Loyola of Los Angeles Law Review

Volume 10 | Number 1 Article 4

12-1-1976

Instituting California's Ward Grievance Procedure: An Inside Perspective—II. The Justice Model Applied: A New Way to Handle the Complaints of California Youth Authority Awards

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II. THE JUSTICE MODEL APPLIED: A NEW WAY TO HANDLE THE COMPLAINTS OF CALIFORNIA YOUTH AUTHORITY AWARDS

*by J. Michael Keating, Jr.**

There was one additional right—the privilege of writing applications and petitions (which replaced freedom of the press, of assembly, and of the ballot, all of which we had lost when we left freedom). Twice a month the morning duty officer asked: "Who wants to write a petition?" And they listed everyone who wanted to. In the middle of the day they would lead you to an individual box and lock you up in it. In there, you could write whomever you pleased: the Father of the Peoples, the Central Committee of the Party, the Supreme Soviet, Minister Beria, Minister Abakumov, the General Prosecutor, the Chief Military Prosecutor, the Prison Administration, the Investigation Department. You could complain about your arrest, your interrogator, even the chief of the prison! In each and every case your petition would have no effect whatever. It would not be stapled into any file, and the most senior official to read it would be your own interrogator. However, you were in no position to prove this. In fact, it was rather more likely that he would *not read it*, because no one would be able to read it. On a piece of paper measuring seven by ten centimeters—in other words, three by four inches—a little larger than the paper given you each morning at the toilet, with a pen broken in the middle or bent into a hook, and an inkwell with pieces of rag in it and ink diluted with water, you would just be able to scratch out "Petit . . ." Then the letters would all run together on the cheap paper, "ion" couldn't be worked into the line, and everything would come through on the other side of the sheet.[1]

Alexandr Solzhenitsyn
The Gulag Archipelago

I. INTRODUCTION

Arbitration, mediation, shared decision-making with wards,[2] and the

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1. A. SOLZHENITSYN, THE GULAG ARCHIPELAGO 208-09 (1973).

2. Inmates in the California Youth Authority are referred to as "wards." The age group supervised by the California Youth Authority is comparable to inmates sentenced under the Federal Youth Corrections Act. 18 U.S.C. § 5005 *et seq.* (1970). The

provision of a just system for dealing with the grievances of wards: These are the fundamental concepts in a program launched in 1972 to create a radically new way of handling grievances in the California Youth Authority (CYA). Based on principles and concepts never before applied in corrections, the CYA has established grievance procedures for wards in every one of its institutions, forestry camps, reception centers and community programs. In addition, it has recently instituted similar experimental procedures in selected parole units to provide an avenue of redress for parolees with grievances.

The experimental grievance procedure, which now has become an institutionalized part of the overall California Youth Authority program, is the result of a lengthy and fruitful collaboration between the CYA and the Center for Community Justice (the Center), a Washington, D.C. organization long involved in the design, implementation and evaluation of correctional grievance mechanisms.[3] The Center made early and extended use of the skills of organizations with established expertise in mediation and arbitration, including particularly the Institute for Mediation and Conflict Resolution (the Institute)[4] and the American Arbitration Association (the AAA).[5]

California Youth Authority accepts commitments to age 20 and retains jurisdiction of committed youths to age 25.

3. The Center was founded in 1971 with a grant from the Office of Legal Services of the Office of Economic Opportunity (OEO) to design and operate a model legal services program for prisoners and to develop administrative inmate grievance procedures. Since then, the Center has received research and technical assistance grants from both the federal government (National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration) and private foundations (Rosenberg Foundation of California, Ford Foundation, Polaroid Foundation, the Eugene and Agnes E. Meyer Foundation of Washington, D.C.).

4. The Institute for Mediation and Conflict Resolution, a New York City-based organization, was established in 1970 with funding assistance from the Ford Foundation to work in the area of community disputes primarily in New York City. Founded by Theodore W. Kheel and currently headed by Basil A. Paterson, the Institute has trained over 250 community and governmental leaders from all across the country in negotiation and mediation skills and has conducted training courses for various arms of government on the national, state and local levels.

5. The American Arbitration Association (hereinafter referred to as AAA) is a public service membership corporation, founded in 1926, that predominates in the field of arbitration. It maintains a labor panel of arbitrators of over 1800 persons and annually administers over 25,000 arbitration cases. In addition, it conducts a wide range of activities designed to publicize and promote the use of arbitration in a wide variety of contexts. The Community Dispute Service (formerly the National Center for Dispute Settlement or NCDS) was created by the AAA in 1968 to develop the use of mediation, fact-finding and arbitration in community disputes. Both the AAA and the former NCDS provided assistance to the California Youth Authority in establishing its grievance procedure.

II. BACKGROUND: THE IMPROVING CLIMATE FOR THE ADMINISTRATIVE REDRESS OF PRISONERS' GRIEVANCES

Investigations following most major prison disturbances have generally acknowledged the existence of legitimate inmate complaints directed at conditions, policies or personnel of the besieged prison. Consider, for example, the record in just one state. In its explanation of the Attica riot, the McKay Commission pointed to the longstanding and uncorrected prevalence of conditions that led to the tragic events of September, 1971.[6] Within months of the release of the Attica report, investigation of a troubled county correctional facility on Long Island, conducted by undercover agents of the local district attorney, similarly recorded the explosive frustration of inmates unable to get responses to their legitimate complaints.[7] In November, 1975, Mayor Abraham Beame of New York City granted amnesty to rioting prisoners at the City's Rikers Island institution after acknowledging the legitimacy of the grievances that generated the disturbance.[8]

Repeatedly, rioting prisoners argue that no one listens to their complaints or that, once heard, their grievances are ignored. Although recognizing that they may be hurt the most by their violence, they continue to endanger their lives and the lives of others in protest. Yet, there is a certain logic to the violence of prisoners; each new outbreak that wrings concessions from suddenly responsive officials is an inspiration to inmates elsewhere. The spiralling human and material costs of this violent approach to prisoners' grievances are becoming increasingly evident to local government officials, correctional administrators, and the general public.[9]

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6. The Commission specifically condemned inadequate medical care, food and recreational facilities; "barriers to all forms of communication with the outside world"; rules that were "poorly communicated, often petty, senseless, or repressive and . . . selectively enforced"; and a relationship between more correctional officers and inmates that was "characterized by fear, hostility, and mistrust, nurtured by racism." NEW YORK STATE SPECIAL COMMISSION ON ATTICA, ATTICA: THE OFFICIAL REPORT OF THE NEW YORK STATE SPECIAL COMMISSION ON ATTICA 54-80 (1972).

7. The report stated:

> When an inmate had a complaint or a grievance, he felt that he had no recourse within the prison system. If he wrote a complaint to a high-ranking officer or the warden, it had to be submitted, unsealed, to the guard on duty—who often was the very individual against whom the complaint was made. Most inmates believed that their complaints never reached the staff members to whom they were addressed and that a written complaint was an exercise in futility. Many of them did not submit complaints because they feared they would . . . suffer loss of "good time" (the time deducted from their original sentence for good behavior).

Cahn, *Report on the Nassau County Jail*, 19 CRIME & DELINQUENCY 1, 11 (1973).

8. N.Y. Times, Nov. 27, 1975, at 37, col. 3.

9. *See, e.g.*, SOUTH CAROLINA DEPT. OF CORRECTIONS COLLECTIVE VIOLENCE RE-

The existence and importance of the breakdown in meaningful communication of grievances between inmates and prison administrators has been noted and lamented by a wide variety of penal experts, most of whom credit the breakdown with a major role in recurring disturbances.[10]

One indirect effect of successful resort to violence on the part of prisoners is the discouragement of inmate initiative in fashioning legitimate, non-violent means of expressing discontent and seeking reform.[11]

Increasing violence has not been the only incentive for the creation of effective administrative grievance mechanisms in prisons. Beginning in the mid-1960's, courts began to abandon the "hands-off" doctrine which had long been applied to prisoners' claims.[12] While sub-

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SEARCH PROJECT, COLLECTIVE VIOLENCE IN CORRECTIONAL INSTITUTIONS—A SEARCH FOR CAUSES (1973); Singer & Keating, *Prisoner Grievance Mechanisms: A Better Way than Violence, Litigation, and Unlimited Administrative Discretion*, 19 CRIME & DELINQUENCY 367 (1973).

10. *See, e.g.*, AMERICAN CORRECTIONAL ASSOCIATION, CAUSES, PREVENTITIVE MEASURES, AND METHODS OF CONTROLLING RIOTS AND DISTURBANCES IN CORRECTIONAL INSTITUTIONS 66 (1970):

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

Id. quoting CHRISTIAN CENTURY, vol. 72, at 884.

In a perceptive study of collective violence in prisons, Edith Flynn, Ph.D., Associate Director of the National Clearinghouse for Criminal Justice Planning and Architecture, listed as one of the major contributing factors in the recent wave of correctional violence: "absent or restricted communication patterns which seriously impair the airing of legitimate inmate grievances and the detection of impending unrest." FLYNN, *Sources of Collective Violence in Correctional Institutions*, in NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, CRIMINAL JUSTICE MONOGRAPH: PREVENTION OF VIOLENCE IN CORRECTIONAL INSTITUTIONS 15, 28 (1973).

11. One articulate prisoner observed:

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

The Prison Strike: A Peaceful Alternative, Fortune News, April, 1973, at 7. The Fortune news is a monthly newspaper of The Fortune Society, an organization of ex-convicts and other interested persons located in New York City.

12. Justification both for the "hands-off" doctrine and its abandonment is summarized succinctly in Procunier v. Martinez, 416 U.S. 396 (1974):

> [C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. . . . Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities.
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> But a policy of judicial restraint cannot encompass any failure to take cognizance of valid constitutional claims whether arising in a federal or state institution. When

sequent years yielded some important legal victories that have expanded substantially prisoners' rights, the overall impact of judicial intervention has been disappointing.

Part of the disillusionment stems from the length of time and resource commitment required to pursue a case through the courts. Litigation efforts to bring change to the Arkansas prison system illustrates the point. In a series of decrees in 1969 and 1970, a federal district judge ordered the wholesale revamping of the Arkansas correctional system.[13] Yet, after five years of litigation, the United States Court of Appeals for the Eighth Circuit, in an opinion handed down in November, 1974, confirmed the fact that conditions in Arkansas correctional institutions continued to be unconstitutional in many aspects and that Arkansas was in substantial non-compliance with the original judicial decrees.[14]

Another element in the growing disillusionment among prisoners and reformers is the limited subject matter jurisdiction of judicial review. Departures from the "hands-off" doctrine come reluctantly, and as the Supreme Court indicated in *Procunier v. Martinez*,[15] judicial intervention was designed only to protect constitutional rights. The discretion of correctional administrators remains incredibly broad.

From the beginning of increased judicial activism, correctional administrators have been unhappy with court intervention as a means of achieving reform. Part of the unhappiness arises, no doubt, because responding in court to prisoners' complaints is both time-consuming and expensive. Another factor is the conviction, long prevalent among administrators, that courts have no special expertise qualifying them to dictate or oversee the implementation of change in corrections.

The courts themselves have taken great pains to assure administrators that they have no desire to intervene in the day-to-day operations of correctional institutions. Chief Justice Warren E. Burger relates

a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights.

Id. at 405-06. *See also* Gifis, *Decision Making in a Prison Community*, 1974 WIS. L. REV. 349, 353.

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

14. Finney v. Arkansas Bd. of Correction, 505 F.2d 194, 200 (8th Cir. 1974). Attorneys in the *Holt* case and its progeny were awarded modest legal fees along the five-year course of litigation. Under the Supreme Court's ruling last term in Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 260 (1975), it is no longer clear whether attorneys representing prisoners in actions brought under 42 U.S.C. § 1983 (1970) will be entitled to fees.

15. 416 U.S. 396 (1974).

with obvious dismay the case of a prisoner who engaged the primary attention of "one District Judge twice, three Circuit Judges on appeal, and six others in a secondary sense—to say nothing of lawyers, court clerks, bailiffs, court reporters, and all the rest" in an attempt to recover seven packs of cigarettes allegedly taken improperly by a guard.[16]

Other judges have echoed the Chief Justice's desire to set limits on use of the judicial process as a means for resolving the broad gamut of prisoners' complaints. In November, 1974, the United States Court of Appeals for the First Circuit cited cases brought before federal judges that were characterized as totally inappropriate for the exercise of judicial intervention. Examples given included the claimed right to keep a pet in a correctional institution, the right of an inmate to receive personal clothing from the state and the duty of the institution to repair broken toilets.[17]

The subject matter of cases brought by prisoners—particularly to federal courts—is one source of judicial vexation. Far more critical, however, is the ever-rising volume of petitions being filed by prisoners. In his latest annual report on the judiciary, the Chief Justice announced that one-sixth of all cases on the civil dockets of federal courts are petitions from prisoners.[18] He ended his observations on the problem of prisoner petitions with a refrain he has often sounded in the past:

> Federal judges should not be dealing with prisoner complaints which, although important to a prisoner, are so minor that any well-run institution should be able to resolve them fairly without resort to federal judges.[19]

The common element tying together the complaints of most judicial critics of the growing recourse to courts by prisoners is the recommendation that correctional administrators move promptly to create viable, credible administrative alternatives.[20] In some jurisdictions where ad-

16. Address by Chief Justice Burger delivered to American Bar Association, Washington, D.C., Aug. 6, 1973. The case referred to by the Chief Justice is Russell v. Bodner, 478 F.2d 1399 (3rd Cir. 1973).

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

18. Burger, *Chief Justice Burger Issues Yearend Report,* 62 A.B.A.J. 189 (1976).

19. *Id.* at 190. Of the 117,000 cases filed in the fiscal year, 19,000 represented petitions from prisoners, including habeas corpus petitions.

20. Among these critics is Chief Justice Burger who, in a speech delivered to the National Conference of Christians and Jews at Philadelphia, Pennsylvania, Nov. 16, 1972, said:

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

Another critic is Judge Donald P. Lay of the United States Court of Appeals for the

ministrative grievance mechanisms have been introduced, courts have been quick to grant approval and encouragement. In a recent case denying Connecticut prisoners the right to form a union, a federal district judge described the newly established ombudsman program as providing ample opportunity for the presentation of inmates' grievances for review by an objective outside body.[21]

In a little-noted 1974 decision of the United States Court of Appeals for the Fifth Circuit, the court suggested strong approval for the requirement offered by the newly implemented and then experimental Federal Bureau of Prisons grievance procedure and imposed by a district court that federal prisoners exhaust administrative channels for remedy of grievances before submitting their petitions to the lower court.[22]

In a similar case, *McCray v. Burrell*,[23] another federal district judge ordered state prisoners in Maryland to exhaust their administrative remedies through the Inmate Grievance Commission, established by statute in 1971, before bringing cases to the federal courts. The United States Court of Appeals for the Fourth Circuit reversed the lower court with some obvious regret:

> We keenly appreciate the force of the factors identified by the district court in McCray . . . as supporting a policy determination that exhaustion of available administrative remedies should be required of prisoners of correctional institutions in Maryland as a prerequisite to a suit under § 1983. We recognize the burden which the increasing flood of prisoner complaint litigation places upon the already overtaxed district courts as well as ourselves. Nevertheless, we are constrained to conclude that the holding that exhaustion is required may be

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Eighth Circuit. This court has reviewed three of the major correctional decisions of the past five years: Wolff v. McDonnell, 418 U.S. 539 (1974); Morrissey v. Brewer, 408 U.S. 471 (1972); Holt v. Sarver, 442 F.2d 304 (8th Cir. 1971).

Judge Lay has stated:

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

RESOLUTION OF CORRECTIONAL PROBLEMS AND ISSUES, Fall 1974, at 10 (published by the South Carolina Department of Corrections).

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

22. Ross v. Henderson, 491 F.2d 117 (5th Cir. 1974). Recently, Chief Justice Burger suggested the possibility that the Federal Bureau of Prisons administrative grievance procedure may have contributed to the moderation in the annual rate of increase of prisoners' petitions from federal prisoners in the preceding fiscal year. Burger, *Chief Justice Burger Issues Yearend Report*, 62 A.B.A.J. 189, 190 (1976).

23. 367 F. Supp. 1191 (D. Md. 1973), *rev'd*, 516 F.2d 357 (4th Cir. 1975).

> reached only by either legislation conditioning resort to 42 U.S.C. § 1983 upon the exhaustion of available administrative remedies, or by the Supreme Court's re-examination and modification of its controlling adjudications on the subject. Congress has not enacted such legislation. The Supreme Court has not yet begun a re-examination of its previous holdings and we have no basis on which to predict that it will, or, if so, with what result. We think that we have no alternative but to hold that exhaustion may not be required.[24]

On November 3, 1975, the Supreme Court granted certiorari and agreed to hear the *Burrell* case.[25] The Court's agreement to hear the case undoubtedly reflects growing concern about the volume of prisoners' petitions submitted to federal courts. This concern may well lead to the imposition of an exhaustion requirement where adequate administrative procedures for redress of grievances exist. Any such requirement should be accompanied by specific standards for timeliness and adequacy; otherwise, the least common denominator among the many currently available and largely ineffective grievance mechanisms is likely to become the norm.

While the search for alternatives to violence and litigation has done much to foster interest in administrative grievance mechanisms, a more positive influence, the so-called "justice model," has emerged recently to promote development of these mechanisms. The justice model is a by-product of growing disillusionment with the "rehabilitative ideal," a conceptual framework that has dominated corrections for most of the twentieth century.[26] The central element of the justice model, which is still in its infancy as a unifying rationalization of overall correctional policy, is an emphasis on the importance of fairness and equity both in correctional policies and in their application.[27]

One active correctional administrator who subscribes to the "justice model" approach to corrections is Allen F. Breed, former Director of

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24. McCray v. Burrell, 516 F.2d 357, 360-61 (4th Cir. 1975), *cert. improvidently granted*, 423 U.S. 923 (1975).

25. 423 U.S. 923 (1975).

26. For a discussion of the "rehabilitative ideal," see Allen, *Criminal Justice, Legal Values, and the Rehabilitative Ideal*, 50 J. CRIM. L.C. & P.S. 226 (1960).

27. The philosophical basis for the model has been provided by J. RAWLS, A THEORY OF JUSTICE (1971) in which the English philosopher urges the primacy of justice:

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

Id. at 3.

the California Youth Authority. He frequently cites the need for an atmosphere of justice in correctional institutions as one of the main reasons he became interested in the introduction of a grievance mechanism in the CYA. He asserts:

> "that . . . we believe in fairness . . . and we ought to be demonstrating it in those areas that govern the greatest part of the kid's life—his everyday activities and [his] interaction with staff."
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> . . . .
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> "No treatment program that exists . . . today in the field of corrections [is] successful, and, basically, they are not successful because they are operated in an environment that's not fair . . ."[28]

Recognition of the need for grievance mechanisms designed to provide fair and effective review of inmates' grievances has come from within,[29] as well as from without the corrections establishment.[30] The response of correctional administrators to this need has engendered one of the most innovative and promising developments in corrections in

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28. R. & T. Denenberg, *Prison Grievance Procedures,* CORRECTIONS MAGAZINE 29, 41 (Jan./Feb. 1975).

29. One source states:

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

AMERICAN CORRECTIONAL ASSOCIATION, CAUSES, PREVENTITIVE MEASURES, AND METHODS OF CONTROLLING RIOTS AND DISTURBANCES IN CORRECTIONAL INSTITUTIONS 23 (1970).

30. *See* NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, CORRECTIONS (1973), which states:

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

Id. at 57. *See also* THE ACADEMY FOR CONTEMPORARY PROBLEMS, THE GROUP FOR THE ADVANCEMENT OF CORRECTIONS, TOWARD A NEW CORRECTIONS POLICY: TWO DECLARATIONS OF PRINCIPLES 10 (1974); THE NATIONAL COUNCIL ON CRIME & DELINQUENCY, A MODEL ACT FOR THE PROTECTION OF RIGHTS OF PRISONERS IV-51 (1972); FOURTH UNITED NATIONS CONGRESS ON PREVENTION OF CRIME AND TREATMENT OF OFFENDERS, *Standard Minimum Rules for the Treatment of Prisoners* (1955) in COMPENDIUM OF MODEL CORRECTIONAL LEGISLATION AND STANDARDS, Rule 36 at IV-II (2d ed. 1972); PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 13 (1967); REPORT OF THE 42ND AMERICAN ASSEMBLY, PRISONERS IN AMERICA 8 (1972).

recent times, a development that may have profound impact on the broader field of administrative law.

III. Initial Development of Non-Judicial Grievance Mechanisms

The need to avoid violence and litigation and the need to promote justice in the correctional system have become basic assumptions in many jurisdictions. Given the requirement for constructing a means for the communication and consideration of grievances, correctional administrators have responded in a wide variety of ways. Some have chosen to do nothing more than rely on existing informal means for resolving grievances without creating additional mechanisms. This approach has now been rejected by most administrators who have tried at least one formal mechanism; many have attempted the simultaneous introduction of several formal mechanisms.[31]

Formal mechanisms fall into three broad categories: so-called ombudsman programs, multi-leveled procedures and inmate councils. While legal services programs for inmates also provide a means for dealing with a certain class of prisoners' problems, they do not themselves constitute a grievance mechanism. They are an important and useful supplement to an institution's grievance mechanism, but their limited jurisdiction precludes their use as a substitute. One other means for dealing with inmates grievances, promoted actively in some states, is a prisoners' union. Official recognition of an inmate organization as a bargaining agent presumably would entail development of a contract which would include a procedure for handling disputes arising under the agreement.[32] The prisoners' union movement, however, is still in its infancy and as yet does not provide a viable means of dealing with the complaints of inmates.[33]

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31. *See* McArthur, *Inmate Grievance Mechanisms: A Survey of 209 American Prisons*, 38 FEDERAL PROBATION 41 (Dec. 1974) [hereinafter cited as McArthur], for a survey of correctional grievance mechanisms.

32. Under public employment statutes in at least three states inmate organizations have sought recognition, with little success, as bargaining agents for prisoners. *See In re* Walpole Chapter of the National Prisoners' Association, Commonwealth of Massachusetts Labor Relations Commission, Case No. SCRX-2 (Sept. 24, 1973); *In re* Prisoners' Labor Union at Marquette and Prisoners' Labor Union at Jackson, Michigan Employment Relations Commission, Case Nos. R72 E-163, C72 E-81, R72 F-214, C72 F-108 (March 19, 1974); *In re* State of New York (Dep't of Correctional Serv.) and Prisoners' Labor Union at Green Haven, 5 N.Y. PUB. EMPLOYMENT RELATIONS 3D ¶ 5-4040, at 4068 (1972).

33. The California Prisoners' Union recently concluded eight months of negotiations

A. Inmate Councils

Inmate councils have been popular in correction for some time.[34] The term has been applied broadly to any sort of inmate organization, generally operated by elected inmate representatives, which attempts to resolve general problems at regular meetings with institutional or departmental administrators, who retain final decision-making power. This method is perhaps best known nationally through publicity given to the Resident Government Council at Washington State Penitentiary (Walla Walla).[35] Applications of this method have a common characteristic: a lack of credibility among the inmate population. One major factor contributing to the general lack of credibility of inmate councils is the repeated sublimation of the difference in objectives of administrators and inmate participants in a typical council. Inmates initially tend to view the council as a vehicle for change, which provides them with a direct and powerful voice. Administrators generally have a more limited view of the purpose of a council, seeing its role more narrowly as a sounding board for inmates' complaints about institutional policies.[36]

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with the California Department of Corrections which resulted in a "proposal" allowing California's 20,000 adult prison inmates to organize and form the equivalent of a labor union, if accepted by the department and the State. Washington Post, Jan. 21, 1976, § A, at 34, col. 4. Opposition to the proposal, led by the California Correctional Officers Association, has been vociferous and effective.

34. For review of the development of inmate institutions of self-government in prisons, *see* MURTON, SHARED DECISION-MAKING AS A TREATMENT TECHNIQUE IN PRISON MANAGEMENT 7-63 (1975).

As early as 1966, the American Correctional Association was encouraging the adoption of inmate councils:

> One of the most significant privileges which can be extended to persons confined is opportunity to take some limited responsibility for the planning and operation of the institution program. Opportunity for participation in constructive social action while under custody, usually in the form of an inmate advisory council, can be one of the most successful and effective means for developing high institutional morale and good discipline.

MANUAL OF CORRECTIONAL STANDARDS 547 (3d ed. 1966) [hereinafter cited as MANUAL]. *See also* SOUTH CAROLINA DEPT. OF CORRECTIONS, THE EMERGING RIGHTS OF THE CONFINED 94 (1972).

35. The Walla Walla inmate government was the subject of a major article in one of Life Magazine's final issues. LIFE, Sept. 8, 1972, at 32. As of April 1, 1975, however, the Resident Government Council at Walla Walla had been disbanded.

36. *See, e.g.*, MANUAL, *supra* note 34. The MANUAL states:

> The inmate advisory council's functions always remain advisory. No actual administrative powers are ever delegated to it. The council encourages, develops, and supports projects for the general welfare of inmates, but all responsibility for management remains in the hands of regularly employed personnel.

Id. at 458.

Regardless of how one evaluates the effectiveness of inmate councils, they make a poor substitute for a grievance procedure. Characteristically, they do not handle individual complaints; rarely are there time limits within which responses must be made; frequently, there is no requirement for a response at all.[37] While inmate councils, where effective, may enhance communication between inmates and administration and provide a useful supplement to a functioning grievance procedure, they cannot be counted on to handle the daily problems of prison life that are the major concern of an institutional grievance mechanism.

B. Ombudsman Programs

One of the most widespread of correctional grievance mechanisms is the ombudsman. The concept, first implemented in Sweden in 1809 and successfully adopted in other Scandinavian countries, calls for the appointment, usually by the legislature, of an independent and respected individual to handle the complaints of citizens against governmental agencies.[38] Generally, an ombudsman has broad investigatory powers. When he determines that a complaint is valid, he usually recommends a resolution to the agency involved. If the agency ignores the recommendation, the ombudsman is authorized to report directly to the legislative body that appointed him. Since the ombudsman also has the authority to make his findings and recommendations public, government agencies theoretically face considerable pressure to comply with his recommendations. The ombudsman can only recommend action; he cannot enforce his own findings.[39]

Adaptations of the ombudsman concept in America have deviated from the Scandinavian model. Nowhere has the deviation been as pro-

37. This listing of problems is only partial; other problems include the questionable applicability of representative government in correctional institutions, *see* PRESIDENT'S COMMISSION ON LAW EFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 13 (1967), and the historic impermanence of councils, *see* Singer and Keating, *Prisoner Grievance Mechanisms*, 9 CRIME & DELINQUENCY 367, 371 (1973).

38. For a general study of the ombudsman concept *see* S. ANDERSON, OMBUDSMEN FOR AMERICAN GOVERNMENT? (1968); W. GELLHORN, WHEN AMERICANS COMPLAIN (1966).

39. OMBUDSMAN COMMITTEE OF THE AMERICAN BAR ASSOCIATION SECTION OF ADMINISTRATIVE LAW, MODEL OMBUDSMAN STATUTE FOR STATE GOVERNMENTS (1974) provides an exemplar for a well-constructed ombudsman statute. The same organization also publishes a listing (with periodic updates) of both international and United States ombudsman and ombudsman-like programs, the latest of which is: OMBUDSMAN COMMITTEE OF THE AMERICAN BAR ASSOCIATION SECTION OF ADMINISTRATIVE LAW, OMBUDSMAN SURVEY JULY 1, 1974—JUNE 30, 1975.

nounced as in corrections.[40] Most so-called correctional "ombudsman" programs are more closely akin to the inspector general prototype of the military services than the Scandinavian model. Frequently the ombudsman is an employee of the institution or department he is supposed to monitor.[41] He is generally removable at the whim of the appointing authority.[42] Rarely is a correctional ombudsman permitted to make his recommendations public.[43]

Another critical shortcoming of correctional adaptations of the ombudsman program is the scope of jurisdiction. An ombudsman was never intended to take the place of an administrative system for handling complaints; rather, it was conceived as a supplement to such a system. As one experienced Scandinavian ombudsman has observed:

> The institution of Ombudsman will never be a substitute for such elementary safeguards as judicial control, internal control, and an administrative appellate system. It will always be a factor of additional guarantee. If the ordinary remedies do not function satisfactorily, the Ombudsman will be paralyzed by an overwhelming work-load.[44]

Yet an ombudsman, coupled with a grievance procedure, can monitor the effectiveness of the procedure, as well as undertake investigations on his own initiative.

C. Structured Multi-Level Grievance Procedures

Despite the appealing novelty of the ombudsman concept, most correctional systems have relied on a structured procedure involving the

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40. For a review of the early development in corrections of an ombudsman, *see* Tibbles, *Ombudsmen for American Prisons*, 48 N. DAKOTA L. REV. 383 (1972). *See also*, May, *Prison Ombudsmen in America*, CORRECTIONS MAGAZINE, Jan./Feb. 1975, at 45.

41. *See, e.g.*, Ohio Dept. of Rehabilitation and Correction, Administrative Reg. 847 (1972). After little more than two years of operation the Ohio ombudsman program was terminated in early 1975. Cited as principal reason for the termination was the fact that inmates used the ombudsman to bypass local management personnel with their problems, thereby circumventing institutional review of grievances where most problems could be resolved most efficiently and effectively.

42. *E.g.*, MINN. STAT. ANN. § 241.41 (Supp. 1976). The Minnesota Correctional Ombudsman is appointed by and serves at the pleasure of the governor. There are no clear statutory guidelines on causes for removal.

43. Only in Iowa is a purely correctional ombudsman authorized to publicize his rejected recommendations for the resolution of a specific grievance. IOWA CODE ANN. § 601G.17 (1975). Elsewhere, the ombudsman may be authorized to publish an annual report, which can include rejected recommendations.

44. Bexelius, *The Origin, Nature, and Functions of the Civil and Military Ombudsman in Sweden*, 377 ANNALS 10, 18 (1968). Mr. Bexelius served for twelve years as Sweden's ombudsman.

processing of complaints through institutional, departmental and, occasionally, independent levels of review.[45] Major differences between the ombudsman and a formal grievance procedure include the following: In a grievance procedure, the burden of pursuing a resolution through the various levels falls on the grievant. In an ombudsman program, once a complaint is filed, the grievant's role ends. A grievance procedure gives local administrators an opportunity to resolve local problems, without immediate recourse to individuals outside the administrative chain of command, while most ombudsman programs direct problems immediately to the department or independent individual acting as the ombudsman.

Like ombudsman programs, grievance procedures come in a wide variety of formats. Some are completely internal;[46] others involve outside review in some form;[47] others encourage inmate participation in the operation of the procedure;[48] some procedures have relatively tight time limits;[49] and some are virtually open-ended.[50]

IV. The Center for Community Justice and its Early Development of a Grievance Procedure for Corrections

In late 1970, a group of attorneys, ex-offenders and correctional officials founded the Center for Correctional Justice, a private, tax-exempt organization, to seek new ways to deal with prisoners' grievances. Out of the Center's operational experience and research efforts, a new model for correctional grievance mechanisms emerged. This model became the prototype for the CYA grievance procedure.

As its first project, funded by a demonstration grant from the Office of Economic Opportunity's Office of Legal Services, the Center designed and operated a pilot program for delivering legal services to prisoners and parolees in the District of Columbia. Through their presence in local institutions as independent outsiders, Center staff members came

45. Of 209 responding correctional institutions in one survey, 77 percent said that they had "a formal procedure for handling grievances of inmates." McArthur, *supra* note 31, at 43.

46. *See, e.g.*, Federal Bureau of Prisons Policy Statement 2001.6A (Oct. 18, 1974).

47. *See, e.g.*, Md. Ann. Code art. 41, § 204F (Supp. 1975) for a description of the Maryland Inmate Grievance Commission.

48. *See, e.g.*, Wis. Dept. of Health and Social Services, Division of Corrections, Inmate Complaint Review System (Jan. 31, 1973).

49. *E.g.*, Federal Bureau of Prisons Policy Statement 2001.6A (Oct. 18, 1974).

50. *E.g.*, Cal. Dept. of Corrections, Administrative Bulletin No. 73/49 (Oct. 17, 1973).

to serve as *ad hoc* ombudsmen, mediating disputes between inmates and correctional staff in areas such as medical treatment, mail censorship, transfers, and disciplinary rules and procedures.[51]

As a result of this early practical experience, Center staff members developed several hypotheses. One was that a formal procedure obligating administrators to respond in writing within prescribed time limits to prisoners' complaints provided the only means of avoiding endless delays during which officials promised to "look into" or "take care of" problems but never actually delivered definite responses. Second, inmates themselves, as opposed to prison staff or even well-meaning outsiders, had to be given major responsibility for defining and resolving their own complaints. Center staff observed that a large portion of inmates with whom they came in contact had spent most of their lives in one sort of institution or another. As true children of the state, they had been fed, clothed and regimented by the state and had little experience in dealing constructively with their own problems. Finally, although solutions to institutional problems could best be developed by those who must live with them, namely inmates and prison staff, there would be little motivation on the part of staff to compromise differences with inmates as long as the only appeal by inmates from rejection of complaints was to the system itself. Some review of decisions on grievances by someone independent of the correctional system was required.

With these hypotheses in mind, the Center began development in mid-1972 of a correctional grievance procedure based on research into similar mechanisms in other contexts. After a review of complaint handling procedures in government, schools, military and industry, the Center focused further study on grievance procedures in labor relations. At about the same time, the Center, along with the National Center for Dispute Settlement and the National Council on Crime and Delinquency, co-sponsored a Washington, D.C. conference on prison violence which brought together labor union leaders, correctional administrators, ex-offenders, arbitrators, mediators and correctional reformers. In addition to considering ways of dealing with violent crises, the conference wrestled with the problem of creating permanent, pre-

51. In 1973, the Center turned over its pilot legal services program for inmates to the Washington, D.C. Public Defenders Service. One of the premises of the pilot project was that prisoners were generally ignored by existing legal services organizations, which ought to be more cognizant of and responsive to prisoner-clients. The willingness of the D.C. Public Defenders Service to assume continuing responsibility for the program was a vindication of that premise. The Center has provided technical assistance to other private groups around the country interested in establishing similar prisoner legal services programs.

ventive means of handling conflict in corrections.[52] In this regard, the conference provided an opportune forum for the Center to explain and obtain expert critique of its hypoetheses and early design efforts. Finally, the meeting brought together people with diverse kinds of expertise who eventually were to contribute substantially to the CYA procedure.

In late 1972, the Center was invited by John O. Boone, Commissioner of Correction in Massachusetts, to develop a grievance procedure for the Concord Reformatory. What the Washington conference had accomplished in refining and sharpening design aspects of the procedure, the Massachusetts experience was to accomplish for the implementation phase of the procedure. With little more than an introduction to the institutional administration by the Commissioner, the Center plunged directly into the task of implementing the procedure it had designed to the last detail in its Washington, D.C. office.

After one or two sessions with inmates and staff, it became clear that the imposition of a design prefabricated elsewhere by outsiders simply would not worrk. Most of the remaining initial work of training and orientation in Massachusetts represented an effort to overcome the underlying tactical error of trying to get inmates and staff to use, understand and trust a procedure in the design of which they had played no part. After four arduous months, when recovery seemed almost within grasp, Commissioner Boone was dismissed and the superintendent at Concord was transferred to Walpole. Deprived of its principal administrative support, the procedure slipped into oblivion.

Simultaneously with the Massachusetts experiment, the Center conducted a survey of all adult correctional institutions in the United States to expand its knowledge about what was being done in the field to create grievance mechanisms for inmates.[53] The responses indicated that an overwhelming majority of correctional administrators were aware of the urgent need for such mechanisms. Moreover, they were willing to experiment with what, by correctional standards, were startling innovations.

V. The California Youth Authority Experiment

By the time California Youth Authority Director Allen F. Breed indicated to the Center in late 1972 that he was interested in pursuing the

52. For a report on the findings and recommendations of the conference, *see* O'Leary, Clear, Dickson, Paquin & Wilbanks, Peaceful Resolution of Prison Conflict: Negotiation as a Means of Dealing with Prison Conflict (1973).

53. McArthur, *supra* note 31.

development of a grievance procedure for institutions in his department, the Center had a fund of both research and operational experience. Mr. Breed designated a task force of departmental and institutional administrators to meet with Center staff and identify some basic principles or guidelines that would form a framework for the development within each institution of a procedure designed to meet its peculiar needs and structure.

Among the principles tentatively identified by the task force as essential were the following:

(1) Formal grievance procedures shall be available to all wards and may be filed by individuals or groups.

(2) Formal grievances shall be processed through one or more of the following levels:

(a) First level review (involving wards and staff),

(b) An intermediate level of administrative review, and

(c) Independent review.

(3) Time limits shall be as brief as reasonable to permit adequate review and response.

(4) Using specified forms, written responses, with stated reasons and within required time periods, shall be required at each level.

(5) To ensure full opportunity of expression, there shall be a hearing at which all parties are present during at least one level of the grievance process.

(6) The grievant shall be entitled to select a representative of his own choice to assist and/or represent the grievant's interest at all stages of the grievance procedure.

(7) The ward may appeal decisions from all levels except the independent review level.

(8) The grievant, if dissatisfied with second-level review, may request an independent review by a three-person panel comprised of:

(a) Grievant designee;

(b) Department designee;

(c) Neutral party mutually agreed upon and designated by (a) and (b), above.

(9) Decisions of the independent review board shall be advisory only.

(10) Decisions of the independent review board shall be made available to the public.

(11) No reprisals shall be taken against any person for participating in the procedures established.

These principles were to form the parameters for development of the first experimental procedure at Karl Holton School in Stockton, California during the latter part of 1973. Since then, essentially the same principles have been applied to the design of procedures in sixteen institutions, reception centers, forestry camps and community programs throughout the CYA, as well as in fourteen major correctional institutions for adults in New York. Through its research in other correctional institutions across the country, the Center has attempted to validate these principles as essential elements of successful grievance mechanisms and has found them present in every effective mechanism currently operating.[54]

These principles were the framework of policy for the establishment of CYA grievance procedures. The more difficult task of implementing that policy began immediately at Karl Holton School. With the help of the Center and its primary consultant, the Institute for Mediation and Conflict Resolution, wards and staff at Karl Holton designed a procedure, were trained in its use and, in turn, introduced it to their fellow employees and wards. By March, 1974, all living units at Karl Holton had operating procedures which were subjected to the close scrutiny of the departmental research division. By tracking grievances and interviewing users and non-users as well as staff and wards, researchers were able to assess the initial impact of the process.

The structure of the prototype procedure developed at Karl Holton consists of three levels. At the first level, a committee of two voting wards and two voting staff members is chaired by a nonvoting chairperson drawn from institutional middle management. This committee holds hearings at which the grievant, with a representative of his choice, explains and amplifies his complaint and his requested remedy. Relevant witnesses or experts may be invited to participate, but the format for each hearing is informal.[55]

After listening to the grievant, involved parties and other invited participants, the committee goes into executive session to consider the problem brought by the complainant.[56] This committee session, in

54. *See* Keating, McArthur, Lewis, Sebelius & Singer, Grievance Mechanisms in Correctional Institutions (1975); Keating, Gilligan, McArthur, Lewis & Singer, Seen But Not Heard: A Survey of Grievance Mechanisms in Juvenile Correctional Institutions (1974).

55. California Youth Authority, Departmental Requirements at 4, 10 (Sept. 22, 1975).

56. *Id.* at 12.

which a recommendation is framed to resolve complaints, has turned out to be the heart of the procedure. Success is dependent to a large extent on the mediating skill of the chairperson whose primary function is to serve as a catalyst for the development of mutually acceptable solutions to problems. Deprived of a vote, the chairperson must depend for effect on persuasion; he or she cannot impose a solution or cast a deciding vote. What occurs among the voting members is a process of negotiation in which representatives from the two major institutional constituencies seek to work out the problem defined in the grievance. The emerging compromise comes in the form of a recommendation for solution to the appropriate decision-maker, *i.e.*, the living unit supervisor, the superintendent or the director.

The second level of the procedure is designed to give institutional and departmental management an opportunity to respond to grievances unresolved at the first level. Upon the appeal of any party to a grievance, the institutional or departmental administrator reviews the committee's decision and, in turn, decides the matter.[57] The administrator may conduct whatever investigation is felt to be necessary to supplement the information provided by the committee.

Parties dissatisfied with second-level decisions may appeal to outside review, which consists of a hearing before a tripartite panel.[58] The grievant appoints one member to the panel; the superintendent or, in the case of departmental issues, the director, appoints one member. The chairperson is a professional arbitrator selected randomly by the American Arbitration Association, which maintains a roster of arbitrators and administers the panel hearings. Hearings are held at the grievant's institution and provide an opportunity for all parties to express and defend their positions. In an executive session following the hearing, the chairperson polls the panel and undertakes to write the opinion for the panel. Exceptions to the opinion may be entered by other panel members.[59]

The panel's recommendation, which is advisory only, is forwarded to the superintendent or director, depending on whether the case deals with an institutional or departmental issue.[60] In order to limit the discretion of administrators in rejecting arbitration opinions, the CYA has

57. *Id.* at 4.

58. California Youth Authority, Grievance Procedures, Revised Guidelines for Independent Review 3.

59. *Id.* at 6.

60. *Id.* at 6.

issued specific guidelines which narrow the grounds on which an arbitrator's recommendation may be denied.[61]

The procedure is designed to force wards and line staff to work together to resolve problems at the lowest possible level. The nonvoting chairperson on the ward/staff committee is supposed to act as a mediator, thereby enhancing the problem-solving potential of the committee. The purpose of outside review is to impose on administrators, line staff and wards the need to be reasonable in their efforts to resolve grievances at the lower levels and to ensure wards that unresolved grievances will be heard and judged by truly independent individuals.

Other design features included the submission of disputes over jurisdiction to the procedure itself for decision;[62] an emergency time-frame for the handling of complaints that require immediate resolution;[63] a provision for representation of wards at each level of the procedure by staff, other wards or volunteers;[64] and, time limits that fix the maximum period for the handling of complaints and permit automatic appeal of grievances which have not been handled within the scheduled time limit.[65] A major administrative innovation was the introduction of the grievance clerk. The grievance clerk is a ward on each living unit who helps fellow wards fill out grievance forms, receives grievances, schedules first-level hearings, forwards appealed grievances, tracks grievances through the entire procedure and keeps cumulative records of grievances filed on each living unit.[66] The clerk quickly be-

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61. California Youth Authority, Departmental Requirements 12-13 (Sept. 22, 1975):

> Independent review recommendations to the Superintendent or Director are advisory; however, all such recommendations shall be approved unless, in the judgment of the Superintendent or Director, implementation would:
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> a. Be contrary to law; or
>
> b. Constitute physical danger to wards, staff, or the public; or
>
> c. Require the expenditure of funds not available to the Superintendent or Director. In all such cases where the recommendation is turned down, the Superintendent or Director shall set forth subsequent budget proposals indicating the priority of the recommendation relative to other budget requests.
>
> Any denial of an independent review recommendation by the Superintendent, not falling into one of the three categories set forth above, must be approved by the Director before it is final. The Director retains final authority on all personnel matters. The Director shall approve the outside review recommendation unless, in his judgment, such action would be detrimental to the welfare of the public or the effective operation of the institution involved.

Id.

62. *Id.* at 2.

63. *Id.* at 3-4.

64. *Id.* at 2.

65. *Id.* at 5-6.

66. For a list of information that is to be made available to all wards, see discussion of Ward Grievance Information System, *id.* at 20-24.

came a key element in the procedure of each living unit and the efficiency and enthusiasm of individual grievance clerks determines to some extent the success of a procedure in a particular unit. The clerk is an ever-present, credible source of information for fellow wards on the purpose, mechanics and impact of the procedure.

Design of the grievance procedure at Karl Holton School was followed by a deliberately paced implementation program that required just under six months. The procedure was introduced in increments just as it had been throughout the department. The first living unit of 100 wards received its training and orientation in September, 1973. George Nicolau, of the Institute for Mediation and Conflict Resolution,[67] led the first training session for elected wards and selected staff on the ward/staff committee, as well as for its first group of mediators. These trainees, assisted by Center staff, subsequently conducted orientation sessions for small groups of staff and wards in which every ward and staff member on the living unit had an opportunity to hear the purpose and mechanics of the procedure explained and to raise questions about its structure and probable effects.

This training and orientation process was duplicated in each succeeding Karl Holton living unit as it began operation of a procedure. The only difference was the increasing share of direct training responsibility shouldered by institutional people, both wards and staff, in each succeeding introductory session. By March, 1974, the procedure was operating throughout Karl Holton.

Operations of the procedure during the period from September, 1973 to July, 1974 were promising. Of the 279 grievances processed, 102 (36.6 percent) dealt with individual problems (*e.g.*, exclusion from a program or activity or denial of furlough); 131 (46.9 percent) involved complaints about policy (whether of the treatment unit, the institution, or the department); and 32 (11.5 percent) were complaints about specific staff actions or behavior.[68] In 68.1 percent of the grievances, the relief requested by the grievant was granted either in whole or in part; in the remainder of the cases, the resolution sought by the complainant was denied.[69]

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67. *See* Mr. Nicolau's article on the procedure, Nicolau, *Grievance Arbitration in a Prison: The Holton Experiment*, RESOLUTION OF CORRECTIONAL PROBLEMS AND ISSUES, Spring 1975, at 11.

68. California Youth Authority, Final Evaluation of Ward Grievance Procedure at Karl Holton School 7 (Nov. 1974).

69. *Id.* at 11.

These early results indicated that the process of mediation worked well in the correctional environment. Despite the expectation of many that virtually every inmate/staff committee hearing would result in an even split between irreconcilable factions, in only 11 cases (4 percent) was it necessary to pass the grievance to the next level for a decision because agreement could not be reached. The lower levels of the procedure functioned so well that only six grievances (2.1 percent) were appealed to outside review.[70]

Based on this record, the California Youth Authority decided to extend the procedure to all of its facilities. By mid-1975, the procedure was operating throughout the system with roughly the same efficiency it had in Karl Holton; by late 1975, more than 500 grievances a month were being filed by wards.[71] Of the 4,420 complaints filed in the first 26 months of operation of the procedure, 36.9 percent dealt with individual problems; 30.6 percent involved complaints about policy; and 22 percent were complaints about specific staff actions or behavior.[72] In 69.2 percent of grievances submitted, the relief requested by the grievant was granted in whole or in part.[73]

As of early 1976, the percentage of cases appealed to outside review had fallen to one percent.[74] The type of issue submitted to arbitration has varied widely, running from a dispute over medical care provided to an individual grievant to one ward's claim of a constitutional right to display politically unpopular paraphernalia in his room.[75] As of March 1, 1976, not a single disposition of a grievance under the procedure had been taken to either a state or federal court.

In late 1975, the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration (LEAA) designated the CYA procedure an "Exemplary Project." The Exemplary Projects Program of the LEAA seeks to identify outstanding criminal justice programs throughout the country, verify their achievements and publicize them widely. The independent research organization that evaluated the CYA procedure for LEAA cited the procedure's sophisticated design, cost effectiveness and careful consideration for the dynamics of change in large organizations as key ele-

70. *Id.* at 40.

71. California Youth Authority, Evaluation of the Ward Grievance Procedure in the California Youth Authority 8 (Dec. 1975).

72. *Id.* at 10.

73. *Id.* at 12.

74. *Id.* at 14.

75. For a general review of the cases submitted to arbitration under the procedure,

ments in its success.[76] In announcing the selection, LEAA observed that the CYA grievance procedure "has responded to more grievances . . . more efficiently at less cost than any other grievance mechanism currently operating in corrections. . . . ."[77]

The American Bar Association BASICS program[78] has identified the development of arbitration-model correctional grievance procedures as one of three criminal justice areas it will support in the coming year. The LEAA recently announced that it will devote a series of regional workshops to the dissemination of information about the arbitration-model procedure.[79] The CYA grievance procedure has generated a large and enthusiastic following.

Even more interesting is the possibility of the broader application of the CYA model to other areas. As development of the procedure has progressed, observers have become aware that it represents less a correctional reform that a bureaucratic or organizational one. As lawyers, judges and administrators search for ways to make institutions of government more responsive to the specific complaints of citizens, the principles embedded in the CYA procedure may well offer guidelines for success. Few citizens are as alienated from their "benefactors" as prisoners are from their keepers, yet the alienation, distrust and hostility that characterize the relationship between prisoners and correctional personnel are no longer foreign elements in the relationship between general citizens and the bureaucratic agencies of government.[80] The latter may have much to learn from the CYA experience.

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see Keating, *Arbitration of Inmate Grievances*, 30 ARB. J. 177 (1975).

76. ABT Associates Inc., Exemplary Project Validation Report: California Youth Authority Ward Grievance Procedure 22 (Aug. 1975).

77. Law Enforcement Assistance Administration Newsletter 4 (Dec. 1975).

78. Bar Association Support to Improve Correctional Services (BASICS) is an ABA program that seeks to involve local bar associations more actively in promoting improvement in correctional systems through grants to individual bar associations made possible by a substantial contribution from the Edna McConnell Clark Foundation.

79. Law Enforcement Assistance Administration, Request for Proposals No. J-008-LEAA06 (Jan. 1976).

80. *See, e.g.*, Nader & Singer, *Dispute Resolution . . . Law in the Future: What are the Choices?*, 51 CAL. STATE BAR J. 281 (Supp. 1976).