grievance clerks with clerical responsibilities for the mechanism.

The following breakdown offers some guidance on criteria for selection of people for each of these important roles:

a. Staff committee members are usually chosen preferably from among volunteers by the institutional or program administrator. Ideally, staff committee members should be custodial or security personnel who work directly on the living unit served by the committee. Treatment staff are often viewed as unrepresentative by correctional officers and they do not have the daily, intimate contact with inmates that custodial staff do. It is also a plus to have a staff member who worked on the design committee serve on the initial operating committee since he/she will be well informed about how the mechanism works.

b. Inmate committee members may be elected by a vote taken in the institution or program, or they may be appointed from the original design committee. Not surprisingly, inmate members of the design committee, after they have worked for several months to put together a viable mechanism, are reluctant to step down. Almost always they are eager to participate in the operation of the mechanism. Inmate committee members, again ideally, should be respected leaders of the inmate population; it is important not to have individuals serving on the committee who are viewed as "patsies" of the administration. The advantages of having a so-called "militant" inmate who is sometimes fiery and disruptive but who is widely respected in the population far outweigh the procedural peace that may be obtained with inmate committee members who have had a long history of "cooperating" with the administration.

c. Chairpersons may be selected in a variety of ways. They may be outsiders, and where outside volunteers abound in an institution or program they should be the first choice for chairpersons. Lacking volunteers, some institutions have used their own middle managers. Still others have gotten inmate and staff committee members to agree on a mutually acceptable list of inmates and staff to serve as chairpersons. Whatever the method of selection, the chairpersons should, at a minimum, be viewed as truly objective individuals. Since their entire power is the power to persuade, it is also helpful if they are articulate. Individuals with a dogmatic, dominant, or authoritarian personality or history should never be selected as chairpersons.

d. Inmate grievance clerks should be intelligent, articulate inmates who are familiar with the institution, well-known by staff and inmates, and trusted by the population. The recordkeeping requirements of the position mean that the clerk must be able to read, write, and organize files. A large measure of tact is also important. Probably the best way to select a clerk is through elections in the living units.

The written version of the mechanism should spell out clearly the required qualifications, the method of selection, the tenure, and a method of recall for each position just described in order to avoid later misunderstandings.

At the final level of review in the mechanism, the outside reviewer should whenever possible be a professional arbitrator or mediator. Obviously, it will not always be possible to obtain the services of professional arbitrators or mediators. In such a case, the following should be considered:

- Attorneys with experience as advocates in labor-management arbitration cases
- Attorneys in whatever field of practice
- Professional or business people (not attorneys), preferably with some exposure to or experience in grievance procedures.

Outside reviewers should include minority representation, since many complainants will come from minority racial and ethnic groups. The prime quality to be sought in outside reviewers is objectivity; flexibility is also extremely important.

Primary recruitment sources for outside reviewers are local arbitration and mediation offices and programs. The American Arbitration Association, the Better Business Bureau, and the Federal Mediation and Conciliation Service all have regional offices around the country that are involved in all forms of arbitration and mediation. These organizations generally are willing to share lists and to promote the use of arbitration in a new area such as corrections. They usually will be glad to help recruit arbitrators and mediators.

The next most likely source is the local bar association. The labor law section of an association is a prime starting area for a recruitment drive. The advantages of obtaining lawyers with a background in arbitration and grievance procedures is twofold: It reduces the amount of training required for their effective participation, and they generally are genuinely neutral. Attorneys in criminal practice are frequently the objects of suspicion in correctional institutions from one side or the other.

The general community has groups and institutions that are excellent sources of outside reviewers, including local business groups, colleges and universities, even fraternal orders. The sources, then, are numerous and an administrator should have little difficulty in finding and recruiting suitable participants.

If a correctional system already has an independent ombudsman or commission that reviews complaints, there is no need to look further for a means of outside review. In Minnesota, an ombudsman appointed by the governor receives and responds to inmates' complaints. There is no reason why the ombudsman there could not serve

as the outside reviewer at the final level in an administrative grievance mechanism for inmates. Similarly, in Maryland, the Inmate Grievance Commission could be the level of outside review for a mechanism that embraced the design principles.

2. Training sessions. Training for participants in the first level of a mechanism should take about two full days and should be conducted, at least in the experimental unit or program, by outside consultants. The most effective device for instructing committee members has proven to be simulated hearings involving extensive role-playing on the part of inmate and staff trainees. After an initial opening session in which principal administrators can reiterate their support and enthusiasm for the procedure and questions about the procedure can be discussed, the training should move immediately into simulations.

In the simulations, roles should be assigned for a hearing on a mock grievance without additional preparation on the part of role players. It is important that the subject matter of the grievances be real issues in the institution or program where the training is occurring. The grievances should be developed carefully to demonstrate the confused intermingling of policies, issues, and allegations that will be characteristic when the committee undertakes its regular duty under the procedure.

The role players generally will structure a hearing with excessive formality because of their prior experience in the courts and in the prison disciplinary context. Naturally, the first hearing will be ragged, as the role players struggle with their new tasks. It is preferable if the simulations can be videotaped, so that the role players can take a more direct part in the critique following the simulation.

After the simulated grievance is resolved or after the hearing has proceeded sufficiently without a resolution, an assessment that is guided, but not dominated, by the trainer should occur. It is best to let staff and inmate trainees themselves pinpoint and discuss their mistakes as much as possible. Very quickly, after only two or three simulations, the trainees will emerge with an accurate perception of how committee meetings should proceed.

After a series of simulations, which can end whenever the group of trainees demonstrates a reasonably good grasp of the hearing process, the trainees should be split up into separate role groups. Trainers should work separately with committee members, chairpersons, and clerk to review with them the skills and practices pertinent to their distinctive tasks.

The training session should end with a wrap-up session to review the training and anticipate start-up problems. Some of the latter include making sure that a hearing room, as well as office space and equipment, is available to the committee; seeing that forms in sufficient quantity are available throughout the institution or program; providing clerks and committee members with sufficient freedom of movement to accomplish their tasks; and, where necessary, making arrangements for designation of their committee tasks as full-time, paid institutional jobs.

Training requirements for the outside reviewers are quite different and will depend on the degree of expertise and experience of those recruited to participate. Professional arbitrators and mediators will need little more than a general introduction to corrections and a description of the specific grievance mechanism under which they will be holding hearings and rendering opinions. For recruits with no prior exposure to arbitration, the general introduction to corrections and a briefing on the procedure will have to be supplemented by training in arbitration. This can best be arranged through the training division of the American Arbitration Association which, for a reasonable fee, can put together a one- or two-day seminar for potential outside reviewers.

There are abundant arbitration decisions available as examples for prospective arbitrators, since well over 60 cases have gone to arbitration in California and New York.

Once initial training is accomplished, some sort of machinery must be created to ensure that a continuing program of training is established and maintained. A cadre of trainers for such a program already exists among the initial committee members, chairpersons, and clerks; they should be used extensively in establishing a permanent training program.

D. Orientation

A frequently neglected aspect of the implementation process is adequate orientation of staff and inmates. Outsiders and administrators alike tend to assume that the circulation of written copies of a new policy or procedure is enough to inform everyone in a system or institution. The evidence sharply contradicts this assumption. One survey of grievance mechanisms in correctional institutions found that the majority of inmates questioned about the mechanism available to them not only were uninformed about its operation but also were ignorant of its very existence.¹ Obviously, inmates cannot make effective use of a grievance mechanism they know nothing about.

1. Staff orientation. It is generally more difficult to orient staff than inmates, primarily because it costs more to assemble and talk to the staff. While treatment staff members tend to meet fairly regularly with their supervisors, corrections officers generally get together only for brief periods at shift changes (usually 10 to 15 minutes, at most). These shift change assemblies are too short and disorganized to serve as an occasion for informing correctional officers about the purpose, functions, and potential benefits of the mechanism and for responding to their questions and apprehensions. This means that the process of staff orientation must be conducted virtually on an individual basis.

Individual staff orientation can be accomplished in several ways. One obvious method, although a time-consuming one, is to have staff personnel on the design committee and the initial staff/inmate grievance committee circulate on a regular schedule to every post in the institution on all three shifts.

¹Grievance Mechanisms in Correctional Institutions, op. cit., p. 9.

Another more economical method is to insert an hour's orientation into the "inservice" training for correctional staffs conducted in most institutions. This inservice training generally provides correctional officers with an opportunity for annual review of certain rules, procedures, and skills, and in the course of 12 months each officer generally rotates through the training. In every case, introduction to the mechanism should be conducted by staff who either participated in the design or have a role in the operations of the procedure.

Proper orientation of staff is critical. Unless staff apprehensions and hostility toward the mechanism are at least neutralized, there is every likelihood that the mechanism will never get a fair trial. In the "total" environment of a prison, it is not difficult for a determined staff to bring to bear insuperable pressures against those who are trying to operate a grievance mechanism. The pressures exerted, moreover, can be so subtle that they are virtually undetectable by administrators or outsiders.

It is never possible to win the confidence of an entire staff. There will always be a small core of officers who will remain adamantly opposed to the entire concept. At the other end of the spectrum of response, there is a small core of officers who will welcome the mechanism and encourage its use. The obvious target of the orientation program should be that large group of staff in the middle who are concerned about the impact of the mechanism but not predetermined to destroy it or promote it. Orientation for them should emphasize the positive contributions to institutional stability and the potential benefits for staff that the mechanism offers.

One argument adopted widely by administrators in persuading subordinates to accept a grievance mechanism is that pressure from the courts will make the introduction of grievance machinery inevitable anyway. The obvious corollary to this argument is that it is better for the prison system itself to begin to design and test possible approaches to handling grievances than to leave the initiative to the courts. Thus, staff resentment against judicial intervention in corrections can become a stimulus for winning acceptance of a mechanism.

An integral part of the administrative structuring or orientation is the creation of a continuing program for informing newcomers to the staff about the mechanism. Such an orientation program should be undertaken as a regular part of the duties of staff who serve on the inmate/staff grievance committee.

2. Inmate orientation. The captive nature of the inmate audience makes it easier logistically to provide them with an orientation on the mechanism. Still, many of the same attitudinal problems encountered in introducing the mechanism to staff must be dealt with in providing an orientation for inmates.

The key to a successful orientation of inmates is use of fellow inmates to conduct it. No one in the institution has as much credibility with inmates as other inmates. Those who helped design the mechanism and hold important roles in its operation must be the ones responsible for introducing it to the general population. This is another important reason for involving bona fide inmate leadership in the design process and on the initial inmate/staff committee.

As with staff, there are a number of possible approaches to the delivery of orientation to inmates. The principal varying factor is the degree of security of the institution or program. The optimum method for delivery is in small groups of from six to 10 inmates, with an explanation of the mechanism being given by the committee members. The meetings should also provide the population with an opportunity to ask questions and express doubts about the mechanism. If the orientation immediately follows initial training, any outsiders who help in delivery of the training might join these small groups to support the committee members, who, as yet, will have had no experience with an operating mechanism. Another approach may be to have a team of inmate personnel, together with outside advisors, circulate throughout the institution, speaking to groups of inmates from each tier, gallery, cellblock, or other appropriate living unit.

The use of outsiders as an adjunct to inmate orientation can be limited to the first time a mechanism is introduced into an institution or program. Thereafter, experience as committee members should make the original inmate participants familiar enough with the workings of the mechanism to conduct future orientations by themselves. Also, as with staff, arrangements should be made immediately to create a permanent program of orientation for incoming inmates.

All of these personal, oral efforts at orientation should be supplemented by disseminating to every inmate and staff member a written copy (available in both English and Spanish or other appropriate foreign languages) of the mechanism, spelling out the definition of a grievance and the operations of the mechanism and giving the name of the nearest available grievance clerk.

One of the advantages of a grievance mechanism that uses inmate grievance clerks is that the point of entry to it is another inmate, who frequently is willing and has the time to sit down with a prospective complainant to discuss both the mechanism and the grievance. There is some evidence to suggest that inmate intake is an essential ingredient in a credible mechanism.² This may be due to the recurring need for an orientation on the procedure whenever a specific grievance arises for an individual inmate. Since introduction to the procedure comes during a newcomer's initial orientation period, when he/she is bombarded with descriptions of dozens of programs, rules, and regimens, there is great need for a readily available refresher course on the mechanism when a grievance actually arises.

Orientation of inmates in an institution is relatively easy; making sure that parolees or participants in community correctional programs receive an adequate introduction to the mechanism is infinitely more difficult. Usually such people want to keep their contacts with the parole or other supervising agency at a minimum; they are extremely reluctant to file grievances concerning supervising officials or the rules of their supervision for fear of jeopardizing

²Grievance Mechanisms in Correctional Institutions, op. cit., p. 9.

their liberty; and, finally, the supervising officials generally entrusted with disseminating information to the people under their supervision are not enthusiastic about telling their clients how to file grievances.

All of these factors mean that special efforts must be taken in an orientation program for offenders in community programs. There should be direct mailings, scheduled conferences with supervising personnel and others involved in the mechanism, and scheduled times during which people familiar with or involved in the mechanism can be available for phone or personal conferences to explain the mechanism to inquiring participants. Whatever introductory efforts take place initially should be followed up at regular intervals with written reminders of the mechanism and notice of grievances that have arisen in the program and been favorably resolved.

These orientation steps may appear insufficient to some and overdone to others. The small amount of study that has been done on prison grievance mechanisms to date indicates that a rigorous orientation program that involves line staff and inmates directly in the delivery is essential to creating a successful mechanism.

E. Monitoring

Any system to curb the abuses of a bureaucracy is liable to become operationally flabby after an initial period of enthusiasm for it passes. The principal danger is that the mechanism will be co-opted by the agency that is supposed to be policed. One need look no further than the federal regulatory structure to find an example of this process in operation.

Provision for recordkeeping is designed to permit effective monitoring. Monitoring of a correctional grievance mechanism must ensure that the operations of the mechanism conform to the design, prevent the occurrence of reprisals against inmates who make use of the system, and ensure that decisions under the mechanism are carried out. While the first and third of these purposes are common to all administrative monitoring processes, the second is particularly important in correctional institutions. The fear of reprisals on the part of inmates, whether or not objectively justified, is a perception that must be dealt with realistically and effectively. To allay that fear, it may be wise to rely on monitoring by individuals who, at a minimum, are extra-institutional and who, at best, are totally independent of the correctional structure.

Thus the monitoring structure should operate at several different levels. At the first or living-unit level, the unit supervisor should check constantly with the grievance clerk on the status of grievances, compliance with time limits, and the scheduling of committee hearings. At the superintendent's level, some administrator should be designated to regularly audit the operation of the institution's mechanisms. Such an audit should be designed to pinpoint breakdowns in effectiveness and timeliness, to expose instances of overt or covert reprisals, and to ensure that promised resolutions are delivered on time.

At the extra-institutional level, it may be necessary to create an elaborate system for compiling data on the mechanism. An example of this is the sophisticated system developed by the California Youth Authority, which

computerizes data on every grievance submitted. The kind of profile provided by the system, which gives basic information on operations in living units as small as 25 to 50 inmates, can be invaluable to an administrator whose task is to monitor the mechanism. It is no less invaluable for the administrator who uses the data system as a means of pinpointing problem areas throughout his or her jurisdiction.

It is also helpful to have extra-institutional, departmental, or agency personnel frequently visit and inspect directly the operation of the procedure. Such departmental monitors can make sure that institutional auditors are doing their jobs competently and thoroughly.

Finally, it is helpful in keeping a mechanism totally honest to have non-correctional monitors regularly examine it. They should be seeking much the same information sought by departmental monitors, but the objectivity of their perspective may help them see problems missed by correctional monitors. More importantly, the presence of outside monitors will be convincing evidence of the administration's desire to keep the mechanism credible.

F. Evaluation

Administrators may institute grievance mechanisms for many reasons, and determining whether a particular mechanism is meeting its intended objectives is not easy. As indicated earlier, responding administrators in a 1973 survey of adult correctional institutions identified some of their objections in establishing a variety of mechanisms (ranked in descending order of priority):

1. To provide all inmates with opportunities to voice grievances and receive an official response
2. To assist management by identifying institutional problems
3. To reduce inmate frustration
4. To aid in the rehabilitation of inmates
5. To reduce the level of violence in the institution
6. To reduce the amount of litigation.³

Based on these stated objectives, two fundamental criteria for determining whether a grievance mechanism is working can be articulated. The first is volume: Do inmates, in fact, use the mechanism to express and seek redress of their grievances? The second criterion is effect: Do complaints submitted to the mechanism result in clarification and change of policies?

These criteria are relative, flexible, and contingent. There is no absolute number of grievance submissions that, once achieved, make a mechanism

³ Virginia McArthur, "Inmate Grievance Mechanisms: A Survey of 209 American Prisons," op. cit., p. 41.

successful. Thus, if inmates are willing to use the mechanism available to them and submit numerous grievances, then that mechanism probably can be considered effective. If such a mechanism actually responds to the grievances submitted and, in addition, brings about clarification or change in living-unit, institutional, and departmental policies, then that mechanism clearly can be considered effective.

Reasons for selecting these criteria are obvious. If inmates refuse to submit grievances, for whatever reason, the mechanism cannot be said to provide meaningful opportunities to voice grievances and obtain official responses; it cannot identify institutional problems and thereby improve management; it cannot reduce inmate frustration or promote rehabilitation. Similarly, a procedure unresponsive to complaints about policy limits the opportunity presented to inmates to voice grievances, impedes the identification of institutional policy problems, and reduces inmate frustration only partially.

These criteria admittedly are crude. The problem of developing more sophisticated and detailed criteria that take into account the almost infinite number of variables that must be considered in measuring the impact of a grievance mechanism simply has not yet been tackled by evaluative researchers. Until more specific criteria are developed, these crude measures will have to suffice.

The design and implementation of an effective grievance mechanism obviously represents a challenging task of administration and leadership. Without extraordinary commitment and skill on the part of administrators, an effective mechanism cannot be established. Resistance to effective grievance mechanisms is powerful, and only a massive effort embracing the kind of planning, training, orientation, monitoring, and evaluation described above, can hope to overcome it.

CHAPTER 7. LEGISLATION AND THE GRIEVANCE MECHANISM

Should a state or other appropriate governmental unit move to legislate a grievance mechanism? While a number of states already have done so,¹ particularly those that have created an independent ombudsman, there remains a division of opinion on the subject.

Some of those who argue against legislation contend that a statute is too restrictive and limits the ability of administrators to fashion varied mechanisms responsive to the needs of particular institutions or programs. Legislation which spells out minute directions for a particular mechanism well may restrict an administrator's options. On the other hand, if a statute were to embrace the principles of design and implementation advocated in this Manual, while leaving the development of specific mechanisms to administrators, staff members, and inmates, this objection might be overcome.

A more serious problem exists in those jurisdictions where political opposition to the concepts included in the principles is sufficiently strong and organized to nullify the possibility of enactment of a statute that embraces the principles. The passage of an emasculated statute is liable to be counterproductive for an administrator seeking to institutionalize a mechanism based on the principles. Key opponents are likely to point to the statute as defining the maximum allowable limits for a grievance handling program.

If, however, political difficulties can be overcome and the statute that emerges from the legislative process provides guidelines similar to the principles, the advantages for an administrator can be considerable. The existence of legislation makes the establishment of a grievance mechanism an inevitable and legitimate enterprise. Staff still may not like the idea, but they know that

¹California (for the Youth Authority), Hawaii, Iowa, Kansas, Maryland, Michigan, Minnesota, New York, and North Carolina.

their administrator has no choice but to make an attempt to fulfill his or her statutory obligations. Thus, legislation makes the initial education of midlevel administrators and staff easier by shifting emphasis during this early, critical period from whether the program should be undertaken at all to how best to proceed with the implementation process.

Thus far, two states have adopted legislation for a grievance mechanism based on the principles. In California, the passage of a statute marked the culmination of a long period of experimentation and expansion for the California Youth Authority. The statute there codified the experience of over three years of work. Based on its evaluation of that experience, the Youth Authority drafted the basic legislation which was passed without amendment.²

The experience of New York was far different. While the State Department of Correctional Services was in the midst of fashioning a first experiment with a grievance mechanism in one unit of one of its institutions, the legislature had a rare and spontaneous spasm of reform that made possible the enactment of a statute creating grievance mechanisms for the state system of corrections. Reform factions were pushing for the establishment of an ombudsman; the department wanted to continue its experiment with a mechanism based on the principles; the governor's office wanted some effective action quickly. The results predictably were mixed.³ While the concept of inmate participation was preserved in the act, outside review was to be provided either directly by the Commission of Correction, a watch-dog committee of three citizens appointed by and responsible to the governor, or by arbitrators whose participation in the mechanism would be administered through the Commission.

By making the Commission of Correction an integral part of the mechanism, the legislation added an unnecessary and cumbersome level of review. Some 18 months after the enactment of the statute the role of the Commission has yet to be worked out in an acceptable fashion and the Commission has proven to be a major and continuing structural bottleneck in the mechanism. Its direct involvement in the mechanism, on the other hand, has caused the reconstituted Commission little else but grief. In all other aspects of its duties and functions the Commission monitors the activities of the department, but its operational involvement in the mechanism requires it repeatedly to review and rule on decisions of the department in specific cases. Relations between the Commission and the Department have deteriorated badly.

Another unfortunate aspect of the New York legislation was its abandonment of the implementation principle of incrementalism. The statute required all of the State's institutions for adult offenders to have operating mechanisms within 180 days of passage of the bill. This required immediate preparation for the simultaneous introduction of a mechanism in 25 different institutions serving a population of over 16,000 inmates. The department simply did not have resources for the training and orientation necessitated by the legislation. What little outside help the state could procure was spread so thin, its impact was marginal.

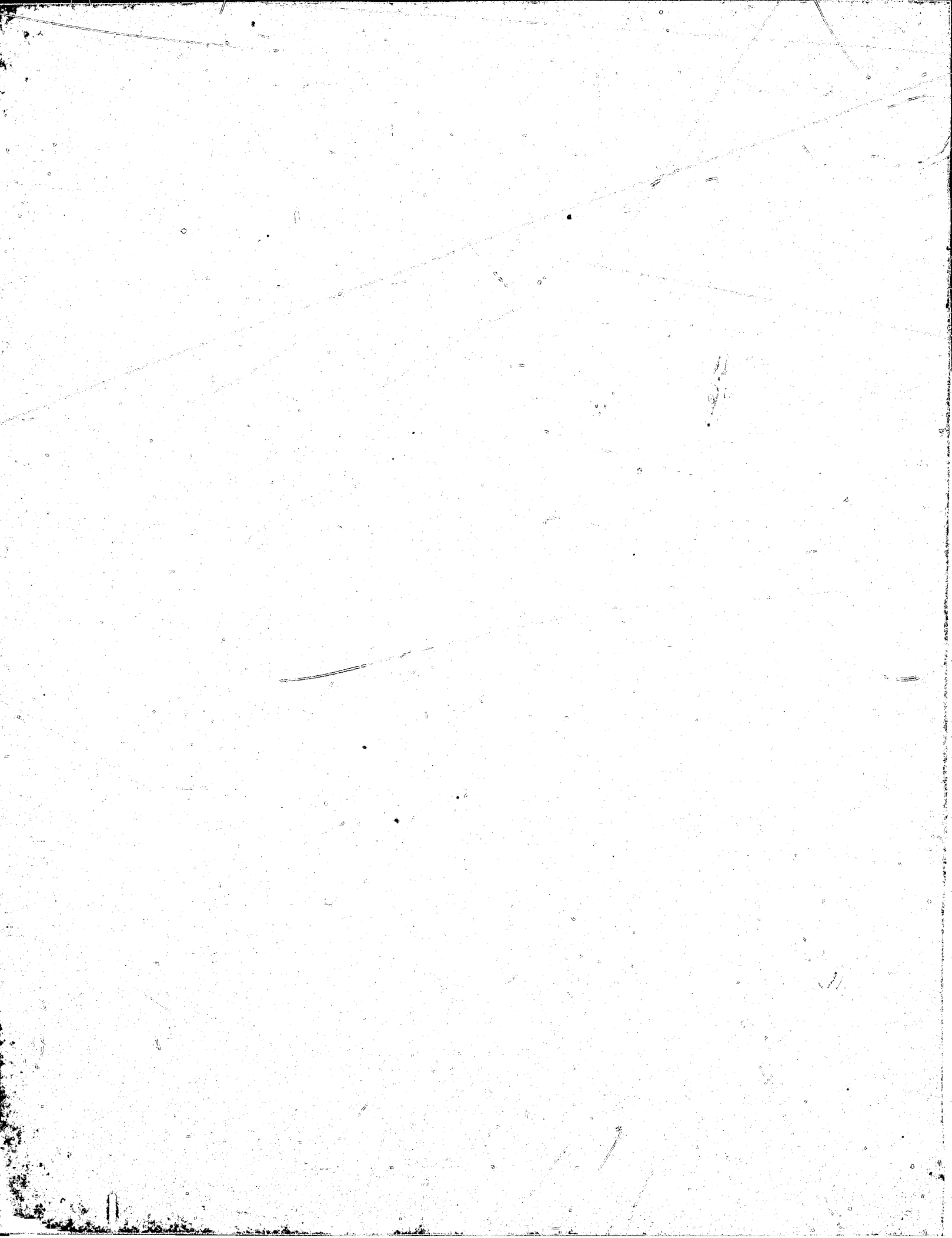
² For a copy of the California legislation, see Appendix B.

³ For a copy of the New York legislation, see Appendix C.

When all 25 institutions in the state began generating grievances, the administrative burden was simply overwhelming. It took the Department of Correctional Services some eight months to untangle the snarl and begin responding with some degree of regularity and comprehensiveness. It is still not clear whether the early administrative difficulties encountered by the New York mechanism, which resulted repeatedly in long-delayed responses, were so serious as to destroy beyond recovery inmate credibility in the process.

The contrasting experiences in New York and California point out some clear paths for legislators considering the passage of a statute mandating correctional grievance mechanisms. The legislation should be broadly drawn and should be based on the principles. If the legislation is to precede the introduction of a mechanism, as in New York, it should include the principle of incrementalism, thereby allowing the correctional system to proceed with the introduction of a mechanism on an institution-by-institution or program-by-program basis. This can be done by simply allowing a reasonable time, say 18 to 24 months, to complete implementation throughout the system.

The enactment of legislation ensures the institutionalization of a mechanism--at least in so far as institutionalization is possible in any large, bureaucratic structure. Future administrators may de-emphasize the importance of the mechanism, but they can never eliminate it by administrative fiat. Expungement will require legislative appeal.



APPENDIX A

Text of the Procedures Enacted by the Design Committee for the Kirkland Correctional Institution's Inmate Grievance Committee - July 13, 1976

- Article 1.** Participation by elected inmates and by line staff in designing procedures and in resolving grievances.
- Sec. 1** There shall be three (3) Inmates and three (3) Staff members on the Committee.
- Sec. 2** The seventh (7th) member of the committee "The Chairman" will be a non-voting member, preferably on a rotating basis.
- Sec. 3** There shall be two (2) members of the Committee appointed each month consisting of one (1) Inmate and one (1) Staff member to do investigations, if needed, on an alternating basis, and to attempt informal resolutions to grievances. Other Committee members shall do the same as needed.
- Sec. 4** The purpose of the Committee shall be to investigate complaints when necessary, and make recommendations.
- Sec. 5** The Committee shall select a clerk to handle the written grievances and copies shall be made of same. The clerk shall serve as long as his job performance is good, and shall be replaced only by a two-thirds (2/3) vote of the Committee.
- Sec. 6** Every inmate has a right to be seen by the Committee and to be represented by himself, another inmate, staff member, institutional employee, or volunteer regularly participating in institutional programs.
- Sec. 7** Every grievant who desires his complaint to be heard by the Committee but who desires to be represented at the Committee by another person must also be present at the hearing.
- Article 2.** Definition of a Grievance.
- Sec. 1** A grievance is an act and/or policy, written or unwritten in which an inmate feels that his personal and/or human and/or constitutional rights have been infringed upon.
- Sec. 2** A grievance will include complaints against the substance of policies as well as their application.
- Sec. 3** The Committee shall not be responsible for determining guilt or innocence on charges that may be brought before the Adjustment Committee, but challenges of disciplinary and/or procedures will be handled by the Committee.

- Article 3. The Route of Grievances.
- Sec. 1 The "Inmate Grievance Committee" shall be the first level.
- Sec. 2 The "Warden" shall be the second level.
- Sec. 3 The "Commissioner" shall be the third level.
- Sec. 4 The "Arbitrator" shall be the fourth level.

Special Note On Departmental issues the Warden shall receive a copy of the complaint and it shall be forwarded to the Commissioner for a ruling.

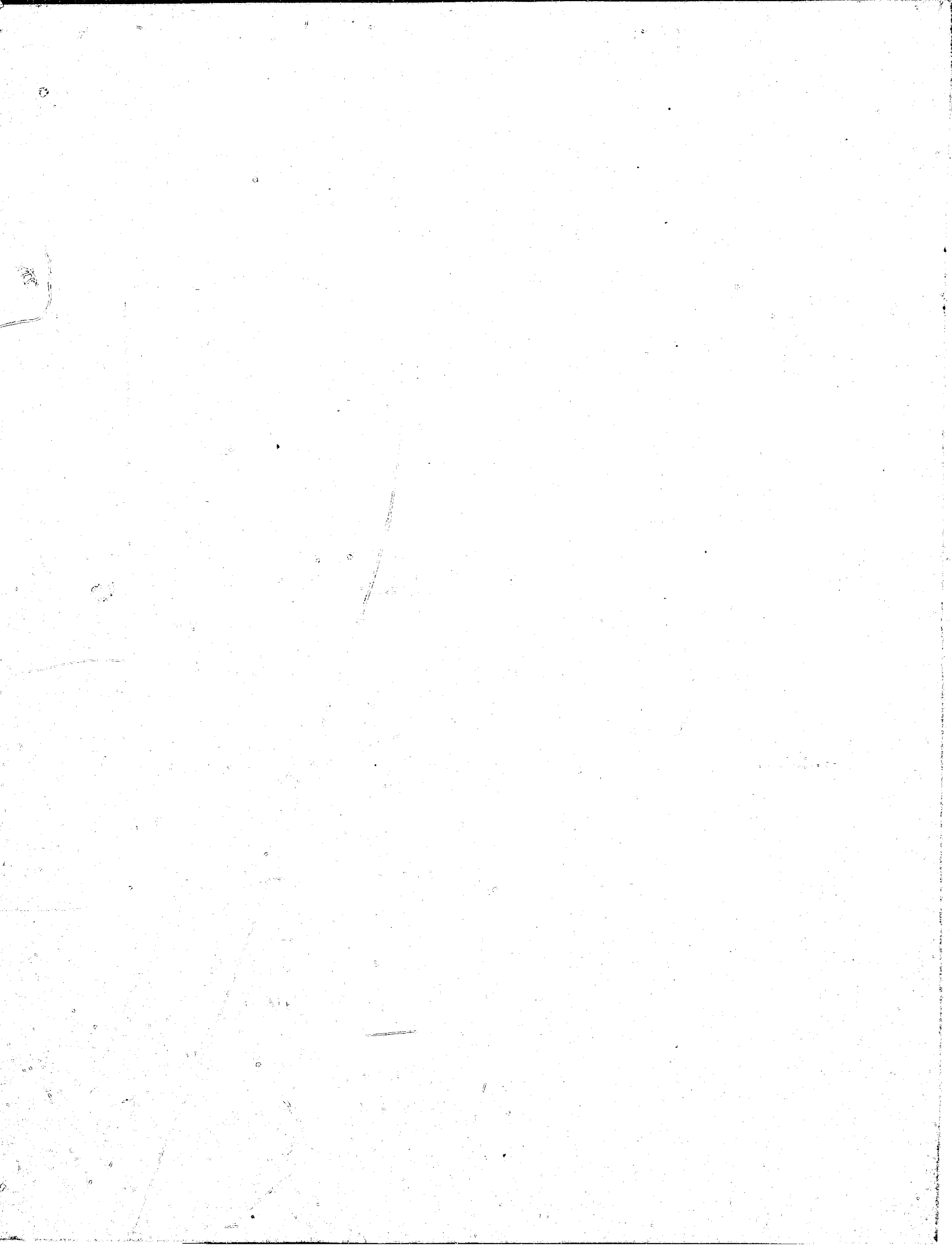
- Article 4. Time Requirements.
- Sec. 1 The grievant has five (5) working days after occurrence of any specific incident in which to file his complaint.
- Sec. 1A Policy grievances may be filed at any time.
- Sec. 2 ~~The Committee shall respond to grievant as soon as possible, not to exceed five (5) working days.~~
- Sec. 3 The Warden shall respond to grievant as soon as possible, not to exceed seven (7) working days.
- Sec. 4 The Commissioner shall respond to grievant as soon as possible, not to exceed five (5) working days.
- Sec. 5 The Arbitrator shall respond to grievant as soon as possible, not to exceed ten (10) working days.
- Sec. 6 The grievant has two (2) working days to decide if he is to appeal a decision to the next level.
- Sec. 7 The grievant has the right to appeal to the next level if the time limit is exceeded without his permission.
- Sec. 8 The grievant may extend the time limit at any level if he so desires.

Procedural Guidelines for the Inmate
Grievance Committee

1. There will be a review of the grievance procedure in 90 days from the start of the actual committee, to determine what, if any changes should be made.

After review, general elections will be held for committee members.

- 1A. Inmate members of the Design Committee will serve as members of the Grievance Committee for the 90 day trial period.
2. Upon election, committee members will serve for a period of six (6) months.
3. All committee members shall be able to run for re-election if they so desire.



APPENDIX B

Excerpt from Welfare and Institutions Code
Relating to the California Youth Authority

Assembly Bill No. 4099, CHAPTER 710

An act to add Section 1766.5 to the Welfare and Institutions Code, relating to the Youth Authority.

(Approved by Governor September 2, 1976. Filed with Secretary of State September 3, 1976.)

LEGISLATIVE COUNSEL'S DIGEST

AB 4099, Torres Youth Authority: wards--grievance procedure.
Existing law does not provide for a grievance procedure for wards of the Youth Authority.

This bill would require the Director of the Youth Authority to establish and maintain for wards a grievance procedure, as specified, including participation by wards and employees of the authority, written responses, priorities, representation, safeguards against reprisals, full hearings, appeals, advisory arbitration, as specified, monitoring, annual evaluations, and related reports.

The people of the State of California do enact as follows:

SECTION 1. Section 1766.5 is added to the Welfare and Institutions Code, to read:

1766.5. The director shall establish and maintain a fair, simple and expeditious system for resolution of grievances of all persons committed to the Youth Authority regarding the substance or application of any written or unwritten policy, rule or regulation of the department or of an agent or contractor of the department or any decision, behavior or action by an employee, agent or contractor or by other person committed to the Youth Authority. The system shall:

- (a) Provide for the participation of employees of the department and of persons committed to the Youth Authority on as equal a basis and at the most decentralized level reasonably possible and feasible in the design, implementation and operation of the system;
- (b) Provide, to the extent reasonably possible, for the selection by their peers of persons committed to the Youth Authority as participants in the design, implementation and operation of the system;
- (c) Provide, within specific time limits, for written responses with written reasons in support thereof to all grievances at all decision levels within the system;

- (d) Provide for priority processing of grievances which are of an emergency nature, including, but not limited to, matters which would, by passage of time required for normal processing, be made moot and matters in which delay would subject the grievant to substantial risk of personal injury or other damage;
- (e) Provide for the right of grievants to be represented by another person committed to the Youth Authority, by an employee, or by any other person, including a volunteer who is a regular participant in departmental operations;
- (f) Provide for safeguards against reprisals against any grievant or participant in the resolution of a grievance;
- (g) Provide, at one or more decision levels of the process, for a full hearing of the grievance at which all parties to the controversy and their representatives shall have the opportunity to be present and to present evidence and contentions regarding the grievance;
- (h) Provide a method of appeal of grievance decisions available to all parties to the grievance, including, but not limited to, final right of appeal to advisory arbitration of the grievance by a neutral person not employed by the department, the decision of such arbitrator to be adopted by the department unless such decision is in violation of law, would result in physical danger to any persons, would require expenditure of funds not reasonably available for such purpose to the department, or, in the personal judgment of the director, would be detrimental to the public or to the proper and effective accomplishment of the duties of the department;
- (i) Provide for the monitoring of the system by the department with an annual report regarding the operation of the system to be filed with the Legislature, with the Attorney General, and with the State Public Defender, and further provide, pursuant to contract or other appropriate means, for an annual evaluation of the system by a public or private agency independent of the department to the extent necessary to ascertain whether the requirements of this section are being met. The results of which evaluation shall be filed with the department, the Legislature, the Attorney General, and the State Public Defender.

APPENDIX C

Excerpt from the New York Correction Law

Correctional Institutions--Grievance Procedures--Inmates
Memoranda relating to this chapter, see pages A-306, A-332
CHAPTER 866

An Act to amend the correction law. In relation to grievance procedures for inmates of state correctional institutions.

Approved Aug. 9, 1975, effective as provided in section 2.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The correction law is hereby amended by adding thereto a new section, to be section one hundred thirty-nine, to read as follows:

§ 139. Grievance procedures

1. The commissioner shall establish, in each correctional institution under his jurisdiction, grievance resolution committees to resolve grievances of persons within such correctional institution. Such grievance resolution committees shall consist of three persons at least one of whom shall be an inmate of such correctional institution.

2. The commissioner shall promulgate rules and regulations establishing such procedures for the fair, simple and expeditious resolution of grievances as shall be deemed appropriate, having due regard for the constitutions and laws of the United States and of the State of New York. Such procedures shall include but not be limited to setting time limitations for the filing of complaints and replies thereto and for each stage of the grievance resolution process.

3. A person aggrieved by the decision of a grievance resolution committee may apply to the commissioner for review of the decision. The commissioner or his deputy may take such action as he deems appropriate to fairly and expeditiously resolve the grievance to the satisfaction of all parties. If the resolution of the complaint by the commissioner or his deputy is deemed unsatisfactory, by any party to the grievance, at the request of such party, the commissioner shall refer the matter to the state commission of correction for review and recommendation. The commission may, if it deems it appropriate, delegate its function under this section to an independent arbitrator. A copy of the commission's recommendation shall be promptly forwarded to the parties and to the commissioner. If the commission's recommendation is rejected by the commissioner wholly or in part, the commissioner shall state his reasons for such rejection in writing and both the commission's recommendation and the commissioner's reasons shall be made public.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.

Correctional Institutions--Grievance Procedures--State Facilities
Memorandum relating to this chapter, see page A-332

CHAPTER 867

An Act to amend the correction law, in relation to grievance procedures at state correctional facilities.

Approved Aug. 9, 1975, effective as provided in section 2.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

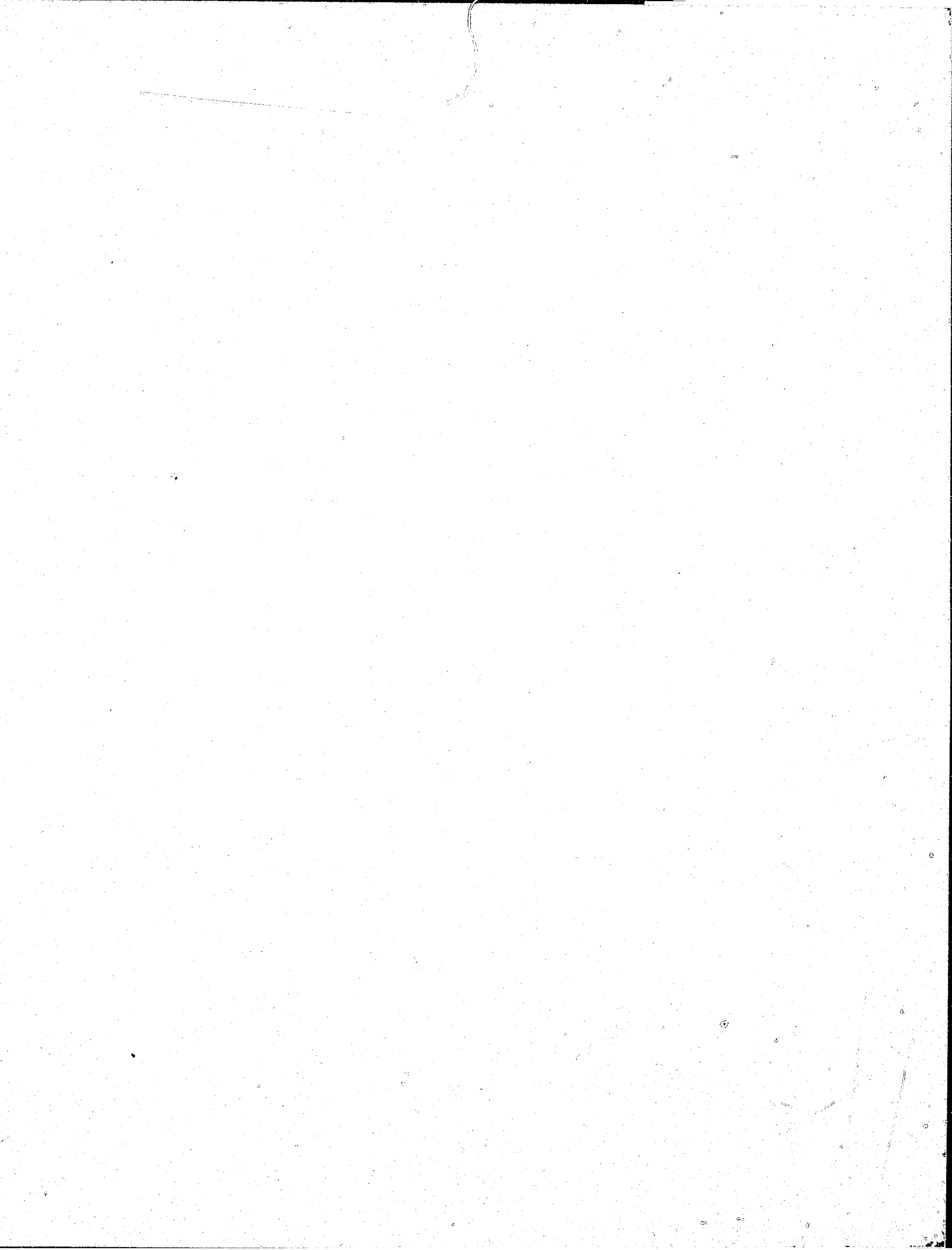
Section 1. Subdivision one of section one hundred thirty-nine of the correction law, as added by a chapter of the laws of nineteen hundred seventy-five entitled "An Act to amend the correction law, in relation to grievance procedures for inmates of state correctional institutions", is hereby amended to read as follows:

1. The commissioner shall establish, in each correctional institution under his jurisdiction, grievance resolution committees to resolve grievances of persons within such correctional institutions. Such grievance resolution committees shall consist of ~~three~~ five persons four of whom shall be entitled to vote at least one, two of whom shall be ~~an inmate~~ inmates of such correctional institution, and a non-voting chairman.

§ 2. This act shall take effect on the same day that a chapter of the laws of nineteen hundred seventy-five entitled "An Act to amend the correction law, in relation to grievance procedures for inmates of state correctional institutions",¹ takes effect.

Additions in text are indicated by underline; deletions by crossout.

¹1975 McKinney Session Laws, Chapter 866.



END