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STATE CRIME COMMISSION

CRIMINAL JUSTICE STANDARDS AND GOALS STUDY

Study Group: Corrections Date: December 2, 1975

Position Paper Title: Offender Rights
CR2-6

Issue Statement

What are the legal rights of convicted offenders and how can such rights be protected?

Conclusion

Because of current legal trends, it is necessary that various changes be made so that Georgia prison policies will not be subject to successful legal challenge. The Department of Corrections and Offender Rehabilitation (DCOR) should establish specific policies and guidelines for searches and seizures taking into consideration both the rights and safety of inmates and the security and safety needs of the institutions' staff. The staff of the Prisoners' Legal Assistance Project needs to be evaluated to determine if the level of service being provided is adequate, and, if not, what level of service is required.

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Research Findings

Problem Identification

For many years it was believed that prisoners had no rights once they were incarcerated. In fact, a little over one hundred years ago the Supreme Court of Virginia said that:

> a convicted felon, whom the law in its humanity punishes by confinement in the penitentiary instead of with death, is subject while undergoing that punishment, to all the laws which the Legislature in its wisdom may enact for the government of that institution and the control of its inmates. For the time being, during his term of service in the penitentiary, he is in a state of penal servitude to the State. He has, 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. He is civiliter mortius; and his estate, if he has any, is administered like that of a dead man.[1]

The current attitude of courts and society towards the incarcerated criminal is vastly different. Although lawful incarceration may occasion the withdrawal of some privileges and rights,[2] it is clear that a prisoner "retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law."[3] The United States Supreme Court reaffirmed this principle in Wolff v. McDonnell when it said that "[T]here is no iron curtain drawn between the Constitution and the prisons of this country."[4]

Despite their recognition of a prisoner's basic constitutional rights, for many years the courts refused to interfere with the internal operation and administration of prison systems.[5] However, within the last few years, federal courts have become aware that they have a constitutional duty to assure that the conditions of incarceration do not overstep the boundaries of constitutional limitations.[6]

As a result of the courts' more active role in the area of prison administration, many prison officials have been under pressure to ensure that an inmate's basic constitutional rights are not infringed.[7] These rights include, but are not limited to, the following: (1) the right of access to the courts, which includes the right of access to legal services and materials; (2) the right to be protected from personal abuse which would constitute cruel and unusual punishment; (3) the right to be protected against unreasonable prison searches and seizures; (4) the right to be free from racial and religious discrimination; (5) the right to due process in the enforcement of conduct rules at disciplinary proceedings; (6) the right to free expression and association; and (7) the right to seek remedies for the violation of an inmate's rights.[8]

Judicial pressure is not the only reason that prison officials are changing their attitude toward prisoner's rights, for much of the rioting and turmoil in prisons which has occurred in the last five years has been partially attributed to long-standing denials of prisoners' basic constitutional rights.[9] Thus, inmates have been guaranteed the above enumerated rights by state and federal court decisions. However, in Georgia there is no comprehensive policy or legislation endorsing all of these rights. Furthermore, where some of these rights are officially advocated in Georgia, there is no mechanism, other than the courts, to guarantee their enforcement.

Other States' and Federal Experience

Federal:

A fundamental right of an inmate is the right of access to the courts. This right developed from an inmate's absolute right to petition for a writ of habeas corpus.[10]

The proper exercise of an inmate's right of access to the courts is dependent on adequate legal services and materials. The minimum legal assitance required by the federal courts is the maintenance of an adequate prison law library to which inmates have easy access.[11] The United States Supreme Court affirmed a district court decision which said that a State's claim that the cost of maintaining adequate library facilities was too great had no legal significance and was not an adequate defense to insufficient facilities.[12] The district court opinion ruled that the library facilities were inadequate if they did not include state and federal reports and annotated codes.[13] The court also noted that if inmate legal needs were otherwise adequately provided for, prison law libraries would not be required.[14]

One way in which inmate's legal needs can be met is through the use of "jailhouse lawyers".[15] Several prisons have tried to ban such activities, but the U.S. Supreme Court again intervened and said that such a prohibition denied prisoners their Constitutional right of access to the writ of habeas corpus. The Court went further and said that

> " ... 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 ... barring inmates from furnishing such assistance to other prisoners."[16]

The federally protected right against physical abuse of inmates has its genesis in the Eighth Amendment to the United States Constitution which prohibits the infliction of cruel and unusual

punishment. Federal courts have recently begun to specify punishments which are "cruel and unusual" and thus in violation of the Eighth Amendment. For example, it was declared cruel and unusual punishment to use a strap to beat inmates.[17] Likewise, it was a violation of the Eighth Amendment provisions to confine a prisoner in a six-by-eight foot cell which had no furnishing except a toilet and had no interior source of light.[18] While the federal courts have not found solitary confinement to be cruel and unusual punishment per se,[19] the denial of the basic elements of comfort and hygiene to inmates so confined will violate the Eighth Amendment.[20]

Inmates have a federally protected right to be free from racial and religious discrimination. It is clear in light of the United States Supreme Court's opinion in Lee v. Washington, that racial discrimination in both federal and state prisons is in violation of the Constitution.[21] Furthermore, it has been decided that removal of an inmate from a prison job because of his race may subject prison authorities to civil liability.[22] Discrimination against inmates is also unconstitutional,[23] but prison authorities do have wide latitude in limiting a prisoner's freedom to worship for security reasons.[24]

Inmates have the right to due process in the enforcement of Conduct rules at disciplinary hearings.[25] The traditional judicial approach to complaints regarding prison disciplinary actions was to ignore such complaints and treat them as matters within the discretion of the prison administrators.[26] But because disciplinary proceedings have such a substantial impact on rights commonly afforded inmates (e.g., good time and parole), the courts are no longer willing to turn their backs when such rights are abridged without adequate due process protections.[27]

One federal district court in the Fifth Circuit said that an inmate who risked a loss of good time or punitive segregation at a disciplinary hearing was entitled to retain counsel or some substitute; present evidence and call voluntary witnesses; and a record of the proceeding stating reasons for decisions reached at the hearing.[28] A federal court in Rhode Island delineated even broader due process requirements saying that an inmate: 1) must be informed of charges and the date of the hearing in advance; 2) may present information available to himself and others; 3) may be represented by a classification officer; 4) has the right to hear the decision and a rationale for it; 5) would not be charged with a violation unless the charge was supported by substantial evidence; 6) must be informed that the board's decision will be reviewed by the warden in three days; and 7) is entitled to have a record of the proceedings made and retained.[29] In 1974 the U.S. Supreme Court held that prison disciplinary actions must comport with the basic minimum requirements of due process to avoid violating an inmate's constitutional rights.[30]

The First Amendment to the U.S. Constitution guarantees certain basic rights to all persons, including prisoners.[31] Thus, the Courts have declared that an inmate has the right to the free exercise of religion,[32] the right to petition government for the redress of grievances,[33] the right to communicate to the press by use of the mails without censorship,[34] and the right to receive news from outside the prison society.[35]

The Federal Bureau of Prisons has authorized all federal institutions to adopt open correspondence regulations on the basis that contact with the community is a good therapeutic tool for the inmate.[36]

If an inmate's constitutional rights have been violated, he has one certain avenue of recourse in the federal courts. He can bring an action against the appropriate state official in federal court under 42 U.S.C. §1983 and seek monetary damages, injunctive relief, or both.[37] It is possible that if injunctive relief is sought under §1983, an inmate might have to exhaust all state remedies before commencing an action in federal court.[38] However, if a basic civil right is involved, exhaustion of state remedies is probably not necessary.[39]

Other States Experiences:

In a recent survey of some 200 state prisons, 71 percent of the respondents had some type of program that provides legal services to inmates. There were four basic categories where legal assistance had an impact: (1) post conviction problems; (2) Civil problems; (3) problems involving the administration of the institution or department; and (4) problems with the parole board.[40] The survey also indicated that legal services weren't usually available to inmates in punitive segregation;[41] however, there have been two recent cases which said that inmates in segregation should not be denied access to attorneys or legal materials.[42]

Since 1969 the Texas Department of Corrections has had a major program of legal assistance for inmates. As of 1974, there were twelve attorneys who resided on the grounds of the institutions and represented inmates in civil and criminal matters. The program has utilized paralegals and law student interns, and there is a full law library at each Texas Department of Corrections unit.[43] In addition to habeas corpus actions, the prisoners have been assisted with divorce and custody problems, disciplinary matters, tax problems, and problems of substandard living conditions.[44]

One other method of providing legal services to inmates is what amounts to an "institutionalization" of the jailhouse lawyer. In Pennsylvania's State Correctional Institute in Gratesford there is a paraprofessional law clinic. Inmates get a dollar a day for working in the clinic. Work done by this clinic includes: sentence computation problems, appeals, detainer problems, and representation of inmates accused of disciplinary rule violations. There are similar programs in New York and New Jersey.[45]

There is no clear statement of the law in the area of prison searches and seizures because this is one area which is usually held to be within the purview of prison administration; and hence, outside of court supervision unless prison officials exceed the bounds of reason in the course of a search.[46] Thus, a Maryland court stepped in when one of its state institutions began to abuse its right to conduct inmate searches and declared that searches must be conducted with maximum respect and minimum discomfort.[47]

Throughout the United States, state correctional institutions have tried to develop various grievance procedures. There are four main procedures which have been advocated: (1) direct mail to the Department of Corrections; (2) Inmate Governing bodies; (3) Ombudsmen and (4) formal grievance procedure.[48] The most common mechanism is the formal grievance procedure followed by inmate councils and ombudsmen There have also been attempts in forty-four institutions in twenty states to start inmate unions.[49] These grievance mechanisms are alternatives to legal actions available to inmates which are also discussed in this position paper.

The right of an inmate to be free from cruel and unusual punishment is applicable to all state prisons and is of such import[50] that courts will often take drastic measures against prisons that abridge that right. For example, in Indiana, a federal district court ordered that one of the state's maximum segregation units be closed within twenty days because of the abhorrent living conditions within that unit.[51]

Various states have also endeavored to preserve inmates' First Amendment right to communicate with the outside world. In Ohio, outgoing letters are never censored unless they present a clear and imminent danger to institutional security.

If an inmate wants to enforce a violation of his rights in state court, he has several options. He can always seek a writ of habeas corpus and challenge the validity of any abridgement of his rights while incarcerated.[52]

If an inmate is injured by actions of prison authorities, he can pursue his common law tort remedies against the official injuring him. If the injury was intentional, the prison official causing the harm may be subject to liability for a tort claim of assault and battery.[53] If the injury was a result of negligence, the person whose negligent acts caused the harm would be subject to liability under a negligence theory (i.e., failure to perform a duty owed to the inmate - plaintiff).[54] Of course, a tort action against the state is usually subject to the defense of sovereign immunity (a citizen cannot sue a government unit or its agent without its consent).[55] However, some state courts have allowed inmates to circumvent this defense by alleging that a prison official's duties are ministerial rather than discretionary, and a breach of that duty will result in liability.[56]

Current Georgia Experience

Georgia's Department of Corrections and Offender Rehabilitation (DCOR) operates a Prisoner Legal Assistance Project in conjunction with the University of Georgia Law School.[57] The project uses both attorneys and law students in its work, and it deals primarily with habeas corpus petitions.[58] The current available staff is not sufficient to meet demand for such services.[59]

One of the major obstacles to adequate inmate access to legal services in Georgia is the lack of a useful law library at any institution.[60] At the Georgia State Prison at Reidsville, there are some law books, but there are no Georgia reporters and not a single copy of the Georgia Code.[61] The lack of those essential research tools is probably a clear violation of the rule set forth in Younger v. Gilmore.[62]

Personal abuse of inmates is contrary to official (DCOR) policy which forbids willful or negligent acts that impair the health of inmates.[63] Such abuse is also contrary to the Georgia Constitution which prohibits the abuse of any person while arrested or in prison.[64] The department admits that there is some abuse of inmates in Georgia prisons, but it claims that because of annual correctional staff evaluation such abuse is not widespread.[65] However, earlier this year the Fifth Circuit Court of Appeals remanded a case against the State Board of Corrections alleging personal abuse of inmates to the district court for a hearing on the merits. The court noted that if the allegations were true, then damages would be appropriate against the persons directly responsible and declaratory and injunctive relief would lie against the persons under a duty to prevent the occurrence and continuation of conditions which generated the complaint.[66]

In that case the inmate alleged that: corrections personnel at Reidsville and Jackson beat, kicked, maced, and tear-gassed prisoners; the places of confinement were infested with rats, roaches, and lice; and prisoners were discriminated against because of race.[67]

There is no specific provision in Georgia law or in the DCOR rules and regulations which proscribes racial or religious discrimination. However, general departmental policy is that there be no such discrimination.[68] Furthermore, federal courts have ordered total desegregation of Georgia's prisons,[69] and have said that racial discrimination against any group of inmates would be unlawful.[70]

There is some authority for the idea that an inmate has the right to be incarcerated in an institution whose staff is a close approximation of the racial mixture of the inmate population.[71] If this principle were even accepted in Georgia, DCOR might have some problems. The current inmate population is almost 61 percent black, but the percentage of blacks employed in the entire department is only 9 percent.[72] Thus, while there is apparently no intentional racial discrimination in DCOR, such discrimination often results because of the employment makeup of the department.[73]

Georgia currently has not set guidelines for prison searches and no protection for the inmate in this regard.[74]

There seems to be no major abridgement of an inmate's First Amendment rights. At Georgia State Prison there is little censorship of printed matter which enters the institution. Incoming mail is opened and checked for contraband, but it is not read. Some magazines are not allowed in the institution if the deputy warden for security determines that the publication would present a "clear and present danger" to prison security.[75]

Georgia is currently using two grievance methods. At Georgia State Prison there is an investigation of grievances and a four-step administrative review process.[76] The other state institutions are planning on adopting this procedure,[77] but they currently can express grievances by writing a letter to the warden, commissioner, or other state official.[78] Once a grievance is heard in the department of corrections through the formalized procedures, if an inmate receives an adverse response, he can bring an action in court in the nature of mandamus or injunction against the Director of DCOR if the department's rules are violated.[79]

The Department of Corrections and Offender Rehabilitation has rule-making authority under the Administrative Procedure Act.[80] By virtue of this authority the Department has established a conduct code, a copy of which is distributed to inmates,[81] and a recently revised disciplinary procedure[82] which comports with the requirements of Wolff[83] and is almost a full implementation of the National Advisory Commission's Standard 2.12.[84] However, the

Georgia procedure, while allowing counsel substitutes, does not permit an inmate to retain an attorney for a disciplinary hearing.[85] Furthermore, there have been many complaints from inmates which indicate that the established disciplinary procedures are not being followed.[86]

If an inmate's rights are violated by Georgia prison authorites, he can obtain relief in Federal Court without exhaustion of remedies in state court if cruel and unusual punishment is alleged.[87] An inmate can also bring a tort action against prison officials under Georgia law in federal court and ".... there is no custom, practice, administrative rule or regulation irhibiting such a suit ..."[88]

If an official is negligent in the care and custody of his prisoner or fails in the performance of a duty to him, the official is personally liable for any injuries received by the prisoner as a result of such negligence.[89] An inmate can also bring an action in state court to seek a writ of mandamus or injunction against the Director of the Department of Corrections if a departmental rule was violated at the expense of the inmate. Of course, his administrative remedies must first be exhausted.[90]

Authoritative Opinions

A study conducted by the Center for Criminal Justice of Boston University School of Law showed that

> a vast majority of administrators believe that legal services would help both prison discipline and prisoner rehabilitation. Over three-fourths of those responding agreed... [that]: Prisoner legal services are not now adequate; legal services would reduce inmate tensions created by unresolved legal problems; legal services would not tend to have an adverse effect on prison discipline and security; legal services would help to reduce the effect of prisoner power structures; and legal services might help the rehabilitation by providing a positive experience with laws and the legal system.[91]

Several other groups and individuals, including the National Advisory Commission on Criminal Justice Standards and Goals (NAC) and the American Bar Association, have acknowledged that inmate legal services are important to the institution as well as to the inmate.[92]

The President's Commission on Law Enforcement and the Administration of Justice and the National Advisory Commission on Criminal Justice Standards and Goals took strong stands against personal abuse of inmates and made recommendations designed to prevent such abuse.[93] The National Council on Crime and Delinquency's (NCCD) Model Act to provide for minimum standards in Penal institutions guarantees humane treatments of inmates by staff and fellow inmates.[94]

The American Correctional Association has advocated inmate searches in order to control contraband.[95] The National Advisory Commission (NAC) also recognized the need for prison searches, but it stressed the necessity of adequate policies and procedures governing searches and seizures to ensure that an inmate's rights are protected.[96]

The NAC advocated that disciplinary hearings as a basic requirement for due process (mandated in Wolff v. McDonnell)[97] and further recommending that an inmate should have the right to a representing attorney at the disciplinary hearing.[98]

The NAC also considered ways in which an inmate could express grievances which related to his incarceration. The Commission recommended that a formal grievance procedure be adopted with a guaranteed investigation of each complaint.[99] The NCCD's "Model Act for the Protection of Rights of Prisoners" proposes the use of direct mail to the head of the Department of Corrections in each state to air such grievances.[100]

Alternatives

1. Retain the present level of legal services and current library facilities.

Advantages:

A. Additional expenditure of funds would not be required.

Disadvantages:

A. The current limited availability of legal services and materials may well subject the State and DCOR to successful legal challenges by inmates.

B. If more legal services were available to inmates, frivilous legal actions would probably be reduced and meritorious claims would be more easily recognized.

2. The State Crime Commission should evaluate the Legal Assistance Project and determine if the level of service being provided is adequate, and if not, what level of service is required. Based upon these findings, the State should provide funding for legal assistance to prisoners at the level of service required.

Advantages:

A. Insures that an adequate level of legal service is provided.

B. Woud probably be cheaper than a library at every institution.

Disadvantages:

A. Evaluation costs would be incurred.

B. Cost of continuing the service could be considered.

3. A permanent law library should be established in each institution housing 300 or more inmates.

Advantages:

A. This would enable inmates at all major institutions to adequately prepare pleadings.

Disadvantages:

A. The cost would be considerable (at least $60,000).

B. Many institutions of less than 300 would not be covered.

4. The General Assembly should create an inmate's bill of rights which clearly spells out the rights of an inmate and the liability of prison officials who violate those rights.

Advantages:

A. It would be clear to prison officials, courts, and inmates just what legal rights an incarcerated individual has.

B. This would help ensure that an inmate's rights were enforced and might reduce the prisoners' use of habeas corpus to challenge violations of these rights.

Disadvantages:

A. This would be a very unpopular piece of legislation with many conservative legislators and their constituents.

5. The Department of Corrections and Offender Rehabilitation (DCOR) should establish specific policies and guidelines for searches and seizures taking into consideration both the rights and safety of inmates and the security and safety of the institutions and staff.

Advantages:

A. This would prevent abuse through such searches by correctional officers.

B. An inmate's Fourth Amendment rights would be protected.

C. Evidence obtained against an inmate through a prison search would be better able to withstand a motion to supress.

Disadvantages:

A. "Shakedown" searches might be curtailed.

6. DCOR should develop more stringent selection and evaluation criteria for being new employees.

Advantages:

A. There might be less friction between inmates and prison officials and employees.

B. There might be less abuse of inmates by prison officials and employees.

Disadvantages:

A. This would increase operating costs of DCOR.

B. It is difficult to attract people for positions as correctional officers and rigid selection criteria might discourage those that are attracted.

Recommendation

Alternatives two, five, and six are recommended.

1. The State Crime Commission should evaluate the Prisoner's Legal Assistance Project and determine if the level of service being provided is adequate, and if not, what level of service is required.

2. The Department should develop specific published guidelines for conducting searches and seizures taking into consideration both the rights and safety of inmates and the security and safety of the institutions and their staff.

3. The Department of Corrections and Offender Rehabilitation should adopt more stringent selection and evaluation criteria for hiring new employees.

Implementation

Legislation would be needed to increase DCOR's budget so that other recommendations could be made by DCOR through its rule-making powers and departmental policy.

During 1976, the State Crime Commission should evaluate the Prisoner Legal Assistance Project. Based on the results, DCOR should include or not include a request for state appropriations in their FY 78 budget request.

By the end of 1976, DCOR should develop departmental rules and regulations to govern prison searches.

The DCOR should adopt more stringent selection and evaluation criteria for all employees hired after July 1, 1976.

Financial Impact:

1. The cost of evaluating this project is estimated at no more than $5,000 and could probably be accomplished for less. The net cost or savings based on results of the evaluation cannot be estimated at this time.

Salaries:

Attorneys	(14 @Grade 18, includes 5 present positions)	$167,664
Secretaries	(5 @ Grade 12)	35,160
		$202,824

Expenses:

Equipment	$ 25,000
Supplies, Travel, and Rent	52,500
	$ 77,500

2. There would be no costs to make the recommended changes in the law and departmental regulations.

3. It is impossible to estimate the cost of testing and upgrading correctional personnel because the magnitude of ineptness of current personnel has not been quantified.

Footnotes

1. Ruffin v. Virginia, 62 Va. (21 Grath.) 790, 795-96 (1971).

2. Price v. Johnston, 334 U.S. 266 (1948).

3. Coffin v. Reichard, 143 F.2d 443,445 (6th Cir. 1944), cert. denied, 325 U.S. 887 (1945). See also Brown v. Perfton, 437 F. 2d 1228 (4th Cir. 1971); Courtney v. Bishop, 409 F.2d 1185 (8th Cir. 1969).

4. Wolff v. McDonnell, 418 U.S. 539, 555 (1974); See generally Criez v. Houck, 404 U.S. 59,60 (1971) where Justice Douglas said in a concurring opinion that "[P]risoners are not statistics, known only to a computer, but humans entitled to all amenities and privileges of other persons, save as confinement and necessary security measures curtail their activities."

5. See Generally Conklin v. Wainwright, 424 F2d 516 (5th Cir. 1970).

6. Campbell v. Beto, 460 F.2d 765 (4th Cir. 1972).

7. Proceedings of the National Conference on Corrections, Judicial Impart on the Prison Administration, Eugene N Barkin, General Counsel, U.S. Bureau of Prisons (1971) at 42.

8. See The ACLU, An ACLU Handbook... "The Rights of Prisoners" (1973).

9. Review,"Attica: The Official Report of the New York State Special Commission on Attica,"64 J. Crim. Law 494 (1973); One inmate spokesman at the Attica uprising said that: "We have come to the conclusion, after close study, after much suffering, after much consideration, that if we cannot live as people, then we will at least try to die like men." (The Commission's recommendation also noted that: "[I]f prisoners are to learn to bear the responsibilities of citizens, they must have all the rights of other citizens except those that have been specifically taken away by court order ... Social responsibility should be thrust upon them, rather than discouraged, as it now is.").

10. Ex Parte Hull, 312 U.S. 546 (1940); See also State Crime Commission's Standards and Goals Project, Position Paper Ct. 2-11 (1975) which deals with habeas corpus.

11. Stevenson v. Reed, No. 6 C73-76K (N.D. Miss. March 27, 1975).

12. Younger v. Gilmore, 404 U.S. 15 (1971); aff'g. Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970). See Cruz v. Hauck, 404 U.S. 59 (1971), where the court said that county jails must also have adequate law library facilities.

13. Ibid., see also Note,"The Expansion of a Prisoner's Right of Access to the Court," 1 Cap. U. Law Review ,192 (1972). [Georgia's inadequacy in this area is discussed infra at page].

14. Ibid., Younger v. Gilmore. (It is not clear what adequate provision for inmate needs means, but in Novak v. Beto, 453 F. 2d 661 (5th Cir.) , the Fifth Circuit said that two attorneys for Texas's 13,000 inmates was insufficient.)

15. Of course, for the jailhouse lawyer to perform his tasks, he must have access to an adequate law library: see supra note 13, 1 Cap. U.L. Rev. 192 at 201.

16. Johnson v. Avery, 389 U.S. 483 (1969). See Wainwright v. Coonts, 409 F.2d 1337 (5th Cir. 1969); and Hooks v. Wainwright 352 F. Supp. 163 (M.D. Fla. 1972) where a federal district court said that a State has a constitutional duty to furnish inmates with expensive law libraries or professional or quasi-professional legal assistance. See also Comment,"Constitutional Law: Prisoners' Right of Access to Legal Mate ials," 26 U.Fla. L. R. 161 (1973).

17. Jackson v. Bishop, 404 F. 2d 571 (8th Cir. 1968).

18. See Jackson v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966). See generally Haines v. Kerner, 404 U.S. 519 (1972).

19. Novah v. Beto, 453 F.2d 661 (5th Cir. 1971).

20. Wright v. McMann, 387 F. 2d 519 (2d Cir. 1967).

21. Lee v. Washington, 390 U.S. 333 (1968). See also McClelland v. Sigler, 456 F.2d 1266 (8th Cir. 1972).

22. U.S. ex rel. Mottey v. Pundle, 340 F. Supp. 807 (C.D. Pa. 1972).

23. Pech v. Ciccone, 288 F. Supp. 329 (W.D.M. 1968).

24. Sharp v. Zigler, 408 F. 2d 966 (8th Cir. 1969).

25. Comment, "Criminal Law - Procedural Due Process for Intraprison Disciplinary Hearings: An Arkansas Analysis," 27 Ark. L. Rev. 44 46-7 (1973).

26. Ibid., at 49.

27. Ibid.

28. Sands v. Wainwright, 357 F. Supp. 1062 (1973); See also Comment "Procedural Due Process in a Prison Disciplinary Proceeding," 25 U.Fla.L.Rev. 844 (1973).

29. Morris.v. Travisono, 310 F. Supp. 857 (1970); See also U.S. ex rel. Miller v. Twoney, 479 F.2d 701 (7th Cir. 1973); "Implications of Morrisey v. Brewer for Prison Disciplinary Hearings in Indiana," 49 Ind. L. J. 306 (1974).

30. Wolff v. McDonnell, 418 U.S. 539 (1974).

31. Courtney v. Bishop, 409 F.2d 1185 (8th Cir. 1969).

32. See Cooper v. Pate, 378 U.S. 546 (1964).

33. See Pamiziano v. Travisono, 317 F. Supp. 776 (D. R.I. 1970).

34. See Nolan v. Fitzpatrick, 451 F.2d 545 (1st Cir. 1971); see also Procunier v. Martinez, 416 U.S. 396 (1974) which the court said "... we reject any attempt to justify censorship of inmate correspondence merely by reference to certain assumptions about the legal status of prisoners ."

35. Fortune Society v. McGinnis, 319 F. Supp. 901 (S.D. N.Y. 1970).

36. See Policy Statement 7300.1A of the Federal Bureau of Prisons. See generally Barkin, E.N., "Judicial Impact on the Prison Administrator," Proceedings of the National Conference on Corrections (1971).

37. Almond v. Kent, 459 F. 2d 200 (4th Cir. 1972).

38. See Preiser v. Rodriguez, 411 U.S. 475 (1973).

39. See Sinclair v. Henderson, 435 F.2d 125 (5th Cir. 1970).

40. McArthur, V.; "Inmate Grievance Mechanisms: A Survey of 209 American Prisons," 38 Fed. Prob. 41 (Dec. 1974).

41. Ibid.

42. See Aikens v. Lash, No 72-S-129 (N.D. Ind., Jan. 23, 1974); and Knell v. Bensinger, 489 F. 2d 1014 (1973).

43. Statsky, W.P.; Inmate Involvement in Prison Legal Services, ABA Commission on Correctional Facilities and Services, Resource Center on Correctional Law and Legal Services (1974) at 25.

44. Ibid., at 16-24.

45. Statsky, supra note 43, at 43.

46. The American Civil Liberties Union, an ACLU Handbook - "The Rights of Prisoners" (1973) at 79.

47. McCray v. Maryland, 10 Cr. L. Rptr. 2132 (Cir. Ct. Md. 1971).

48. Singer and Keating, "Prisoner Grievance Mechanisms," 19 Crime and Delinquency 367 (1973).

49. McArthur, V.; "Inmate Grievance Mechanisms: A Survey of 209 American Prisons," 38 F. Prob. 41 (Dec. 1974).

50. See Miller v. Twoney, 479 F.2d 701 (7th Cir.); Campbell v. Beto, 460 F.2d 765 (5th Cir. 1972).

51. Aikens v. Lash, No. 72-S-129 (N.D. Indiana Jan. 23, 1974).

52. See In Re Riddle, 57 Cal. 2d 848, 372 P.2d 304 (1962); contra Dutton v. Eyman, 95 Ariz. 95, 387 P. 2d 799 (1963).

Certainly such an action could also be brought in federal court. For a full treatment of habeas corpus actions, see State Crime Commission Position Paper CT2- , (1975).

53. Bowman v. Hayward, 1 Utah 2d 131, 262 P.2d 957 (1953).

54. See generally, Smith v. Slack, 125 U.Va. 812, 26 S.E. 2d 307; (1943) Moore v. Murphy, 254 Iowa 969, 119 N.W. 2d 759 (1963); see generally Prosser on Torts at

55. Palmer, Const. Rts. of Prisoners, 135 (1973).

56. Krisah v. McCorkle, 100 Wash. 318, 170 P. 1023 (1918); Smith v. Slack, 125 W. Va. 812, 26 S.E. 2d 307 (1943).

It should be noted that the prison official might be liable in his individual capacity if liability against the state and the individual in his official capacity is barred by sovereign immunity. See Collenburg v. County of Los Angeles, 150 Cal. App. 2d 795, 310 P.2d 989 (1957).

57. Masterplan, Phase II; Department of Corr. and Offender Rehab., Standard 2.2 (Access to Legal Services).

58. Telephone interview with Tom West, Staff Attorney with Prisoner Legal Assistance Project, Georgia Diagnostic and Classification Center, Jackson, Ga., August 29, 1975.

59. Supra, note 57.

60. Ibid.

61. Interview with Joe Hopper, Warden of G.S.P. and tour of the prison, June 26, 1975.

62. Younger v. Gilmore, supra note 12.

Adequate library facilities are needed since the prisoners' Assistance Program is understaffed (See supra note 16.).

63. Rules and Regulations, State Board of Corrections, 125-2-5-07. See Ga. Code Ann. § 77-104 (1973) which says "[N]o jailer shall ... be guilty of wilful inhumanity or oppression to any person under his care and custody."

64. Const. of Ga. of 1945 Art I, § I, ¶ IX; Ga. Code Ann. § 2-109.

65. Masterplan, Phase II; Department of Corrections and Offender Rehabilitation; Standard 2.4 (Protection against personal abuse). [It should be noted that the author has spoken to two unnamed former inmates of Reidsville who described several acts of vicious brutality and harassment which were directed at inmates by correctional officers. Admittedly, since these sources are convicted criminals their credibility is inherently suspect; but on the other hand, these men were also in a better position than any correctional official to see what really goes on inside the prison] .

66. See Patterson v. MacDougall, 506 F. 2d (5th Cir. 1975).

67. Ibid.

68. Masterplan, Phase II, Dept. of Corr. and Offender Rehab.; Standard 2.8 (Nondiscriminatory Treatment).

69. See Wilson v. Kelley, 294 F. Supp. 105 (N.D. Ga. 1968); Rentfrow v. Carter, 296 F. Supp. 301 (N.D. Ga. 1968).

70. Supra, note 66, Patterson v. MacDougall.

71. See generally, Rudovsky, D.; Basic ACLU Guide: Rights of Prisoners 68-70 (1973).

72. These percentages came from figures compiled in October 1974 and supplied by Stewart Kramer, DCOR.

73. Such discrimination is often difficult to prove; however, the ACLU explains it in the following manner:

> ... racial discrimination continues to be as commonplace in our prisons as it is in society at large. The general legal principles prohibiting discrimination have little relevance in the everyday administration of prisons. Many penal institutions containing a large percentage of minority group inmates are located in white rural communities, and in these prisons black inmates are subject to the directives and commands of the white guards recruited from these communities. Racism is a constant and substantial factor in these relationships, but most discriminatory practices are of such a nature as to pass under the rubric of discretionary acts of public officials.

[ACLU, "The rights of Prisoners", an ACLU Handbook, 69-70 (1973).]

74. See supra note 58, Interview with West.

75. Hopper, supra note 61 (the deputy warden does not have a legal background but has had some training in Constitutional law). See also "Operation Handbook for Offenders," Ga. DCOR, 5-7 (Mail privilege can be taken away and publications received per inmate can be limited).

76. Masterplan, DCOR, Draft; Present Situation on Standard 2.14 (Grivance Procedures).

77. Hopper, supra note 61.

78. Supra note 76.

79. Heard v. Hopper, 233 Ga. 617 (1975) (elections).

80. Ga. Code Ann. §3A-101.

81. "Orientation Handbook for Offenders", Georgia DCOR.

82. Board of Corrections, Rules and Regulations, §125-2-5, 1-40.

83. Wolff v. McDonnell, 418 U.S. 539 (1974).

84. Masterplan, Phase II, Draft, DCOR; Present Situation in Georgia on Standard 2.12 (Disciplinary Procedures) (1974).

85. Interview with Hopper, supra note 61.

86. Draft, DCOR Masterplan, Consolidation Sheet, Present Situation in Georgia DOOR for Standard 2.12 (Disciplinary Procedures) p.4.

87. Krist v. Smith, 309 F. Supp. 497 (S.D. Ga. 1970) (Diction).

88. Heard v. Caldwell, 364 F. Supp. 419 (S.D. Ga. 1973).

89. Irwin v. Arrendale, 117 Ga. App. 1 (1967).

90. See Forbes v. Ricketts, 234 Ga. 316 (1975).

91. "Providing Legal Services to Prisoners," 8 Ga. L. Rev. 363, 378 (1974).

92. See generally, NAC, Corrections, Standards 2.1, 2.2, 2.3 (1973), American Bar Association, Standards Relating to Post-Conviction Remedies, (1967), 49-66; Statsky, supra note 43 at 29; American Correctional Association, Manual of Correctional Standards, (1966), 268.

93. See The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections (1967); National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Standard 2.4.

94. NCCD, An Act to Provide for Minimum Standards in Penal Institutions (1971).

95. The American Correctional Association, Manual of Correctional Standards (1966).

96. NAC, Corrections, Standard 2.7 (1973).

97. Wolff v. McDonnell 418 U.S. 539 (1974).

98. Corrections, NAC on Criminal Justice Standards and Goals, Standard 2.12.

99. Corrections, NAC, Standard 2.14 (1973).

100. National Council on Crime and Delinquency, A Model Act for the Protection of Rights of Prisoners (1972).

101. This is the ratio which the project believes it can handle most efficiently; see Masterplan, supra note 57.