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CRIMINOLOGY

CORRECTIONAL ADMINISTRATORS ASSESS THE ADEQUACY AND IMPACT OF PRISON LEGAL SERVICES PROGRAMS IN THE UNITED STATES

ALBERT P. CARDARELLI* AND M. MARVIN FINKELSTEIN**

INTRODUCTION: CORRECTIONAL REFORM AND THE LEGAL RIGHTS OF INMATES

Rising rates of crime within the United States during the past five years have focused renewed attention on the question of law and order in a democratic society. Within this context, special emphasis has been directed to the ancient dilemma of achieving an ordered society without infringing upon the individual's sense of freedom and justice. This dilemma is of special importance to the criminal justice system, where critical issues revolve around the formulation of standards for criminal liability and the control of conduct defined by law as criminal.

While standards for classifying behavior as criminal always have created problems and conflicts between those who do the defining and those who are defined, the question of how criminal behavior, once observed, should be treated is even more controversial in nature.¹ The controversy is related to the premise that if the methods of treatment and control are ineffective or unsuccessful in reforming offenders, then the probability for continued observance of criminal activity will increase; the resultant effects on the social fabric of society will be quite predictable.

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This paper is a revised and expanded version of a national survey of correctional administrators and law schools contained in NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE, PERSPECTIVES ON PRISON LEGAL SERVICES: NEEDS, IMPACT AND THE POTENTIAL FOR LAW SCHOOL INVOLVEMENT (1972), available from the National Technical Information Service, U.S. Department of Commerce.

¹ For a review of the more relevant issues and controversies, see C. SCHERAG, CRIME AND JUSTICE: AMERICAN STYLE (1971). See also PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT ON CORRECTIONS (1967); A. MORRIS, CORRECTIONAL REFORM: ILLUSION AND REALITY (1972).

The most dramatic examples of the kinds of negative consequences that result from ineffective methods of treatment and control are to be found within the correctional institutions throughout the country. Prison riots, work-stoppages and sit-downs have become all too endemic for correctional administrators and have resulted in a new wave of prison reform movements among much of the public at large. New methods of treatment and control have been advocated and advanced by those who have a direct stake in the system itself, as well as by those whose economic well-being is not directly dependent upon the operational efficiency of the system.

Although the current eruption of prison disturbances is not a new phenomenon to correctional administrators, it comes at a time of growing interest and concern for the rights and obligations of offenders during periods of incarceration. This concern is especially evident in the insistence by the courts on greater legal protections for offenders, beginning with the sentencing process and extending through the procedures and regulations for parole.² Many view the traditional "hands off" policy of the courts regarding prison administration as a thing of the past.³ Whereas the major concern formerly was with those rights lost by an inmate, there has been a shift in interest to the rights retained by the lawfully incarcerated offender.⁴ This movement has resulted in increased time spent by

² F. COHEN, THE LEGAL CHALLENGE TO CORRECTIONS: IMPLICATIONS FOR MANPOWER AND TRAINING (1969).

³ See Barkin, *The Emergence of Correctional Law and the Awareness of the Rights of the Convicted*, 45 NEBRASKA L. REV. 669 (1966); Comment, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506 (1963); Symposium—*Prisoner's Rights*, 63 J. CRIM. L.C. & P.S. (1972) [hereinafter cited as *Symposium*].

⁴ See Tappan, *The Legal Rights of Prisoners*, 293 ANNALS 99 (1954), for an early and insightful discussion of the transformation in thinking regarding prisoner rights.

the courts on prisoner rights, and has led to the proliferation of legal services programs throughout the country.

A recent survey of the 143 law schools within the United States found that of the ninety-seven respondents, forty-two had prison legal services programs in operation.⁵ Furthermore, a follow-up investigation of the forty-six law schools that did not respond indicated an additional twenty-one schools with programs providing such services.⁶ This involvement in organized provision of these services is a relatively new development. Of the forty-two law schools with legal services programs, twenty-nine (70 per cent) commenced operations after 1968, and eleven began during the period 1966 through 1968. Two programs were initiated prior to 1966, one in 1964, and the earliest (University of Tennessee) in 1947.

The sharp acceleration in these programs reflects a mounting recognition by the courts, law schools, lawyers and the general public of the legal needs of prison inmates. However, the expansion of these programs is not without controversy. Prison legal services programs have been regarded by many as a challenge to traditional thinking on the part of correctional administrators with regard to the legal status of prisoners. In many cases, such programs have led to controversy and conflict among lawyers, correctional personnel and the inmates of the institutions.⁷ Inasmuch as the delivery of such services occurs within a setting which is not only uniquely different from any other the lawyer is likely to encounter, but one which may have long-range effects on the character of the correctional process itself, it is of particular importance that information be available so that the services offered reflect legitimate inmate and correctional system needs.

A recent "Symposium on Prisoner Rights," published in this journal,⁸ reviews many of the issues and problems associated with legal intervention in the correctional systems, and stresses the need for

increasing judicial intervention whenever necessary to assure the fundamental rights of inmates.⁹ Such intervention may be essential if the violence that occurred at Attica and other correctional institutions is not to recur in the future. To assure a state of stability, it is incumbent that we not only have knowledge as to how the courts and inmates perceive legal services, but that we be able as well to convince correctional officials that guaranteeing prisoner rights is not antithetical to the correctional goals of control and rehabilitation. This report provides an initial purview of how correctional administrators across the country view the development and implementation of legal services for inmates. It also provides some important insights into the character of the interpersonal relationships that develop between correctional personnel and the attorneys who supply legal services to inmates.

A NATIONAL SURVEY OF CORRECTIONAL ADMINISTRATORS

The present survey attempts to determine the impact of prison legal services programs on correctional institutions as perceived by those whose primary responsibility is the day-to-day administration of the institutions. A further objective is to develop a profile of the attitudes of correctional administrators regarding the function of these services on offender rehabilitation. Interest in this latter area was aroused by the opinions of many officials that legal services for inmates can make a positive contribution to the process of rehabilitation.¹⁰ To accomplish these objectives, questionnaires were forwarded to three different categories of correctional personnel: (1) the Administrator or Commissioner of Corrections in every state, (2) the wardens of 196 state correctional institutions throughout the country with inmate populations composed primarily of adult, male felons and (3) the treatment directors of the same 196 institutions. Excluded from the survey were prison farms, road-gang facilities, medical-classification facilities and training schools.¹¹

⁹ See Harvard Center for Criminal Justice, *Judicial Intervention in Prison Discipline*, 63 J. CRIM. L.C. & P.S. 200, 228 (1972) [hereinafter cited as Harvard Center].

¹⁰ See Ingraham, *Will Legal Relief for Inmates Prevent Violence in Correctional Institutions*, CRIMINAL JUSTICE MONOGRAPH, DEPARTMENT OF JUSTICE 33 (1973), for some opposing views.

¹¹ Mailing lists were derived from 1970 DIRECTORY: CORRECTIONAL INSTITUTIONS AND AGENCIES OF THE UNITED STATES OF AMERICA, CANADA, AND GREAT BRITAIN.

⁵ CENTER FOR CRIMINAL JUSTICE, BOSTON UNIVERSITY, PERSPECTIVES ON PRISON LEGAL SERVICES: NEEDS, IMPACT AND THE POTENTIAL FOR LAW SCHOOL INVOLVEMENT, Chapter IV (1972) [hereinafter cited as PERSPECTIVES ON PRISON].

⁶ The forty-six law schools which did not submit responses were examined in DIRECTORY OF LAW STUDENTS IN CORRECTION PROGRAMS (1971), and SURVEY OF CLERICAL AND OTHER EXTRA-CLASSROOM EXPERIENCES IN LAW SCHOOLS (1971).

⁷ See Statsky, *Teaching Corrections Law to Correctional Personnel*, 37 FED. PROBATION 42-47 (1973).

⁸ See *Symposium*, *supra* note 3.

Of the fifty questionnaires sent to state administrators, thirty-one, or 62 per cent, were returned; for wardens and treatment directors, the response was 102 (52 per cent) and 104 (54.6 per cent) respectively. While the rates do not vary widely, differences were noticeable when the returns were analyzed by geographic region. The lowest rates of return (47 per cent) were for wardens and treatment directors from the southern region of the country. This may reflect a greater unwillingness on their part to accept the worth of these programs, or it may simply reflect the greater degree of correctional decentralization that exists in the southern states. Whatever the reasons, the findings of the present survey represent the views of a significant number of correctional administrators across the country and should be taken into consideration in the future development of such programs.¹²

RESULTS

The specific purpose of the national survey was to elicit from those with the most immediate responsibility for the administration of prisons (wardens, treatment directors and state commissioners or administrators) their views and perceptions regarding the impact of prison legal services, as well as their attitudes concerning the continued introduction and/or expansion of these programs. For analysis, questions have been categorically grouped in the following subject areas: (1) extent and adequacy of prison legal services; (2) impact of prison legal services on internal order and management; (3) impact of prison legal services on the population; (4) support of prison legal services programs; and (5) nature of interaction between attorneys and correctional administrators.

(1) *Extent and Adequacy of Prison Legal Services*

Any attempt to analyze a phenomenon of relatively recent development presents problems in obtaining adequate data. This is especially true for prison legal services, where the rapid expansion of prison legal services programs across the United States has made it difficult to arrive at adequate quantitative information.

Although current figures are unavailable, a recent analysis of prisoners' legal services estimated the total annual volume of legal and quasi-legal

proceedings involving prisoners in excess of 200,000, including 17,000 direct felony appeals, 27,500 parole revocation hearings, 84,000 parole release determinations and 60,000 detainer problems.¹³ This estimate does not include figures on divorce, custody, support and other civil cases; petitions to prohibit unconstitutional practices by correctional officials; clemency or deportation proceedings; prison administrative hearings on such matters as discipline or classification; and several other matters generally requiring legal advice.¹⁴

It is further estimated that one post-conviction collateral motion or petition is filed for every nine or ten federal prisoners, and that 30 per cent or more have detainers pending against them.¹⁵ In addition, it has been determined that over 18 per cent (16,000 cases) of all civil actions (87,300 cases) filed in the federal district courts in 1969 consisted of *habeas corpus* and other prisoner petitions and constituted the largest single category of civil cases.¹⁶ Thirty years earlier, such cases constituted less than 1.5 per cent (625 of a total of 44,209 cases) of the civil caseload in the federal district courts.¹⁷ This trend is evident even within the circuit courts of appeals where, for the year 1968, it was found that 19 per cent of all appeals from the federal district courts were from decisions in cases involving *habeas corpus* and other prisoner petitions, and 23 per cent were direct appeals in criminal cases.¹⁸ Furthermore, although little overall change occurred in total civil cases filed in the federal district courts between 1966 and 1968, petitions by federal inmates to those courts increased by almost one-fourth, and state

¹³ These figures are based on 1965-68 estimates, projected without allowance for increased volumes in recent years. See Jacob & Sharma, *Justice After Trial: Prisoner's Need for Legal Services in the Criminal Correctional Process*, 18 KAN L. REV. 493 (1970). The detainer problems considered in this total figure are those of penitentiary inmates, not misdemeanant offenders.

¹⁴ *Id.* at 507-08.

¹⁵ *Id.* at 506. See also Note, *Effective Guaranty of a Speedy Trial for Convicts in Other Jurisdictions*, 77 YALE L.J. 767 (1968).

¹⁶ These figures were released in an address by William Eldridge, Director of Research, Federal Judicial Center, meeting of the American Bar Association Commission on Correctional Facilities and Services, 1971. The figures were derived from DIRECTOR OF ADMINISTRATIVE OFFICE OF U.S. COURTS, ANNUAL REPORTS (1969). For 1968 figures, see *id.* at 110, 128 (1968).

¹⁷ JUDICIAL CONFERENCE OF THE UNITED STATES, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF UNITED STATES COURTS 71, Table 4 (1970).

¹⁸ *Id.* at 97-102.

¹² Unless otherwise noted, *correctional administrators* includes the three groups of respondents: wardens, treatment directors and state commissioners. Because of the limitations of time and money, follow-up questionnaires were not possible.

inmate petitions increased by one-third. This burgeoning of prisoner litigation is a fact that has been noted in the state courts as well as in the federal court system.¹⁹

The present survey attempted to construct rough estimates of the rate at which prison inmates receive legal services as perceived by correctional administrators. To accomplish this, wardens were asked to estimate the percentage of inmates in their institutions who sought and received free legal assistance from available legal services delivery systems during a twelve-month period preceding the survey. Approximately 85 per cent of the wardens estimated that fewer than 25 per cent of the inmates in their institutions received such assistance, while almost half placed their estimate at 10 per cent; only two of the 102 wardens indicated a figure in excess of 50 per cent. An average for all institutions amounts to slightly more than 15 per cent, or about one in every six inmates.

Among those institutions without a prison legal services program, over half claimed that efforts were currently being made to improve the level of legal aid to the inmates. These efforts were in the form of volunteer law students and attorneys, and/or the expansion or establishment of a law library within the institution.

Although the foregoing data suggest an apparent low level availability of legal assistance to indigent inmates, the *sufficiency* of such services cannot be measured in the absence of knowledge of inmate needs, the quality of services which are available, etc. For this reason, the responses of correctional administrators to questions concerning the present adequacy of prison legal services are of special importance. When asked to indicate their agreement or disagreement with the statement that "the availability of legal assistance for indigent inmates is presently adequate," approximately 67 per cent of state administrators, 65 per cent of wardens, and 87 per cent of treatment directors voiced disagreement. It was the collective judgment of over 76 per cent of the correctional administrators included in this survey that prison legal services are *not* now adequate within the correctional institutions in this country.

Although this is a subjective judgment, it is entirely consistent with the emerging sentiments of the Bar and of the Judiciary, and reflects a shared assumption that the delivery of prison legal

services has not yet reached a level that is considered to be adequate either in quality or availability.

(2) *The Impact of Prison Legal Services on Internal Order and Management*

One of the most urgent concerns confronting correctional administrators throughout the country is the establishment of a climate of inmate trust and confidence so necessary to the preservation of internal stability. Because the prison setting is unique, it has been argued that prison legal services, while desirable in concept, give rise to practical effects that may be at variance with the accepted goals and responsibilities of prison administrators. Even under the best of circumstances, a multiplicity of barriers to internal stability have become so endemic to the correctional process that reform-oriented administrators have difficulty trying to overcome their negative effects. Accordingly, administrators must often settle for even the very modest advances which they are able to bring about. Anything that appears to threaten the delicate equilibrium of the institution, or the preservation of internal order, will be perceived as a matter of the greatest consequence, and may be subject to the fullest resistance not only by correctional staff and personnel, but by inmates as well.

Along these lines, it has been suggested that legal services could result in insulating inmates from the full impact of internal sanctions, while reinforcing their resolve concerning real or imagined grievances. In addition, as Kimball and Newman note:

The recent trend in prisoner petitions involves challenges to some traditional *discretionary* powers of correctional administrators, thereby seeming to threaten correctional autonomy and to call into issue the professional worker's claim of expertise.²⁰

The impact of prison legal services on correctional personnel is demonstrated in a recent study of judicial intervention in an adult correctional institution in Rhode Island.²¹ The study indicated that classification counselors who represented inmates at disciplinary board hearings experienced major role conflicts because of their designated duties.²² If they won a case for the inmate, they

²⁰ Kimball & Newman, *Judicial Intervention in Correctional Decisions: Threat and Response*, 14 CRIME & DELINQUENCY 1 (1968).

²¹ See Harvard Center, *supra* note 9, at 208.

²² *Id.*

¹⁹ MacMillan, *Trial Court and Prison Perspectives on the Collateral Post-Conviction Relief Process in Florida*, 21 U. FLA. L. REV. 503 (1969).

TABLE 1
NUMBER AND PERCENTAGE OF CORRECTIONAL ADMINISTRATORS AGREEING
TO STATEMENTS RELATING TO CORRECTIONAL PROCESS

Statement Presented	State Administrators		Wardens		Treatment Directors		Totals*	
	Agree	Disagree	Agree	Disagree	Agree	Disagree	Agree	Disagree
Prison legal services will tend to increase inmate hostility against the institution.	3 (9.6)	28 (90.3)	13 (12.8)	82 (89.3)	11 (10.2)	94 (87.8)	27 (11.2)	204 (85.0)
Prison legal services would provide a safety valve for grievances of inmates against the institution.	24 (77.4)	7 (22.6)	78 (76.5)	24 (23.6)	91 (85.0)	16 (15.0)	193 (80.4)	47 (19.6)
Prison legal services would help to reduce inmate tensions that are a result of unresolved legal problems.	29 (93.5)	2 (6.4)	90 (88.2)	11 (10.8)	101 (94.4)	5 (4.7)	220 (91.7)	18 (7.5)
Prison legal services would tend to have adverse effects on prison discipline and security.	5 (16.1)	26 (83.9)	16 (15.7)	80 (78.4)	11 (10.2)	93 (86.9)	32 (13.3)	199 (82.9)
Prison legal services would help to reduce the harmful effects of inmate power structures.	28 (89.3)	3 (9.7)	76 (74.5)	24 (23.5)	92 (86.0)	14 (13.1)	196 (81.7)	41 (17.1)
Prison legal services would provide a positive experience with the legal system which might contribute to rehabilitation.	27 (87.1)	4 (12.9)	81 (79.4)	20 (19.6)	90 (84.1)	15 (14.0)	198 (82.5)	9 (16.2)

* For purposes of facilities, the categories strongly agree and strongly disagree have been collapsed into the two major categories noted in the table. Non-responses have been excluded from totals.

were resented by staff; when they lost a case, they were resented by the inmate.²³ Furthermore, it was also found that most inmates expressed dissatisfaction with the representation provided by the counselors at these hearings. Both of these findings point to the critical need of providing legal services in a manner that minimizes the potential hostility of staff toward those who provide legal services. While outside attorneys tend to be viewed with suspicion by correctional staff, it appears to be a more efficacious alternative than having "insiders" representing the inmates. In the latter case, there is always the distinct and real possibility that inmates will not be represented adequately and will come to view the legal process as being more in favor of the institution than the inmate. The negative consequences of this process need not be reiterated here.

To determine the prevalence of the attitudes referred to by Newman and Kimball, respondents were asked a series of questions relating to the perceived impact of legal services on internal ad-

ministration and order. The response to the question of whether legal services would "tend to increase inmate hostility against the institution"²⁴ indicated that less than 12 per cent believed prison legal services had the undesired effect of increasing inmate hostility against the institution (see Table 1). Surprisingly, almost 85 per cent of those responding disagreed with the above presented statement. This positive view of prison legal services is further evident in the findings showing that 80 per cent of the respondents believe "legal services would provide a safety valve for grievances (real or imagined) against the institution," and would, therefore, make a positive contribution to the maintenance of internal order (see Table 1). One warden expressed his opinion that "the major

²⁴ Respondents were asked to "assume that such a system (for the delivery of legal services to indigent inmates) would offer assistance in a full range of legal problem areas including criminal (i.e., outstanding warrants, collateral attack, etc.), civil (i.e., good time and sentence computation, parole, disciplinary matters, etc.). Assume further that such a system would provide services ranging from information and advice to representation in a trial or appeal."

²³ *Id.*

contribution would be in convincing the offender that he has not been victimized by society and the judicial system." Respondents who expressed agreement with the statement predicated their responses on the belief that adequate channels for the articulation of grievances presently exist and that an extension of inmate power might serve to increase the perception of grievances and would, as one treatment director noted, "provide a blackjack for agitators."

Moreover, when asked whether legal assistance to inmates would have any effect in "reducing inmate tensions created by unresolved legal problems," almost 92 per cent of the respondents replied in the affirmative (see Table 1). One warden claimed that the legal assistance program in his institution "has proven to be very effective in relieving tensions through problem solving, be it real or superficial."

Finally, respondents were queried as to whether prison legal services "would tend to have an adverse effect on prison discipline and security." Our results indicated that 83 per cent of the respondents foresaw no such adverse effect (see Table 1). While some state administrators acknowledged in their responses that isolated discipline problems could result, they believed that there would be little effect on the general population. Along this vein, treatment directors claimed that such programs had a favorable impact on internal discipline. One treatment director, echoing the sentiments of many others, noted:

The staff of this institution feels that such legal assistance is a great asset in maintaining order within the institution. Such a program helps the inmate to expel the feeling of being 'lost', and helps to get across to the inmate that he does have personal worth.

In sum, more than 80 per cent of the respondents believe that prison legal services would not have any negative impact on internal order, and instead emphasize the positive effects of such programs.

(3) *Impact of Prison Legal Services on the Inmate Population*

In his classic analysis of the inmate society within a maximum security prison, Gresham Sykes analyzed the "pains of imprisonment" that inmates in correctional institutions must endure throughout their incarceration.²⁵ These pains or deprivations,

which include the inmate's loss of liberty, goods and services, heterosexual relationships, security and autonomy, have important implications, not only for his physical comfort, but for his sense of self-worth as well. Sykes notes:

They [the deprivations] carry a more profound hurt as a set of threats or attacks which are directed against the very foundations of the prisoner's being. The individual's picture of himself as a person of value—as a morally acceptable, adult male who can present some claim to merit in his material achievements and his inner strength—begins to waver and grow dim. Society did not plan this onslaught, it is true, and society may even 'point with pride' to its humanity in the modern treatment of the criminal. But the pains of imprisonment remain and it is imperative that we recognize them, for they provide the energy for the society of captives as a system of action.²⁶

Since it is very likely that the imprisonment of offenders will be with us for some time, it has been suggested that the provision of legal services to inmates may make a contribution toward reducing these pains of imprisonment, while strengthening positive factors beneficial to the process of rehabilitation. Underlying this assumption is the premise that the incarcerated offender is often beset with frustrations which ultimately handicap him in his efforts to successfully rejoin the community upon release, and that legal problems of varying descriptions often compound these frustrations. According to one analysis:

The inability to alleviate these problems can have an adverse effect on inmate adjustment. Efforts to rehabilitate inmates can easily be frustrated by external events which are unsettling to the inmate and cause him to become embittered.²⁷

The goal of the correctional system, ideally, should be to deter the development of criminal behavior, and at the same time to encourage the inmate to assume skills in a life style acceptable to the broader society. In practice, however, all too often this is not the case. There are many unintended by-products of institutional life which may militate against the inmate's success in reintegrating himself into the community upon release. With

also Schwartz, *Deprivation of Privacy as a "Functional Prerequisite": The Case of the Prison*, 63 J. CRIM. L.C. & P.S. 229 (1972).

²⁵ SYKES, *supra* note 25, at 79.

²⁷ Comment, *Resolving Civil Problems of Correctional Inmates*, 1969 WIS. L. REV. 574, 577 (1969).

²⁵ See G. SYKES, *THE SOCIETY OF CAPTIVES: A STUDY OF A MAXIMUM SECURITY PRISON* (1971). See

links to the outside world severed or impaired, internal institutional stimuli and values assume a dominant role in shaping his behavior and thinking. Among these, the so-called "inmate code" and inmate power structures may weigh heavily in reinforcing pre-existing antisocial attitudes and in creating new ones.²⁸ Although this inmate "society" or "culture" may vary from one institution to another, research has shown that the inmate code is basically antithetical to the professed goals of correctional administrators.²⁹ This code is based upon normative imperatives held forth as guides for the inmate in his relationship with fellow inmates and custodians, and includes several beliefs that provide the basis for five major dictums: First, do not interfere with inmate interests, such as "ratting" on a fellow inmate. Second, do not engage in quarrels or arguments with fellow inmates. Third, do not exploit inmates, especially through force. Fourth, do not lower one's conception of self. Lastly, do not give prestige or respect to the custodians.³⁰ These so-called maxims, while expressed in many diverse ways, generally provide the focal components of the inmate code. The functional significance of this code, of course, lies in its ability to ward off, or at least neutralize, the moral condemnation that legitimate society hurls at its adjudicated offenders. Furthermore, it is the inmate code which provides the foundation for the development of role models in the prison system. One can distinguish many of these roles on the basis of whether the inmate is conforming to, or deviating from, the established inmate code. Those who deviate can be viewed as performing an alienative role, which in some respects is disruptive to the equilibrium that the inmate society attempts to maintain. More importantly, however, research has shown that strict adherence to the inmate code, while alleviating the pains of imprisonment, also decreases the likelihood of successful rehabilitation.³¹

As noted earlier, one of the major problems encountered in any correctional program of rehabilitation involves the degree of influence that the inmate power structure has on the individual inmate. As long as the inmates gravitate toward a

²⁸ Wellford, *Factors Associated with Adoption of the Inmate Code: A Study of Normative Socialization*, 58 J. CRIM. L.C. & P.S. 197 (1969).

²⁹ *Id.*

³⁰ *Id.*

³¹ See Schwartz, *Pre-Institutional vs. Situational Influences in a Correctional Community*, 62 J. CRIM. L.C. & P.S. 117 (1969).

normative system that is antithetical to the internalization of a pro-social code, the process of rehabilitation will be impeded. In this context, prison legal services may be instrumental in diluting some of the underlying beliefs which sustain and perpetuate the inmate value system, by (1) minimizing the flow of misinformation which can confirm his sense of victimization; (2) offering pro-social outlets for the disposition of legal claims; (3) providing a counterweight to the prevailing inmate view that the criminal justice system is "stacked" against him; and (4) maintaining opportunities for effective solution of affairs considered to be extra-institutional (e.g., civil law problem areas). In addition to the positive effects on these organizational aspects of the institution, the provision of legal services may also diminish the inmate's dependence on services made available through representatives of the inmate power structure.

In this regard, our findings show that over 80 per cent of correctional administrators believe that legal services would help to reduce the harmful effects of inmate power structures, especially with regard to jailhouse lawyers (see Table 1). Moreover, a similar amount (82 per cent) agree that prison legal services might contribute to the rehabilitative prospects of inmates by providing a positive experience with the legal system (see Table 1). Several respondents who expressed the minority view argue that legal services for inmates could have a detrimental effect on the rehabilitative process by diverting the inmate's attention from the difficult task of restructuring his basic attitudes and values. As one warden noted:

Legal assistance to prisoners tends to support their hopes that there may be no need for them to change after all. The law is adversary, and the [lawyer] assisting a prisoner is his advocate, his champion, and attempts to help him make his point of view prevail. It is precisely here that the problem comes [because] the prisoner's real problem is his point of view [and] that point of view will continue to get him into trouble as long as it persists

In this same vein, one state administrator noted that "the degree of legal intervention has reached the point where many inmates are looking only to legal loopholes for release rather than the rehabilitative route." A number of respondents, primarily wardens, tended to concur in this view, as summarized in the following comment: "An inmate who continues to litigate throughout his confinement

TABLE 2
NUMBER AND PERCENT OF TREATMENT DIRECTORS AGREEING TO STATEMENTS RELATING PRISON .
LEGAL SERVICES TO THE REHABILITATIVE PROCESS

Statement Presented	Response to Statement		Totals (Across)
	Agree	Disagree	
Unresolved and unassisted legal problems play a significant role in effecting the inmate's ultimate rehabilitation and reintegration into society.	104 (97.2)	3 (2.8)	107 (100.0)
Such unresolved and unassisted legal problems are impediments to effective participation in treatment and rehabilitative services.	104 (97.2)	3 (2.8)	107 (100.0)
Negative inmate attitudes toward law and the legal process have a harmful effect on prospects for rehabilitation and reintegration.	104 (97.2)	3 (2.8)	107 (100.0)
A good prison legal services program might contribute to an improvement in inmate attitudes toward law and the legal process.	101 (94.4)	5 (4.7)	106 (99.1)
The breakdown of ongoing relationships with the outside world and an excessive dependence on institutional social and value systems is a negative factor for rehabilitation.	102 (95.5)	4 (3.7)	106 (99.1)
A good prison legal services program might contribute to a reduction of such dependence.	92 (86.0)	11 (10.3)	103* (96.3)

* Totals do not include non-responses.

oftentimes is unable to participate in self-betterment programs."

To further examine the relationship between prison legal services and offender rehabilitation, a series of six questions was directed solely to treatment directors (see Table 2). Although not un mindful of potential conflicts between the pursuit of legal remedies and a commitment to treatment channels, treatment directors appeared to conclude that prison legal services can have a substantial positive impact on rehabilitation. In contrast to the above-reported minority views, treatment directors were overwhelmingly (97 per cent) of the opinion that an inmate's eventual rehabilitation and successful reintegration into society are significantly affected by unresolved legal problems, and that such unresolved legal problems are an impediment to effective participation in treatment programs. Respondents also pointed out that outstanding warrants and detainers made it very difficult for inmates to engage in productive post-release planning.

Furthermore, 97 per cent of the treatment directors believe that negative inmate attitudes toward law and the legal process are a detriment to rehabilitation and that a good legal services program might improve such attitudes. One director claimed that such services

indicate to the inmate that we care—that if his rights are violated he will get relief—that we are

not solely bent on punishment—that we have no 'personal' interest in prolonging his confinement if he is otherwise qualified for release.

Overall, our results show that most treatment directors not only view legal services for inmates as an integral component of corrections, but as a necessary adjunct to rehabilitation.

The forecasted positive impact of prison legal services on the inmate population presupposes, of course, that the program will meet minimal performance standards. If not, respondents warned that the effects on inmates could be more adverse than the absence of any legal services in the institution. Among the program characteristics which respondents mentioned as necessary were the following: (1) speedy case processing (including early action on requests for legal assistance, efficient case management and periodic status reports to the inmate); (2) consistency (*i.e.*, avoidance of haphazard provision of services and seemingly arbitrary procedures); and (3) independent status (*i.e.*, should not appear to be an arm or tool of the administration).

Although research into the question of legal services and rehabilitation has not been extensive, the experience of many persons associated with prison legal aid programs has, according to Silverberg, confirmed the belief that "clarification of the legal process as it has been applied to him [the inmate] . . . removes festering doubts in many cases

TABLE 3
NUMBER AND PERCENTAGE OF CORRECTIONAL ADMINISTRATORS AGREEING TO STATEMENTS RELATING
TO PRISON LEGAL SERVICES AND CORRECTIONAL SUPPORT

Statement Presented	State Administrators		Wardens		Treatment Directors		Totals*	
	Agree	Disagree	Agree	Disagree	Agree	Disagree	Agree	Disagree
All arguments (pro and con legal services) considered, I support the creation and/or expansion of prison legal services programs.	30 (96.7)	1 (3.2)	92 (90.2)	9 (8.9)	104 (97.2)	3 (2.8)	226 (94.2)	13 (5.4)
Prison legal service programs would create unnecessary burdens on correctional staff.	5 (16.1)	26 (83.9)	24 (23.6)	71 (69.6)	25 (23.4)	78 (72.9)	54 (22.5)	175 (72.9)
Lawyers are generally sympathetic to the problems of correctional administrators.	17 (54.8)	14 (45.1)	56 (54.9)	42 (41.1)	**	**	73 (54.9)	56 (42.1)

* Non-responses excluded from totals.

** Not asked of treatment directors.

and may help set a man's sights on rehabilitation rather than revenge."³²

(4) *Correctional Administrators and Future Support for Prison Legal Services*

In addition to the impact of prison legal services on the inmate culture, we were most interested in the degree of support for the continued expansion of these services in corrections. Our results show a high degree of support (94 per cent) among correctional administrators for both the creation and expansion of prison legal services programs in the United States (see Table 3). This striking support is even more impressive when examined in conjunction with the data on the perceived burden that would be created with the introduction of prison legal services. It is universally acknowledged that corrections in the United States is severely inhibited by serious manpower, space and other resource deficiencies. Because of this state of affairs, the establishment of any program, however worthwhile, may be negated if the strain which it imposes upon existing resources would undermine the achievement of other high-priority correctional goals.

In light of these admitted problems, respondents were asked if they believed legal assistance programs "create unnecessary burdens on staff and space allocation." Our results indicate that only 25 per cent of the respondents believe such services

create unnecessary burdens on institutional resources (see Table 3). Most believe that it creates no additional burden. In fact, a number of respondents expressed the opinion that such services would actually cut down on staff workload and increase overall efficiency. One treatment director claimed that such services

would free staff and administration to spend more time in their primary role function and areas of competence. We currently spend much of our time listening to legal complaints.

Another director noted the beneficial role of these services with the following remarks:

I feel that increased litigation by inmates has imposed additional work on staff, but it has caused administration to take a closer look at its own practice and procedures. This is beneficial even though taxing on the staff.

Still others stated that prison legal services would "assist staff in keeping abreast of legal matters and changes" and "could also provide another aid to management of prisoners as a whole." The general views on this issue were best summarized by a state administrator who claimed that "a burden might be created, but it is certainly not an 'unnecessary' one."

In addition to the above concerns, our survey attempted to determine whether correctional administrators perceive legal services to be an integral part of a good correctional system. Although

³² See Silverberg, *Law School Legal Aid Clinics*, 117 U. P. A. L. REV. 970 (1969).

most questions elicited a strikingly high rate of support for prison legal services, it was of importance to determine whether this level of support for the principle of prison legal services would remain constant when the issue was cast in terms of the responsibilities of the correctional system itself. Accordingly, the respondents were asked if adequate prison legal services are a necessary component of a good correctional system. Our results show that nine out of ten of the respondents replied in the affirmative. Only fourteen of the total 240 respondents indicated that it is not a necessary component of corrections. Overall, the results indicate both acceptance and support for the institutionalization of prison legal services programs in modern correctional systems.

(5) *Correctional Administrators and Prison Legal Services Personnel*

If, as the foregoing data strongly suggest, correctional administrators are highly receptive to the introduction of prison legal services delivery systems, how does one explain the commonly held view that these individuals are not, by and large, hospitable to legal services? One clue to this apparent inconsistency may be found in reviewing the material on the attitudes of correctional administrators toward lawyers and legal services personnel.³³ When asked whether "lawyers are sympathetic to the problems of correctional administrators," almost 45 per cent of the state commissioners and 40 per cent of the wardens stated that lawyers are generally *not sympathetic* (see Table 3). This rate of unfavorable response far exceeds that elicited on any other item contained in the survey and, when considered with the comments submitted by correctional administrators, indicates that *barriers to successful implementation may emerge more at the level of interpersonal relationships than from any generalized opposition to the provision of legal services to prison inmates*. In this survey, greater concern was expressed over the quality of legal services attorneys than any other issue. Adverse comments were widespread and were shared by many respondents.

Many respondents, most of whom favored prison legal services, stressed the need for "maturity," "motivation" and "careful selection" of the participating attorneys and emphasized "the necessity of a strictly professional legal approach." One state administrator warned that if legal services are not provided "by responsive and reputable

legal advisors . . . more problems will arise than presently exist."

Others complained that lawyers often enter the institutions as uncooperative antagonists of the administration and hostile to the correctional system. A warden expressed the following concerns about prison legal services:

Legal services in a prison is fine, but by all means prison authorities who are responsible in running a prison should be consulted in all matters. Many problems and legal matters can be handled with the least time and confusion. Bypassing prison administration will cause a breakdown in authority by the inmates.

One treatment director claimed

. . . that many legal services attorneys who visit institutions present themselves as an enemy of the institution and thus they project themselves as being fighters of the system rather than legal advisors. . . . We certainly need additional legal services. However, we need lawyers content to work within the system, not those dedicated to changing the system through tactics such as we so often see in OEO-sponsored legal aid programs.

Still others believed that the lawyers were more concerned about their "own causes" rather than those of the inmate. Thus, one treatment director claimed that a fault of the legal assistance programs is that

young lawyers dedicated to violent revolution get into these services, do not care about the inmates' cases, but only about their doctrinaire programs.

Another repeated this theme and argued that legal services

may tend to further open the door to attorneys who are more interested in 'social causes' than in the legal rights of their inmate clients, i.e., seek to 'use' the inmate to further ideologies.

Still another alleged that "too many law students and lawyers today have less respect for law and order than do inmates" and a disgruntled warden observed:

The young obnoxious lawyers from the [name of a legal services unit] could help the system by attending a few sensitivity sessions and changing their ways. Change the system from within. Work with administrators who are trying to improve.

The results of our national survey reveal a startlingly high level of support among correctional administrators for the creation of, or expansion of, prison legal services programs in the United States.

³³ See Harvard Center, *supra* note 9.

Equally impressive, the respondents viewed prison legal services as a necessary component of a good correctional system. Important as it is, this acceptance of prison legal services in principle is not necessarily tantamount to acceptance in practice, as evidenced by the considerably less favorable respondent attitudes towards lawyers.

The somewhat unfavorable attitude of correctional administrators toward lawyers was not reciprocated by the responses elicited from the directors of legal services programs in the Law School Survey mentioned earlier in the text. In assessing the support of various groups for prison legal assistance programs, the directors of these programs ranked correctional administrators second only to law students for their support, and above law school faculty and administrators, the judiciary and the organized bar. Comments, when made, were quite favorable, and prison administrators were described as "very cooperative" and "bending over backwards to help us."³⁴

SUMMARY AND CONCLUSIONS

A review of the data presented in the foregoing sections compels us to conclude that correctional administrators appear to be prepared to accept, at least in principle, the implementation of prison legal services programs, and to concede within the correctional process itself a formal role to organized legal services delivery systems. Moreover, each of the respondent groups displayed an impressive independent rate of favorable response.

It was presumed, prior to the undertaking of the survey, that if there were any correlation between the three groups of respondents, it would most likely be between the state administrators and treatment directors. Wardens were viewed prospectively as being the most critical and resistant to the expansion and development of prison legal services programs, since such programs would affect them most directly. The results, however, show a high degree of acceptance, even among wardens, and may indicate an increasing willingness to accept these programs as a possible method to achieve a state of equilibrium in a system characterized by turmoil and violence. Prison legal services, in some sense, may be perceived as an administrative means for maintaining control while decreasing the potential for inmate riots and disturbances. It would, however, be extremely naive to suppose that an acceptance of prison legal services in principle is tantamount to acceptance

in practice. Any system as traditionally insulated from aggressive public scrutiny and burdened by decades of cumulative problems as is the prison system is bound to be sensitive to the prospect of any further challenge from the outside. This is especially true if the outsiders are perceived as being independent of internal controls, immoderate, uncooperative and without knowledge or understanding of the goals and priorities of the correctional process. In the words of a warden, "One problem to overcome is the fear that staff have of lawyers, especially because they are outsiders who are potential threats to them."

In addition to the generalized fear that many correctional administrators may have of "outsiders," where are a number of very realistic concerns that go to the heart of long-held correctional philosophies and practices. While it is still too early to measure or predict the actual effect of legal services within these areas, it is very likely that they will generate controversy and possible conflict for some time to come.

By their very nature, most prisons are highly structured, authoritarian entities dedicated to the maintenance of order and discipline, and to the neutralization of internal conflict by formal or informal means. The lawyer, on the other hand, operates in an arena committed to the articulation and disposition of adverse claims. Organized prison legal services institutionalize channels for the definition and articulation of such claims and, more importantly, establish ultimate decision-making authority in bodies which are external to, and independent of, the correctional system. In the eyes of some prison administrators, this process would divest them of the discretionary authority which they deem necessary to proper prison management.

In this context, admonitions to legal services lawyers to work within the system and to cooperate with prison authorities are not very useful if they are, in fact, veiled demands that lawyers subvert their sober professional judgments to the expressed needs of correctional administration. Moreover, the beneficial aspects of prison legal services, which respondents pointed out in responding to the survey, can be vitiated by a program which is viewed by the inmates as operating under the direction of the administration. A number of respondents warned that such a program could succeed only if not viewed by the inmates as being an arm of the institution.³⁵

³⁵ See *Symposium, supra* note 3, for an explicit analysis of this problem.

³⁴ See *PERSPECTIVES ON PRISON, supra* note 5.

Whereas virtually no opposition was expressed regarding legal services in criminal (*e.g.*, post-conviction, outstanding warrants and detainees) or civil matters, a persistent note of disapproval was registered concerning legal intervention in areas involving inmate-institutional relationships. Supporting arguments employed the considerations outlined above coupled with an apparent belief among some that young legal services attorneys have little sincere interest in the broad-ranging legal problems of the inmate population, but are inclined instead to regard prison legal services as a vehicle for attacking a pre-determined target, namely, prison administrators.

On the other hand, those respondents who referred to programs now in effect at their institutions were, with only a few exceptions, highly complimentary. Thus one treatment director claimed:

Our experience with Legal Aid and Public Defenders or the Office of the Ombudsman relative to inmate needs and complaints has generated better services, greater concerns, alertness and reappraisal of procedures and policies. . . . [We] anticipate an ultimate improvement in inmate-staff relations and in the overall operation of the prison.

Some even complained that their own efforts to improve inmate legal services have not been matched by the legal profession. A state administrator charged that attempts

. . . to pull more volunteer agencies and [the name of a law school] into overall legal services [has been] a hard uphill road, and I feel much of the responsibility lay with hostile feelings on the part of the legal staff.

Another argued that

. . . law schools and legal aid organizations are not providing courses and training in the area of prison legal services today. This must be improved.

Of far-reaching importance is a growing number correctional administrators who, frustrated in their efforts to gain enlarged commitments of correctional resources through traditional channels, are now seeking opportunities to broaden the forum for the discussion of correctional issues and to create a wider constituency for reform. Many of these may welcome legal services as an ally in focusing attention on major systemic problems and in generating additional pressures toward their resolution.

The following remarks about the role of legal services are reflective of these sentiments:

Would assist law schools in developing a more accurate assessment of the role of corrections in the criminal justice system. (Warden)

. . . if properly approached this should lead to legislation which would serve [to balance] the currently feudalistic approach of many administrators. (Treatment Director)

The State of _____, as all other states in our country, has been deluged with the writ-route. Some of the issues raised are very valid, need change, and are highly desirable in long-range perspective. (State Administrator)

The attorney, by his involvement, would be aided in his understanding of his public and social responsibilities and opportunities for social commitments. It also helps to keep some honesty in the correctional administration. (Warden)

Bringing in lawyers and other professionals to work more closely with the administration and inmates would get the public involved to a greater degree and could help upgrade corrections; lift it from the orphan status in the law enforcement field to a higher status. Get more outsiders involved. (Warden)

Finally, underlying the support for prison legal services was the proposition that it is consistent with fundamental principles of justice and right and that the embodiment of these values is a prime duty of a good correctional system. As one treatment director noted:

I know of no legitimate arguments against protecting people's legal rights. If the state is diligent in protecting the rights of its least citizens, prisoners, I can feel more secure about my own.

A warden stated:

The argument pro is simply one of constitutional rights for legal redress to the Courts and his rights to adequate representation for matters of cause. Process should be reasonable.

Prison legal services for inmates not only are here to stay, but will in the future be seen as a necessary component of a functional correctional system, and not as a luxury of inmates to be resisted by some and championed by others. Until all the legal rights of the offender are granted in practice, our correctional systems will continue to operate in the same unsuccessful manner as in the past.