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INSTITUTING CALIFORNIA'S WARD GRIEVANCE PROCEDURE: AN INSIDE PERSPECTIVE

I. ADMINISTERING JUSTICE: IMPLEMENTATION OF THE CALIFORNIA YOUTH AUTHORITY'S GRIEVANCE PROCEDURE FOR WARDS

*by Allen F. Breed**

It should come as no surprise that many correctional institutions in the United States are in trouble. Organizational and bureaucratic theorists tell us with a remarkable degree of unanimity that, after a period of development and expansion, bureaucracies simply run down; almost ineluctably they become less efficient, more rule-bound and stubbornly resistant to change. The correctional bureaucracy has been around since the early decades of the 19th century¹ and there is little evidence of healthy, thriving organizational life in most correctional institutions today.

While some may argue whether the enormous problems of the correctional bureaucracy are the cause or the effect of its decay, few deny the reality of either the problems or the decay. People who work in correctional institutions are paid less and have less opportunity for advancement than employees in virtually any other bureaucracy. The physical environment in which they work is incomparably worse than that of most other bureaucracies. The class, racial and, especially, the legal distinctions between them and their clients are probably greater than in any other bureaucracy in society. These are some indications that the psychological aspects of their functions and environment are

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1. See generally BARNES, *Penal Practice in America*, in ISSUES IN CORRECTIONS AND ADMINISTRATION 33-43 (1976); GOLDFARB, *JAILS: THE ULTIMATE GHETTO* 10 (1975).

so severely debilitating as to make humane and effective job performance most difficult.

Their leaders, the correctional administrators appointed to guide and control the correctional bureaucracy, generally have had little professional administrative training. They usually have come up through the ranks of the bureaucratic structure and attain office by dint of an extra measure of grit, resolve, drive, patience and/or luck. There is virtually no popular or legislative agreement on what the purpose or objective of the correctional bureaucracy should be; administrators characteristically are given three or four irreconcilable objectives for their goals. Correctional administrators spend most of their hours wheedling a few crumbs in the way of resources out of their executive and legislative superiors, an exercise made necessary by the rock bottom priority assigned to the correctional bureaucracy and its clients.

Finally, organizational decay means that, in most instances, policy is made by line staff who operate in virtual isolation from the reach of supposed policy makers in a department's central office or the superintendent's office. A typical symptom of the organizational breakdown is the increasingly ineffectual communication of more and more regulations which leave line officers free to frame policy on a case-by-case basis.

Administrators attempt to cope with these problems in a variety of ways. They frequently demand a more precise articulation of the purpose of the correctional system, or they push for a massive infusion of funds. Given the political and economic realities of the day, however, neither attempt is likely to succeed. Probably the best hope for accomplishing some meaningful improvement in our correctional institutions lies in the effort to resuscitate the organizational life of the correctional bureaucracy. That is what the Ward Grievance Procedure is all about, although that is not where it started.

In 1972 the California Youth Authority (CYA) began consideration of a grievance mechanism for its wards² with one simple goal: to create an effective system for handling complaints that worked fairly and that was perceived to be fair by wards. The overriding purpose of the system was to create an institutional climate of justice. It was recognized that the goal was not an easy one and that available models offered little guidance.

2. For a definition of "ward," see CAL. WELF. & INST'NS CODE ANN. § 602 (West Supp. 1976).

By the time most wards get to an institution, they are already deeply discontented with judicial or adversarial structures as exemplified by the court system. Efforts to introduce a quasi-judicial disciplinary procedure based on constitutional notions of due process into institutions have done little to counteract that distrust. Administrators, on the other hand, have objected strenuously to the introduction of more adversarial proceedings, considering the inefficiency and manpower drain associated with those already in operation.

The ombudsman approach was considered but rejected. The cost of an ombudsman program that served as the primary administrative means of handling grievances in so large a department as the CYA was seen as prohibitive. Moreover, to be credible, the ombudsman would have to be an independent state agency and legislation to create such an agency had already been rejected in California.³

Having no adequate models on which to base its system, the CYA opted early to call in some expert assistance. A task force of CYA department administrators met with the Center for Correctional Justice, a Washington, D.C. organization that had been working effectively and imaginatively for the past several years to create innovative grievance procedures for prisons. They emerged with a set of tentative principles to guide development of an experimental grievance procedure.

There were two central elements in the framework of principles agreed upon: (1) ward and line staff would have a major role both in designing and operating whatever procedure was adopted;⁴ and, (2) unresolved grievances would be submitted to truly independent outsiders for review.⁵ The task force identified both elements as vital for the accomplishment of the overall objective of the creation of a fair grievance procedure. Truly independent review of grievances assured wards that their complaints would be heard by an impartial panel. This outside review would take the form of arbitration, preferably with professional arbitrators from the general community being recruited to chair final review panels.⁶ Participation in the design and operation of the procedure meant they would have real input into

3. Legislation was introduced and passed in the California Assembly in 1971 to create an ombudsman who would monitor all state correctional agencies. A.B. 1181, Reg. Sess. (1971). The legislation was vetoed by Governor Reagan. Introduced again in 1972, the legislation was again vetoed by Governor Reagan. A.B. 5, Reg. Sess. (1972).

4. This element is expressed in the California Youth Authority, Ward Grievance Procedures 1 (Sept. 22, 1975) [hereinafter cited as Procedures].

5. See *id.* at 2 for the provision of this element in the procedure guidelines.

6. *Id.* at 7.

decisions rendered under the procedure. The operational participation of wards would take the form of mediation, with wards and line staff in equal proportions responding to specific grievances with the help of a non-voting, mediating chairperson.

In early 1973, when these two vital elements⁷ were identified and postulated, no one realized the potential impact a procedure built on these premises would have on the administration of the correctional system. The original concepts were advanced primarily in the interest of promoting the credibility of the mechanism in the eyes of wards. Still, the twin concepts involved a radical departure from accepted practice in corrections and it was known from the beginning that an extraordinary effort would be required to successfully implement our procedure. Fortunately, there was no reason to hurry introduction of the procedure, so the department could move slowly and carefully to introduce the potentially disturbing concepts.⁸ This meant that we would have time to experiment and build deliberately on those elements of the experiment that proved to be practical and beneficial.

The proposed application of outside review and participation to the correctional institution caused considerable skepticism and suspicion among administrators, staff and, indeed, among wards as well. The best, and perhaps the only way to attack that distrust was to provide a working model that demonstrated to all the feasibility and usefulness of a grievance procedure based on mediation and arbitration. No amount of theoretical argument or persuasion would convince the skeptics; what was needed was a successfully functioning procedure.

The first stage in the implementation of the procedure was the selection of an experimental institution. One member of the original CYA task force, Richard Kolze, superintendent of the Karl Holton School, was impressed by the task force's work. The school is operated in Stockton for approximately 400 males, with a program based on behavior modification techniques. Kolze volunteered his institution as the initial test site. Since the unqualified commitment of the institutional administrator was considered a *sine qua non* for a successful procedure—especially in the experimental phase—Karl Holton was designated as the place to inaugurate the procedure.

7. See notes 3-4 *supra* and accompanying text.

8. The correctional system sometimes has suffered egregiously from the too-rapid implementation of court-ordered reforms. While correctional administrators can be faulted justifiably for failing at times to initiate needed reforms, judges have also occasionally been short-sighted in demanding immediate and sweeping changes without regard for the administrative and leadership complexities involved in implementing correctional change.

Beginning in the summer of 1973, the Center for Correctional Justice staff and a committee of staff, wards, and administrators at Karl Holton met regularly to design a procedure. Thus, from the very beginning there was direct participation by the people most affected by the procedure. This participation was unique both for wards and line staff, who typically had been left out of the process of planning for change in corrections. The presence of the consultants meant that the design committee would have knowledgeable guidance in its struggle with the unknown. By discussing ideas and suggestions for specific procedural elements with the consultants, the committee could conduct its design task with a realistic understanding of what might—or might not—work. With the confidence inspired by such help, the committee at Karl Holton designed a basic model that has been adapted for use by every institution and program in the department. Those involved in the design process also developed a vested interest in its successful implementation and subsequently labored tirelessly to make it work. Such commitment was a key benefit of ward and line staff participation in the design process.

In September, 1973, the procedure designed by the committee was introduced in one living unit at Karl Holton. Expansion of the procedure to other units occurred over the next six months and, by March, procedures were active throughout the Karl Holton School. At the time of the first introduction of the procedure and thereafter during the expansion process, extensive training assistance was provided. The Center for Correctional Justice and the Institute for Mediation and Conflict Resolution⁹ provided a two-day program of training for key personnel in the procedure, as well as a basic orientation for line staff and wards. Videotaped simulations followed by critique sessions and extensive use of wards and staff to conduct orientation were key features of the training effort.

With expansion of the procedure to other living units, Karl Holton's staff and wards were given increasingly prominent training roles. By the end of the expansion period, Karl Holton had a cadre of experts in the procedure who were also experienced in training others. In addition to their expertise and training ability, the cadre were committed to making the procedure work.

In order to recruit the best available arbitrators to participate, the CYA sought the help of the American Arbitration Association (AAA)

9. The Institute for Mediation and Conflict Resolution is a New York based organization with long and distinguished experience in training community negotiators and mediators in techniques for conflict resolution.

and its offshoot, the National Center for Dispute Settlement.¹⁰ Through the San Francisco office (and later the Los Angeles office) of the AAA, a list of volunteer arbitrators was compiled and administrative arrangements were made for their assignments to specific cases. Youth Authority staff and Center for Correctional Justice attorneys provided the volunteers with an orientation on the procedure and the correctional environment.

At this point in the development of the procedure, it was time to take a critical look at the early results. During the first six months of 1974, the Research Division of the department conducted an in-depth analysis of the procedure's performance. Grievances were tracked and classified; grievants were interviewed about their reactions to the procedure and their satisfaction with the results; staff members also were questioned about their reactions to the procedure. Out of this research effort came preliminary evidence suggesting strongly that mediation and arbitration could work in corrections. For example:

(1) The first-level line staff/ward committee agreed on common recommendations in more than 95 percent of the grievances initially brought before it. This contrasted sharply with the expectation of many that staff and ward members of the committee would split along "party lines" and rarely agree on a common resolution.

(2) Rather than pursue every case through each level of the procedure, grievants opted to take only a limited number (four of the first 212 grievances submitted) of policy issues to outside review.

(3) The overwhelming bulk of grievances submitted initially dealt with the policy of the living unit, the institution or the department. The fear of some staff that the procedure would provide a readily available forum for petty harrassment of staff simply did not materialize. Less than 12 percent of the initial grievances dealt with a specific staff member's action or decision.¹¹

Coupled with these positive research findings was a growing awareness of some of the organizational byproducts of the procedure. Given an opportunity and a means to do so, wards and staff went about the job of ruthlessly rooting out "unofficial" policies. For example, one

10. The National Center is now known as Community Dispute Services. As the new name indicates, its primary function is the application of mediation and arbitration concepts to non-labor, community disputes.

11. California Youth Authority, *Final Evaluation of Ward Grievance Procedure*, Karl Holton School (Nov. 1974); California Youth Authority, *Evaluation of Ward Grievance Procedure for California Youth Authority* (July 1975, *updated* Dec. 1975).

early grievance dealt with a policy that limited outgoing correspondence to both sides of only two sheets of paper. Forced to find a reasonable explanation for the rule rather than slough off the complaint with a response that "it's policy," the ward/staff committee discovered the origins of the rule in the old practice of assigning to the night counselor the task of reading and censoring all outgoing mail. In order to enable the censor to complete this task within an evening's work, the two-page limit was set. This limit long survived the demise of censorship of outgoing mail. As a result of the grievance, the two-page limit was discarded and one direct case of organizational atrophy was cured.

In another instance, staff had long and futilely complained about the unsafe condition of an institutional car used to transport wards to outside community programs. The normal organizational channels through which staff had pursued their complaints were unresponsive since the matter was basically a logistical one and the logistical decision was never reviewed by operational supervisors. Staff members were able to convince wards to file a grievance about the car with the result that it was quickly taken off outside runs and confined to intra-institutional work. A different and safe car was then assigned to transport wards to community programs.

This last instance illustrates one of the most promising organizational or bureaucratic aspects of the procedure. The larger the organization, the easier it is for line staff to bury both information and decisions. Most supervisors, especially in a working environment where discipline, control and security are paramount, tend to support the decisions of their immediate subordinates even when the wisdom of particular decisions is suspect. The tendency is usually defended with an incantation about the need for "backing up" one's subordinates and not undermining their authority and control.

In corrections, when an inmate wants to complain about a line officer's decision he goes to the officer's supervisor, usually the nearest available sergeant or lieutenant (or their equivalent). The supervisor is heavily biased in favor of his subordinate's decision and, absent the most egregious set of circumstances that can be substantiated easily and thoroughly, he will support his subordinate. Unless the supervisor wishes thereafter to bring the matter to the attention of his supervisors, and he is not likely to want to do so, the matter is buried forever. Some correctional systems will permit the aggrieved inmate to complain directly to the superintendent or to the departmental director. Even then, direct accountability for a response almost always goes back to the supervising sergeant or lieutenant whose bias is unaltered and who

generally has a monopoly on the information supplied to or, equally important, believed by the ranking decision-maker.

The Ward Grievance Procedure short-circuits this characteristically bureaucratic process by providing a relatively fool-proof means for escalating review of decisions through each echelon of the hierarchy.¹² In addition, and most importantly, besides simply providing a routine process for review of decisions, the procedure makes sure that a balanced flow of information with input from both wards and staff accompanies each appeal through the reviewing levels.¹³ This informational contribution of the ward/staff committee in the form of its findings and recommendations is critical for two reasons: (1) it ensures the grievant that the decision-maker will have access to information about both sides of the complaint and (2) it provides the decision-maker with a reasonably sure indication of the substantiality of the complaint. When a unanimous ward/staff committee responds favorably to a grievance, the reviewer can be relatively sure there is merit to the complaint. Conversely, if a unanimous committee rejects a complaint, the administrator has good reason to suspect that the complaint is unmeritorious. In addition, the rejection of a ward's complaint by his peers on the committee reduces appreciably the likelihood that the grievance will be pursued further.

This functional byproduct of the procedure is a key element in its success. Sophisticated wards understand that the ward/staff committee rarely makes binding decisions. They perceive that the procedure represents an actual sharing of power in policy-making only in a very narrow and limited sense. What it does for them and for the entire correctional structure is break up the traditional decision-making process in a way that restores a form of communication between individuals and their living units as well as between institutional and departmental bureaucracy.

For the administrator who wants to introduce changes in the system, the procedure provides a most effective and practical tool for extending power beyond the threshold of his office. In effect, in every living unit, the administrator has a grass roots, bipartisan committee reporting directly to him on obsolete and dysfunctional policies, on arbitrary applications of policies, and on incompetent and inhumane personnel. Given that kind of input, a progressive administrator may

12. Procedures, *supra* note 3, at 1, 2-4 (Sept. 22, 1975).

13. *Id.* at 2, 5.

well be in a position to regain a measure of meaningful control over the system he runs.

The early favorable reports on the procedure from the Research Division were corroborated both by departmental monitors who watched the experimental development closely, and by the outside consultants who visited Karl Holton regularly for design and training sessions. Encouraged by these results, the Youth Authority decided to implement the procedure in all of its institutions and program units.¹⁴

The first step in the expansion process was to turn over responsibility for overall supervision of the implementation process to the Deputy Director of Parole and Institutions Branch (the operational division of the department). A conference of all institutional and program administrators was scheduled immediately for July, 1974, where questions, apprehensions and concerns of key institutional administrators could be discussed and worked out.

Prior to the conference, the department sent the superintendent and assistant superintendent from each institution in the state to the Institute for Mediation and Conflict Resolution in New York where they received an introductory, ten-day seminar in the techniques of mediation, the concept that was so central to the success of the procedure. The purpose of the seminar was to make the participating individuals aware of the potential benefit to them as administrators of the concepts underlying the procedure with which they were about to become involved.

By the time the departmental conference convened in July, the assembled administrators knew something of the concepts behind the procedure and were familiar with experimental developments at Karl Holton. After a lively session during which virtually every difficulty and problem associated with implementation was exposed and debated, the conference went on to establish firmly in the minds of all present some fundamental points:

(1) The grievance procedure was a program with the highest possible departmental priority. The Youth Authority was totally committed to its successful implementation.

(2) The tentative principles applied in the Karl Holton experiment had proved to be successful and, henceforth, would guide the development of future procedures throughout the department. Within the framework of those principles, each institution and program unit was free to experiment—and, in fact, was encouraged to do so.

14. See note 11 *supra*.

(3) The department would make available to administrators in each institution and program whatever assistance was required to make the procedure work in their units. This included overtime pay for the training of key personnel, design help from staff and ward personnel at Karl Holton, and the training assistance of outside consultants.

(4) A timetable for planning and implementation was established requiring each institution and program to have a design and implementation plan approved by the central office by December 31, 1974 and the completion of implementation by June 30, 1975.

With these clear working instructions, institutional and program administrators worked diligently during the next five months to complete plans for procedures that conformed to the principles and reflected the peculiar programmatic needs of their units. Beginning in January, 1975, procedures were functioning as scheduled in all Youth Authority institutions and program units. Throughout the year-long process, the Center for Correctional Justice provided continuing design and training assistance to administrators;¹⁵ additional training help was obtained from the National Center for Dispute Settlement and the Federal Mediation and Conciliation Service; the CYA created an Office of Wards Rights under the Deputy Director and assigned additional personnel to monitor both the expansion and the operations of procedures throughout the department; and, the Research Division substantially increased its commitment of resources to evaluation of the expanding procedures.¹⁶

The result of all this effort was the successful completion of the implementation task. By the end of June, 1975, every CYA institution, reception center, forestry camp and community program had a functioning grievance procedure. Since July, these sixteen institutions have been processing over 500 grievances a month, meaning that the procedure can expect an annual volume well in excess of 6000 grievances. Considering the fact that such a number exceeds by over fifty percent the incarcerated population of the CYA, it can be safely said that the procedure is enjoying heavy, unprecedented use.

An attempt to analyze the success of the implementation process points to several critical factors. Some of them are commonplace in the administration of a correctional system or any other kind of system.

15. The Center's participation throughout the development of the grievance procedure was made possible by three successive yearly grants to the Youth Authority by the Resenberg Foundation.

16. The Research Division's effort was supported, in part, by a federal grant from the Law Enforcement Assistance Administration.

Such factors include the extensive planning and coordination that preceded system-wide introduction of the procedure, as well as the creation of a multi-leveled monitoring structure to ensure that the principles acknowledged as essential to the procedure were actually being applied in each institution.

One central organizational premise underlying the success of the procedure was decentralization. A ward/staff committee works best when its members are familiar with the problems and people that appear before it. The familiarity not only makes the whole hearing process more personal and satisfying to the grievant, it also reduces substantially the need for detailed investigation on the part of committee members before the hearing. Since a majority of complaints submitted to a committee concern the substance or application of living unit policies or the actions of individual staff members on a living unit, this last consideration is substantial. If, for example, a large institution has only one inmate/staff committee dealing with hundreds of rules and people with whom the committee members are unfamiliar, the burden of a pre-hearing investigation imposed on committee members may become intolerable.¹⁷

Another added advantage of the decentralized approach to the grievance procedure is the diffuse distribution of manpower costs. Instead of having only two or four staff members devoting all of their time to committee hearings, there is a committee on each 50 or 100-bed unit, which means that two staff members from each unit spend one half day or one full day a week in hearings. The problem of finding personnel who can be spared for all or part of a day each week is difficult and taxing, but it cannot be compared to the currently impossible task of creating two to four new line positions in every institution and program. Finally, the involvement of greater numbers of both staff and inmates on many living unit committees means that the operations of the procedure are more highly visible and access to its benefits more readily attainable.

Another critical factor in the success of the program was the large and steady dose of outside expertise applied throughout the implementation process. The CYA would have encountered substantial difficulties in introducing the procedure without that expert assistance. Conceptually, some of the key features of the procedure, imported primarily

17. In the New York Department of Correctional Services, which introduced a system-wide procedure similar to the California Youth Authority procedure in February, 1976, each institution has only one committee. It is my understanding that these committees are encountering the problems just described.

from the field of labor relations, were new to corrections. In addition, the CYA certainly did not have the knowledge or skills necessary to train mediators or to recruit and train arbitrators. The infusion of conceptual, training and operational help over the two-year implementation period, however, has enabled the department to develop an understanding of the procedure and training knowledge sufficient to sustain future operations of the procedure.

One area in which the assistance and perspective of the outside consultants were especially useful was in allaying fears of line staff and their employee organizations about potential abuse of the procedure. A recurring concern of line staff involved possible attempts on the part of wards to use the procedure to harass particular staff members. In planning conferences and meetings on the procedure as well as in each institution, this concern surfaced repeatedly. Consultants to the project, who participated in the introduction of the procedure and shared with line staff their broad understanding of, and experience with, mediation and arbitration, did much to alleviate the anxiety of line staff. They were even more instrumental, however, in helping to fashion procedural guidelines that would protect the rights of staff without gutting the grievance system.

As the procedure is now structured, in grievances that involve accusations against staff members that could result in disciplinary action, the first level of the procedure is bypassed and the grievance goes directly to the superintendent;¹⁸ appeals of the superintendent's decision to outside review are limited to a review of the superintendent's findings of fact and do not directly involve dispositions;¹⁹ an accused staff member need not participate in the outside review, but if he elects to do so, he may be represented by counsel, union officials or anyone else of his choice.²⁰ Interestingly, the grievance procedure for wards now provides accused staff members with more protection than the state public employment statute, which does not provide for review by an outside arbitrator. Many staff members have complained about their own grievance procedure after comparing it to the wards'.

The four factors—planning, monitoring, decentralization and liberal use of outside help—were key factors in the implementation of the

18. Procedures, *supra* note 3, at 2 (Sept. 22, 1975).

19. *See id.* at 19, 20. The major purpose for providing review of a superintendent's findings of fact is to prevent either the occurrence or the accusation of a white-wash. The disposition of disciplinary cases is in the hands of the department's personnel division.

20. *Id.* at 18.

procedure, which, by all accounts, is highly successful. The procedure processes a great many grievances while providing an effective means for the review of major policy issues as well as minor problems. It has been selected by Law Enforcement Assistance Administration as one of the few outstanding correctional programs in the country; similar procedures are now being implemented in New York,²¹ and South Carolina.²² Legislation to establish a statutory basis for the procedure was enacted by the California legislature.²³

This last item is especially important since legislation is vital to the institutionalization of the grievance procedure. Enactment of such legislation will represent the culmination of an effort of almost four years. This effort began as a move to create for wards of the California Youth Authority a grievance procedure that is both fair and perceived to be fair, but which has become central to a revitalization of the correctional structure. The grievance procedure is a first and unquestionably an important stride in the direction of making our correctional institutions not only fair and just, but also manageable.

21. N.Y. CORREC. LAW § 139 (McKinney Supp. 1976).

22. The program in South Carolina is an experimental program functioning in the Kirkland Correctional Institution. It was established by the administrative decision of Commissioner William D. Leeke of the South Carolina Department of Corrections. Funding is provided through the Center for Correctional Justice.

Grievance procedures were used in Colorado on an experimental basis in mid-1976. The program was implemented by the Director of Corrections, Gerald L. Agee, in June, 1976. For reasons not directly related to its success or failure, the program was terminated in August, 1976.

23. Act of Sept. 6, 1976, ch. 710, Cal. Stat. — (formerly A.B. 4099 of the 1975-76 session of the California Legislature).