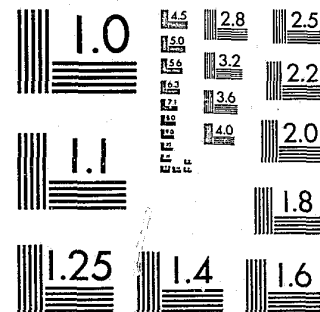


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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

10/12/83

PROGRAM ON PRISON DISCIPLINE

Department of Justice
Institute of Justice

FINAL REPORT TO:
THE NATIONAL INSTITUTE OF CORRECTIONS

AJ AMERICAN
JUSTICE
INSTITUTE

1007 7th Street - Sacramento, CA 95814 - (916) 444-3096

89904

PROGRAM ON PRISON DISCIPLINE

U.S. Department of Justice
National Institute of Justice

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MAY 1980

ACQUISITIONS

FINAL REPORT TO:

THE NATIONAL INSTITUTE OF CORRECTIONS

APRIL 30, 1980

SUBMITTED BY:
THE AMERICAN JUSTICE INSTITUTE
1007 7TH STREET
SACRAMENTO, CA 95814
(916) 444-3096

INQUIRIES AND CORRESPONDENCE
SHOULD BE DIRECTED TO:
JOHN P. CONRAD



1007 7th Street • Sacramento, CA 95814 • (916) 444-3096

April 28, 1980

Mr. Allen Breed, Director
National Institute of Corrections
320 First Street, NW
Washington, D. C. 20534

ATTN: Mr. William Wilkey

Dear Mr. Breed:

We submit herewith six copies of the Final Report of the Program on Prison Discipline (Program 16-501). We trust that the content speaks for itself; if there are questions concerning any aspect of the project as conducted, we are prepared to answer as requested.

We are planning to forward a concept paper to you for a full-scale project based on the program outlined in this report. This concept paper should reach you in the very near future.

Cordially,

Robert C. Cushman

Robert C. Cushman
President

RCC:jc

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PROGRAM ON PRISON DISCIPLINE

Final Report

On 1 December 1979, the National Institute of Corrections awarded a grant of \$25,000 to the American Justice Institute to carry out a Program on Prison Discipline (Program 16-501). The purpose of the grant was:

Design of curriculum for training of decision-making custodial personnel in improved administration of disciplinary measures, including hearings, imposition of sanctions, and programming of segregation and protective custody units.

The grant was originally scheduled to terminate in March 1980. By agreement with Allen Breed, Director of the National Institute of Corrections, a no-cost extension to 30 April 1980 was granted on 27 March 1980.

This is the final report of this project. It consists of the following sections:

- I. Purpose
- II. Procedures
- III. A Syllabus for a Curriculum on Prison Discipline

I. Purposes:

Background: From 1975 through 1978, the Project Director, John Conrad, was co-director of the Dangerous Offender Project, a battery of research studies conducted at the Academy for Contemporary Problems of Columbus, Ohio, sponsored by the Lilly Endowment of Indianapolis. From time to time he was also engaged in inspections commissioned by the National Prison Project and other civil liberties groups interested in prison litigations.

Observations made in various prisons throughout the country during the course of these years while making these studies and inspections led him to the view that the training of senior and intermediate uniformed staff in the prisons leaves much to be desired. Planning, inspections, supervision and training of line staff, and reviews of status are poorly coordinated, if they are coordinated at all. Study of some of the major disturbances that have taken place in state prisons during the past ten years leads to the conclusion that these deficiencies contribute substantially to the unrest and disorders that seem to be chronic in most of the country's major correctional facilities.

Based on these observations and tentative conclusions, the American Justice Institute submitted to the National Institute of Corrections a proposal for the design of a curriculum for the training of senior disciplinary officers. The program was to be designed by the project staff, who would arrange a collaboration with a group of scholars and experts from other disciplines for criticism and amendments. The intent was to design a course of training in the kinds of subject matter that would be most important for a warden, an associate warden or a correctional major or captain to know. It was thought that the learning experience ought to be directed primarily at habits of thought and action rather than on technology, procedures, and factual materials. From the first, it was recognized that there was little experience with programs such as planned here, and there would have to be a careful assessment of needs and consideration of the most promising ways to satisfy them.

II. Procedures:

Upon the award of the grant, arrangements were made for Mr. James W. L. Park to replace Mr. John Galvin, who had originally been intended to work as co-director of the project, but who was unavailable because of other obligations. Approval of Mr. Park's appointment was obtained from the project monitor, Mr. William Wilkey. Mrs. Rose Kor acted as secretary until 11 April, when she resigned to move to another state, and was replaced by Mrs. Joann Cavros.

With the approval of the Project Monitor, the following persons were selected to serve on the Advisory Committee:

Dr. George Beto, Professor of Criminal Justice
Sam Houston State University, Huntsville, Texas

Dr. Leo Carroll, Professor of Sociology,
University of Rhode Island, Kingston, Rhode Island

Dr. Simon Dinitz, Professor of Sociology
Ohio State University, Columbus, Ohio

Mr. Vincent Nathan, Professor of Law
University of Toledo, Toledo, Ohio (on leave)

Mr. Carl Robinson, Warden
Connecticut Correctional Facility, Somers, Connecticut

Mrs. Linda Singer, Director
Center for Community Justice, Washington, D. C.

Dr. Hans Toch, Professor of Psychology
School of Criminal Justice, State University of New York at Albany,
Albany, New York

Mr. Frank Wood, Warden
Minnesota Correctional Facility-Stillwater, Stillwater, Minnesota

Three plans for the curriculum were considered. The first, modeled after the program for Management Training for the Middle Level Manager in Corrections (which has been successfully conducted by the American Justice Institute for the past two years), was planned for a two week period, with a one week "call-back" session three to six months after the close of the basic session. Consideration was also given to a two week session without call-back. Affirmative evaluation of the first two week curriculum should precede a decision about calling back participants; the "call-back" model might be adopted in later sessions when the value of the seminar is established. In the interest of economy, consideration was also given to a one week session, without call-back.

Conrad and Park reviewed literature, engaged in informal discussions with local colleagues, and prepared syllabi based on all three plans. The two week syllabus was circulated to the Advisory Committee prior to a meeting which was held on 6-8 March 1980 at the Academy for Contemporary Problems in Columbus. All members of the Committee attended for the entire meeting. The purposes of the training were discussed in detail and the syllabi received critical attention. It was the prevailing view that at least for the first session it would be desirable to provide for an intensive one week session which would cover the following topics:

- o Current Issues in Prison Management
- o Command and the Correctional Officer
- o The Management of Emergencies
- o Communications
- o Standards of Practice and Expectations
- o Prison Litigation

- o Due Process
- o The Conduct of Disciplinary Hearings
- o Segregation of the Difficult Prisoner; Protection of the Vulnerable
- o Inspections and Audits
- o Grievance Systems
- o Preventive Discipline

It was recommended that the instructional methods rely to the greatest extent possible on discussion and dialogue, although some lectures would be unavoidable. There was general agreement that instruction concerning "correctional hardware" should be eliminated entirely, and attempts to familiarize participants with relevant ideas and findings of sociology and psychology would be unlikely to be productive.

Many substantive ideas were contributed by the Advisory Committee session, and most of them have been incorporated in the Syllabus that is included herein. A full transcript of the proceedings was made and is on file at the American Justice Institute.

Much thought was given to the selection of participants. There was some support for the idea of limiting training to personnel from one state only; others favored selection from a region of contiguous states with somewhat similar management problems. There was general agreement that a large program with national representation would be inappropriate. It was decided that the first session should be a demonstration session, in which participants would be drawn for a one week course from the north central states, but would meet off their home base in Huntsville, Texas. This would take the group away from familiar institutional settings, give them opportunities to see other settings, and thereby add to their perspective on the subjects to be considered.

There was general agreement that a program such as that contemplated would be a valuable contribution to the professionalization of correctional command. All members of the Advisory Committee have signified their willingness to review plans for the Seminar; some will be available as consultant-instructors.

III. The Syllabus:

The syllabus is appended herewith.

SEMINAR ON PRISON DISCIPLINE

Model Schedule

Participants will arrive at the seminar site on a Friday evening. Adjournment and dispersal scheduled for the following Friday afternoon at 1:00 p.m.

Classes will be scheduled daily from 8:30 - 11:45 a.m., 1:30 - 4:00 p.m., and 7:30 - 9:30 p.m., except on Wednesday, when a tour of the institution nearest the site of the seminar and a free evening are scheduled.

PROBLEMS OF COMMAND

Friday evening:	Registration and Orientation	Staff
Saturday morning:	Current Issues in Prison Management	Staff
Saturday afternoon:	Command and the Correctional Officer	Consultant #1
Saturday evening:	Class Exercise: Planning for the 80's	Staff and Consultant #1
Sunday morning:	Making Communications Happen	Staff and Consultant #1
Sunday afternoon:	Preparing for and Managing Emergencies	Consultant #1
Sunday evening:	Class Exercise: Communications	Staff
Monday morning:	Standards and Expectations	Staff
Monday afternoon:	Prisons in the Courts: Key Decisions	Consultant #2
Monday evening:	Class Exercise: Security Budgeting	Staff

ACHIEVING FUNDAMENTAL FAIRNESS

Tuesday morning:	Due Process, Fairness, and the Rules	Consultant #2
Tuesday afternoon:	Conducting Lawful Hearings	Staff
Tuesday evening:	Class Exercise: Disciplinary Hearings	Staff

Wednesday morning	Managing Segregation and Protective Custody	Staff
Wednesday afternoon:	Tour of Institution	
Wednesday evening:	Free	

PREVENTING PROBLEMS

Thursday morning:	Inspections, Searches and Audits	Staff
Thursday afternoon:	Grievance Systems	Consultant #3
Thursday evening	Class Exercise: Developing a Model System	Staff and Consultant #3
Friday morning:	Preventive Discipline: Constructive Use of Command	Staff
	Summary and Closing Discussion	
Friday afternoon:	Adjourn	

SYLLABUS OF TOPICS

TIME: Saturday morning

TOPIC: Current Issues in Prison Management

PROCEDURE: Introductory statement and general discussion

PERSONNEL: Staff

PURPOSE: To identify issues to be covered in the course; to familiarize participants and staff with each other.

—o—

The people who manage prisons--wardens, associate wardens, captains and officers down the line--are the experts on current prison problems. By the time today's problems reach the textbooks, prison managers will be struggling with an entirely new set of difficulties.

Therefore, this seminar is a collaboration of the staff and the practitioners assembled in the definition of prison management problems. The prison is seen as an integral element of the criminal justice system. The discussion will consider all the influences on prison management coming from within the system and outside.

Seminar participants will be asked to share their concerns and perspectives on contemporary corrections and on the management of prisons. The various concerns voiced by the participants will be grouped in related problems. These groupings of management problems will be the basic background for the discussions of the ensuing week. All the discussions during the week will be related to the realities of prison management as it is experienced today or foreseen for tomorrow.

TIME: Saturday afternoon

TOPIC: Command and the Correctional Officer

PROCEDURE: Lecture and discussion

PERSONNEL: Consultant #1

PURPOSE: To consider the problems of command in the altered circumstances of the contemporary prison. How can authority be used to bring about the objectives of the "lawful, safe, industrious, and hopeful" prison?

—o—

I. Introduction

"Prisons must be lawful, safe, industrious and hopeful."

Although society's notions about what prisons should do to or for prisoners varies from decade to decade, ordinary citizens and their legislative representatives have always believed that these public institutions should be operated in a competent and orderly manner. A certain way to waste money is to introduce a few new programs into an unsafe prison in the hope that this will provide a cheap repair of the situation. Nor does emphasis on any single aspect of prison management provide a long term solution for an unsound overall program. An institution must be considered as a dynamic total entity in which safety is more than hardware and alarm systems, and industriousness is more than having a tag plant. The four conditions of lawfulness, safety, industriousness and hopefulness interact continually and intimately, each with the others.

In principle, all employees are responsible for every factor; in practice major responsibility for the fundamental conditions of lawfulness and safety rests with the uniformed staff. The line officers, typically under-trained and underpaid, should be the focus of the most intensive preparation possible for their difficult and lonely assignments. If they cannot maintain order and act lawfully in doing so, little else can function within the prison.

Prisons must be lawful places where the duty to prevent, detect and punish violations of law carries a high priority. Neither prisoners nor staff should be free to violate the laws of the state or the rules of the warden without fear of lawfully applied sanctions. Lawfulness in enforcement of regulations and in the application of punishment means following the principles of fundamental fairness--due process in the language of the lawyers.

(Saturday afternoon - continued)

Safety in prisons is sometimes confused with the presence of armed posts, electronic devices and the buddy system. While well-designed hardware and security equipment are useful in the safe operation of prisons, people remain the important management ingredient and no mechanical device can replace the judgment of well-trained staff.

But safety is also sound procedures carried out by well-trained staff in manageable housing units who have effective communication vertically, horizontally, formal and informal. Safety lies in effective, frequent contact between staff and inmates, a quality often missing in our megaprisons. Without "informal rapping" between guards and prisoners, neither group can assess with accuracy what is happening on the other side of the invisible barrier that separates them. Violence has frequently occurred because of incomplete or distorted information.

Industriousness depends both on the means of industry--the shops, factories and work assignments--and on an attitude that assumes every able-bodied prisoner will work a full day, producing at reasonable levels and being compensated in an adequate manner. The truly industrious prison must provide non-demeaning work, preferably with carryover training values useful in the outside community, and with adequate immediate incentives for the inmate workers. Money is, of course, an incentive to which most of us respond remarkably well, but other incentives are useful.

Prisons are not noted for having a hopeful climate, but vast differences can be observed between facilities offering a wide spectrum of self-improvement activities and those where idleness is the major assignment. Educational and leisure time programs must be measured in terms of present adjustment in the prison, as well as future adjustment in free society. Here we come full circle to the issue of safety which depends in part on the hopefulness that good programs bring to the prison.

II. Objectives

To identify the elements of a well-run institution.

To introduce the means by which order is maintained.

III. Methods

The class will create the list of elements and place them in priority.

IV. Factors to consider

Full employment
Personal safety
System of incentives
Sanctions for unlawful acts

(Saturday afternoon - continued)

Good delivery of basic services
Fundamental fairness
Constructive community contacts
Self-improvement opportunities
Climate of optimism
Effective communications: formal/informal

V. Readings/Bibliography

Conrad, J. P. and Dinitz, S. The State's Strongest Medicine

Jacobs, James V. Statesville

TIME: Saturday evening

TOPIC: Class Exercise: Planning for the 1980's

PROCEDURE: Small group exercise

PERSONNEL: Staff and Consultant #1

PURPOSE: To consider solutions to problems identified in the Saturday morning session; to review available solutions and their advantages and disadvantages in planning.

—o—

This will be a group exercise with two parts: The first part will be a review of the problems and elements of prison management that developed during the day's sessions with particular emphasis on consensus by the group that these problems will be present in the decade of the 80's.

Using this list of agreed-upon prison management problems, the participants will divide into small groups by states represented, each group then to develop plans to handle these problems. Division into groups by state will allow participants to plan to solve problems within a familiar context as well as to develop ideas that have practical application within their own system. To assure realism, staff will assemble facts and data available in each state's criminal justice system.

The planning process will begin with the problem statements. The groups then must consider at least the following planning elements:

- o What is needed and why it is needed.
- o What are various alternatives? For example, increased felony convictions may be handled in a variety of ways, only one of which is new construction.
- o What are the mandated features of the institution, or other solutions to the problem?
- o What features, not yet mandated, should be included to preclude early obsolescence?
- o What is the size, location and content of the proposed solution?
- o What are the strategies required to implement the solutions; i.e., getting legislative approval and funding, community acceptance, etc.

TIME: Sunday morning

TOPIC: Making Communications Happen

PROCEDURE: Lecture, discussion and demonstrations

PERSONNEL: Staff and Consultant #1

PURPOSE: Present the principles of clear and effective communication.
Consider how these principles apply to prison situations.
Discuss organizational requirements for effective communication.

—o—

Communication is both an individual and a group phenomenon, occurring at several levels simultaneously with formal and informal channels, direct and indirect contacts, sometimes even underground routes. To a large extent good prison administrators are good communicators; that is, effective executives can communicate exactly what they want in a way that will make it happen. They can generate feedback that monitors progress toward their goals. Ideally, the good communicator can do this in face-to-face relationships as well as in policy statements and written communications.

In the prison setting the most crucial problems of communication are in the transmission of unintended messages and the failure to transmit any message at all.

In face-to-face communications, body language, facial expressions, voice tones accompany the words, either reinforcing the message or nullifying it. Prisoners who have long histories of delinquency become expert in reading the real messages people transmit. This is a matter of survival and their perceptions are honed, just as the successful salesman becomes adept at reading his customers' reactions.

Even written communications can carry two or more messages. For example, an order from the warden to increase the exercise privilege of a maximum security unit may be seen by inmates as either a sign of an enlightened administration or as indicative of a weakness that can be exploited, thus undoing the reduction of tensions the warden had hoped to achieve. Staff may see it as a just and needed measure, although some will agree with the inmates that the warden is getting soft, and others will see it as one more affront in a long series of affronts in which the courts and the prison administration seem to have sided with the inmates against the overworked and underpaid correctional officer. Most messages from top management require follow-up to determine their actual impact.

Self interest affects the impact of communications. In a prison with poor rank and file morale, anything that appears to give inmates something they didn't have may be seen as undesirable. Communications perceived to increase the safety of officers, on the other hand, will be approved and energetically implemented.

(Sunday morning - continued)

Good communication begins with good listening, a sensitivity to what others are saying, awareness of what the real message may be, and the freedom to allow others to express their thoughts and feelings. No an easy task in the quasi-military, hierarchial prison, but ultimately necessary for effective management.

There are few mysteries about communication; managerial texts are full of how-to-do-it formulas. Yet this remains an area in which failures are dishearteningly frequent.

Effective communication in the prison setting is in part a matter of telling everyone what is going on. People want to be included and they feel better when they are. Information shared with the guard line makes them part of the team instead of just an underpaid group of expendable foot soldiers. This seems hard for managers to do, perhaps because they believe mistakenly that matters are settled once they have made the big decision. While there is good reason not to publicize all of the decisional options a manager may be considering, especially when some of them are very remote possibilities, management planning too often transmits a conspiratorial message to the employees. Which is better--to err on the side of over-informing or to under-inform staff and inmates? Note that in military security operations the tendency is to limit communications to a need to know basis. Is this a valid criterion in prison management, and if so, why? Where is it inappropriate?

Increased awareness of the manager's personal qualities that impede or abet good communication is one answer to the dilemma of communication. At one time T-groups, sensitivity training and similar techniques were considered the way to increase interpersonal awareness. This may be true on an individual basis. However, group experiences have been a subject of controversy and in some instances destructive when sensitivity techniques were applied to organizations. Examples of good and bad communication/sensitivity training will be presented for class consideration.

TIME: Sunday afternoon

TOPIC: Preparing for and Managing Emergencies

PROCEDURE: Lecture and discussion

PERSONNEL: Consultant #1

PURPOSE: To present the essential elements of emergency plans and effective preparation of staff for actions to be taken in the event of major disturbances, hostage-taking, terrorist activities, escapes.

—o—

The last fires have been extinguished and the prison secured for the night, the captain gets a final cup of coffee and takes the Emergency Plan out of its locked drawer to see what they forgot to do this time. This is a fairly typical scenario because there is never time to consult the master riot plan when big trouble comes along suddenly, and inmates do not always follow the right script when disturbances begin. Actually, if prison managers have to reach for the written plan as the first window breaks, they are probably not well prepared to deal with fast-moving emergencies.

Why have elaborate, detailed plans then? The most obvious reasons are the need for planning and for training staff. The identification of resources and the planning required to prepare good emergency plans are the best preparation for trouble. Identification of points in the security system, locating alternative exit and entry routes, inventory of resources available, listing manpower resources available on the different shifts, determining call-back time needed to bring in additional staff, and making arrangements for mutual aid resources are all part of a proper plan.

Emergency plans also involve post orders throughout the institution. To the extent that this can be done without breaching necessary confidentiality, every post order should contain the sequence of actions to be taken in emergency situations. This in turn requires diligence in reviewing these orders periodically. Those procedures that must remain confidential from inmates should be included in intensive training programs.

Maintaining emergency readiness involves several departments of the institution including the security division, plant maintenance, the medical department, fire department and food services.

Elements to consider in planning for emergencies include:

- o Writing of emergency plans

Clear, concise, unambiguous language.

Updating of plans.

Where will they be kept? How secure?

Who gets to read the plans?

(Sunday afternoon - continued)

- o Training for emergencies

Classroom training.
Large-scale emergency training exercises.
Training with outside agencies.
On-the-job training.
Training in specific skills: firearms, gas, fire suppression, hostage management.
Command post operational exercises.
Hostage situation management.
Conflict resolution.

- o Command post operations

Location and equipment.
Staffing.
Clear arrangements as to who is in charge.

- o Mutual aid arrangements

Who? State police, local police and fire agencies, National Guard, local hospitals.
Mutual planning with outside agencies.
Combined training exercises with outside groups.
Emergency plan packages, plot plans, etc. for these outside resources.

- o Equipment inventories and operational checks.

Who does this? How often?
Items involved: fire equipment, ammunition, gas and firearms, radio equipment, medical supplies, emergency feeding supplies, lighting equipment, and generators.
Emergency exit and entry ways.

- o Press operations

Clear pre-set policies as to news media access to the prison; how far can they go? What equipment?
Trained and designated press officer, and alternatives.

Some prisons rely heavily on elite, intensively trained special units such as tactical squads. The Commission on Accreditation has a standard requiring a special unit trained in techniques of confrontation and negotiation. Some administrators feel it is a mistake to place their best employees in special units, preferring to have intensive emergency training given to as many of their employees as possible, so that the entire security force becomes an effective emergency squad. Regardless of which philosophy is followed, training is the key to safety and to prompt suppression of disturbances with minimal counter-violence.

(Sunday afternoon - continued)

Too often the emergency plans are reviewed just once a year, and forgotten until the next annual review or the next crisis, whichever comes first. When training is given, it is frequently limited to the in-service training room. For training to be effective, there must be continued follow-up by first line supervisors who insure that each officer on each post knows what must be done in any of the several conceivable emergencies. Constant rehearsal for trouble is a good means of avoiding serious problems.

In institutions with heavy commitments to rehabilitative programs, emphasis on preparing for trouble may be seen as counter-productive negative thinking that damages staff relationships with inmates. This seeming conflict of purpose must be handled in the training process with two goals in mind. First, non-security staff must be convinced of the need to be prepared and to be trained in their particular roles in an emergency. The second goal is to develop security staff who are skilled in the emergency procedures required without making it appear that this is their first and most important role. As always, prevention by proper supervision is a major role of uniformed staff.

In addition to traditional training in emergency procedures and the use of weapons, training today includes handling of hostage situations, dealing with terrorist groups, crisis intervention skills and conflict resolution techniques.

The seminar will consider the principles and techniques for handling hostage situations and for the intrusion of terrorist groups into a prison situation. The extensive literature in these areas will be reviewed and summarized.

TIME: Sunday evening

TOPIC: Class Exercise: Communications

PROCEDURE: Small group exercise

PERSONNEL: Staff

PURPOSE: To provide a systematic exposure to practical problems in communications in a closed institution and to consider effects of various ways of conducting communications traffic.

—o—

This exercise will be directed at the examination of reasons for communications failures and successes. Participants will be divided into small groups, assigned staff roles (e.g., warden, captain, tower guard, chairman of inmate council, etc.) and asked to go through command post exercises for various kinds of critical incidents in which communications will play a significant part in the outcome. Examples might be the taking of hostages, rumor of plans for a mass escape, plans for a lockdown of the prison. Communications will be sent to members of the groups for action, and logs will be kept by one member of each group for reports and discussion with the seminar at the end of the exercise.

TIME: Monday morning

TOPIC: Standards and Expectations

PROCEDURE: Lecture and discussion

PERSONNEL: Staff

PURPOSE: To consider the relationship of standards to operations and management's responsibilities in meeting and maintaining standards. What to do when resources are such that standards cannot be met. How standards relate to public expectations of prisons.

—o—

Prisons evolved in the 18th century because concerned citizens and groups applied religious, humanitarian and practical standards to the jails and work-houses of the time and found them lacking in the basic elements of decent existence. But the first American penitentiary had scarcely begun operations before it became both overcrowded and the focus of a controversy over philosophies of management. The dispute over solitary confinement versus the silent congregate system illustrates the great power an appealing philosophy has in obtaining funds from legislatures as well as the lengths to which prison staff will go in attempting to enforce essentially unworkable systems. It is noteworthy that the victory of the Auburn system had more to do with economics than with either philosophies or results.

The search for standards during much of the 19th century was an attempt to develop an ideal prison architecture that would of itself solve the persistent problems of discipline and control that plagued the penitentiaries. The panopticon was one result of the search for safety in architecture. Despite disputes over philosophies and methods, the major concern of wardens was controlling overcrowded prisons with underpaid, poorly trained staff, a concern that continues today seemingly without abatement. Hope continues today that the proper design of institutions might provide an economical solution to serious management problems.

While standards for prison architecture were slowly developing, nearly all present day programs were introduced, usually in piecemeal fashion so that an institution noted for brutal handling of prisoners might also have a department of moral instruction or a rudimentary educational program. The presence of an enlightened medical or academic program was in itself a major achievement, without reference to outside standards. Actually, in the early century there were few if any national standards for the professions generally.

The first major movement toward a useful set of national standards for corrections was the 1870 Declaration of Principles endorsed by the Prison Congress (now the American Correctional Association). The Principles provided a comprehensive set of guidelines for the entire criminal justice system in which

(Monday morning - continued)

education and medical care became key elements along with fairness in sentencing and the use of probation. Re-endorsed with some revision twice during the 20th century, the Declaration of Principles served as a valuable aid to prison administrators in persuading legislatures to fund new programs.

However, the Principles were not standards but simply statements of what programs were desirable in a complete correctional program. Medicine and education moved in the first part of the 20th century from general statements of principles to actual standards by which facilities and programs could be measured objectively. With the usual lag that afflicts corrections, the question of how much of each program element should be present and how it should be measured was not addressed until the 1946 edition of A Manual of Suggested Standards issued by the American Correctional Association. This manual provided both a compilation of good things to do in prisons and some suggestions as the resources required. Revisions of the Manual of Standards in 1954, 1959, and 1965 moved closer to specific standards and more detailed information about proper procedures in such diverse areas as the use of tear gas and the maintenance of personnel records. A check list was devised so that administrators could evaluate conformity of their institutions with the standards.

The next major step toward specific standards was provided by the National Advisory Commission on Criminal Justice Standards and Goals in their 1973 report, Corrections, which presented a wide range of specific standards, some as detailed as cell size and staffing ratios. These national standards remained advisory, lacking a means of implementation or a format for checking compliance.

In 1974 the Commission on Accreditation for Corrections was formed under the sponsorship of the American Correctional Association to begin development of standards that could be used to actually accredit correctional institutions, as well as parole, probation and community correctional center operations. The standards were developed under the guidance of a committee of experienced practitioners, field tested, and now have been applied to scores of programs and institutions throughout the country.

Why is an accreditation process necessary? It takes a lot of staff time and resources and may not lead to improvement because of the reluctance of legislatures to respond to national standards, unless absolutely necessary in order to receive federal funding. Several benefits can be identified in measuring a prison against a set of standards. First, the process of self-evaluation is beneficial at any time in identifying gaps in procedures, in locating areas in which policies are not being carried out in the way the warden thought they would be, and in finding safety and security hazards of considerable magnitude. One prison found during a self-evaluation that there was the official tool control procedure with all the proper shadow boards and checkout arrangements, but that the actual working tools stayed in the hands of inmates without any accountability. A second benefit is the preparation for future court actions that may occur since it is certain that a

(Monday morning - continued)

nationally accepted set of standards will carry great weight in court decisions. While courts are reluctant to interfere in the details of prison operation, judges will be much less concerned about ordering conformance with standards that have been set by the correctional profession. And finally, there is always the chance that the funding of needed programs can be supported by the authority of national standards. It is likely that reform-minded state legislatures will use the standards as a guide in writing legislation regarding the rights of prisoners and other matters that do not require appropriation of large amounts of money.

Reading List:

Manual of Standards for Adult Correctional Institutions

Declaration of Principles, 1870

TIME: Monday afternoon

TOPIC: Prisons in the Courts: Key Court Decisions

PROCEDURE: Lecture and Discussion

PERSONNEL: Consultant #2

PURPOSE: To familiarize participants with the trend of the most important court decisions affecting prison management. To establish the kinds of principles used by courts in the adjudication of prison litigation.

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Until the 1960's most judges followed a longstanding "hands off" doctrine regarding the internal affairs of prisons. Courts were reluctant to become involved in the daily operations of prisons, the wardens and their staffs being considered the experts in managing them. However, the courts are the experts in interpreting constitutional questions. In a 1979 Colorado decision the court expressed this division of responsibility very clearly in stating that it would not tell the prison administration what activities it must provide for inmates, but it would say that enforced idleness is not constitutional treatment.

A consequence of the "hands off" doctrine was that constitutional questions related to criminal justice procedures in the community were among the first to be considered in relation to the rights of prisoners. The in-prison application of Miranda vs. Arizona established the right of prisoners to the now commonplace Miranda warnings.

The courts inevitably became involved in basic constitutional questions that arise because of the closed nature of prisons and the nearly total control wardens have over most aspects of a prisoner's life. Some of these questions, such as access to the courts rarely arise in civilian life. Others, such as freedom of speech guarantees, come up repeatedly in a variety of contexts. Restriction and censorship of mail, or banning of religious programs, concern the courts deeply because these measures are unthinkable in outside society. Prison administrators must make an exceptionally strong argument in such cases, and often are unable to do so as happened in efforts to ban the Black Muslim newspaper, Muhammed Speaks. Likewise, administrators have not been able to demonstrate imminent harm resulting from prisoners reading most if not all of the publications that are freely available in outside society.

While to the warden who has just been ordered to change the way the prison operates, the courts may appear to be given to unwarranted interference with prison operations, the fact is that the courts have moved slowly and deliberately in most areas of prison litigation. The nature of the court process is to build one case upon the foundation of another, adding findings here, subtracting them

(Monday afternoon - continued)

elsewhere, listening to arguments from both sides, noting the experience of prisons where the programs under litigation are operating, inspecting the housing units in question, and preparing a decision that leaves the warden in charge but gives the inmates the rights guaranteed them under the Constitution.

Because prisons are total care facilities where the staff have 24 hour control over the inmates and where access to goods and services is carefully regulated, it is not easy to separate constitutional questions from consideration of physical structures and of program implementation. Size of cells in relation to time spent in them, hours of exercise, the availability of sunlight, all have become matters of concern to the courts. A significant connecting link is the concept of the loss of liberty. Anything that deprives American citizens of their freedom requires certain due process protections. When disciplinary hearings result in possible extension of the prison sentence, due process must be followed and arbitrary actions questioned. Secret proceedings are prohibited in prison as well as in the community.

Case law for corrections has become a complicated specialty in just a few years. Cases currently in the Federal courts are probing a bit further into the management of prisons than they did last year. The assertion that inmates need legal counsel to represent them in prison classification and disciplinary questions was rejected in Wolff vs. McDonnell, but remains alive and subject to further consideration in Wright vs. Enomoto. The law continues to evolve slowly and prison managers must understand how to work with courts and attorneys in promoting constructive evolution of prison law.

In recent years, courts have taken more drastic actions in prison matters, including:

- o Closing prisons: James vs. Wallace, Parmigiano vs. Garrihy.
- o Appointment of Special Master: Taylor vs. Perini.
- o Money damages against negligent or malfeasant officials.

Reading list:

Selected court decisions

Prison Law Handbooks

TIME: Monday evening

TOPIC: Security Staff Budgeting

PROCEDURE: Class exercise

PERSONNEL: Staff

PURPOSE: To examine the basis for personnel budgeting; to develop principles of justification; to develop experience in defending a budget before fiscal control agencies.

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The training objective is to orient custody management personnel to the principles of budgeting by post assignment; presentation of budgets to legislative committees and fiscal control agencies; adjusting budgets to appropriations received.

Budgeting by post assignment:

Definition: A post assignment is the set of requirements that justify the employment of one person for one shift. The sum of all post assignments is the total personnel requirement for institutional custody.

Design of a post assignment:

- o Why does this job have to be done?
- o How many persons are required to do it?
- o Where does it have to be done?
- o During what hours must it be done?
- o What level of skill/training is required?
- o What supervision?
- o What security must be provided for the person doing it?

Equipment (e.g., two-way communications device, beeper, weapon).
Cover from an armed post?
Cover from patrol with eye contact?
Periodic surveillance calls?

Review of post assignments is a continuous responsibility of custodial management.

- o Does the post cover the intended duties and requirements?

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Incidents associated with the post.
Problems encountered with post; was the plan sufficiently foresighted to take them into account?
Alternative coverage at less personnel expense.
Comments from persons assigned to post.

- o Have program changes altered post requirements?
- o Can post requirements be consolidated to reduce need for coverage?

Can this post be covered parttime and reduce costs?

A review of institutional operations should be conducted to uncover operational deficiencies which require additional post coverage, and possible excess coverage for security requirements that can be handled more economically.

Presentation to control agencies:

The role of the control agency in adjusting departmental requirements to the Governor's budget includes negotiating for the negotiable; defending the non-negotiable. The role of the legislative budget committee personnel includes the presentation of alternative budget allocations for purposes of economy and increased efficiency. The institution's responsibility is for an orderly response.

Plan for the evening:

The plan for the evening will be based on the plans for a new institution, e.g., the new Minnesota prison. The architectural drawing and program statement will be distributed. State participant teams will be asked to propose post assignments for the prison, with justifications for each post. They will be asked to defend the plan before a mock legislative committee consisting of the staff and consultants. They will be told that budget is too loose; must be cut by fifteen percent; they will then come up with alternate plan for post assignments and budgets.

TIME: Tuesday morning

TOPIC: Due process, Fairness, and the Rules

PROCEDURE: Lecture, panel comments, and general discussion

PERSONNEL: Consultant #2 and staff as panel discussants

PURPOSE: To clarify minimum requirements for due process in administration of disciplinary functions. To review methods of meeting requirements in the special situation of the prison.

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The past fifty years saw the development of the medical model for prisons with an emphasis on programs intended to promote rehabilitation and reduce recidivism. Key words were "clinical" and "therapeutic." Will the intervention of the courts in prison management make the key words for the coming decades "legality" and "due process"? Since the 1950's courts have been increasingly concerned with application of the 8th Amendment and due process in all areas where government impacts upon the citizens. The series of court decisions that impose due process requirements on corrections began with a social welfare case, *Goldberg vs. Kelly*, U. S. Supreme Court 1970.

Two kinds of due process impact on correctional institutions: substantive due process involves the guarantees made in the first ten amendments to the Constitution, which through the 14th Amendment were made applicable to the states. From substantive due process derive the issues of freedom of speech and religion and of the bar to cruel and unusual punishment which is involved in judicial examinations of the conditions of confinement.

Under the provisions of the 18th Amendment, procedural due process applies to the processes and hearings whereby individuals are deprived of life, liberty or property.

"The essential elements of 'due process of law' are notice and opportunity to be heard and to defend in orderly proceeding adapted to nature of case, and the guarantee of due process requires that every man have protection of day in court and benefit of general law." (Black's Law Dictionary)

In the prison setting, the elements of due process related to the disciplinary system are:

1. Clear statement of regulations.
2. Official statement of charges.

(Tuesday morning - continued)

3. Advance notice of charges, allowing sufficient time for preparation of defense.
4. Proof of charges before impartial and competent court.
5. Defense of charges with confrontation of prosecuting witness.
6. Opportunity to employ defense counsel or an advocate.
7. Opportunity to appeal adverse decision.

These elements of due process do not prevent disciplinary action against a rule infractor; they require fair play to assure that the suspected infractor is guilty as charged and that he has an opportunity to defend himself against the charges preferred against him.

The first impact of due process requirements is on the rules and regulations of the prison. Prison rules used to be a set of short simple prohibitions against a variety of specific acts ranging from failure to bathe regularly to assaulting an officer. Everyone understood what was good behavior and what was bad. Even the inevitable catchall rule under which a wide variety of unspecified acts could be charged against an inmate was accepted as the right of the warden to run the yard as he wished. Prison rules were an extension of the warden's personality or of the strongest subordinate in the case of a weak warden. The warden issued the rules and changed them whenever it seemed desirable. The rules were of little concern to anyone outside the prison.

Today, rules are everybody's business and lawyers, courts, inmates, and interested citizens all play a part in their formulation. In many jurisdictions, prison rules cannot be established until legally advertised public hearings are held and all special interest groups have had a chance to be heard. While this results in considerably less arbitrariness on the part of wardens, it also means that new rules take several weeks or months to institute rather than the relatively brief time required when wardens wrote them as they wanted them.

Increasingly, prison rules are written by lawyers or with lawyers in mind so that they will stand up in future court actions. This has resulted in greater legal clarity but much less understandability on the prison yard. If rules were once too simple to be just and fair, it may be that they are now becoming too complex for non-lawyers to understand.

Inmates must be informed about the rules and regulations and there must also be some written proof that persons charged have actually received the rule book. Second language editions are being prepared in some states, and there is an obligation on the part of prison managers to assist illiterates with their understanding of the rules. All of this is part of the insistence by the courts that prison staff play fair in a situation that will always be inherently stacked in their favor.

(Tuesday morning - continued)

More attention should be paid to reading levels of the rules, and a format chosen that is simple and straightforward. The degree of specificity of the violations listed in rules should be studied with the general objective of increasing their application to the real life of the prison. Ambiguities should be removed whenever possible. The alternative to simplifying prison rules and regulations is to involve lawyers in the internal processes of the prison, as prosecutors and as advocates for prisoners.

Due process insures fairness, regardless of personalities and the status of of the persons involved. As prisoners see the prison as an essentially unfair place in which they are usually in the wrong, it is vitally important that all staff involved in disciplinary actions should be indoctrinated in the procedures for assuring due process. The courts' interest in these matters is continuing and essential. The prospect is that standards will be under scrutiny for a long time to come, and that the conduct of disciplinary hearings will be increasingly prescribed by the courts and the attorney generals. It may be that the conduct of hearings will be seen as so important that only specially trained personnel will be allowed to preside, prosecute or defend. Some states, notably Minnesota, have already created an external group of disciplinary officers, responsible only to the Commissioner.

TIME: Tuesday afternoon
TOPIC: The Conduct of Lawful Hearings
PROCEDURE: Lecture, demonstration and general discussion
PERSONNEL: Staff
PURPOSE: To present the essentials of lawful hearing processes

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Classification and disciplinary processes punctuate the progress of prisoners from reception to release. These occasions play major roles in setting the climate of the institution. The methods used and the attitudes on display in these important interactions between the senior officials of the prison and the prisoner himself are significant for the whole institution. If the hearings are conducted in a mechanical way by officials who are primarily interested in getting them over with, the inevitable allegations of unfairness and of "kangaroo court" procedures will be hard to rebut. It is seldom that one mishandled case is crucial to the morale and attitudes of the prisoners, but an accumulation of such cases can lead to very serious consequences. Justice must not only be done, it must be seen to be done. Where it is performed in a perfunctory or cynical manner, the destructive results will last much longer than the sentence imposed on the individual concerned.

Generally, the conduct of hearings is learned from senior staff, who, in turn, learned from their superiors, sometimes long ago. Little study has been made of these vitally important processes. Standards 4310-4323 of the American Correctional Association's Manual of Standards for Adult Correctional Institutions sets forth rules and guidelines for compliance by accredited correctional facilities. However, nothing is said about the actual interactions between staff and prisoner, nor are the important details of the hearings prescribed. The quality of these hearings usually depends on the individual staff members assigned to these duties, and nothing prevents them from making up many procedures to suit themselves as they go along.

During the years when the influence of psychologists and sociologists was paramount, there were efforts to modify the tone of the hearings by introducing a clinical approach. Many social scientists believed it was essential to get away from a strictly "legalistic" approach and to use classification and disciplinary hearings as occasions when the problems of the prisoner could be better understood through intensive interviewing (usually in a setting that allowed little privacy) so that appropriate adjustments could be made in his program regardless of the settlement of the issue of guilt or innocence. Unquestionably, the prevailing opinion about the unfairness of the disciplinary hearings arises in part from this approach.

The second consideration contributing to the belief in the unfairness of classification and disciplinary administration arises from the reasonable inference

(Tuesday afternoon - continued)

that members of the committee hearing the case will be little disposed to decide in favor of the prisoner when it is his word against that of a staff member. It is hard for anyone to believe that Captain X on the court will decide in favor of Prisoner A, when Sergeant Y, an old friend of the Captain, has been the principal witness against the prisoner. The practice of constituting independent hearing boards, not responsible to the warden, will correct some of this disbelief, but much more is needed. We think that the following deserve careful consideration.

1. Hearings should take place in a dignified setting, not, as so often happens, in a dingy room with broken down furniture.
2. The Hearing Officer should be, if possible, an independent functionary, responsible to the Commissioner, and specially trained for his assignment. He does not have to be a lawyer, but he should have a thorough knowledge of the law and principles applicable to the conduct of these hearings.
3. If the hearing officer cannot be an independent, the same principles apply; he must be trained, he must be aware of the apparent disadvantages of his position as an employee of the institution, and he must have an appreciation of his significant place within the institutional structure.
4. The hearing officer may be assisted by no more than two other employees, but these associated hearing officers should not belong to the same operational division.
5. It is desirable that prosecution of disciplinary infractions at the major level should be the special responsibility of a prosecuting officer with training for the assignment. This officer should be empowered to recommend dismissal of cases where he believes that the evidence is insufficient to find guilt. He should refer back inadequately investigated charges for further information. He should interview all prosecution witnesses in advance, and he should make full disclosure of the evidence to the defense counselors.
6. Defense counselors may be counseling officers or caseworkers assigned to the defendant's case. They have responsibility to prepare a defense, to interview the defendant in advance of the hearing, and to find and interview witnesses whose testimony the defendant wishes to have presented.
7. Because for security of the witness himself it will be often impractical to allow for confrontation of the defendant with his accuser, it is especially important that statements be obtained in writing with both prosecuting officer and defense counsel present for the interrogation, even though the witness must be anonymous. Where even this precaution is insufficient protection, such statements should be reviewed by the hearing officer in advance of the hearing itself to assure that fair play is observed. They should receive the same special training as the prosecuting officer.

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8. The specific rules of the Manual of Standards, as mentioned above, should be strictly observed.

The application of due process requirements to prison hearings pushes the concept of fundamental fairness ahead of the clinical approach formerly in vogue. Because these hearings must affect the time a prisoner serves on his offense, the courts must be concerned that they should be conducted in such a way that liberty is not deprived without due process of the law.

Currently the courts are working on the problem of classification hearings other than those connected with rule infractions. What protections are needed for those being transferred to a prison of higher security, or to a less desirable unit within the same prison? Is assignment to a maximum security unit or to an administrative segregation unit a constitutionally significant deprivation of liberty, even if the actual prison sentence is not thereby extended?

Readings

Manual of Standards for Adult Correctional Institutions (Revised), Standards 4310-4323.

The Constitution of the United States, Amendments 5, 8 and 14.

TIME: Tuesday evening
TOPIC: Disciplinary Hearings
PROCEDURE: Class exercise. Use of role playing techniques
PERSONNEL: Staff
Purpose: To demonstrate various procedures for the conduct of classification and disciplinary hearings.

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Mock hearings of various kinds, including classification for minimum custody, classification for assignment to protective custody, hearings of major disciplinary infractions will be conducted, with critiques and commentaries.

TIME: Wednesday morning
TOPIC: Managing Isolation, Segregation and Protective Custody Units
PROCEDURE: Lecture, training films as available, panel discussion, and general discussion
PERSONNEL: Staff, selected participants
PURPOSE: To consider guidelines for the management of these units, assuring that they fulfill their purpose and at the same time remain in conformity with constitutional requirements.

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I. Punitive isolation

Punitive isolation is a sanction administered for a specific disciplinary infraction by order of the Hearing Officer or the Disciplinary Committee. It is limited to a specific number of days and must not exceed more than the maximum set forth in the rule book. Not long ago, prisoners could be placed in such units for an indeterminate length of time with very little formality in the commitment proceedings—no guarantees of a prompt hearing or any hearing at all, and length of stay was subject to no terms of any kind in some prisons. At the present time, commitment to punitive isolation is subject to due process safeguards, and review of the action by senior prison administrators.

Due process begins with a well written set of rules available to all inmates which the staff are required to follow as well as the inmates. Not only do the rules have to be available; there must be positive evidence that they have been issued to the inmates, and that they are in a language they can read.

When a violation is charged, due process requirements include:

- o Timely notice before the hearing, disclosure of the evidence, and usually a copy of the disciplinary report.
- o A personal appearance hearing presenting evidence in the defendant's behalf and calling witnesses before a neutral body.
- o A written statement of the evidence used and the action taken.
- o Assistance in presenting a defense in certain cases.
- o Placement in segregation, pending the hearing, is reviewed by supervisory staff.

Having been sentenced to a period of time in disciplinary detention, the following must be provided:

(Wednesday morning - continued)

- o Adequate living conditions, including proper lighting and ventilation and such.
- o Suitable clothing.
- o Daily exercise.
- o Continual water supply.
- o Access to courts.

Practices vary in regard to:

- o Visiting.
- o Reading material.
- o Continuing academic education.
- o Provisions for appeal of disciplinary court actions.
- o Amount of activities permitted.

II. Administrative segregation

Assignment to administrative segregation solves immediate problems but creates new ones. A prisoner who is or is thought to be an incorrigible threat to safety and order in the general population may leave us no alternative but to assign him to segregated housing. The decision to segregate is a commitment to long-term placement and should not be taken without consideration of the alternatives:

- o Maximum custody management in the general population.
- o Surveillance and full programming.
- o Transfer to another institution where the prisoner's reputation is not known. (Use of Interstate Compact)

Consequences of assignment to administrative segregation: When a prisoner is assigned to prolonged and indefinite segregation the following consequences have to be taken into account.

- o Confirmation of reputation as a person beyond ordinary means of control.
- o Complete inactivity while segregated.

(Wednesday morning - continued)

- o No participation in regular programs; special individual programs must be arranged if any programming is to occur.
- o No work assignment.
- o No pre-release preparation.
- o Probable physical and psychological deterioration.

The basis for assignment should be limited to the following:

- o Frequent direct involvement in violence against staff or inmates.
- o Evidence of gang leadership.
- o Proven activity in introduction of contraband from outside institution.

(These criteria eliminate escape risks, chronic minor disciplinary problems, and other institutional nuisances.)

Program for administrative segregation: While any self-help program ought to be wholly voluntary, the effort should be to present prisoners with options in lieu of empty cell time for these reasons:

- o Eventually the prisoner should be released to some kind of institutional program and should return with the understanding that it will be easier for him to stay out of trouble and eventually be released if he is involved in a program after his release from administrative segregation.
- o The more involved he is in a program while in segregation, the less time he will have to concentrate on his resentments and hostility.
- o Unless he is occupied with some activity, there is little or no basis for judging readiness for release.

Release from administrative segregation: The general plan for release should be initiated immediately upon admission. The basis for the plan includes criterion for release decision, and a plan for functioning in the general population. Lieutenant in charge must be sufficiently familiar with the circumstances of the prisoner assigned to provide general supervision after return to the yard. Note that although most prisons will provide for contacts with a psychologist or a counselor, it is necessary for a custodial supervisor to maintain personal contact to assure that communications with the inmate and with the significant members of the custody staff are coordinated. For the first three to six months after release, the inmate should be in regular contact with the lieutenant (sometimes daily).

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III. Protective custody

Admission to protective custody is limited to decision by a special committee on the recommendation of an investigating officer. An effort is made to ascertain the basis of an inmate's need for protection and determine whether the need for protection can be met if the persons of whom the inmate is afraid can be placed under close supervision or in administrative segregation.

Involuntary protective custody: sometimes necessary, but to be avoided. Use only as a last resort.

Programs: Programs for inmates in protective custody should be as complete as possible--both education and work are always feasible. No inmate should be motivated to apply for protective custody to escape work.

Options:

- o Protected housing
- o Protected employment in general population is often perfectly feasible, or transfer to another institution either in the system or on interstate compact.

Release: Release is based on the plan for return to the general population to be discussed at the time of admission, with maintenance of staff contacts for the remainder of the institutional stay.

IV. Managing administrative segregation

The unit should be under the general control of an officer at a level no lower than lieutenant, who may also be in charge of the protective custody unit. The officer participates in admissions committee and release decisions and makes personal inspection at least daily. The warden and associate wardens should inspect the unit at least weekly.

Questions to consider in the management of segregation units are:

- o Selection and training of staff.
- o Personnel management of assigned staff.
- o Degree to which employees are held responsible for conditions in the unit, including disturbances.

Staffing considerations in segregation units:

Most institutions have difficult jobs that must be filled by carefully selected and adequately trained officers. These assignments are of two types: management of difficult inmates, and operation of control rooms or busy gates where many crucial decisions must be made in rapid succession. Both kinds of

(Wednesday morning - continued)

assignment require employees who are alert, intelligent and able to react well under stress. The control room assignment poses less difficulty than filling maximum security posts because the candidate usually understudies with an experienced officer and those who cannot learn the task are weeded out.

The tasks involved in a segregation unit are more complex, and errors in judgment may not show up until some future time. There are a number of assignment scenarios that are, unfortunately, too common:

- o Good old Sam who does such a fine job controlling the segregation unit that he is left there for ten years or until he develops a serious physical problem.
- o The least experienced on the watch is assigned to the unit because under the union contract management gave away the right to make assignments and seniority is the only allowable criterion.
- o Good old Sam got sick along with three other key officers on the day shift, so Eddy, with three months total experience, is placed in the maximum unit. The convict clerk tells him how to run the section.
- o Ralph is picked to run the segregation unit because he is a good physical specimen who spends most of his leisure time studying the martial arts.
- o John violated a set procedure by entering the segregation unit when he couldn't locate any of the unit staff. John was killed a few seconds later.

Where management has the authority to choose personnel for segregation units, these scenarios can be avoided by careful selection, including designation and selection of staff who will provide vacation and sick leave coverage. Some factors to consider in selection of staff include:

- o Assignment should be based on experience; never assign a newly recruited officer.
- o No officer should work in administrative segregation for longer than 12 consecutive months.
- o Successful performance should be regarded as qualifying for promotion.
- o Note that some institutions provide for increased pay while assigned.
- o Desirable attributes: physical self-confidence, ability to work comfortably with difficult and irrational individuals, tolerance for verbal abuse, good memory for the minutiae of behavior, etc.
- o Undesirable attributes: temper, incapacity at self-defense; inability to project personality in dealing with inmates, and lack of the above desirable attributes.

TIME: Wednesday afternoon
TOPIC: Institutional Tour
PROCEDURE: By arrangement with warden of prison in immediate vicinity
PERSONNEL: Warden and staff; program staff
PURPOSE: To observe procedures and applications of policies in an operating facility.

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After a brief orientation walking tour of the facility, the group will break up into small task forces to make detailed observations with institutional staff of specific operations. Task forces will be assigned to:

- o Disciplinary hearings.
- o Initial classification hearings.
- o Observation and interviews in administrative segregation unit.
- o Observation and interviews in protective custody unit.
- o Interviews with members of the grievance system staff.

Other activities may be observed. Each group will choose a recorder who will report to the class on the group's findings about its observations, on Thursday morning. (Inspections, investigations, and audits)

TIME: Thursday morning
TOPIC: Inspections, Searches and Audits
PROCEDURE: Reports from tour groups, general discussion
PERSONNEL: Selected participants, staff
PURPOSE: To consider approaches to effective inspection of institutions; to establish some principles of audits and search.

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Reports will be received from the groups reviewing institutional operations in the Wednesday afternoon tour. Each group will be asked to describe the operations studied briefly and objectively, to stress performance requirements and the way and degree to which they are met, and to detail apparent deficiencies and recommendations for change or improvement.

Staff will contribute generalizations on the value of regular inspection to assure that policies and procedures prescribed by the law, the Department, and the Warden are being carried out and to discover shortcomings which need correction. We believe that the function of inspection is so important that a senior officer of the institution should be appointed to responsibility for the conduct of routine and regular inspections. This officer should work in conjunction with the grievance officer who, in small institutions, might be the same person, and the chief of the investigation unit.

Inspections should provide for a systematic check of all physical facilities, verification of the execution of all procedures as prescribed, and an audit of all staff and prisoner activities. On the completion of each inspection, a full report should be drafted and submitted to the warden.

Special inspections for some services will not be within the scope of the Chief Inspector's personal competence. He should, however, be responsible for arranging for outside inspectors to make regular technical studies of such operations as medical services, power plant operations, sanitation, and food services. Each outside inspection team's report should be submitted to the warden and filed with the Chief Inspector.

TIME: Thursday afternoon

TOPIC: Grievance Systems

PROCEDURE: Lecture and group discussion; training films as available

PERSONNEL: Consultant #3

PURPOSE: To present and clarify the use of grievance system procedures.
To familiarize group with various kinds of grievance mechanisms
and to consider secondary benefits of an active grievance system.

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I. What is a grievance?

A. A broad definition will be too inclusive to be practical. A grievance is any condition or event that displeases a prisoner. As few prisoners are pleased with any aspect of their situations, a narrower operational definition must limit itself to remediable conditions or events.

B. Operational definitions. A grievance may be:

- (1) Any condition or event at variance with constitutional or statutory requirements that are binding on prison administration.
- (2) Any remediable condition or event that causes inconvenience or unnecessary distress to a prisoner or a group of prisoners.

Examples: Inappropriate visiting hours, discourtesy to visitors, unrepaired plumbing, leaking roofs, vermin in the kitchen and mess halls, racial harassment.

II. Purposes and functions of a grievance system:

A. Note that the establishment of specially managed grievance systems is a relatively new movement in American prisons, dating only from the early 70's. The reasons for their rapid development include:

- (1) Prisoner activism: Prisoners have become accustomed to making demands and expecting responses. The existence of a grievance system does not imply that prison administration must or should comply with prisoner demands; it does assume that complaints will be heard, and where adjustment is indicated, adjustments will be made.
- (2) Judicial response to prisoner litigation: Since the courts have ended the "hands-off" policy with respect to prisoner litigations, the volume of petitions and complaints has become unmanageable. The courts have tended to apply the principle of

(Thursday afternoon - continued)

"exhaustion," i.e., the prisoner-litigant must exhaust the remedies available to him. That implies that there must be local remedies, and a fair and functioning grievance system is the expected recourse.

B. The advantages of a grievance system to the practical administration of prison discipline are of a different nature but potentially of great importance to the maintenance of order:

- (1) No institutional operation can be error-free. There will always be deviations from laws, rules, or fair play, sometimes intentional, but usually unintentional, and even unavoidable. Such deviations justify complaint. In any prison, a complaint that cannot be made to the officials will be magnified in importance. Tensions are increased, and custodial control becomes more difficult. A system that can and will redress grievances where possible will increase confidence in the fairness of the administration and reduce the sources of friction and unrest.
- (2) New problems arise in any prison for a wide variety of reasons, many of them beyond the control of management. Where an operating grievance system has the confidence of prisoners, it will be used to seek correction of problems that affect prisoner routines. In this sense, the better the grievance system the more probable it is that management will have early warning of the impact of problems on the prisoner population.
- (3) Although most courts are reluctant to hear cases brought by prisoners unless it is shown that local remedies have been insufficient to remedy legitimate and significant complaints, a grievance system can reduce the litigation arriving in court by demonstrating that the prison management made a good faith effort to adjust the complaint. There is also the additional benefit of increasing management credibility when it must respond that it cannot correct a condition which is the subject of a complaint.
- (4) Grievance systems should be seen as a communications channel of value to both management and prisoners beyond the actual adjustment of grievances:
 - (a) Grievance systems communications traffic will produce information for management concerning prisoner morale, tensions, and attitudes toward management.
 - (b) Grievance systems communications traffic will provide prisoners with practical information about management policies and problems that will increase understanding of routines and changes.

(Thursday afternoon - continued)

III. Three models of grievance systems:

A. External system: The most familiar external grievance system is the independent ombudsman, reporting directly to the governor or the legislature. Under this system, the ombudsman may have an exclusively correctional charge, as in Minnesota, or he may be charged with adjustment of any citizen grievance against the government, as in the Scandinavian countries.

- (1) Advantages: The ombudsman can be and should be seen as independent and objective in his work.
- (2) Disadvantages: Usually the independent ombudsman has a small staff to cover a wide constituency of complaints. The interest of the governor or the legislature in his recommendations will be nominal. Usually he will have minimal knowledge of day-to-day operations and of management problems and personalities. Reports go to the Director, tending to undercut the warden's position. Although he may have the formal and legal status of a direct representative of the governor and the legislature, it is often the case that these officials are not supportive or interested.

A second type of external review relies on a central office unit which hears grievances at each prison in the system and makes recommendations for adjustments to the warden, with implications that its reports to the Director will include reports of the warden's response.

- (3) Advantages: Independence and objectivity. Service to Director/Commissioner. Facilitates department control.
- (4) Disadvantages: This system will undercut the position of the warden and his staff unless it is handled with care. Prisoners may not have confidence in the objectivity and independence of such a unit.
- (5) Both these systems will have the disadvantage of not allowing for follow-up on subsequent action by the institution to assure satisfactory adjustment of grievances.

B. Internal system without external review: In a system of this kind, the first action on a grievance after complaint is by local staff, preferably a grievance officer, specially assigned to the system. He may or may not act for and with a committee, which may or may not include prisoners in its composition. His recommendations will be made to the warden for adjustment. These decisions may be appealed to the Director/Commissioner who may assign a departmental Chief Grievance Officer to investigate the situation and make recommendations for further action.

- (1) Advantages: Grievances are first processed by institutional personnel who will be familiar with the context of the complaint and may arrive at a satisfactory adjustment without further

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processing. Local processing provides institutional staff with an opportunity to demonstrate good faith. The local staff gets information on remediable areas of tension before there is a deterioration of the general situation in the prisons.

- (2) Disadvantages: A grievance system that operates with local staff only will not enjoy the confidence of the inmates; in general it is likely to be distrusted unless unusually effective persons are put in charge of the operation. It is for this reason that many authorities recommend participation by prisoners on the grievance resolution committee. A second disadvantage is that staff assigned to the grievance resolution will tend to be the scapegoats for the resentments of unsuccessful grievants. A third and perhaps the most serious disadvantage is the conflict of interest that any staff member will be thought to face; he is personally associated as a colleague with those against whom grievances are alleged. Even though he is conscious of the conflict, it is difficult for him to rule against the fellow employee and in favor of a prisoner-grievant. At the same time he is likely to be seen as prejudiced in favor of his fellow-employee, even though he had no other choice.

C. Internal system with external review: Under this plan, actions by the grievance officer are subject to review by an outside committee of arbiters. Whether the grievance officer acts alone, or has a committee which decides on the nature of the recommendation, the arbitration panel is available for review of the action taken in the event that the prisoner-grievant requests it or, conceivably, where the grievance officer and committee believe that the situation would be better handled without the normal internal processing.

- (1) Advantages: Reduces bias and the appearance of bias in internal adjustment of grievances. Provides for outside opinion in unusual and delicate situations. Increases confidence in the system as a whole.
- (2) Disadvantages: Recruitment of outside review panel with the time and competence necessary will be difficult at many prisons.

IV. Organization and management of grievance systems:

A. Excluded grievances: Usually, not always, grievances against parole boards and disciplinary committees are specifically excluded from the jurisdiction of grievance systems.

- (1) Reasons for exclusion: Grievance systems/committees cannot and should not overrule or recommend overruling of actions by parole boards or findings of disciplinary committees. These are crucial decisions and when made should be challenged only by regular appellate channels.

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- (2) Basis for exceptions: Both parole boards and disciplinary committees are dependent on institutional personnel for information on which decisions are based. When information has been incorrectly or unfairly presented, a grievance has occurred which might be more expeditiously remedied by the grievance system than by an appellate process.
- B. System overload: The system may be overloaded with frivolous grievances. This condition calls for sensitive handling. No grievance should be ignored, but where minor grievances are creating an interference with the effectiveness of the system, prisoner channels should be used to assure that priorities are observed without damage to any grievant's interests. Such channels should include the prisoners' council and the prison newspaper. If there are prisoners serving within the grievance system as committee members, they may be able to interpret the overload problem.
- C. Class action grievances: Groups of prisoners with the same grievance (e.g., leaking roof in a dormitory, vermin, racial harassment) should be permitted to file class action grievances, subject to procedures for their negotiation by committees of grievants designated at the time the complaint is filed.
- D. Role of the Chief Grievance Officer: The Chief Grievance Officer is a member of the Director's executive staff. He is responsible for review of grievance systems, the maintenance of statistics on types of grievances filed, adjusted, rejected, or other action taken, with types of grievances. Because a grievance system can exist without meeting its objectives, it is important that there be a periodic outside inspection by an outside officer. He is responsible as the final appellate officer on disputed adjustments before submission to outside review panel. He is responsible directly to the Director and has the rank of assistant director.
- E. The role of the institutional Grievance Officer: As the officer of first resort, he is the immediate adjuster of grievances, and through informal discussions with prisoners may be able to reconcile many complaints before they become formal grievances. A grievance which becomes formal will be recorded and the actions taken will be forwarded to the departmental Chief Grievance Officer. Depending on departmental and institutional policy he may have a committee of the staff assist in adjustment of grievances. This committee may have elected inmate members. All reconciliations and adjustments are submitted to the warden for approval. When prisoner-grievant is dissatisfied with the warden's decision, he has the right to appeal to the Director who forwards grievance to the Chief Grievance Officer for review and appropriate disposition.
- F. Role of the warden: It is important to understand that the warden is in charge, and that all actions by the institutional Grievance

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Officer and committee are recommendations for his decision. warden's actions are appealable to the Director who, of course, may refer appeals to any officer or committee he chooses for final recommendation to him.

- G. Role of the inmate representative: Inmates may participate in any of the grievance system models in a variety of ways. In some institutions, one or more inmates may sit on a committee along with staff to resolve grievances. Another organizational option provides for an inmate grievance office to be established to resolve as many grievances as possible before involving the formal system. Inmates may be elected to these functions or selected by staff, preferably the former. Obviously, careful structuring of duties, responsibilities and setting the limits of inmate authority is essential to the successful inclusion of inmates in the grievance process.

Reading:

Dillingham, David D. and Singer, Linda R. Complaint Procedures in Prisons and Jails: an Examination of Recent Experience. Washington, D. C.: Center for Community Justice, September 1979.

TIME: Thursday evening
TOPIC: Grievance Systems: Developing a Model System
PROCEDURE: Class exercise
PERSONNEL: Staff, Consultant #3
PURPOSE: Exercise in the conduct of grievance hearings; continued discussion of methods and benefits.

—O—
Using role playing techniques, the class will be presented with a series of actual grievances drawn from the files of existing grievance systems and asked to consider their resolution.

TIME: Friday morning
TOPIC: Preventive Discipline; Constructive Use of Command
PROCEDURE: Lecture, panel discussion, general comments
PERSONNEL: Staff, selected participants
PURPOSE: Summary of seminar experience, review of general principles.

—O—
The basic principle underlying the whole seminar is that to the greatest extent possible the aim of the custodial staff should be the administration of preventive discipline by the following means:

- o Maintenance of firm authority in hierarchical command.
- o Maintenance of clear and unobstructed communications channels between staff and prisoners and prisoners and staff.
- o Fair and lawful action where staff intervention is required to maintain order.
- o Systematic and thorough inspection of operations by qualified personnel.
- o Systematic review of experience through study of reports, data collected on trends in the behavior of the prisoner population, and use of these data in training all custodial personnel, especially persons in the chain of command.
- o Periodic adjustment of the system to meet new demands, changed circumstances, opportunities for improved effectiveness through the use of new technology.

At the close of the discussion, the class will be asked to furnish the staff with an evaluation of the course. Staff will request further feedback from participants at a three months' interval after the close of the seminar.

END