

Federal

Probation

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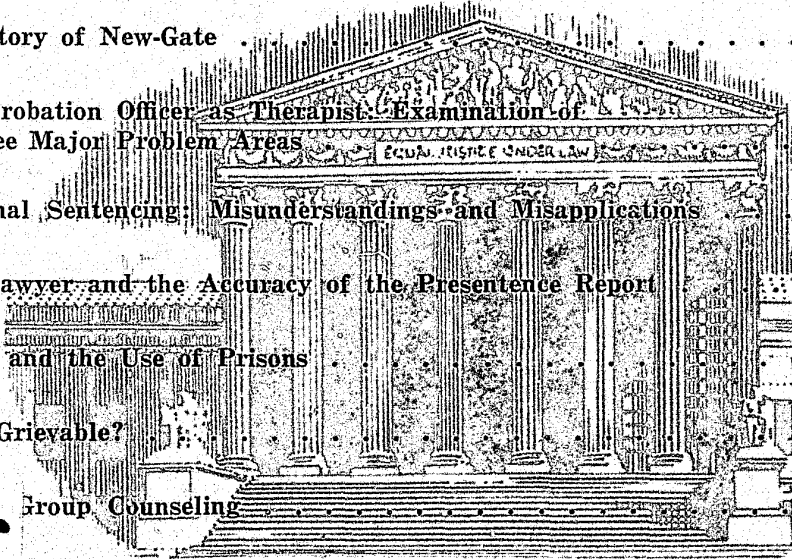
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bers of offenders. On the other hand, it may be true that imprisonment itself is criminogenic. The data cannot be used to support either causal interpretation. Correlations are never sufficient to confirm causal theories, but they can refute them, and the present data are certainly sufficient to refute the theory that the greater use of imprisonment will reduce crime.

It is possible that the relationship between imprisonment and crime is much more complex than can be revealed by simple correlations. It may be, for example, that the relationship tends to be curvilinear or U-shaped, with both very low and very high crime rates being associated with high imprisonment rates. Logically, this might be the case if deterrence were assumed to work up to an arbitrary point of total crime, but that for higher levels of crime, high use of imprisonment

was reactive rather than preventive. However, the distributions shown in figures 1 and 2 provide no support for this more complex hypothesis, and therefore it must be concluded that there is no support for the proposition that the high use of imprisonment (by either specific or general deterrence or by incapacitation) leads to lower crime rates. If anything, the opposite seems to be the case.

The evidence presented in this brief review should not be interpreted as supporting the non-use or abolition of imprisonment, but it should go some way to encouraging the use of imprisonment at the lowest acceptable level. If we do not buy ourselves greater public safety by incarcerating large numbers of offenders, then perhaps we should try harder to think of less costly and less destructive responses to crime.

Is It Grievable?

BY ALEXANDREENA DIXON

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IN THE FORESHADOW of HR-9400, pending in the last Congress, those states and local government who have not implemented grievance mechanisms will be seeking information. Although there is literature on the need to implement such programs,¹ there is little information readily available on the actual scope or effect of grievance mechanisms. Predictably, therefore, among one of the most difficult situations both prison administrators and inmates alike will have to grapple with, is the problem of whether the issue being complained about is a grievance, and if in fact, it is even grievable. This article is an attempt to assist others answer some of their inevitable questions.

The Procedure

The State of New York in 1975, at the direction of Benjamin Ward, the Commissioner of Correctional Services, recommended to the legislature that it pass legislation for the establishment of grievance mechanisms for all inmates in correc-

tional facilities throughout the State. The legislature acted quickly and enacted Section 139 of the Correction Laws of New York State. It requires all correctional facilities to provide a speedy and expeditious mechanism for the resolution of grievances.

The program evolved from a pilot project established at Green Haven Correctional Facility. Inmates and staff were brought together with the request that they construct a grievance mechanism which would satisfy both. Together a small number of inmates, who had been selected by their housing block peers, and two security officers, who were selected by the administration, began putting together a viable mechanism. They were assisted by the Center for Community Justice and the Institute for Mediation and Conflict Resolution. The end result of their labor was a four-step system, beginning at the institutional level going through to the Commissioner for his final approval, for handling complaints.

(a) *Informal and Formal Resolutions.*—The first step of the mechanism involves committee inmate members and/or committee staff members assisting an inmate in the resolution of his prob-

¹ See *Peaceful Resolution of Prison Conflict*, National Council on Crime and Delinquency, 1973; George Nicolau, "Grievance Arbitration in a Prison: The Halton Experiment," *Resolution*, Spring 1975, Vol. 1, No. 3, pgs. 11-16; Linda R. Singer and J. Michael Keating, Jr., "Grievance Mechanisms in American Corrections: The State of the Art," *Resolution*, Spring 1976, Vol. 1, No. 3, pgs. 6-11.

lem on an informal basis. An inmate must file a complaint within 6 days of an occurrence of the problem. Inmates are encouraged to exhaust all available means to resolving the problem prior to filing a grievance.² If the problem cannot be resolved within a 48 hour time period established for an informal resolution, the inmate may then request and receive a formal hearing from the grievance committee. In New York State this body is composed of two inmates, two security officers, one of whom is on a supervisory level, and a nonvoting chairperson who may be either an inmate or staff person. Once this body convenes, it has a total of 5 days in which to offer a resolution to the inmate.

The full committee is continually trained in the concept of mediation, factfinding, and conflict reduction. As mediators, they are taught how to listen to an inmate's problem and then offer solutions and alternatives. Many times this process is used in the informal stages of the procedure. Both the techniques of factfinding and control confrontation are used in the formal hearing process. At the hearing stage, information has been gathered by the grievance committee and resolutions are presented to the aggrieved. The committee members understand and accept that at this hearing an inmate may vent a great deal of the frustrations incurred in being unable to resolve the problem being encountered. An ardent attempt by all members of the committee is made to remain objective, empathetic, and open during sometimes acute emotional displays.

(b) *Administrative Reviews.*—Once a grievance reaches this level, step two of the mechanism, it must receive a policy determination status.³ The grievance takes on either of two directions at this point. Namely, if an inmate is not satisfied with the resolution offered by the Committee, an appeal of their decision is to the Superintendent of that facility. The inmate has a specified amount of time in which to appeal the committee's decision. On the other hand, when the inmate is satisfied with the resolution offered by the Committee which suggests a change in the policy or procedure of the institution as a means of resolving the individual's problem, the Superintendent must make a determination as to whether it is

in the best interest of the entire facility to implement the change. Regardless of which occurs, the Superintendent must respond to the inmate and grievance committee within a 5-day time period, citing the reasons and justification for the decision rendered on the requested action of the inmate.

In Departmental matters where a Superintendent is not at liberty to modify or change a Directive, the next level of review is put into motion. The grievance is "passed through" to Central Administration. Institutional and Departmental grievances are dichotomous at the Superintendent's level, consequently, their treatment is different. However, at the Central Office level all grievances receive similar treatment. Grievances being appealed are presented to a preliminary screening board for determination. Departmental matters which have been passed through are also handled in this fashion. The central level reviews grievances and where there is clear indication that the facility is to be sustained, a response is returned to the grievant. The written disposition which is returned to the inmate within 20 days indicates that the case has been reviewed, the reasons for the disposition and his right to appeal.

For grievances which have overall policy impact or where the preliminary screening board cannot reach a unanimous decision, a higher level of official must review. This body is known as the Central Office Review Committee or CORC. Since this body is composed of top level administrators, Deputy Commissioners, it is empowered to implement changes both at the Department and the institutional levels. As previously stated, a decision is made and a written response is returned to the inmate indicating his right to appeal to the next level of review.

An inmate who disagrees with the disposition of the central office review committee may appeal to an outside "watch dog" agency known in New York State as the Commission of Correction. This appeal initiates the final step in the mechanism. The Commission has the option of reviewing the grievance or delegating its responsibility for review to an independent arbitrator. Either the arbitrator or the Commission will make an advisory recommendation to the Commissioner of Correctional Services who must respond within 10 working days to that recommendation. If a rejection is made on the recommendation, the reasons must be stated in writing and returned to all parties.

² The policy requiring exhaustion of channels to resolve a problem is consistent with *McKart v. United States*, 395 U.S. 185 (1969).

³ Two distinctive policy statuses are identified. Institutional grievances refer to local correctional facility policies which are developed by the prison administration. Their rules are not Departmental wide. Departmental grievances may possibly impact upon the entire system. These grievances are generally on Directive policy promulgated by the Commissioner, his executive staff, or division heads.

(c) *Meeting Minimum Standards.*—As is currently developed, New York State is in compliance with the principles and intent of HR-9400 which establishes that the attorney general will: “promulgate minimum standards relating to the development and implementation of a plain speedy and efficient system for the resolution of grievances of persons confined in any jail, prison or other correctional or pretrial detention facility.”⁴

Minimum standards as indicated in HR-9400 are as follows: “(1) For the participation of employees and inmates of correctional institutions (at the most decentralized levels as is reasonably possible) in the formulation, implementation, and operation of the system; (2) specific maximum time limits for written replies to grievances with reasons thereto at each decision level within the system; (3) For priority processing of grievances which are of the emergency nature, including matters in which delay would subject the grievant to substantial risk of personal injury or other damages; (4) For safeguards to avoid reprisals against any grievant or participant in the resolution of a grievance; and (5) For independent review of the disposition of grievances, including alleged reprisals, by person or other entity not under the direct supervision or direct control of the institution.” With these basic principles in place, correctional reform through the grievance process is evolving.

What Is a Grievance?

Defining a grievance is a difficult task. The term itself has a rather nebulous connotation. To define a grievance⁵ one must distinguish a grievance from a gripe or a complaint. Webster's dictionary defines a gripe as that which irritates or annoys, a complaint as “an expression of pain, dissatisfaction or resentment”; and a grievance as “a circumstance regarded as just cause of protest.”

Most grievance mechanisms will only want to handle the latter. Their design will be solely constructed to reduce the burden on the Federal court of prisoners' suits brought under section 1983 of title 42 United States Code. This will, no doubt, have the effect of improving the administration of State institutions holding confined people. Furthermore, states will welcome a mechanism which will provide them with greater de-

fenses to civil rights actions against their correctional employees.

Another definition more suited to the prison environment is “any complaint by a prisoner in regard to his living or working conditions or treatment by others in the institution.”⁶ In September 1975, the California Youth Authority created grievance procedures to offer its wards a vehicle to address and resolve the just causes for protest within their living and working units and with regard to their treatment. It was an exemplary project by the National Institute of Law Enforcement and Criminal Justice. New York is the first system to incorporate the principles of this exemplary project for its entire adult population. New York's prison system houses over 20,000 inmates.

(a) *Irritants, Complaints, Grievances.*—The experience in New York has been that not only are grievances dealt with as a part of the mechanism, complaints and minor irritations are recurring situations for all the inmate grievance boards. One of the interesting features of the program is that grievance boards have become mini referral services within the institutional setting for inmates who are unable or who lack the knowledge of where to go to resolve their problems.

As in all prisons, inmates are irritated about mail being delivered late or incorrectly. Human error is usually the factor most often responsible for this situation. Most grievance boards help inmates understand that this is a minor annoyance which does not necessarily have to escalate into a full scale complaint. This phenomenon has rightfully been called, the social work process of the grievance committee.

Usually when these minor irritants cannot be alleviated and circumstances exacerbate the situation, an inmate will complain. Complaints of staff conduct and harassment from staff persons seem to be recurring. These situations are best handled through mediation techniques. To have a credible and viable mechanism, correctional administrations encourage staff and inmates to take advantage of this means to reduce human relation conflict. In all instances, conflict may not be reduced through this technique. Therefore, the grievance mechanism is never used as a means for determining or adjudicating wrong doing of staff or inmates. If this were to take place, it would lessen its credibility of being an impartial avenue which is intended to resolve grievances.

⁴ *Civil Rights of Institutionalized Persons*, U.S. House of Representatives, HR-9400, 95th Congress, Report No. 95-1058, April 18, 1978.

⁵ Most of this topic was published in an article written by Alexandreena Dixon for the *Correctional Services News*, January 1978.

⁶ National Council on Crime and Delinquency, op. cit., pg. 67.

Thus, grievances often reflect the way the Department or facility implements or enforces policy rules, regulations, and procedures or the lack of implementation or enforcement. The State of New York most appropriately defines a grievance as, "a complaint about the substance or applications of any written or unwritten policy, regulation, or rule of Department of Correctional Services or any of its program units, or the lack of a policy, regulation or rule, or a complaint about any behavior or action directed toward an inmate."⁷

(b) *Grievable?*—The Department establishes areas for which grievances should not be filed; i.e., wherever existing appeal mechanisms are available within the area grieved, a grievance may not be filed. Thus, areas such as temporary release, media review, and disciplinary proceedings are considered nongrievable. Careful review of the definition of a grievance clearly points out that the rules and regulations concerning these programs are the subject of grievances. It can, therefore, be concluded that it depends upon the structure of a grievance whether it will be considered grievable.

Before getting into examples of grievable issues, it should be pointed out that in specific areas within the correctional setting there will always be a question as to whether grievances are valid. Parole Board decisions, disciplinary actions and charges of harassment are of importance in this respect.

For instance, an inmate may get an additional 18-month sentence from the parole board while serving an indeterminate sentence. The parole board's decision is based upon the fact that the crime was quite severe and the institutional adjustment does not meet acceptable requirements. Many feel that an inmate should not be able to file a grievance. Yet other parole functions provide grounds for valid grievances. Unfortunately, to further complicate this area for the purpose of grievable matters, some parole departments are not within departments of corrections. Consequently, grievances logged against parole functions are argued as not being within the purview of grievable subject matter. There is much confusion in this area because parole services are available within prison settings. This confuses many inmates who wish to file grievances against

the actions of parole officers or problems associated with that agency.

A significant case at point is a grievance filed against an institutional parole officer who alleged that a grievant had violated his temporary release boundaries by gambling at a race track. In his written complaint, the grievant requested that he be able to challenge the parole officer through the grievance process. There was a formal hearing at which time the parole officer conceded that the allegations against the inmate could not be substantiated. Inadvertently, to compound the melee in this case further, the parole officer filed this grievance material in the inmate's folder.⁸ Subsequent grievances ensued. An analysis of this grievance implies that the inmate has a legitimate complaint. The legitimacy of the complaint is based upon the assumption that complaints may be filed "about any behavior or actions directed toward an inmate."

Although parole may be under the jurisdiction of a State Board of Parole with only contractual arrangements to Correction Departments, any action taken by a parole officer should be grievable. The actions of the individual in the above cited grievance, cannot be construed as a decision from the Board of Parole. There is no question that an unsubstantiated allegation by any part of an institutional system's staff or subcontractor is subject to grievances. Under HR-9400 it would appear that this has been considered since the bill proposes actions for redress in cases involving deprivation of rights of all institutionalized persons.

If grievance mechanisms attempt to limit the area of grievances, the most likely categories to rule out would be areas where appeal mechanisms currently exist. As previously stated, this is the path taken in New York State. Most of the jail house lawyers have discovered, these nongrievable issues can be written in such a fashion as to become grievable issues. Aiding this concept is the fact that the grievance mechanism determines whether any complaint falls within the definition of a grievance.

A very clear example of this is the precedent New York State case on grievances against staff. Grievances against staff may be filed. However, grievances which request some form of sanction or censure for staff conduct will not be entertained by the mechanism. It has been essential for the State to take this direction in preservation of the mechanism. Strong unionism for correctional

⁷ *Inmate Grievance Program Training Manual*, State of New York, Department of Correctional Services, 1976, p. 2.

⁸ A safeguard which is usually incorporated in most grievance mechanisms to protect the inmate from reprisal, real or imagined, is that no formal complaint may be lodged in institutional or centralized records.

guards prohibits disciplining staff unless in accordance with the negotiated contract. The contract specifically lays out the procedure management must take in order to discipline an employee. The correctional guard's supervisor must initiate any such action.

The remedy which New York State sought in handling complaints against staff members is the basic ingredient of this grievance mechanism. The essence of conflict reduction is mediation. Every member of the grievance committee is constantly given reinforcement in the essentials of this technique. Keeping an open mind is difficult, but the more a person becomes indoctrinated in being the intermediary between two opposing forces the more ingrained this concept becomes to one's person. Any grievance filed against a staff member should be offered the benefit of this unusual and most successful interposition of human relations.

An inmate has received an infraction for being out of place. This is the fifth infraction and, therefore, subject to disciplinary procedures. The inmate should not file a grievance pertaining to the outcome of the disciplinary charges. Instead it is best to take issue with any part of the procedure which brought the infraction. For example, the complaint may be that because all infractions are given verbally, but nonetheless recorded, a written notice to the inmate is necessary in order to understand the nature of the charge. Additionally, the notice would serve as forewarning that the accumulation will result in disciplinary action. The grievant may request that the infraction be removed. Where no policy exists for this request, one may be developed if needed. A resolution to such an issue for the grievant may be the desolving of the infraction as compensation for a valid complaint. Furthermore, a policy may result which requires more due process for preliminary disciplinary actions.

(c) *The Substance of Grievances.*—If a Black inmate constantly breaks his 10 cent State issue comb on each occasion that he attempts to groom his hair, his grievance is probably just that. A requested action may be that afro picks or combs be sold in the commissary or allowed to be sent in packages. Many grievances on the conditions of confinement are of this nature. A policy which restricts a certain article which was previously allowed in packages is often the subject of a grievance. Usually an inmate will grieve that the post mark date of the package coincided with the

issuing date of the restrictive policy. A healthy resolution to such a grievance is to allow a 2- to 3-week grace period on all policies which restrict previously allowed items. This would ensure that the grieving inmate is not penalized, and subsequent problems will not arise. Many complaints which an inmate files are on noncompliance of stated policy. A benign policy stipulates hobby shop items are to be allowed in packages as long as the hobby shop personnel make an appropriate listing of receivable articles. When the facility continues to ignore, an inmate has further cause for protest.

The most likely issue which would not be considered a grievance is when an inmate files a complaint which does not affect him or her. For example, in the Special Housing Unit visiting area there is no provision for an inmate and a visitor to obtain food or drink. A grievance filed by an inmate who has not been confined to Special Housing should be advised that he is not affected by the complaint and there is no grievable issue. Had this inmate been grieving the visiting room for general population, of which he is a part, he would have better standing for filing a grievance.

Conclusion

Grievance mechanisms that embrace the concepts of appealable, mediation oriented processes will no doubt have entered upon a challenging yet productive way of incorporating the principles in HR-9400. The initiation of grievance mechanisms will respond to some basic needs of both inmates and staff. The inmate will learn a new approach to dealing with conflict regardless to whether he knows how to massage the system in his behalf. The cybernetic effect of the grievance process for an individual inmate will assist in the generation of the sense of one's own ability to resolve a problem. Staff has the opportunity to share in an endeavor designed to reduce and manage conflict. The possibilities of the reduction in litigation of civil right suits, which would be strictly adversary, is more than just plausible. It is emotionally and economically sound.

Grievances can be broadly defined without disastrous results as long as the grievance system itself provides the definition. Types and categories of issues can, as long as there are other ways of dealing with them, remain outside of the grievance domain.

Grievances are varied and cover a wide range

of situations. Minor amenities for the unincarcerated citizen are often major demands by inmates. Once the proper perspective is placed upon the issue being addressed, a more concrete label can

be attached to it and dealt with accordingly. Complaints, irritants, and grievances can all be artfully handled in the kind of grievance mechanism posed by the proposed legislation.

Intake Group Counseling

BY PAUL HOTFELDER AND A. DWAIN SACHS*

THE WORD "intake" generally connotes some sort of initiation into something. We are certainly using the word to imply a beginning. However, hopefully the Intake program which we are about to explain consists of something more than an orientation. The program is made up of orientation material, but there is also group counseling material which expands the goal and objective to encompass more than just an introduction into our system.

Before our Intake program there was no organized manner by which the client could learn about probation and parole and our agency. His information about us would come from his peers and the particular probation officer to whom he was assigned. Generally, he would enter our office from the court or correctional institution. He would be directed to a probation/parole officer whose first function was to read the "rules" of probation/parole to him.

What would take place after that initial ceremony would differ by officer. But the first encounter would generally involve the officer making a brief exploration with the client as to whether or not the client was willing to confess any problems. If a problem surfaced they would hopefully make some sort of plan to go about solving it.¹ If no problem surfaced an appointment would be made for the following month. Often, this process would continue for the duration of the probation/parole period with few of the client's needs being genuinely addressed.

In short, the client would enter our system uncertain of the feelings and evaluation of his probation officer. He would subsequently be uncertain of his status within the probation/parole system. Such uncertainty would then serve as a

poor basis upon which to build a working relationship with the client through which the client could attempt to satisfy his needs. Being aware of the above problems, a team of four probation officers attempted to try something different.² We began experimenting with the idea of a group counseling program which would introduce the client into the probation and parole system in such a manner that the client could benefit.

For us, one interesting idea of this program was to let the client in on our "secrets." We wanted to give him the necessary information about us and our system which would equip him not only to survive within our system, but more importantly, to become successful as a result. In short, we wanted to share with the client not only the rules of probation/parole, but the reasons for the rules and how we go about the process of enforcing those rules. We wanted to advise the client not only that he was being evaluated by us but what it was specifically that we were evaluating him on. Finally we wanted not only to let the client know that he would be receiving counseling but how our counseling modality worked, that is, what its assumptions, principles, processes and goals were. This was to be accomplished in a series of group meetings beginning immediately after placement on probation/parole. The Intake Groups were scheduled to meet for 8 consecutive weeks, later revised to the present 6 weeks.

¹ The chances are that the client will not view the exposing of information to be to his advantage. For a reference on this see Jourard, Sidney, *Self-Disclosure—An Experimental Analysis of the Transparent Self*. (Wiley Interscience, a division of John Wiley & Sons, Inc., N.Y. (pp. 108-122).

² Actually, Paul Hotfelder and myself were playing with the idea of Intake Group Counseling separately from the other two officers, Jean Campbell and Mark Johnston. We all worked in the same office at the time and worked more closely together after we discovered how much we had in common. We were initially running pilot groups as team members without the aid of volunteers who came later. Also, it should be noted that we were making these initial efforts on our own simply because we saw the need. The agency allowed us the freedom to experiment with the idea but there was no original plan to incorporate this program for the entire office or agency.

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