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PRISONERS' RIGHT OF ACCESS TO COURTS: PLANNING FOR LEGAL AID

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The civil rights movement has reached into prisons and jails, directing public attention to the fact that prisoners are also beneficiaries of the rights and privileges that the Constitution extends to *all* citizens. After a discussion of the development of prisoners' rights, this article will survey the major cases establishing prisoners' rights of access to courts and legal assistance. It will summarize previous research dealing with prisoners and their legal problems on a national scale, and extend that research by presenting the findings of a recent research project conducted in the Washington State prison system evaluating the legal needs of prisoners. On the basis of these studies, suggestions are offered for increasing the effectiveness of delivery of legal services to prisoners.

I. BACKGROUND FOR PRISONERS' RIGHTS

A. Development of Legal Services for the Poor

The results of previous research indicate that the poor frequently do not receive legal representation, and that when they do, it is likely to be of inferior quality.[1] The absence of legal representation, or its inferior quality, tends to result in exploitation of those individuals or groups not properly represented.[2]

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1. *See* Carlin, Howard & Messinger, *Civil Justice and the Poor: Issues for Sociological Research*, 1 LAW & SOC. REV. 9, 55 (1966).

2. *See generally* D. CAPLOVITZ, THE POOR PAY MORE (1963); Comment, *Resolving Civil Problems of Correctional Inmates*, 1969 WIS. L. REV. 574–86. The comment describes the plight of indigent inmates faced with the need for legal assistance in civil matters including domestic relations, financial matters, dealings with governmental agen-

In 1964 the federal government assumed a major portion of the responsibility for providing legal assistance to the poor.[3] This aspect of the so-called "war on poverty" was an extension of the civil rights movement and a response to the lack of representation of low income families in consumer and other legal problems which often could be resolved with the aid of legal counsel.[4] The availability of legal aid to those who previously had been denied legal services was an important step toward the objective of equal justice.

B. Development of Civil Rights for Prisoners

Although the civil rights movement has experienced some success in guaranteeing basic rights to all people, pleas for the essentials of life and a habitable environment persist.[5] More recently, the civil rights movement has focused on specific segments of society, including the prison system and the rights of prisoners. The majority of judicial decisions dealing with issues arising in the correctional system have paralleled other areas of the law of human rights. The rights of prisoners were expanded once the courts directed their attention to other groups deprived of their civil rights. It was *Brown v. Board of Education*[6]

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cies, and complaints against the correctional institutions. The author concludes that these needs could be met best by placing a lawyer in the correctional institution.

For an examination of this phenomenon in a more general social context, see Mayhew & Reiss, *The Social Organization of Legal Contacts*, 34 AM. SOC. REV. 309 (1969). Sixty-nine percent of Mayhew & Reiss' weighted sample of households in the Detroit study stated that they had seen a lawyer on a legal matter at least once in their lifetime. Only one in four reported seeing a lawyer in the previous five years. *Id.* at 309–10. Blacks sought the advice of counsel less frequently than did whites; 59% of the blacks and 71% of the whites had contacted an attorney. *Id.* at 310. Of those black males who contacted an attorney, 17% said they had been discouraged from taking legal action. The comparable figure for white males was only 7%. *Id.* at 311.

As Justice Douglas stated in his concurring opinion in Cruz v. Hauck, 404 U.S. 59 (1971): "Our holdings have steadily chipped away at the proposition that appeals of the poor can be disposed of solely on summary and abbreviated inquiries into frivolity rather than upon the plenary consideration granted paying appellants." *Id.* at 62.

3. COMMUNITY ACTION PROGRAM (O.E.O.), GUIDELINES FOR LEGAL SERVICES PROGRAMS (1964). *See also* Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1334–52 (1964). For an analysis of legal aid programs established under the Equal Opportunity Act of 1969, 42 U.S.C. § 2701 *et seq.* (1970), see COMPTROLLER GENERAL OF THE UNITED STATES, REPORT TO CONGRESS: THE LEGAL SERVICES PROGRAM—ACCOMPLISHMENTS OF AND PROBLEMS FACED BY ITS GRANTEES (1973).

4. *See* Carlin, Howard & Messinger, *supra* note 1, at 10–12.

5. Dorsen, *Introduction* to THE RIGHTS OF AMERICANS: WHAT THEY ARE—WHAT THEY SHOULD BE at xi–xxi (1971).

6. 347 U.S. 483 (1954).

that "triggered additional demands for judicial review of governmental action affecting individuals. The civil rights movement accustomed the courts to considering such issues. It was inevitable that prisoners as a class would request similar attention."[7] The demands for review conflicted with the attitude reflected by the court in *Ruffin v. Commonwealth,*[8] where the court ruled that a prisoner "as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the State."[9] This attitude has been the subject of a substantial volume of criticism,[10] as well as judicial modification.

In 1941 the United States Supreme Court in *Ex parte Hull*[11] recognized the prisoners' right of access to the courts by giving inmates the legal opportunity to exercise their basic constitutional rights. The Court declared invalid a Michigan prison regulation requiring inmates to submit " '[a]ll legal documents, briefs, petitions, motions, habeas corpus proceedings and appeals' "[12] to the institutional welfare office for approval as well as requiring the further approval of the legal investigator for the state's parole board. The Court declared:[13]

> The considerations that prompted its formulation are not without merit, but the state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus. Whether a petition for writ of habeas corpus addressed to a federal

7. AMERICAN BAR ASS'N & AMERICAN CORRECTIONAL ASS'N, LEGAL RESPONSIBILITY AND AUTHORITY OF CORRECTIONAL OFFICERS 5 (1974).

8. 62 Va. (21 Gratt.) 790 (Ct. App. 1871).

9. *Id.* at 796.

10. *See generally* SOUTH CAROLINA DEP'T OF CORRECTIONS, THE EMERGING RIGHTS OF THE CONFINED (1972); J. PALMER, CONSTITUTIONAL RIGHTS OF PRISONERS (1973); NATIONAL COMM'N ON CRIMINAL JUSTICE STANDARDS & GOALS, REPORT OF THE TASK FORCE ON CORRECTIONS (1973) [hereinafter cited as TASK FORCE ON CORRECTIONS]; Plotkin, *Recent Developments in the Law of Prisoners' Rights*, 11 CRIM. L. BULL. 405 (1975).

11. 312 U.S. 546 (1941). *Hull* was a significant departure from the hands-off policy of the courts. *See* text accompanying notes 14–19 *infra*. It was perhaps the first case to recognize that a prisoner had a right to reasonable access to the courts. Petitioner Hull had attempted to submit a petition for a writ of habeas corpus to the United States Supreme Court but was prevented from so doing by a prison rule that all legal materials had to be submitted to the institutional welfare office. Hull's petition was confiscated. The Court held that "the state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus." 312 U.S. at 549. The Court ultimately denied Hull's petition on the merits. *See also* Johnson v. Avery, 393 U.S. 483, 485–86 (1969) (state rule which prohibited inmates from assisting other prisoners in preparing habeas corpus petitions could not validly be enforced).

12. 312 U.S. at 548.

13. *Id.* at 549.

> court is properly drawn and what allegations it must contain are questions for that court alone to determine.

Although prisoners' rights have been somewhat strengthened over the past 35 years by court decisions, progress was hampered by the courts' application of a "hands off" policy which tended to curtail the effectiveness of suits initiated by inmates against prison administrators.[14]

Banning v. Looney[15] exemplifies this "hands off" policy. There the court stated that "[c]ourts are without power to supervise prison administration or to interfere with the ordinary prison rules or regulations."[16] This sentiment of prison autonomy was reinforced in *Sutton v. Settle*,[17] where the court stated that "supervision of inmates of federal institutions rests with the proper administrative authorities and [the] courts have no power to supervise the management and disciplinary rules of such institutions."[18] It has been suggested that courts have tended to avoid prisoners' suits for three principal reasons:[19] (1) many judges believed that the separation of powers doctrine required that prison grievances not be considered in court because prison administration was an executive function; (2) many courts reasoned that the level of penological knowledge and expertise among the judiciary was too limited to deal with prison problems; and (3) judges feared

14. *See* Milleman, *Protected Inmate Liberties: A Case for Judicial Responsibility*, 53 ORE. L. REV. 29, 30–31 (1973). It may be argued that even where changes occurred in correctional law, those changes were not adequately reflected in the operation of correctional institutions because of sporadic enforcement. *See generally* Greenberg & Stender, *The Prison as a Lawless Agency*, 21 BUFF. L. REV. 799 (1972); Comment, *Judicial Intervention in Corrections: The California Experience—An Empirical Study*, 20 U.C.L.A.L. REV. 452 (1973).

15. 213 F.2d 771 (10th Cir.), *cert. denied*, 348 U.S. 859 (1954).

16. *Id.* at 771.

17. 302 F.2d 286 (8th Cir. 1962). The courts have also avoided a number of substantive prison issues. *See, e.g.*, Sostre v. Rockefeller, 312 F. Supp. 863 (S.D.N.Y. 1970), *rev'd sub nom.*, Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1971), *cert. denied*, 404 U.S. 1049 (1972) (consideration of the policies underlying the "new penology"; court refused to find one year of punitive segregation to be cruel and unusual punishment, thereby barring action under 42 U.S.C. § 1983 (1970)); Novak v. Beto, 453 F.2d 661 (5th Cir. 1971) (solitary confinement in an unlighted cell with limited bedding and bread and water diet found to be consistent with the "general practices of our society," and prison reform found to be "primarily a task for legislators and administrators." *Id.* at 665, 671 n.6). For an extensive discussion of pre-1963 cases that used the "hands-off" doctrine to deny relief, *see* Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506 (1963). *See generally* TASK FORCE ON CORRECTIONS, *supra* note 10.

18. 302 F.2d at 288.

19. Goldfarb & Singer, *Redressing Prisoners' Grievances*, 39 GEO. WASH. L. REV. 175 (1970).

that judicial intervention would undermine prison administrators and their methods of discipline. Additionally, despite the probable availability of jurisdiction under *Monroe v. Pape*,[20] federal courts were reluctant to hear civil rights actions brought by state prisoners because of considerations of federalism and comity. Thus, despite constitutional rights and protection provided by law, conditions of incarceration were relatively unsupervised by judicial review and unimpeded by constitutional strictures.

More recently, there has been a decrease in the application of the hands-off policy.[21] Correctional administrators increasingly are being held responsible for justification of restrictive regulations. The legal basis for such a requirement is clear: "A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law."[22] It was not until *Cooper v. Pate*[23] in 1964 and *Wilwording v. Swenson*[24] in 1971, however, that the United

20. 365 U.S. 167 (1961). The Court held that the 1871 Civil Rights Act, 42 U.S.C. § 1983 (1970), vested federal courts with jurisdiction to hear and decide any case involving parties deprived of constitutional rights, privileges, and immunities by an official's abuse of his position. The federal remedy was supplementary to any state remedies, which, if available, need not have been sought and denied first. Although *Monroe* did not involve the rights of prison inmates, its far-reaching principles were later held to apply to prisoners in Cooper v. Pate, 378 U.S. 546 (1964), thus creating a significant judicial remedy for prison abuses.

21. Major erosion of the courts' doctrine of non-intervention in the operation of penal institutions began with decisions relating to freedom of religion. "Decisions on other first amendment rights followed in rapid succession." H. KERPER & J. KERPER, LEGAL RIGHTS OF THE CONVICTED 279 (1974) [hereinafter cited as KERPER]. The principle of balancing the rights of the state against those of the offender was accepted and courts began to require that the means chosen by correctional authorities to protect valid state interests be one which was least onerous upon prisoner rights. *Id. See also* D. WEXLER, CASES AND MATERIALS ON PRISON INMATE LEGAL ASSISTANCE (Dep't of Justice 1974); Comment, *supra* note 14, at 460–69.

22. Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944). In *Coffin*, the court held that where an inmate was subjected to cruelties and assaults from guards and other inmates, habeas corpus was available to protect the inmate's "inherent rights." The court indicated that courts must be "diligent" in protecting substantive rights even in the institutional setting. *Id.* at 445.

23. 378 U.S. 546 (1964) (prisoner's complaint alleging that he was denied permission to purchase religious publications and denied other privileges enjoyed by other prisoners solely because of his religious beliefs held sufficient to state a cause of action under 42 U.S.C. § 1983 (1970) and 28 U.S.C. § 1343 (1970)). An action for redress under § 1983 has become a common means of challenging the conduct of prison officials or the nature of confinement. *See, e.g.*, Main Road v. Aytch, 522 F.2d 1080 (3rd Cir. 1975); Nolan v. Scafati, 430 F.2d 548 (1st Cir. 1970); Jackson v. Bishop, 404 F.2d 571 (8th Cir. 1968); Wright v. McMann, 387 F.2d 519 (2d Cir. 1967). *But see* Preiser v. Rodriguez, 411 U.S. 475 (1973), where the Supreme Court held that habeas corpus rather than § 1983 is the sole federal remedy to challenge the fact or duration of confinement.

24. 404 U.S. 249 (1971) (exhaustion of state remedies not required where, although cognizable in habeas corpus, the petitioners' pleading could also be read as

States Supreme Court clearly established that prison inmates could bring suit against prison officials under the provision of the Civil Rights Act of 1871, codified as 42 U.S.C. § 1983.[25] In order to state a claim under the Act the prisoner had to allege that the state deprived him of a federal statutory right[26] or a constitutional right guaranteed by the fourteenth amendment.[27] Section 1983 permits prison inmates to secure their basic constitutional rights while within the confines of prison. Theoretically, inmates need no longer prove their entitlement to these rights. The burden has been shifted to correctional administrators to establish that the restrictions imposed are necessary and proper and are the least restrictive of prisoners' rights.[28]

In 1973, however, the Court's decision in *Preiser v. Rodriquez*,[29] substantially reduced the potential for prisoners' petitions under Section 1983 by holding that "when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus."[30] One commentator suggests that the desire to reduce crowded dockets led the Court to take a step backwards in the protection of prisoners' rights:[31]

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stating a cause of action under 42 U.S.C. § 1983 (1970) and 28 U.S.C. §§ 1343(3) & (4) (1970), for deprivation of constitutional rights by prison officials).

25. 42 U.S.C. § 1983 (1970) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

26. *See, e.g.*, Smartt v. Avery, 370 F.2d 788 (6th Cir. 1967) (interference with right to petition for a writ of habeas corpus).

27. *See, e.g.*, Benton v. Maryland, 394 U.S. 784 (1969) (fifth amendment double jeopardy provisions made applicable to state proceedings by the fourteenth amendment).

28. In Procunier v. Martinez, 416 U.S. 396 (1974), the Court held that the mail censorship regulation in issue failed to promote the important governmental interests of security, order, or rehabilitation by the least onerous means. Similarly, in Brown v. Peyton, 437 F.2d 1228 (4th Cir. 1971), the court had held that Black Muslim prisoners claiming they were denied access to religious materials and were refused permission to conduct prayer meetings, were entitled to a hearing on whether the religious ban represented the least onerous method of accomplishing the state's legitimate objectives of protection of the public, rehabilitation, retribution, internal discipline, or lowering of administrative costs. *Id.* at 1231–32.

29. 411 U.S. 475 (1973).

30. *Id.* at 500.

31. Plotkin, *Rotten to the "Core of Habeas Corpus:" The Supreme Court and the Limitations on a Prisoner's Right to Sue*, 9 CRIM. L. BULL. 518, 523 (1973).

> The essence of the majority opinion in *Preiser* is that whenever a prisoner's claim is for immediate release or for potential reduction of his sentence, he is actually attacking the length of his confinement, an action which falls within the "core of habeas corpus" . . . . Where such a claim is made, the Civil Rights Act is not available as an alternative remedy, for habeas corpus is the more specific of the two congressional statutes, and thereby supersedes § 1983.

After *Preiser*, a Section 1983 action may be considered appropriate only for a challenge to the conditions of a state prisoner's confinement.[32]

C. *Prisoners' Access to the Courts*

Although the traditional judicial concern for prisoners' access to the courts has been limited, in recent years the United States Supreme Court has acted to secure the right of prisoners' access to judicial consideration of a wide range of issues arising out of confinement in the prison institutions.[33] This active involvement suggests that judicial

32. 411 U.S. at 498. The Court distinguished its earlier holdings in civil rights cases: Cooper v. Pate, 378 U.S. 546 (1964); Houghton v. Shafer, 392 U.S. 639 (1968); Wilwording v. Swenson, 404 U.S. 249 (1971); and Haines v. Kerner, 404 U.S. 519 (1972). None of the petitioners in those cases had sought to challenge the fact or duration of his confinement. The Court concluded that "[t]hose cases, therefore, merely establish that a § 1983 action is a proper remedy for a state prisoner who is making a constitutional challenge to the conditions of his prison life, but not to the fact or length of his custody." *Id.* at 499. The Court reaffirmed its holdings in those cases.

33. The volume of Supreme Court cases concerning prison-related issues has increased significantly since the period when a "hands-off" approach prevailed. Court scrutiny of prison conditions and issues has been wide-ranging. *See* Lee v. Washington, 390 U.S. 333 (1968) (limitation on racial segregation of prisoners in a state prison); Johnson v. Avery, 393 U.S. 483 (1969) (invalidation of state regulation barring assistance by other inmates in the preparation of petitions for post-conviction relief); Arciniega v. Freeman, 404 U.S. 4 (1971) (parole and association with ex-felons); Wilwording v. Swenson, 404 U.S. 249 (1971) (recognition of right to challenge prison living conditions and discipline under 42 U.S.C. § 1983 (1970), which does not require exhaustion of state remedies even though action was brought as habeas corpus); Humphrey v. Cady, 405 U.S. 504 (1972) (right of prisoner convicted under state sex crime statute to jury consideration of whether he met standards for commitment after the expiration of his maximum sentence); Cruz v. Beto, 405 U.S. 319 (1972) (first amendment right of Buddhist prisoner to Buddhist religious services in penal institution); Jackson v. Indiana, 406 U.S. 715 (1972) (limitations on commitment of criminally insane); McNeil v. Director, Patuxent Institution, 407 U.S. 245 (1972) (inmate could not be confined in mental institutions beyond maximum sentence on the basis of an ex parte order); Morrissey v. Brewer, 408 U.S. 471 (1972) (procedural due process standards in parole revocation); Gagnon v. Scarpelli, 411 U.S. 778 (1973) (procedural due process in probation revocation); O'Brien v. Skinner, 414 U.S. 524 (1974), *following* McDonald v. Board of Election Commissioners, 394 U.S. 802 (1969), and Goosby v. Osser, 409 U.S. 512 (1973) (voting rights of

scrutiny of prison conditions and issues within the institutional setting will be a major force in future correctional policy-making.[34]

1. Impairments to right of access

Many practices in prison systems impair inmates' right of access to the courts. Censorship, often supplemented by confiscation of inmates' legal documents, has been common, often disguised as "internal security" or "institutional control" regulations.[35] Furthermore, prisons typically have provided less than adequate facilities for legal aid.[36]

Once an offender enters a prison, his access to legal assistance for both civil and criminal matters is obviously restricted.[37] As a result of the unavailability of adequate legal aid in the prison systems, those seeking such services have been forced to resort to employing the assistance of self-proclaimed "jailhouse lawyers:" "A jailhouse lawyer is an inmate who, through self-education has acquired minimum legal skills and, notwithstanding prison restriction, offers legal advice and counseling to fellow inmates, either with or without compensation."[38] Traditionally, jailhouse lawyers have had very limited or no permission from prison administrators to provide legal services to fellow inmates. The Supreme Court dealt with this issue in *Johnson v. Av-*

confined persons); Procunier v. Martinez, 416 U.S. 396 (1974) (overly restrictive mail censorship regulations held unconstitutional and ban on interviews conducted by law students or paraprofessionals found to be an unjustifiable restriction on prisoners' right of court access); Pell v. Procunier, 417 U.S. 817 (1974) (state regulations restricting media access to prisoner upheld against first amendment challenge); Saxbe v. Washington Post Co., 417 U.S. 843 (1974) (federal regulation restricting media access to prisoners upheld); Richardson v. Ramirez, 418 U.S. 24 (1974) (disenfranchisement of convicted felons who completed their sentences and paroles held not violative of 14th amendment equal protection rights); Wolff v. McDonnell, 418 U.S. 539 (1974) (procedural due process requirements for good-time revocation, mail regulations, and legal assistance in Nebraska penal institution).

34. For an in-depth study and analysis of the impact of increased judicial involvement in areas previously left to prison administrative discretion within the California corrections system, see Comment, *supra* note 14.

35. *See* Bergesen, *California Prisoners: Rights Without Remedies,* 25 STAN. L. REV. 1 (1972).

36. *See* Singer, *Enforcing the Constitutional Rights of Prisoners,* 17 HOWARD L.J. 823 (1973).

37. *See generally* Jacob & Sharma, *Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process,* 18 KAN. L. REV. 493 (1970). *See also* N.Y. Times, Feb. 18, 1970, § A, at 16, col. 1 (discussing a speech made by Chief Justice Warren Burger suggesting the need for a change in the public attitude toward prisoners and ex-convicts, stressing rehabilitation over punishment).

38. *See* Palmer, *supra* note 10, at 78. *See also* Larson, *A Prisoner Looks at Writ-Writing,* 56 CALIF. L. REV. 343 (1968).

ery,[39] invalidating a Tennessee prison regulation that prohibited an inmate from advising, assisting, or otherwise aiding another in preparing writs or in other legal matters. The Court held that, because of "the fundamental importance of the writ of habeas corpus in our constitutional scheme,"[40] although the state may impose reasonable limits upon the time and location of the seeking and giving of assistance in legal matters, "unless and until the State provides some reasonable alternative to assist inmates in the preparation of petitions for post-conviction relief, it may not validly enforce a regulation such as that here in issue, barring inmates from furnishing such assistance to other prisoners."[41]

In *Johnson* the Court noted that there was no general obligation of courts to appoint counsel for prisoners seeking post-conviction relief and that therefore the initial burden of presenting a claim for such relief usually rested on the indigent prisoner, with or without the help of jailhouse lawyers. The Washington Supreme Court, however, in *Honore v. Washington State Board of Prison Terms and Paroles*[42] held, on equal protection grounds, that an indigent state prisoner seeking habeas corpus relief is entitled upon request to be furnished appointed counsel to assist him in prosecuting his petition at the evidentiary hearing stage, the first appeal level, or both, when:[43]

> (1) his petition is urged in good faith; (2) his petition raises significant issues which, when considered in the light of the state's responsive pleadings or the evidence adduced at an evidentiary hearing, are neither frivolous nor repetitive; and (3) such issues by their nature and character indicate the necessity for professional legal assistance if they are to be considered presented and considered in a fair and meaningful manner.

The court did not rely on the sixth amendment guarantee of counsel, but rather on the reasoning of *Griffin v. Illinois*,[44] and *Douglas v. Cal-*

39. 393 U.S. 483 (1969).
40. *Id.* at 485.
41. *Id.* at 490.
42. 77 Wn. 2d 660, 466 P.2d 485 (1970).
43. *Id.* at 673–74, 466 P.2d at 493.
44. 351 U.S. 12 (1956) (failure to supply indigent convict with stenographic transcript of the trial proceeding when he was financially unable to supply one to the reviewing court was unconstitutional discrimination, denying appellant an adequate and meaningful appellate review).

ifornia,[45] that indigent convicts should not be discriminated against in their ability to obtain adequate appellate review.

The more recent cases of *Younger v. Gilmore*[46] and *Cruz v. Hauck*[47] demonstrate the United States Supreme Court's continuing concern for preserving the right of access to a judicial remedy. In *Younger* the Court linked access to legal materials and law libraries to the right of access to courts. The Court affirmed, per curiam, the three-judge district court's holding that an attempt by California to limit the books available to prisoners in a prison law library, in the name of standardization, was unconstitutional. The Court in *Cruz*, citing *Younger*, remanded for further consideration the lower court's summary denial of prisoners' access to law books and other legal materials. One commission has concluded that the preemptory remand of this case indicates that the Supreme Court "will not tolerate barriers which thwart a prisoner's right to meaningful access to the courts and attorneys."[48]

2. *Prisoners' right to counsel*

An offender is guaranteed the right to be represented by counsel at trial in any criminal matter, whether classified as petty, misdemeanor, or felony, in which his liberty is at stake.[49] Once the offender is convicted and incarcerated, however, access to legal counsel is altered substantially. Prisoners have a need for counsel beyond the traditional issues of habeas corpus petitions[50] and Section 1983 civil rights actions.[51] Although in civil matters counsel is not required, and in some jurisdictions may not be permitted to represent a prison inmate,[52] peti-

45. 372 U.S. 353 (1963) (rule permitting denial of counsel for appeals as of right constituted denial of equal protection of laws).

46. 404 U.S. 15 (1971), *aff'g sub nom.*, Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970).

47. 404 U.S. 59 (1971).

48. RESOURCE CENTER ON CORRECTIONAL LAW & LEGAL SERVICES (ABA), PROVIDING LEGAL SERVICES TO PRISONERS 1 (1973) [hereinafter cited as RESOURCE CENTER ON CORRECTIONAL LAW & LEGAL SERVICES].

49. Argersinger v. Hamlin, 407 U.S. 25, 37 (1972).

50. A writ of habeas corpus is brought in a civil action to challenge the legality of custody. The relief sought is liberty and the usual grounds for issuance of habeas corpus are lack of jurisdiction of the convicting court and violations of constitutional rights. *See* 28 U.S.C. §§ 2241–59 (1970). *See also* PRISON LAW PROJECT, A MANUAL ON HABEAS CORPUS FOR JAIL AND PRISON INMATES (1973).

51. For an excellent discussion of the use of the Civil Rights Act in the prison context, see Goldfarb & Singer, *supra* note 19, at 252–65.

52. *See* TASK FORCE ON CORRECTIONS, *supra* note 10, at 82.

tions filed on behalf of prison inmates have increased faster than other types of civil actions, demonstrating a need for civil legal aid to prison inmates.[53]

Various programs have been initiated to meet the growing legal needs of prison inmates, and the National Advisory Commission on Criminal Justice Standards and Goals has stated that:[54]

> Each correctional agency should immediately develop and implement policies and procedures to fulfill the right of offenders to have access to legal assistance, through counsel or counsel substitute, with problems or proceedings relating to their custody, control, management, or legal affairs while under correctional authority. Correctional authorities should facilitate access to such assistance and assist offenders affirmatively in pursuing their legal rights. Governmental authority should furnish adequate attorney representation and, where appropriate, lay representation to meet the needs of offenders without the financial resources to retain assistance privately.

Access to legal assistance through counsel should be made available to guarantee the right of prisoner access to the courts. Such access should enable prisoners to: (1) challenge the legality of their conviction or confinement, or both; (2) seek redress for illegal treatment or condition while under control of a correctional institution; (3) pursue remedies for civil legal problems; and (4) assert against any governmental authority any and all rights granted or protected by constitutional or statutory provision or common law.[55]

3. *Adequacy of available legal services*

Within the past few years courts have begun to specify the nature and extent of legal services that must be made available to prison

53. *See generally* Jacob & Sharma, *supra* note 37; Singer, *supra* note 36. As the California Supreme Court recognized in *In re* Ferguson, 55 Cal. 2d 663, 361 P.2d 417, 12 Cal. Rptr. 753, *cert. denied,* 368 U.S. 864 (1961), the relationship between the ability to afford and secure an attorney and a prisoner's ability to exercise his legal right of access to court is crucial. The court ruled that prison authorities could not use their power to censor prisoners' mail to attorneys.

54. TASK FORCE ON CORRECTIONS, *supra* note 10, at 26.

55. The National Advisory Commission on Criminal Justice Standards and Goals suggests that "the criminal justice system must provide legal counsel in every instance where a man's liberty may be jeopardized. . . ." NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS & GOALS, CORRECTIONS 27 (1973). The American Correctional Association has established guidelines for providing such services. AMERICAN

inmates. In *Novak v. Beto*,[56] for example, the court ruled that two attorneys for the 13,000 inmates in Texas prisons were insufficient to assure access to legal counsel. The court in *Williams v. Department of Justice*[57] similarly decided that the Emory University law student legal aid program was insufficient if there were eighteen-month delays between prisoner requests and interviews. In addition, prisons may not apply overly broad restrictions on the access of paraprofessionals to their attorneys' clients in prison in the name of prison security. The court in *Martinez v. Procunier*,[58] however, held that a less restrictive regulation, short of an absolute bar, could be applied to govern access of attorneys' paraprofessionals to their clients.

These cases represent the courts' determination that prison administrators shall not reduce or limit prisoners' right of access to the courts. These decisions have gone further and stated that the mere availability of an alternative to jailhouse lawyers alone is not sufficient. The alternative must be reasonable and adequate. The court is the ultimate arbiter of what is meaningful access and may even set guidelines for a program to satisfy those requirements.

II. THEORETICAL RESEARCH

Behavioral science research demonstrates that prisoners have a need for legal assistance. Like other indigents, they have legal problems in which they cannot afford to default, but for which they cannot afford counsel.[59] It has been estimated that the need for legal services among prisoners can be categorized and defined in terms of relative needs as follows:[60]

CORRECTIONAL ASS'N, GUIDELINES FOR LEGAL REFERENCE SERVICE IN CORRECTIONAL INSTITUTIONS (1973).

56. 453 F.2d 661 (5th Cir. 1971).

57. 433 F.2d 958 (5th Cir. 1970).

58. 416 U.S. 396 (1974).

59. A. TREBACH, THE RATIONING OF JUSTICE—CONSTITUTIONAL RIGHTS AND THE CRIMINAL PROCESS 188, 189 (1963), observes, "Because their earning capacity is virtually non-existent, people in prison comprise one of the most impecunious groups in society." *See also* Carlin, Howard & Messinger, *supra* note 1.

60. RESOURCE CENTER ON CORRECTIONAL LAW & LEGAL SERVICES, *supra* note 48, at 10. The Center recognizes that in many areas there is a lack of direct empirical evidence and bases its estimates on: (1) surveys; (2) existing projects' caseloads; (3) court caseload information; and (4) experts in the delivery of legal services to prisoners.

Civil Problems	30%
Collateral Attacks	20%
Detainers and Warrants	12%
Parole Problems	12%
Sentence Problems	10%
Institutional Grievances	10%
Prisoner's Rights Cases	3%
Disciplinary Problems	3%
Total	100%

This breakdown was suggested by the Resource Center on Correctional Law and Legal Services which undertook as an ABA Project in 1973 to contact every program seeking to deliver legal services to inmates in the United States. Although suggesting that only 75–80 percent of prison cases are meritorious or involve more than just legal advice,[61] the Center's collated information provides a starting point for structuring a legal aid program that can adequately cope with prisoners' needs. The following discussion provides a summary of the Resource Center's findings and conclusions which, in turn, provide a framework for analyzing the author's findings of Washington prisoners' legal needs and comparing them with prisoners' legal needs on a national scale.

A. Civil Legal Problems

Although a constitutional right to civil legal assistance for prisoners has not been established, the need for such services is obvious. Prisoners' civil problems are not automatically resolved by their incarceration. Many authorities agree that such services should be included in any prison legal aid project.[62] The benefits of civil legal aid are enormous in terms of protecting a prisoner's property rights and relationships.[63]

61. *Id.* at 11.

62. The Federal Bureau of Prisons has urged that nearby law schools establish counselling services for federal penitentiary prisoners and insists that civil cases be handled. RESOURCE CENTER ON CORRECTIONAL LAW & LEGAL SERVICES, *supra* note 48, at 13. The NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS & GOALS, CORRECTIONS, STANDARD 2.2 (1973) also calls for a full range of legal services to prisoners, including civil problems.

63. The following illustrations from Comment, *supra* note 2, at 575, 581, describe situations in which legal advice on civil matters was actually rendered to a prisoner.

Illustration 1: An inmate with several children was served a divorce summons. The grounds alleged were not revealing, as usual. The inmate was concerned that

B. *Collateral Attacks*

Collateral attacks as used herein means all post-conviction proceedings, other than appeals. Included in this category are habeas corpus,[64] *coram nobis*,[65] and motions to vacate sentence.[66] The grounds for release differ among states but usually involve constitutional attacks on the legality of a criminal conviction.[67] Most states simply rely on court-appointed attorneys to assist in collateral attacks. Few states have a more meaningful way of providing legal assistance in these matters.

Such reliance has been criticized. First, most court-appointed attorneys are busy with their regular practice and do not have sufficient time to explore thoroughly the availability of collateral attacks. Second, the practice of law is so specialized that even most criminal lawyers do not have the specialized knowledge to properly and adequately develop constitutional claims. Finally, the cost of retaining a nonexpert attorney is prohibitive when compared to the efficiency of an attorney already expert in this area of the law.[68]

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he not be unfairly accused and that in the event of a divorce, appropriate financial and custodial arrangements be made.

Illustration 6: A finance company repossessed furniture owned by the inmate. Nearly all of the payments had been made and only a small amount remained due. The inmate wanted to recover the furniture and make some arrangement for delayed payment.

Illustration 25: The inmate had made no plans for handling the large amount of debt he had outstanding. He was unaware of the potential consequences of failure to pay.

Although there have been no public statements against the delivery of civil legal assistance to prisoners, prison personnel may be against the idea as it can disrupt the daily routine of a prison.

64. 28 U.S.C. §§ 2241–59 (1970). Although habeas corpus is the traditional way for a petitioner to test the validity of his confinement, it may also be used to examine the conditions of confinement. *See* Jones v. Cunningham, 371 U.S. 236 (1963); Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944). *See also* Peyton v. Rowe, 391 U.S. 54, 67 (1968), in which the Court held that prisoners may attack sentences they have not yet begun to serve.

65. *Coram nobis*, a writ of error to correct a prejudicial error of law in the trial, is available in federal courts and about half the states. If successful, the action results in the granting of a new trial. The petitioner must be able to show that the alleged error is based on facts not appearing in the trial record. *See* 28 U.S.C. § 1651 (1970). This remedy is available only if the prisoner has no remedy under *id.* § 2255 (motion to vacate, correct or set aside sentence).

66. *See* 28 U.S.C. § 2255 (1970). A § 2255 motion for relief can be used to obtain relief short of discharge and may be made at any time, in the court which imposed the sentence, except while an appeal is pending.

67. AMERICAN BAR ASS'N PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO APPELLATE REVIEW OF SENTENCES, App. A (1967).

68. RESOURCE CENTER ON CORRECTIONAL LAW & LEGAL SERVICES, *supra* note 48, at 11.

These types of complaints must be thoroughly researched prior to the filing of a petition in order to weed out frivolous matters and to file only meritorious claims. Writ-writers often waste a great deal of time researching and writing on a point which a trained and qualified lawyer might have rejected outright. If poorly-drawn petitions are filed, they waste not only the time of the writ-writer, but also that of the judge.[69]

Alternative procedures have been suggested for dealing with these problems.[70] Forms have been created for prisoners to complete in making their petitions. These, however, rely upon the assumption that prisoners are literate, able to compile the relevant facts, and argue legal issues. Few prisoners are competent to fill out forms that require some degree of technical knowledge. A more satisfactory solution would be to provide prisoners with access to counsel who have specialized knowledge in this area, perhaps by making such counsel available within the prison institution.[71]

C. *Detainers and Warrants*

When a person is imprisoned in one state and wanted on criminal charges in another, a detainer is filed:[72]

> A detainer is a request by the demanding state that its law enforcement authorities be notified by the confining state when the inmate's sentence in the confining state is about to expire. The notification gives the demanding state sufficient time to extradite the prisoner to its jurisdiction if it chooses to prosecute him on the outstanding charge.

It has been reported that one-third of all prisoners have at least one detainer placed on them.[73] The existence of a detainer usually means close or maximum security, exclusion from many rehabilitative pro-

69. *See* Doherty, *Wolf! Wolf!: The Ramifications of Frivolous Appeals,* 59 J. CRIM. L.C. & P.S. 1 (1968).
70. *See* RESOURCE CENTER ON CORRECTIONAL LAW & LEGAL SERVICES, *supra* note 48, at 11–12.
71. *See* note 2 *supra.*
72. D. WEXLER, *supra* note 21, at v.
73. Dauber, *Reforming the Detainer System: A Case Study,* 7 CRIM. L. BULL. 669 (1971). *See also* Note, *Effective Guaranty of a Speedy Trial for Convicts in Other Jurisdictions,* 77 YALE L.J. 767 (1968), estimating that 30% or more of inmates in federal penitentiaries have detainers outstanding against them.

grams, ineligibility for extra good time, and even denial of parole.[74] In addition to these problems, it has been demonstrated that detainers are often filed as a matter of course, and that many of them are never acted upon when the prisoner is released.[75] As a result of the prisoner difficulties caused by detainers, courts have viewed the charges on which detainers are based as subject to sixth amendment requirements of speedy trials.[76] The detainer cases that are brought to the attention of the legal aid projects are usually simple requests to have the detainers removed.[77]

D. Parole Problems

In *Gagnon v. Scarpelli*[78] the Court, relying upon *Morrissey v. Brewer*,[79] ruled that in some cases the state must provide counsel for indigent parolees or probationers whose revocation is being considered. The decision, although somewhat ambiguous, suggests that under special circumstances, when a parolee or probationer denies having violated a condition of his parole and requests the assistance of counsel, it should be provided.[80]

Numerous requests are received by prison legal aid projects to assist prisoners when they go before the parole board. The Center on Correctional Law and Legal Services has estimated that 12 percent of

74. *See* Lawrence v. Blackwell, 298 F. Supp. 708 (N.D. Ga. 1969). Two commentators have described the ramifications of the filing of a detainer in this manner:

> [Inmates having detainers] are ineligible for initial assignment to less-than-maximum-security prisons, such as an honor camp or forestry work camp. They are not eligible for trusty status. In the federal correctional system they are not entitled to live in preferred living quarters at the prison, such as dormitories. They are ineligible for study-release programs or work-release programs in which selected inmates are allowed to attend classes or obtain private employment outside the prison walls, being released each day and required to return to the prison at the end of the day.

Jacob & Sharma, *supra* note 29, at 583 (footnotes omitted).

75. *See* Dauber, *supra* note 73, at 677.

76. *See* Bennett, *The Last Full Ounce*, 23 FED. PROBATION 20 (1959).

77. RESOURCE CENTER ON CORRECTIONAL LAW & LEGAL SERVICES, *supra* note 48, at 12.

78. 411 U.S. 778 (1973).

79. 408 U.S. 471 (1972) (establishing due process requirements for parole revocation).

80. The Court indicated relevant criteria in determining whether counsel will be provided an indigent parolee or probationer, stating:

> Presumptively, it may be said that counsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request, based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or

a project's time would be concerned with parole matters. This is based on minimum involvement, limited to those problems that represent common concerns of prisoners.

E. Sentencing

The proper computation and imposition of sentence is a matter with which most prisoners are concerned. Although some states provide systems of appellate review, many do not.[81] Two types of sentencing issues are usually raised: (1) challenges to the lengths of sentences, and (2) questions concerning the computation of the sentence and appropriate good time credit.[82] Prison legal aid projects should be prepared to handle both types of cases.

F. Institutional Grievances

Institutional grievances have existed since the first prisons were built.[83] A legal-aid-to-prisoners' project can provide a service to mediate peacefully between prisoners and correctional administrators. Previous negotiations have revised conduct codes, established new grievance procedures, improved living conditions, and developed laws regulating the discipline prison administrators can impose.[84] Prison legal aid projects are likely to serve as an informal negotiator with

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(ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present. In passing on a request for the appointment of counsel, the responsible agency also should consider, especially in doubtful cases, whether the probationer appears to be capable of speaking effectively for himself.

Id. at 790–91. Although this case dealt specifically with a probation revocation proceeding, the Court obviously treats the issue of appointment of counsel in a parole revocation proceeding in the same manner. *Id.*

81. More than 20 states have some type of statutory sentence review. *See* AMERICAN BAR ASS'N PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO APPELLATE REVIEW OF SENTENCES 67–85 (1967). In some states special panels of trial judges sit to review sentences only. *See, e.g.*, CONN. GEN. STAT. ANN. § 51.194 (1960); ME. REV. STAT. ANN. tit. 14, §§ 2141 *et seq.* (1965); MD. ANN. CODE art. 26, §§ 132–38 (1957); MASS. GEN. LAWS ANN. ch. 278, §§ 28A–D (1968). In other states existing appellate courts may review the sentence along with other issues in the case. *See, e.g.*, ARIZ. REV. STAT. ANN. § 13–1717 (1956); IOWA CODE ANN. § 793.18 (1950).

82. AMERICAN BAR ASS'N PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO APPELLATE REVIEW OF SENTENCES 2 (1967).

83. *See generally* D. ROTHMAN, THE DISCOVERY OF THE ASYLUM (1971).

84. SOUTH CAROLINA DEP'T OF CORRECTIONS, *supra* note 10.

prison administrators as well as receive legitimate legal complaints which deserve formal action.

G. *Prisoners' Rights Cases*

This is probably the most sensitive area with which prison legal aid projects could be involved. Certain instances may encourage prisoners to sue prison officials under Section 1983 of the Civil Rights Act.[85] Some legal aid projects have excluded this type of action from their agenda, while others are heavily involved in such litigation.[86] In the last few years research has indicated that prisoners are greatly concerned about the following areas: (1) protection against the use of force; (2) rights to visitation and mail; (3) restrictions on the use of solitary confinement; (4) religious freedom; (5) rights of medical aid; (6) the right to treatment; and (7) the liabilities of prison officials.[87] The planning of a prison legal aid system should be designed with these needs and concerns in mind.

H. *Disciplinary Problems and Various Administrative Actions*

During the past few years, courts have been determining the rights a prisoner has before prison officials may take action which could affect him or his institutional status.[88] *Wolff v. McDonnell*[89] is a central de-

85. *See* text accompanying notes 23–31 *supra*. Although some courts have been reluctant toward compensatory damages to prisoners in cases brought under the Civil Rights Act, *see, e.g.*, Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966), other courts have recognized that "to hold that all state officials in suits brought under section 1983 enjoy an immunity similar to that they might enjoy in suits brought under state law 'would practically constitute a judicial repeal of the Civil Rights Act.' " Jobson v. Henne, 355 F.2d 129, 133 (2d. Cir. 1966), *citing* Hoffman v. Halden, 268 F.2d 280, 300 (9th Cir. 1959).

86. RESOURCE CENTER ON CORRECTIONAL LAW & LEGAL SERVICES, *supra* note 48, at 13, App. D.

87. *See* Task Force on Corrections, *supra* note 10, at 82–92.

88. Such cases may be considered by subject area. Some deal with disciplinary procedures: Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971) (due process rights accompany decision to discipline prisoner, including the right to a hearing, to an impartial tribunal, to a decision on the evidence presented, and to a lay advisor); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971), *aff'd*, 497 F.2d 809 (9th Cir. 1974) (prison inmate must be afforded notice and counsel when charged with prison rule violation punishable by state authorities). Others deal with non-disciplinary processes such as classification, transfer, and work release eligibility. Gomes v. Travisono, 490 F.2d 1209 (1st Cir. 1973), *vacated and remanded*, 418 U.S. 910, *modified on reconsideration*, 510 F.2d 537 (1st Cir. 1974) (involuntary transfer to out-of-state prison must be accompanied by written notice, hearing and an opportunity to present evidence, but the board decision need not be reviewed by the warden

cision in this area. In *Wolff* the court delineated prisoners' rights in disciplinary actions as: (1) advance written notice of charges; (2) an impartial hearing; (3) a written statement of evidence; (4) counsel substitute under certain limited conditions; and (5) the right to call witnesses and present contrary evidence when, in the discretion of prison officials, it will not be unduly hazardous to institutional safety or correctional goals.[90]

Other administrative actions concern classification, transfer, and work-release eligibility.[91] Prisoners' rights in these areas are currently unsettled. There is some agreement that minimal due process must be observed prior to the imposition of serious disciplinary decisions.[92] The due process protections that have traditionally been absent in most prisoner cases include the rights: (1) to cross-examination; (2) to study personal files; and (3) to be represented by counsel.[93]

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or counsel-substitute in every instance requested); Cardaropoli v. Norton, 523 F.2d 990 (2d Cir. 1975) (when special offender classification is contemplated, prisoner must be given written notice and be afforded a personal appearance before a disinterested decisionmaker; in exceptional cases, prisoner may be permitted to confront and cross-examine witnesses and be permitted the assistance of counsel or counsel-substitute).

89. 418 U.S. 539 (1974). *But see* Baxter v. Palmigiano, 96 S. Ct. 1551 (1976).

90. The Court stated that where an illiterate inmate was involved, or where the complexity of the issue made it unlikely that the inmate would be able to collect and present evidence necessary for an adequate comprehension of the case, the aid of a fellow inmate, or substitute aid from the staff should be available. 418 U.S. at 570. The issue was not one that the Court needed to decide to dispose of McDonnell's claim however. On the issue of counsel, the Court stated:

> The insertion of counsel into the disciplinary process would inevitably give the proceedings a more adversary cast and tend to reduce their utility as a means to further correctional goals. There would also be delay and very practical problems in providing counsel in sufficient numbers at the time and place where hearings are to be held. At this stage of the development of these procedures we are not prepared to hold that inmates have a right to either retained or appointed counsel in disciplinary proceedings.

Id.

91. *See* cases cited in note 88 *supra.*

92. *See* Sostre v. McGinnis, 442 F.2d 178 (2d Cir. 1970), *cert. denied,* 404 U.S. 1049 (1972) (states may not avoid rigors of due process by labelling an action which has serious and onerous consequences as withdrawal of privilege rather than a right). Some courts vary the rules depending on the seriousness of the alleged offense or the potential penalty, *see, e.g.,* Collins v. Hancock, 354 F. Supp. 1253 (D.N.H. 1973).

93. The Court recently held that in prison disciplinary hearings involving charges of conduct punishable as crime under state law, the fifth and sixth amendments do not require representation by counsel, nor forbid prison officials from drawing adverse inferences from an inmate's invocation of his right to remain silent. The Court also held that prison officials could, without giving support in the form of written reasons, deny inmates the opportunity to confront or cross-examine witnesses against them. Baxter v. Palmigiano, 96 S. Ct. 1551 (1976).

Table 1
LEGAL PROBLEMS OF PRISONERS*

Problem Area	Sought Recourse to Legal Aid Project		Did Not Seek Recourse to Legal Aid Project		Total	
	No.	%	No.	%	No.	%
Habeas Corpus writs attacking sentence or conviction	9	10	5	17	14	12
Detainers	8	09	0	00	8	07
Criminal Rule 7.7**	3	03	0	00	3	03
Criminal Cases	5	05	0	00	5	04
Parole Board	9	10	6	21	15	12
Time Problem	(7)	(08)	(4)	(14)	(11)	(09)
Miscellaneous	(2)	(02)	(2)	(07)	(4)	(03)
Internal Prison	12	13	3	10	15	12
Visitation	(2)	(02)	(0)	(00)	(2)	(01)
Miscellaneous	(10)	(11)	(3)	(10)	(13)	(11)
Civil Cases	20	22	8	28	28	23
Prison civil	(3)	(03)	(1)	(03)	(4)	(03)
General civil	(12)	(13)	(4)	(14)	(16)	(13)
Tort	(1)	(01)	(1)	(03)	(2)	(02)
Consumer	(1)	(01)	(1)	(03)	(1)	(01)
Bankruptcy	(1)	(01)	(0)	(00)	(1)	(01)
Real property	(1)	(01)	(1)	(03)	(2)	(02)
Wills	(1)	(01)	(0)	(00)	(1)	(01)
Family Problems	13	14	4	14	17	14
Divorce	(12)	(13)	(2)	(07)	(14)	(12)
Guardianship	(1)	(01)	(2)	(07)	(2)	(02)
Traffic/Drivers Lic.	5	06	2	07	7	06
Agencies	5	06	0	00	5	04
Internal Revenue	(2)	(02)	(0)	(00)	(2)	(02)
Veteran's Adminis.	(1)	(01)	(0)	(00)	(1)	(01)
Labor & Indust. Bd.	(1)	(01)	(0)	(00)	(1)	(01)
Workman's Compensa.	(1)	(01)	(0)	(00)	(1)	(01)
Advice only	2	02	1	03	3	03
Total	91	100	29	100	120	100

* The figures in brackets ( ) are sub-totals of particular categories.
** Petitions for post-conviction relief filed by the prisoner in the court of appeals in the district that imposed the sentence.

III. EMPIRICAL RESEARCH

The State of Washington has operated a Legal Services to Prisoners Project since 1972.[94] An evaluation of this project was conducted in 1974–75 by this author.[95] Data were collected from a cohort of 198 male prisoners, each of whom had spent at least six months in prison on his current sentence. The cohort was admitted to the Washington prison system between June 1, 1974 and August 31, 1974. The data reported here were collected the last week in February, 1975, at the prisons to which the prisoners were assigned.[96] Each prisoner was asked if he currently had a legal problem which he felt required legal counsel. The data in Table 1 provide an opportunity not only to learn how the project is used, but also to determine the nature and extent of legal problems encountered by prisoners who, for one reason or another, decided not to seek recourse to the legal aid project.

The data do not reveal findings that differ significantly from previously reported data. The following table shows those problems which were referred to Washington's Legal Services Project and legal problems perceived by prisoners who did not seek recourse to the legal aid project. The totals indicate the nature and extent of the legal problems experienced by the prisoners in the cohort.

Data from Table 1 indicate that civil, including family, problems comprised 37 percent of prisoners' legal problems. Requests concerning parole board questions, writs of habeas corpus, and internal prison matters constituted another 36 percent of the troublesome legal issues. The data reveal a tendency for prisoners not seeking legal assistance to report a higher rate of problems relating to the criminal justice system than those who utilize the project. Seventeen percent of the nonusers report problems concerning their conviction or sentence compared to 10 percent of the users of the legal aid project. This trend is also evident with parole board problems. Twenty-one percent

94. The prison Legal Services Project provides services to the adult correctional institutions and honor camps. The principle behind the legal aid to prisoners project is to provide inmates with quality legal assistance equivalent to that which they would receive from private attorneys.

95. A copy of this evaluation is on file at the offices of the *Washington Law Review*.

96. Each prisoner spent approximately six weeks in orientation and testing at the diagnostic center at Shelton. Prisoners were then transferred to either the Shelton treatment center, Monroe reformatory, the State Penitentiary at Walla Walla, or one of the several honor camps.

of those who chose not to utilize the legal aid project questioned the parole board's handling of their case, although only 10 percent of those who sought help from the legal aid project reported such problems. These data relate to the criminal justice system and put the premise of equal justice in question. The fact that those least likely to seek recourse to legal aid realized problems but did not perceive solutions confirmed the notion that those prisoners who had lost faith in the system or had become passive did not bother using the services of the legal aid project.[97]

Although the categories of prisoners' legal problems listed by various researchers are labeled differently, when the legal content is compared the three areas of complaints voiced most often include: (1) civil problems; (2) collateral attacks; and (3) problems concerning the conditions of incarceration. The data indicate that many prisoners who did not seek recourse to the legal aid project experienced civil legal problems and internal prison problems in approximately the same proportions as those who used the legal aid project.[98]

IV. CONCLUDING OBSERVATIONS

A combination of estimates and empirical data has been presented to facilitate prediction of the nature and frequency of occurrence of prisoners' legal problems and their subsequent requests for legal aid. Data have been reported which suggest patterns of needed legal expertise for projects which deliver legal services to prisoners. Administrators, it is proposed, should staff such projects with attorneys expert in civil law, collateral attacks, and problems directly related to institutionalization and the criminal justice system.

97. The data of another researcher in the area of prison legal services, Marvin Finkelstein, portrayed the applicant for legal services in the Massachusetts prison system as having achieved a higher degree of social integration and a more positive attitude toward the law than the nonapplicant. M. Finkelstein, Perspectives on Prison Legal Services at xxiii (1971).

The data of this author's Washington study indicated that participaton in the legal aid project was a significant factor in producing positive changes in prisoners' attitudes toward police, lawyers, and the judicial system. Also, positive changes in the prisoners' ability to adhere to the prison normative system were also evident. G. Alpert, J. Finney & J. Short, Legal Services, Prisoners' Attitudes and "Rehabilitation" 11 (unpublished report on file with the *Washington Law Review*). Thus participation in prison legal aid may have an added benefit over improving prisoners' access right to the courts—increased social and emotional stability among prisoners.

98. It is true that some prisoners will never seek legal assistance from a formal delivery service, but it must be assumed that a proportion of nonusers will, at some

Legal services projects should make their services more attractive to those prisoners least likely to actively seek out assistance. Passive prisoners and those alienated from the system are likely to experience serious legal problems and do nothing about them. Orientation and briefing sessions should consider these prisoners as potential but reluctant clients.

To function properly, the legal service projects must be staffed by experts in problem areas most frequently experienced by prisoners and be able to establish the rapport with prisoners necessary to gain their confidence. As one Washington prisoner remarked:[99]

> Legal aid? It's O.K. when you can get hold of someone that knows something. Most of the time they are so busy you don't get to see them. When you do, it's always the same thing . . . "we'll research it" or "let me go back and see what I can do about it." Hell, man, I can get that from a guard.

time, be attracted to the Legal Services Project. The author's projections, therefore, are slightly different from those reported by the Resource Center on Correctional Law & Legal Services, *supra* note 48. Legal aid to prisoners should be prepared to deal with legal problems in the following proportions:

1) Civil problems	30%
2) Collateral attacks	20%
3) Institutional, parole and sentencing problems	20%
4) Family matters	15%
5) Miscellaneous complaints including Agencies, Traffic, etc.	15%
Total	100%

99. Interview with prisoner in Washington State Penitentiary, in Walla Walla, Wash., Feb. 27, 1975.