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PROTECTING INMATE RIGHTS: PRISON REFORM OR PRISON REPLACEMENT?

A report prepared by the Ohio Advisory Committee to the U.S. Commission on Civil Rights

ATTRIBUTION:

The findings and recommendations contained in this report are those of the Ohio Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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February 1976

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to the

UNITED STATES COMMISSION ON CIVIL RIGHTS

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LETTER OF TRANSMITTAL

OHIO ADVISORY COMMITTEE TO THE U.S.
COMMISSION ON CIVIL RIGHTS
February 1976

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Sirs and Madam:

The Ohio Advisory Committee submits this report of its study of inmate rights and institutional conditions in Ohio's adult State prison system as part of its responsibility to advise the Commission on civil rights problems within this State.

This report examines both the status of Ohio inmate rights and the institutional conditions affecting those rights. The Advisory Committee has worked on this issue for over 2 years. In July 1973 it conducted open meetings on this question and has heard from past and present prisoners and prison staff, administrators, State legislators, correctional experts, and civic leaders.

The Advisory Committee finds that in spite of much State and Federal case law and State administrative regulations guaranteeing prisoners' rights, Ohio inmates suffer widespread and repeated violations of those rights. The Advisory Committee agrees with many corrections experts that the very institutional structure of prisons is largely to blame for these rights violations and therefore recommends systemic as well as statutory and administrative changes. We strongly feel that prisons may be inherently incapable of operating constitutionally.

The Advisory Committee recommends new State programs to increase the use of probation and decrease the use of incarceration, thereby enabling the closing of most of Ohio's prisons. We also recommend the repeal of State laws which have the effect of rewarding counties financially for the number of persons committed to State prisons.

The Advisory Committee also recommends the enactment of both Federal and State bills of rights for prisoners with provisions for vigorous enforcement. We further urge that such Federal legislation condition the receipt of all Federal funds upon State enactment and enforcement of such a bill of rights.

In the meantime, the Advisory Committee recommends greatly increased monitoring of prison disciplinary and parole procedures. We also urge development of a unified State correctional policymaking and budgeting authority to overcome the present extensive fragmentation of Ohio adult corrections.

It is our hope that the Commission will support our recommendations and make effective use of these findings in the Commission's National Prison Project.

Respectfully,

/s/

ELDRIDGE T. SHARPP, JR.
Chairman

ACKNOWLEDGMENTS

The Ohio Advisory Committee wishes to thank the staff of the Commission's Midwestern Regional Office, Chicago, Ill., for its role in the preparation of this report. The report was written by Frank E. Steiner with legal assistance from Margaret V. Johnson. Other staff members who participated in the preparation of the report include Valeska S. Hinton, Duane Lindstrom, Delores Miller, Ada L. Williams, Sharon A. Rivers, and Kim Dewey (student intern). All worked under the guidance of Clark G. Roberts, Regional Director.

Final edit and review was conducted in the Commission's Office of Field Operations, Washington, D.C., by editor Bonnie Mathews, assisted by Mary Frances Newman and Audree B. Holton. Preparation of all State Advisory Committee reports is supervised by Isaiah T. Creswell, Jr., Assistant Staff Director for Field Operations.

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Preface to the Summary Edition

The complete text of this report is more than 176 pages long, and includes 18 charts and tables and eight appendices. Due to rapidly increasing costs of printing and distributing government reports, this report has been issued in two editions: the complete text and this abridged version. This version includes the complete texts of Chapters I, VII, and VIII of the full report and, therefore, includes all conclusions, findings and recommendations of the Advisory Committee. The full report has been placed in many public and university libraries throughout the State and a limited number of copies will be available from the Commission's Washington and Chicago offices for a time after the report's official release. All inquiries about the report's availability should be sent to the Commission's Midwestern Regional Office, 230 South Dearborn Street, Room 3251, Chicago, Illinois, 60604, 312/353-7371.

SUMMARY EDITION

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CHAPTER I

I N T R O D U C T I O N

The Ohio Advisory Committee to the U.S. Commission on Civil Rights has been concerned about conditions in Ohio's adult prisons for several years. In 1971 and 1972 the Advisory Committee received allegations from inmates, prison staff, and other citizens that violations of inmate and staff rights were occurring in the prisons.

In 1973 the Commission initiated a national study to determine the need for Federal guidelines to protect prisoners' rights. The Commission also wanted to determine the extent of discrimination against minority and women inmates. Traditionally concerned with racial discrimination and more recently with sex discrimination, the Commission has concluded that adequately addressing the rights of minority and women prisoners first requires examination of the rights afforded all prisoners. This is permitted in legislation establishing the Commission which directs it to:

> ...study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice; [Sec. 104(a)2 of the Civil Rights Act of 1957, as amended] [Emphasis added.]

This language has been consistently interpreted to mean that the Commission's jurisdiction in the area of the administration of justice extends to matters pertaining to denial of equal protection, whether or not on the basis of race, sex, or national origin.[1]

1. U.S., Commission on Civil Rights, Office of General Counsel, memorandum, Mar. 13, 1973.

The Ohio Advisory Committee chose to participate in what grew to be a 14-State national project.

In Ohio, as throughout the nation, prison problems have generated controversy and often violence. Elected and appointed officials have frequently responded to the issues by conducting investigations and issuing studies of prison conditions. These studies include the 358-page final report of the Ohio Citizens' Task Force on Corrections, a highly professional group appointed in 1971 by former Governor John J. Gilligan and headed by Judge Bernard Friedman of Cleveland, and the 1973 report of the Administration of Justice Committee, a Cleveland-based private consulting firm staffed by former corrections officials. The general assembly's Republican leadership issued a 1973 report on conditions in the Southern Ohio Correctional Facility at Lucasville, an institution also studied by the recently abolished Governor's Advisory Panel for Rehabilitation and Correction. The general assembly's staff has continued to gather information on Ohio prison administration as part of the legislature's oversight functions. The Ohio prisons have also been the subject of several academic research projects in recent years.

Nearly all of these reports have catalogued allegations of mistreatment of inmates and have publicly sounded the call for "prison reform" of varying degrees. What these prior reports did not address, however, were prison policymaking and budgeting priorities and the enforcement of the system's revised rules and regulations. This report addresses these and also raises the fundamental issue of whether prisons should continue to exist at all in this State. The latter concern was raised by many witnesses during the Advisory Committee's informal hearing in Columbus, Ohio in 1973 and has been repeatedly addressed in recent years by national experts on prisons.

Although the Advisory Committee originally initiated its investigation in response to allegations of mistreatment of inmates, the Committee members were also aware of the relatively high regard with which Ohio's prison system has been viewed by corrections specialists nationally, particularly under its former director, Dr. Bennett J. Cooper. This apparent conflict between everyday operation of the system and its national reputation required an investigation which examined the system's basic structure, budget, and policy-making apparatus. Through that study, especially the budgetary aspects, the Advisory Committee has come to question many of the positive assumptions made about Ohio's prison system. More importantly, however, the Advisory Committee became increasingly concerned that the protection of inmates' constitutional rights and the continuation of Ohio's prison system as it is today may be irreconcilable goals. As U.S. District Court Judge James E. Doyle has said:

> If the functions of deterrence and rehabilitation cannot be performed in a prison without the imposition of a restrictive regime not reasonably related to these functions, it may well be that these functions can no longer be performed constitutionally in a prison setting.[2]

In brief, the Advisory Committee could not ignore the information before it which, when analyzed, amounted to an indictment of prisons generally, not merely a critique of Ohio's seven prisons. As a result, the Advisory Committee is attempting to stake out some new discursive ground within the corrections debate in Ohio. It is also doing this nationally through its parent agency, the Commission. Hopefully this document will both help clarify the issues and also identify more options for creative action by State and Federal officials.

2. Morales v. Schmidt, 340 F. Supp. 544 (W.D. Wis., 1972).

CHAPTER II

TRENDS IN LEGAL RIGHTS OF PRISONERS

The Revolution in the Courts

More than 30 years ago, a Federal court of appeals with jurisdiction over Ohio set the framework for current judicial thinking on prisons by ruling in Coffin v. Reichard:

> A prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication taken from him by law....[3] [Emphasis added.]

This ruling was a reversal of the courts' previous hands-off policy regarding prison conditions. For years the courts had agreed with prison administrators that the operation of prisons was the sole responsibility of the administrators and not a subject for judicial intervention.[4] Prison officials had also held that conditions affecting inmates were not a question of rights but of privileges granted at the discretion of administrators. Some courts have reversed themselves on both points.

3. 143 F. 2d 443, 445 (6th Cir. 1944), cert. denied, 325 U.S. 887 (1945).

4. See cases and commentary in Note, Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts, 72 Yale L. J. 506 (1963).

The judicial reversal occurred most completely in the 1960s due to a number of conditions: a shifting inmate population and new ideas about the offender, about incarceration, and about society itself.[5] Federal and State courts have increased the number of hearings regarding prisoner complaints, thus rejecting the theory that inmates' problems involve the withholding of mere discretionary privileges by prison officials.

The United States Supreme Court has sanctioned the lower courts' reversals by holding in several cases that where paramount Federal rights collide with prison administrative practices the latter must yield.[6]

Detailed judicial opinions and orders now cover all facets of prison conditions and inmate relations. A substantial body of prisoners' rights law has evolved from both Federal and State court decisions and the State courts of Ohio have contributed several orders founded on basic constitutional theories. The Ohio decisions and key Federal opinions form an elemental legal structure by which the treatment of inmates in the Ohio penal system can be measured.

As a result of the courts' new orientation, judges have found entire State prison systems to be operating unconstitutionally. Some correctional experts contend that these systems are not significantly worse than those which have so far escaped close judicial scrutiny.[7] The change in judicial thinking about inmate rights has had an impact on the corrections profession

5. David J. Rothman, "Decarcerating Prisoners and Patients," Civil Liberties Review, vol. I., no. 1 (fall 1973), (hereafter cited as Decarcerating Prisoners).

6. Cooper v. Pate, 378 U.S. 546 (1964); Johnson v. Avery, 393 U.S. 483 (1969); Cruz v. Beto 405 U.S. 319, (1972); Haines v. Kerner 404 U.S. 519, (1972); Wilwording v. Swenson 404 U.S. 249, (1971); and Younger v. Gilmore 404 U.S. 15, (1971).

7. National Council on Crime and Delinquency, Crime and Delinquency, vol. 19, No. 4, (October 1973) p. 451.

itself. The 1966 edition of the Manual of Correctional Standards of the American Correctional Association cited the courts' new interest and advised its members:

> ...[N]o longer are prisoners, in particular, largely at the mercy of correctional authorities....[I]t behooves the prison administrator, not only to comply with [recent standards of inmate rights], but also to secure advice from the appropriate legal advisor of the State whenever an issue arises concerning the legal right or liability of a convicted offender. The administrator should always be certain that he is not acting capriciously or unreasonably but that established procedures are reasonable and not calculated to infringe upon the legal rights of prisoners.[8]

Administrative Regulations

In Ohio, top-level corrections administrators have sought to adopt uniform standards of inmate rights throughout the prison system. After its establishment as a separate State agency in 1972, the Ohio Department of Rehabilitation and Correction issued new rules and regulations covering most areas of inmate life. These new standards closely follow those of the American Bar Association and the Council of State Governments which are based on current judicial rulings on inmates' rights.[9] Other private and public agencies have strongly urged the adoption of standards which expand and protect rights of prisoners. These agencies include the President's Commission on Law Enforcement and the Administration of Justice, the National Council on Crime and Delinquency, the American Civil Liberties Union, the National

8. American Correctional Association, Manual of Correctional Standards (College Park, Maryland: 1966), p. 266.

9. American Bar Association and the Council of State Governments (with cooperation of 11 other national organizations), Compendium of Model Correctional Legislation and Standards, (Washington, D.C.: 1972), Part IV.

Advisory Commission on Criminal Justice Standards and Goals, the United Nations, the American Association of State Corrections Administrators, and others. Finally, in addition to Ohio, several other State correctional systems have incorporated many of the newer standards for inmate rights in their administrative regulations.

The Case for Legislating Inmate Rights

The expansion of inmate rights through court decisions, administrative regulations, and professional standards has not quieted the concern of inmates, citizen organizations, and some public officials that major changes should be made in prison practices in Ohio and throughout the United States. If anything, the level of concern appears to have deepened. This is partly the result of tragedies such as those at New York's Attica State Prison in 1971, where 43 prisoners and guards died, and at the Ohio Penitentiary in 1968 where 5 died.

Despite key judicial rulings favoring inmates' constitutional rights, the courts still do not consistently grant inmate suits a hearing.

This problem has increased as a result of a recent U.S. Supreme Court ruling, according to Leonard Schwartz, former staff counsel for the Ohio Civil Liberties Union. In Preiser v. Rodriguez,[10] inmates suits which would effect an early release of a prisoner are required to be brought as writs of habeas corpus, rather than as civil rights actions under section 1983 of the U.S. Code. Mr. Schwartz cited two negative effects of the court's ruling: (1) It eliminates a number of civil rights legal actions because in using a writ of habeas corpus, class action suits are not possible; and (2) In order to use a writ of habeas corpus the litigant must pursue and exhaust State remedies. This procedure is not productive, according to Mr. Schwartz, because the States cannot adequately handle inmate suits.

Even when courts grant standing to inmate plaintiffs, the key judicial precedents on inmate rights are not uniformly followed by judges. Mr. Schwartz told the Ohio Advisory Committee that some Federal courts are still hesitant to take an active role in behalf of inmates' rights:

10. 411 U.S. 475 (1973).

> They usually refuse to look behind the decision of prison administrators and merely defer to their expertise. (Transcript, p. 58)[11]

Even when State or Federal courts do grant standing to prisoners' suits and rule favorably, the judiciary still stands essentially alone as a force for change within prisons. No legislatures have joined in formal support of inmate rights, and executive orders have had little enforceability within State prison systems. Many inmate and prison staff witnesses during the Ohio Advisory Committee's open meeting alleged that the regulations of the Department of Rehabilitation and Correction are often unenforced. Many inmate and correctional officers and inmates are not familar with the regulations, witnesses said.

The limits of judicial willingness and ability to actually protect inmate rights, plus the need to codify the many rulings in existence, has led to several proposals that an inmate bill of rights be enacted into law legislatively. In July 1972, less than one year after the Attica tragedy, the National Council on Crime and Delinquency (NCCD) published "A Model Act for the Protection of Rights of Prisoners."[12] Members of the committee drafting the model act included such experts as Dr. Karl Menninger of the Menninger Foundation, Norman Carlson, Director of the U.S. Bureau of Prisons, and seven others. According to Sol Rubin, former NCCD general counsel, the model act is an attempt to foster legislative support for inmates' constitutional rights. It explicitly grants inmates access to the courts and defines a broad range of permissible judicial authority over prison systems. The act is supported by many national and local groups, including the NCCD's Ohio affiliate, the Commission on Crime and Delinquency of the Ohio Citizens' Council for Health and Welfare.

11. Page numbers in parentheses cited here and hereafter in text refer to statements made to the Ohio Advisory Committee to the U.S. Commission on Civil Rights during its open meeting July 13-14, 1973, Columbus, Ohio, as recorded in the transcript of that meeting. (The transcript is on file with the U.S. Commission on Civil Rights, Washington, D.C., and with the Commission's Midwestern Regional Office, Chicago, Ill.)

12. National Council on Crime and Delinquency (Paramus, N.J.: 1972).

In February 1972, 5 months prior to the publication of the NCCD's model act and 4 months after the killings at Attica, the National Alliance for Safer Cities called on the Federal government and State governments to adopt the United Nations Standard Minimum Rules for the Treatment of Prisoners.[13] The proposal was supported by nine nationally prominent religious, labor, civil rights, and business leaders. Roy Wilkins, executive director of the National Association for the Advancement of Colored People, commented at the time of the proposal:

> The winds of prison reform are sweeping through the land. The recent Harris Poll reported that 86 percent of the public is convinced that the ultimate answer to keeping peace in prisons is 'to establish real communications with the inmates and try to satisfy their legitimate needs as people.' That's what this statement is all about.

When the U.S. Commission on Civil Rights initiated its national prison project in 1973, it retained, as consultant to the project, Donald H. Goff, formerly chief, Bureau of Correction, New Jersey and former general secretary of the Correctional Association of New York. Under Mr. Goff's direction the Commission issued its proposed baseline of inmate rights. The proposed baseline was examined by Commision advisory committees in studies of 4 Federal prisons and 10 State prison systems, including Arizona, Delaware, Georgia, Kansas, Louisiana, Nebraska, New Hampshire, New Jersey, Ohio, and Oregon.

13. The full text of the United Nations Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations appear in the Compendium of Model Correctional Legislation and Standards (Washington, D.C.: American Bar Association and the Council of State Governments, 1972), pp. IV-9 to IV-18.

In testimony before the Ohio Advisory Committee, nearly all witnesses, including top prison administrators, supported the concept of establishing an inmate bill of rights through legislation. J. Raymond Twohig, then Ohio State University lecturer and director of that school's legal clinic, said:

> Public officials will feel free to ignore [rules protecting inmates' rights] unless there is a clear enforcement mechanism with Federal supervision and criminal sanctions. (Transcript, p. 646)

CHAPTER III

THE QUESTION OF INCARCERATION

Arguments for alternatives to prisons are generally not based on permissive attitudes toward convicted offenders. They stem from a pragmatic view that prisons, in fact, no longer serve to "correct" offenders (if they ever did) and that the price of trying to make prisons work is unjustifiably high in view of excessive rates of recidivism and loss of staff and inmate liberty.

David J. Rothman, a Columbia University professor of American social history and a member of the Field Foundation's Committee for the Study of Incarceration, has described the national debate on prisons as a conflict between those who still believe the "myths" of incarceration and rehabilitation and those who seek "decarceration;" that is, "getting and keeping as many people as possible out of institutions."[14]

Erving Goffman, a noted social scientist at the University of California at Berkeley, has argued that all "total institutions" (prisons, mental hospitals, etc.) share the same qualities of inhumaneness, staff-inmate conflict, and violation of legal rights. In his 1961 work, Asylums, Dr. Goffman describes the characteristics of total institutions such as prisons:

> (1) The key fact of total institutions is the handling of many human needs by the bureaucratic organization of whole blocks of people, leading to:

14. David J. Rothman, "Decarcerating Prisoners," pp. 23, 26, and throughout.

--a major staff role of enforcement and surveillance, rather than guidance;

--a basic split between the managers and the managed, including the use of narrow, hostile, stereotyped views by each group; and

--nearly complete restriction on interpersonal and informational relations between inmates and staff.

(2) A basic incompatibility between such institutions and the work-payment motivations of our society.

(3) A basic incompatibility between total institutions and the family structure of the society that affects both inmates and staff.[15]

Dr. Goffman's analysis of the basic structure of prisons challenges the assumptions of prison reform. A prison "reformed" is still a prison.

A more recent research effort attempted to simulate prison life with startling results. At Stanford University, psychology professor Philip Zimbardo created a mock prison using stable, noncriminal, middleclass, college students as "prisoners" and "guards."[16] The experimental conditions were modeled upon current prison standards and were not designed to be repressive. Nevertheless, the mock prison almost immediately produced hostility, coercion, and in some cases, pathological behavior. The "guards" became brutal and the "prisoners" became withdrawn. Several "prisoners" had to be "released" early because of emotional breakdowns, and the entire project was terminated after 6 days. Dr. Zimbardo said:

15. Erving Goffman, Asylums: Essays on the Social Situation of Mental Patients and Other Inmates (Garden City, N.Y.: Doubleday and Co., 1961), pp. 6-12.

16. Craig Haney, Curtis Banks, and Philip Zimbardo, "Interpersonal Dynamics in a Simulated Prison," International Journal of Criminology and Penology, 1973, vol. I, pp. 69-97.

We were no longer dealing with an intellectual exercise in which a hypothesis was being evaluated in the dispassionate manner dictated by the canons of the scientific method. We were caught up in the passion of the present, the suffering, the need to control people, not variables, the escalation of power and all of the unexpected things that were erupting around and within us. We had to end this experiment. So our planned two-week simulation was aborted after only six (was it only six?) days and nights.[17]

One participant commented:

What made the experience most depressing for me was the fact that we were continually called upon [by the prison environment] to act in a way that just was contrary to what I really feel inside. I don't feel like I'm the type of person that would be...just constantly giving out...and forcing people to do things, and pushing and lying--it just didn't seem like me....You want just to be able to tell everyone that 'this isn't really me at all, and I'm not the person that's confined in there'....[18]

The quote is from a "guard" in the experiment and supports the view that prisons are highly retributive, apart from the character of their residents--inmates or staff. Dr. Zimbardo concluded, in part:

> If our mock prison could generate the extent of pathology it did in such a short time [6 days], then the punishment of being imprisoned in a real prison does not 'fit the crime' for most prisoners--indeed, it far exceeds it! Moreover, since both prisoners and guards are locked into a dynamic, symbiotic relationship which is destructive to their human nature, guards are also society's prisoners.[19]

17. Philip G. Zimbardo, et al, " Pirandellian Prison," New York Times Sunday Magazine, Apr. 8, 1973.

18. Ibid.

19. Ibid.

In 1971 the Ohio Citizens' Task Force on Corrections noted the destructiveness of prisons and urged Ohio officials to greatly deemphasize the use of prisons. The Task Force concluded:

> The public has been led to believe that corrections (especially prisons) actually prevent crime. The fact of the matter is that it does not. Careful investigation shows that our prisons cause more harm than good. To continue as in the past will only prepetuate this myth of prevention, further delude the public, and compound the problem.20

This conclusion has set the tone for much of the recent debate concerning the Ohio corrections system. Governmental and civic leaders appear to be seriously questioning the viability of this State's corrections system. Dr. Bennett J. Cooper, former director of the Ohio Department of Rehabilitation and Correction, has said about confinement in prisons:

> We take a man out of 'normal' society, put him in an 'abnormal' situation, and tell him we are going to teach him how to live normally. This is impossible.21

Similar criticism was voiced by three Ohio State University consultants to the Ohio Citizens' Task Force on Corrections. In a report recommending greater use of alternatives to prisons in Ohio, Harry E. Allen, Nancy J. Beran, and James J. Johnson observed:

> Indeed, the criteria for being a well-adjusted inmate are often the exact oposite of the criteria for being a well-adjusted ex-convict.22

20. Final Report, Ohio Citizens' Task Force on Corrections (Columbus, Ohio: Ohio Department of Urban Affairs, 1971), p. B12 (hereafter cited as Task Force Report).

21. Marvin Beard, "Corrections Chief Opposes Prisons," Cincinnati Enquirer, Dec. 16, 1973.

22. N.J. Beran, J.J. Johnson, and H.E. Allen, "Alternatives to Incarceration in the Criminal Justice System: Community Based Services," special report to the Ohio Citizens' Task Force on Corrections, Task Force Report, p. F83.

Contributing to the rationale against incarceration is research showing that no more than 20 to 30 percent of present inmates are a danger to society and in need of secure confinement.23 This proportion is consistent with the fact that in 1971, violent crimes were only 12 to 14 percent of all reported crimes nationally.24

Furthermore, only a small fraction of crimes committed lead to prison sentences. That fraction is not accurately known, since many crimes are not reported, many criminals are never apprehended, and many offenders are never sentenced to a closed institution.

Two-thirds of the correctional caseload in the United States is supervised in noninstitutional settings (parole, probation, halfway houses, etc.), according to the President's Commission on Law Enforcement and the Administration of Justice in its 1967 report.25 The number of offenders confined in prisons and jails, however, is still three times larger than necessary to protect society, according to the Chamber of Commerce of the United States. In a recent report distributed with the assistance of the American Correctional Association the National Chamber of Commerce stated:

> Experts agree that only 20-30 percent of present inmates represent a danger to society and must be securely confined. If the remaining 70 percent can be rehabilitated in less restrictive local institutions, or under supervision in the community, few facilities will be needed for those considered dangerous and least responsive to correctional treatment.26

23. "Marshalling Citizen Power to Modernize Corrections" (Pamphlet), Chamber of Commerce of the United States, 1972, p. 5 and bibliography (hereafter cited as Marshalling Citizen Power).

24. U.S., Department of Justice, Federal Bureau of Investigation, Crime in the United States: Uniform Crime Reports, 1972.

25. U.S., President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society (Washington, D.C.: 1967), p. 12.

26. Marshalling Citizen Power, p. 7f.

Growing Court Commitments to Ohio Prisons

Despite such recommendations for decreased use of incarceration, court commitments to Ohio prisons have, as a rule, increased regularly since 1957. Table 1 on the following page reports data on court commitments for the years 1957 through 1974, with estimates for 1975.

From 1967 to 1970 the average annual rate of increase in commitments was 6.4 percent, while the corresponding average population increase was one-tenth that at 0.9 percent. From 1970 to 1973 the average increase in commitments was 6.3 percent per year compared to an average population increase of only 0.5 percent. Comparison of the increases in recent court commitments with population increases in the early 1950s, when many of Ohio's new prisoners were born, gives similar results.[27] The average annual population increase for Ohio from 1950 to 1960 was 2.0 percent, still only a fraction of recent increases in prison commitments.

Population changes, therefore, do not appear to explain Ohio's increasing court commitments to prisons. There are several other possible explanations for the increase, including rising rates of reported crime through 1971 and again in 1974, the tendency of local judges to make use of State-funded facilities when they are available, increased use of plea-bargaining, and lack of sufficient local probation services.

The number of commitments may be associated with economic factors. According to the 1973 edition of the Census Bureau's Statistical Abstract of the United States, the unemployment rate peaked in 1961 at 7.0 percent nationally, the highest for the period from 1960 to 1970. That same year, commitments to Ohio prisons were also the highest for that decade. As unemployment rose again in the late 1960s and early 1970s, commitments increased to the highest level in Ohio's history.

Other factors may also influence Ohio's commitment rates. In any case, the latter appear not to be subject to any coordinated governmental influence from either State or local authorities.

27. For population of data see Statistical Abstract of the United States: 1973 (U.S. Dept. of Commerce: Washington, D.C., 1973), p. 13. Recent data on Ohio commitment rates provided by John R. Beach, electronic data processing manager, Department of Rehabilitation and Correction, in letter of July 16, 1974, and subsequent communications.

TABLE 1

Court Commitments to Ohio Prisons
1967-1975

Year	Number of Commitments	Percentage Change*
1967	3,243	--
1968	3,721	+14.7%
1969	3,747	+ 0.7%
1970	4,098	+ 9.4%
1971	4,296	+ 4.8%
1972	4,489	+ 4.5%
1973#	4,691	+ 4.5%
1974#	4,902	+ 4.5%
1975#	5,122	+ 4.5%

* Percentage change computed to show difference between the current year and the immediately preceding year.

\# Estimates

Sources: State of Ohio, Department of Rehabilitation and Correction, Proposed Budget and Operating Plan, Fiscal Years 1973-74 and 1974-75, and Annual Report of the Department of Rehabilitation and Correction, May 1974, p. 39.

Prison Populations Increasing Again

In spite of increased court commitments, Ohio prison populations decreased regularly from a high of 12,045 prisoners in March 1965 to 8,276 in January 1973,[28] a decrease of 3,510 or 31 percent. According to the Department of Rehabilitation and Correction, this decrease occurred mainly because of earlier and more frequent use of parole, liberalized probation laws, and the administration's "...overall greater emphasis on alternatives to incarceration."[29]

Chart 1 on page 19 shows Ohio prison populations from 1945 to 1974. By 1973 the decline begun in 1965 had rolled back prison populations to 1948 levels.

During the 1973-74 fiscal year, however, Ohio prison populations began increasing again, reaching 8,421 inmates by June 30, 1974,[30] 1.7 percent more than in January 1973.

All factors contributing to the new increase in prison populations are not known to the Advisory Committee, although increasing court commitments is clearly one reason. Until recently, however, prison releases surpassed commitment rates, enabling total prison populations to decrease. The recent increase in the prison population implies that rates of parole and other forms of release no longer exceed commitment rates. It may be that the State's strategy to reduce prison populations through parole has reached the limits of its effectiveness. Correctional experts and some policymakers in the Ohio executive branch have criticized that strategy.[31] The drawback they cite is that greater use of parole still presupposes incarcera-

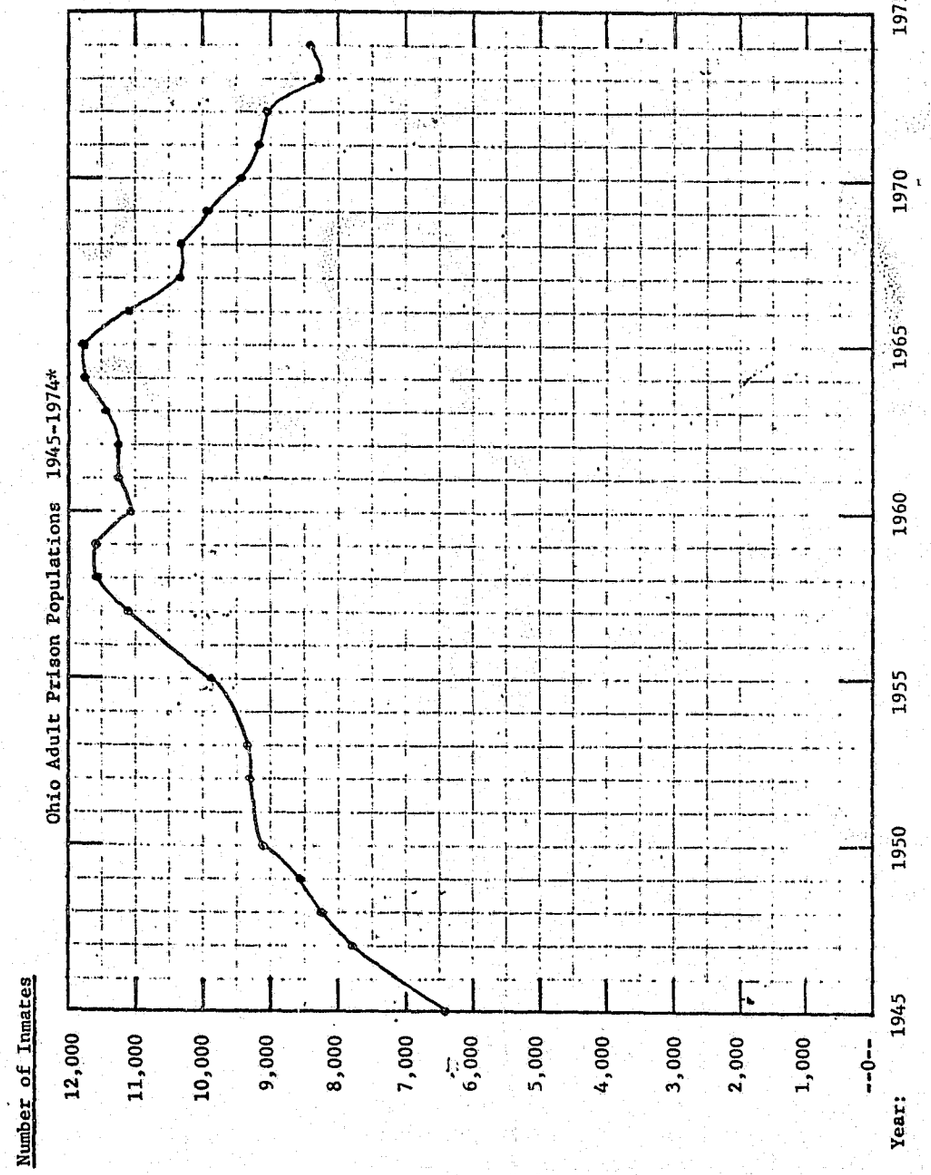
28. "Ohio Prison Population Drops to Modern Low," The Communicator (newsletter of the Ohio Department of Rehabilitation and Correction), vol. 1, no. 5 (Mar. 1973), p. 1.

29. State of Ohio, Office of Budget and Management, Ohio's Needs and Ohio's Response: The Budget for the State of Ohio, 1974-1975, January 1973, p. 128.

30. State of Ohio, Department of Rehabilitation and Correction, Correctional Data Center, June 30, 1974.

31. See Douglas Jansson, "Developing a State Strategy for Community-Based Corrections," a study of strategies to reduce prison populations in Ohio, California, and Minnesota, prepared for the Ohio Office of Policy Research, July 16, 1973.

CHART 1



* Points on chart denote years for which the Advisory Committee had data. All figures, with the exception of 1973, are numbers of inmates as of June 30 of each year. The 1973 figure is the inmate population as of January 1, 1973.

Sources: Statistical reports of the Division of Correction, Department of Mental Hygiene and Correction (1945-1972) and the Department of Rehabilitation and Correction (1973-1974).

tion which is increasingly thought to be counterproductive, even if used only for short periods of time. Staff of the Ohio Office of Policy Research have recommended:

> ...that a concerted effort be made to increase the non-institutional, community-based sentencing options available to judges.[32]

In California and Minnesota certain State subsidies for county probation services are based upon the reduction in the number of prison commitments made by county judges. The more a county reduces prison commitments, the more State probation money it receives. Thus, the State provides both the incentive and the means for greater use of alternatives to prisons. Table 2 shows that commitment rates to California's State prisons decreased drastically during the first 6 years of that State's probation subsidy program, down 43.4 percent in fiscal year 1971-72 from the base year rate. California officials agree that the subsidy program was a major cause of this change, though the exact amount of the decrease directly attributable to the subsidy program is difficult to determine.[33] No increase in recidivism was noted as a result of the program.

Ohio's Prison Subsidy Program

Ohio's current method of paying criminal costs appears to "pay" counties for sending convicted persons to State prisons by making State reimbursement contingent upon commitment to a State penal institution. Where indigents are placed on probation, however, counties absorb the costs. Lou Torok, ex-offender, author of several books on prison life, and national consultant to the Seventh Step Foundation, Inc., told Advisory Committee members and staff:

32. Jansson, Community-Based Corrections, p. 4.

33. The California Department of Finance attributed at least 46 percent of the reduction in commitment rates to the program; see Jansson, Community-Based Corrections, p. 13.

TABLE 2

Commitment Rate Decreases Under the California Probation Subsidy Program 1966-1972

Year	Statewide Percentage Decrease in Base Commitment Rate	Los Angeles County Percentage Decrease in Base Commitment Rate
1966-67	- 16.1%	- 1.1%
1967-68	- 25.4%	- 14.0%
1968-69	- 29.3%	- 28.0%
1969-70	- 29.7%	- 29.1%
1970-71	- 38.5%	- 44.3%
1971-72	- 43.4%	- 53.2%

Source: Kenneth E. Kirkpatrick, Probation Subsidy, Impact on Los Angeles - Comparable Throughout State, as cited in Douglas Jansson, "Developing a State Strategy for Community Based Corrections", Ohio Office of Policy Research, July 16, 1973, p. 42.

> I think counties should be rewarded for keeping people out of prisons because prisons just do not work. The California Probation Subsidy Program has done just that. But what you have in Ohio is just the opposite. Counties are rewarded for doing the wrong thing--we should call it the 'Ohio Prison Subsidy Program.' We are giving counties subsidies if they send people to prison.[34]

Section 2947.23 of the Ohio Revised Code has long required judges to include all court costs in the sentences levied against convicted offenders, in addition to whatever other penalties or incarceration are also levied by the court. The Ohio General Assembly has passed laws specifying the procedure for itemizing costs of criminal proceedings and for their collection from offenders by county sheriffs. These "criminal costbills" are prepared by the county clerk upon a finding of guilty and the following expenses can be and have been charged to the convicted offender:

(1) "Costs of Prosecution";

(2) Costs of apprehending and transporting a subsequently convicted felon from an out-of-State location back to Ohio, or from a State prison to trial;

(3) Per diem pay for jurors;

(4) Fees and expenses of court appointed counsel;

(5) Transportation of escaped convicts;

(6) A county's reward paid to a citizen in return for aid in the apprehension of a subsequently convicted offender;

(7) Costs of a first trial when a conviction was obtained only upon a retrial, the costs of which can also be charged to the offender.[35]

34. Interview in Cincinnati, Ohio, Nov. 2, 1974.

35. Ohio Code Ann. §§ 2947.23, 2949.14, et seq.

If convicted persons are unable to pay these costs, Ohio law directs the State auditor to reimburse counties when these persons are sentenced to State prisons (Ohio Code Ann. §2949.19). The law does not provide for State reimbursement of criminal costs to counties when the offender is placed on probation rather than committed to State prison.

Between fiscal years 1970-71 and 1973-74, State reimbursements for criminal costs to counties rose from $1,499,936 to $1,999,846 annually, an increase of 33.3 percent. The State auditor's office reportedly projects a nine and one-half percent annual increase in county reimbursement requests. State appropriations for county criminal costs have been fully spent in recent years.[36]

As indicated in Table 3 the State of Ohio reimbursed counties a total of $6,889,688 for criminal costs of persons committed to State prisons during the 4 fiscal years between 1970 and 1974. Of that amount $4,503,918 or 65.4 percent went to only 7 of Ohio's 88 counties--Cuyahoga, Hamilton, Summit, Franklin, Lucas, Montgomery, and Stark. Ohio's method of criminal cost reimbursement may be associated with the State's rising commitment rates to State prisons. The seven counties also accounted for 57.1 percent of court commitments to State prisons in fiscal year 1971-72.[37]

Reimbursements to counties also appear to be somewhat unpredictable. Many counties receive sums that vary vastly from year to year. For example, Trumbull County's reimbursement increased over fivefold, from $12,749 to $68,084 between the fiscal year ending in June 1973 and the one ending a year later.[38] Several similar examples exist.

36. David Brunson, staff member of the Legislative Budget Office of the Ohio Legislative Service Commission, telephone interview, Nov. 29, 1974.

37. State of Ohio, Department of Mental Hygiene and Correction, Bureau of Statistics, Division of Business Administration.

38. Data supplied by the office of Joseph T. Ferguson, auditor of the State of Ohio.

TABLE 3

Counties Receiving Large
State Reimbursements for Criminal Court Costs
Fiscal Years 1971-1974

County	Amount Reimbursed	Percent of Total
Cuyahoga	$1,241,651	18.0%
Hamilton	953,477	13.8%
Summit	662,574	9.6%
Franklin	565,274	8.2%
Lucas	439,191	6.4%
Montgomery	418,848	6.1%
Stark	222,903	3.2%
7 Counties Sub-Total	$4,503,918	65.4%*
81 Other Counties	$2,385,770	34.6%
TOTAL (All Counties)	$6,889,688	100.0%

*Column does not add to indicated sub-total due to rounding.

Source: Office of Joseph T. Ferguson, auditor of the State of Ohio.

The seven counties receiving most of the State's criminal cost reimbursements may be dependent on such funds for operation of their court systems. Cuyahoga County, for instance, currently depends on State criminal cost reimbursements for at least 6 percent of its $5 million annual budget for the common pleas court.[39]

39. John Shimko, principal analyst of the Board of Commissioners, Cuyahoga County, telephone interview, Dec. 13, 1974.

CHAPTER IV

OHIO PENAL POLICY AS SEEN IN SPENDING

The U.S. Chamber of Commerce Panel On Crime Prevention and Control has observed:

> Confusion over whether corrections should be punishment oriented, rehabilitation oriented, or both, brings public accusations that the system brutalizes offenders, on the one hand, or coddles them on the other. Manifestation of this confusion is the existence, side-by-side, of correctional facilities intended primarily for punishment and detention, and others designed to help rehabilitate offenders.40

This description fits the correctional system in Ohio which has a similar confusion of purposes in its treatment of offenders. The main priority, however, is custody. The Ohio Citizen's Task Force on Corrections acknowledged this fact in its 1971 report:

> Let's be honest and admit that Ohio's prisons are primarily custody oriented and that many, if not most, of the rehabilitative programs which do exist are viewed with cynicism by most inmates who participate for the sole purpose of impressing the parole board.41

40. Marshalling Citizen Power, p. 5.

41. Task Force Report, p. D24.

One indication of the strong emphasis on custody is the assignment of staff. In a proposal for Federal assistance in training correctional officers, the Department of Rehabilitation and Correction noted that approximately 75 percent of its management positions in 1973 were in the custodial area.42

In January 1974, of the department's 3,456 staff, 1,920 or 55.6 percent, were correctional officers.43 As early as 1965 the President's Crime Commission reported that the average national proportion of adult prison custodial staff among total staff in State institutions was 50.6 percent.44

Departmental staff have observed that the dominance of custody as Ohio's main correctional policy has been deeply rooted in the operations of its prisons for more than 100 years. Dr. Joseph R. Palmer, former deputy director and chief of program services for the Department of Rehabilitation and Corrections, told the Ohio Advisory Committee that when the department was severed from the larger Department of Mental Hygiene and Correction, the term "rehabilitation" was just "inserted" in the name of an agency which remained "bottom-heavy" with custodial staff. (Transcript, p. 547)

Ohio General Revenue Funds

Both the confusion of purpose and the emphasis on custody are best seen in the actual expenditures of the Department of Rehabilitation and Correction.

42. State of Ohio, Department of Rehabilitation and Correction, Project Proposal for Ohio Correction Academy, submitted to the Ohio Department of Economic and Community Development, Project No. 3876-00-F2-73 (LEAA), p. 10.

43. State of Ohio, Department of Rehabilitation and Correction, "Utilization Analysis and Goals: Minority and Women," Jan. 22, 1974.

44. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections (Washington, D.C., 1967), p. 202.

Until fiscal year 1973-74, the Ohio Department of Rehabilitation and Correction had three main sources of funds: general revenue funds appropriated by the General Assembly at the Governor's request, other State funds from the General Assembly earmarked for special activities, and Federal funds, most of which were also earmarked for limited purposes. During fiscal year 1973-74, the department for the first time spent $2.7 million in Federal revenue sharing funds received with few restrictions from the Federal Government.

Of these funding sources, the department has the most control over the spending of its Ohio general revenue funds and its Federal revenue sharing funds. These monies also make up the largest part of the department's total expenditures--$50.4 million, or 79.3 percent in fiscal year 1973-74.

If prisoners view Ohio's rehabilitative programs with cynicism, as asserted by the Citizens' Task Force, it may stem from the relatively small amount of State general revenue funds spent on these activities compared to the State's public rhetoric about corrections.

The Governor's budget message to the 110th General Assembly for fiscal years 1973-74 and 1974-75 described the responsibility of the corrections system as follows:

> The basic responsibility of any correction system must be the protection of society by preventing the recurrence of deviant behavior on the part of the committed offender. This can only be accomplished through humanitarian control and effective programming of those persons under the Department's jurisdiction. Sound reintegration programs and a commitment to community-based programs offering effective and realistic alternatives to incarceration, are fundamental to any correction program.45

45. State of Ohio, Office of Budget and Management, Ohio's Needs and Ohio's Response: The Budget for the State of Ohio 1974-1975, January 1973, p. 125.

In brief, the Governor's statement lists three priorities for corrections: control of offenders, "programming" of offenders, and reintegration of offenders into society. These priorities, however, appear to differ from those of the Department of Rehabilitation and Correction, based on departmental expenditures. Table 4 shows that the top two priorities of the department in fiscal years 1972-73 and 1973-74 included only one of the Governor's stated priorities--control of prisoners, or "custody." This area consumed $15.7 million or 33 percent of general revenue expenditures in fiscal year 1973-74. The highest priority was the general operation of the prison system, for which the State spent $17.2 million or 36 percent of total expenditures. Operations and custody, therefore, account for more than two of every three Ohio general revenue dollars spent on adult State corrections, and neither category includes the stated priorities of rehabilitative programs or reintegration into the community.

Treatment or "programming" of inmates, including psychological, social, religious, and medical services, accounts for only $5.3 million or 11.2 percent of the State general revenue funds spent. Community services include parole, State-supervised probation, halfway houses, community correction facilities, and furlough which account for $4.3 million or 9 percent of State general revenue fund expenditures.

Comparison of fiscal year 1972-73 data with 1973-74 data in Table 4 shows an apparent increase in expenditures for operations, treatment, inmate and employee education, and community services, and an apparent decrease in expenditures for administration and custody. At least some of these are due to changes in the use of financial reporting categories. For instance, in fiscal year 1972-73, "inmate compensation" was counted as an administrative expense rather than a separate category, thus accounting for some of the apparent decline in administrative costs in the 1973-74 report. Likewise, inmate medical care is counted as "treatment" in fiscal year 1973-74, according to State budget worksheets available to the Advisory Committee, but is not separately counted in fiscal year 1972-73 data. This shift in use of financial categories therefore gives the appearance of an increased commitment to treatment programs when in fact at least some of the increase is only so "on paper."

Federal Revenue Sharing Funds

One clear difference between 1972-73 and 1973-74 expenditures is that $326,200 less from the Ohio general revenue fund was spent in 1973-74 than in 1972-73, a decrease of 0.7 percent. This decrease is notable in light of the high rate of inflation prevailing nationally at the time (approximately 12 percent), the renewed increase in Ohio

TABLE 4

Expenditures of Ohio Department of Rehabilitation and Correction
by Source and Application Fiscal Years
1972-73 and 1973-74

		1972-73 Amount	1972-73 Percent of GRF* Expenditures	1973-74 Amount	1973-74 Percent of GRF Expenditures
A.	State General Revenue Funds				
1.	Administration ##	$ 5,093,251	10.6%	$ 1,775,154	3.7%
2.	Operations	15,733,678	32.7%	17,180,834	36.0%
3.	Custody	18,406,541	38.3%	15,747,773	33.0%
	(Sub-Total, 1-3)	($39,233,470)	(81.6%)	($34,703,761)	(72.6%)
4.	Treatment	3,935,000	8.2%	5,340,147	11.2%
5.	Education	1,377,670	2.9%	1,613,857	3.4%
6.	Prisoner Compensation	(Reported in Category 1)		1,800,000	3.8%
	(Sub-Total, 4-6)	($ 5,312,670)	(11.0%)	($ 8,754,004)	(18.3%)
7.	Employee Education	(Not Separately Reported)		30,306	0.06%
8.	Community Services	3,557,251	7.4%	4,289,120	9.0%
	(Sub-Total General Revenue Funds)	($48,103,391)	(100.0%)#	($47,777,191)	(100.0%)#
B.	Other Fund Sources				
1.	Federal Revenue Sharing Funds (See Table 5)	- 0 -	- 0 -	2,666,633	4.2%**
2.	Earmarked Federal and State Funds (See Table 6)	9,439,975	16.1%**	12,836,990	20.2%**
3.	State Public Improvement Funds	1,149,454	2.0%**	334,053	0.5%**
	Total Expenditures	$58,692,820		$63,614,867	

Columns do not actually add to 100 percent due to rounding.
See Appendix A of this report for descriptions of program areas for fiscal year 1973-74 (e.g. the "treatment" program area covers social services and five other sub-areas).
* General Revenue Fund.
** Figures are percentages of total expenditures.

Source: Departmental expenditures for July 1, 1972 to June 30, 1973 and July 1, 1973 to June 30, 1974, Legislative Budget Office of the Ohio Legislative Service Commission.

prison populations, the unexpected expenses associated with disturbances at the Lucasville prison, and the fact that total departmental expenditures rose 8.4 percent from $58.7 million to $63.6 million.

The decrease in general revenue funds expended was apparently made possible by increased use of funds from other sources, State and Federal. The proportion of funds expended from sources other than the general revenue fund rose from 18.1 percent of department expenditures in 1972-73 ($10.6 million) to 24.9 percent in 1973-74 ($15.8 million). Half of this increase, $2.7 million, was accounted for by Federal general revenue sharing funds available to all States under the State and Local Fiscal Assistance Act of 1972.

These funds come with few restrictions on their use, the intent of the revenue sharing act being to allow a maximum degree of State and local control over such monies. Governments are required, however, to announce planned and actual expenditures of the funds.

The Governor of Ohio and officials of the Department of Rehabilitation and Correction announced plans in February 1973 to use Federal revenue sharing monies for "small, minimum security institutions of a few hundred beds each."[46] Table 5 lists the uses of the $2.7 million in Federal revenue sharing monies spent by the department in fiscal year 1973-74. The data appear to show that all but $592,000 (22.2 percent) of the funds were spent on existing prison activities, $1.7 million or 65 percent of these on administration, custody, and operations of prisons. Of the $592,000 actually spent on some form of community corrections, only $2,400 (0.4 percent) went for community reintegration centers, the rest having gone for parole, State probation, and furlough programs.[47]

In brief, in fiscal year 1973-74 the Department of Rehabilitation and Correction applied its Federal general revenue sharing funds in an across-the-board manner to help cover overall expenses in existing activity areas. The department divided these new funds among its various activities in roughly the same proportions as it did its Ohio general revenue funds. (See Table 4.)

46. "Department May Get $4 Million in Shared Funds," The Communicator, vol. 1, no. 4 (February 1973), p. 1.

47. As detailed in expenditure printouts made available to the Advisory Committee by the Legislative Budget Office of the Ohio Legislative Service Commission.

TABLE 5

Application of Federal Revenue Sharing Funds
in Ohio Adult Corrections
Fiscal Year 1973-74

Category	Amount	Percentage
Custody	$ 985,822	37.0%
Operations	631,687	23.7%
General Administration	117,603	4.4%
Sub-Total	$1,735,112	65.1%
Treatment	275,367	10.3%
Education	63,825	2.4%
Community Services	592,329	22.2%
Sub-Total	$ 931,521	34.9%
Total	$2,666,633	100.0%

Source: State of Ohio, Department of Rehabilitation and Correction, expenditure report for July 1, 1973 to June 30, 1974, Legislative Budget Office of the Ohio Legislative Service Commission.

While Ohio general revenue funds, as well as Federal revenue sharing funds, serve the philosophy of incarceration and custody, exactly the opposite is true of some of the department's other fund sources.

Ohio's Other Corrections System: Earmarked Spending

In fiscal year 1973-74, one-fifth of Ohio's adult correctional spending came from earmarked Federal and State funds. General priorities for use of these funds are set outside of the Department of Rehabilitation and Correction. Priorities for a third of these funds are determined directly or indirectly through agencies such as the U.S. Department of Labor and the Supervisory Commission of the Administration of Justice Division of the Ohio Department of Economic and Community Development. In many cases the earmarked Federal funds are intended to support "pilot programs" in prisoner or staff education, training, rehabilitation, or community corrections.

The largest single amount of earmarked funds in departmental budgets is for the Ohio Penal Industries (OPI). OPI accounted for $8.8 million in fiscal year 1973-74 expenditures, 13.8 percent of total expenditures and a 26 percent increase over fiscal year 1972-73.

Virtually none of the earmarked funds can be used for administrative or custody-oriented purposes within State prisons. The State is not obligated to use the earmarked Federal programs, so the restrictions on use of funds are voluntarily accepted. Earmarked State and Federal funds expended by the Department of Rehabilitation and Correction in fiscal years 1972-73 and 1973-74 are summarized in Table 6.

The Ohio Department of Rehabilitation and Correction has drawn especially heavily on earmarked Federal funds for staff training and community corrections (community reintegration centers, halfway houses, experimental parole programs, etc.). Many of these efforts would not exist without such outside funds.

Ohio's extensive use of special outside funds which must be used only for treatment, rehabilitation, and community corrections gives the appearance of two separate penal systems. One, supported by the General Assembly through Ohio general revenue funds with some help from Federal revenue sharing funds, is oriented to administration, operations, and custody, as shown previously. The other is supported by earmarked Federal and State funds and is primarily oriented to prison industries, rehabilitation, and community corrections.

TABLE 6

Earmarked State and Federal Expenditures by Application
Department of Rehabilitation and Correction
Fiscal Years 1972-73 and 1973-74

	1972-73		1973-74	
State Funds	Amount	Percent of Total Expenditures	Amount	Percent of Total Expenditures
Public Improvements	$ 1,149,454	1.96%	$ 334,053	0.53%
Ohio Penal Industries	6,939,130	11.81%	8,764,997	13.77%
Library Grants	14,873	0.03%	62	-0-
Property Receipts	(None Reported)		146,124	0.23%
Other	15,998	0.03%	2,663	-0-
Sub-Total, State	$ 8,119,455	13.83%	$ 9,247,899	14.53%
Federal Funds				
Adult Parole Authority/ Bureau of Vocational Rehabilitation	$ 27,008	0.05%	$ 111,402	0.18%
Emergency Employment Act	143,434	0.24%	226,732	0.36%
Education Funds	49,904	0.09%	238,667	0.38%
LEAA* and Other Federal Funds	2,249,627	3.83%	3,346,343	5.25%
Sub-Total, Federal	$ 2,469,973	4.21%	$ 3,923,144	6.17%
Earmarked Expenditures	$10,589,428	18.04%	$13,171,043	20.70%
Non-Earmarked Expenditures	48,103,391	81.96%	50,443,824	79.30%
Total Expenditures	$58,692,819	100.00%	$63,614,867	100.00%

* Lists of LEAA-funded projects for 1971-1974 can be found in Appendix B.

Source: Departmental expenditure reports for July 1, 1972 to June 30, 1973 and July 1, 1973 to June 30, 1974, Legislative Budget Office of the Ohio Legislative Service Commission.

Since 1971, $9,902,854 in earmarked Federal funds have come to the Department of Rehabilitation and Correction from the Law Enforcement Assistance Administration of the U.S. Department of Justice under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. The total LEAA funds available to the State have increased from $18.9 million in 1971 to $30 million in 1974.[48]

From 1971 through 1974 the State Administration of Justice Division approved over 60 LEAA grants to the Department of Rehabilitation and Correction, supporting over 20 major projects, some of them spanning 4 years.[49] Over that 4-year period, the top 16 projects funded with LEAA monies were primarily in the areas of staff training, various kinds of community corrections, and institutional rehabilitation programs. These projects, listed in Table 7, totaled $8,464,756 and amounted to 85.5 percent of the $9,902,854 in LEAA projects funded during that 4-year period.

Only a fraction of Ohio's offenders benefit from these programs, however, and they are apparently not well-integrated with other parts of the correctional system. (See Table 8) The Department of Rehabilitation and Correction itself has also observed:

> Even though the Department of Rehabilitation and Correction encompasses State probation officers, institutional personnel, and parole officers, one segment does not understand the workings of the other. It is as though each is autonomous and foreign to the other although they are all dealing with the same individuals quite often. This lack of knowledge presents problems in the area of communication and also hinders the development of a total rehabilitation program for the individual committed to our care.[50]

48. State of Ohio, Department of Economic and Community Development, Thrust, Oct. 26, 1973, and Apr. 5, 1974.

49. See Appendix B for a detailed list of LEAA-supported projects in the Department of Rehabilitation and Correction for 1971 to 1974.

50. Ohio Department of Rehabilitation and Correction, Project Proposal for Ohio Correction Academy, submitted to the Ohio Department of Economic and Community Development, LEAA Project No. 2867-00-F2-72 (for 1973), pp. 42-43.

TABLE 7

Major LEAA-Funded Projects
Department of Rehabilitation and Correction
1971-1974

	Project	Amount
1.	Staff Training (1971-73)	$ 1,421,07
2.	Community Reintegration Centers (1971-73)	1,405,06
3.	Correctional Computer System (1971-73)	1,080,00
4.	State Probation Expansion and Improvement (1971-74)	877,77
5.	Use of Ex-offenders as Parole Officer Aides (1971-73)	591,89
6.	Reformatory Community Reintegration Project (1971-73)	514,44
7.	Post-Sentence Investigation (1974)	412,50
8.	Structured Community Release (1974)	356,25
9.	Community Corrections for Female Offenders (1971-74)	281,27
10.	Multi-disciplinary Treatment (1971, 1973-74)	269,27
11.	Citizen Volunteers (1971-73)	251,59
12.	Directed Probation Services to High Crime Areas (1974)	239,25
13.	Comprehensive Departmental Drug Treatment (1974)	215,00
14.	Volunteer Services (1973-74)	214,39
15.	Alcoholic Rehabilitation Program (1971-72, 1974)	180,85
16.	Recruiting Minority Personnel (1971-72, 1974)	154,11
	Sub-Total, 16 largest projects:	$ 8,464,75
	Approximately 14 other projects:	1,438,09
	Total, 1971-1974	$ 9,902,85

Source: Annual summaries provided by the Administration of Justice Division of the Ohio Department of Economic and Community Development. (The complete annual summaries upon which this Table is based are included in Appendix B of this report.)

TABLE 8

Inmate Participation in Institutional Program Services*

April 1, 1973

	Number of Inmates Participating	Percent of 8,000 Inmate Population Participating
Social Services	2,319	29.0%
Psychological Services	218	2.7%
Academic Educational Services	1,777	22.2%
Religious Services	174	2.2%
Outside Volunteer Groups	835	10.4%
Vocational Services	502	6.3%

*Due to participation of individual inmates in several programs, total inmate participation data cannot be determined on the basis of information given to the Advisory Committee.

Source: Dr. Joseph R. Palmer, then Deputy Director and Chief of Program Services, Ohio Department of Rehabilitation and Correction, as reported to the Advisory Committee, July 14, 1974; Transcript, p. 583.

Legislative and Executive Oversight

The bifurcation of Ohio corrections policy and budget also extends to the decisionmaking process. The budgeting of State general revenue funds, although ostensibly controlled by the General Assembly, is in fact determined by staff in Ohio's seven prisons. Each prison superintendent submits a separate institutional budget proposal annually to the Department of Rehabilitation and Correction's central office where these requests are assembled into a departmental budget. The latter is submitted to the State Office of Budget and Management where it becomes part of the Governor's budget for submission to the General Assembly. The legislature generally rules only on the total amount of the budget rather than on specific items and has little ability to monitor correctional spending and performance. Legislative oversight is therefore extremely limited. Throughout the process, the program priorities established at the prison level tend to remain intact. The one exception has been that when total budget amounts have been reduced at any point in the process, rehabilitation and treatment programs have been cut more often than custody activities.[51]

While use of State general revenue funds is controlled mainly by prison staff, use of Federal LEAA monies is overseen by a separate State agency, the Administration of Justice Division of the Ohio Department of Economic and Community Development. This division must allocate funds under a "Comprehensive State Plan" for improving the total criminal justice system according to the 1968 Safe Streets Act. Its policymaking body is the Ohio Criminal Justice Supervisory Commission, a 39-member body of elected officials, criminal justice professionals, and some public members, all appointed by the Governor. LEAA and the supervisory commission favor funding of rehabilitation and community corrections projects.

The split in Ohio adult corrections, therefore, encompasses general policies, actual expenditures, sources of funds, and decisionmaking processes and personnel.

Unifying Plans and Budgets

Congress and the executive branch have conditioned the State use of LEAA money in several ways. LEAA regulations, for example, state:

51. Dean Tucker, Ohio Office of Budget and Management, telephone interview, Mar. 3, 1974.

(1) Comprehensive State plans for LEAA funding should cover all law enforcement and criminal justice activity in order to arrive at an overall blueprint for the State's criminal justice system.[52] [Emphasis added.]

U.S. Statutes also say:

(2) Comprehensive State plans should demonstrate the willingness of the State and units of general local government to assume the costs of improvements funded under the Safe Streets Act after a reasonable period of Federal assistances.

(3) Comprehensive State plans should set forth policies and procedures designed to assure that Federal funds made available under the Act will be so used as not to supplant State or local funds, but to increase the amounts of such funds that would in the absence of such Federal funds be made available for law enforcement and criminal justice.[53]

These conditions flow from the 1968 Safe Streets Act's premise that: "Law enforcement is--and must be--primarily the responsibility of State and local governments."[54]

Ohio correctional policy, funding, and decisionmaking appear to be at variance with the requirement that LEAA State Planning Agencies establish truly comprehensive State criminal justice plans. According to V. Allen Adams, administrator of the Midwestern Regional Office of LEAA, the regional review of Ohio's Comprehensive Plan "has consistently determined that planning was comprehensive."

52. U.S., Department of Justice, Law Enforcement Assistance Administration, Guideline Manual for State Planning Agency Grants (M4100. B, Dec. 10, 1973), Ch. 3, Par. 91 (h) (hereafter cited as Guideline Manual).

53. 42 U.S. Code, Sec. 3733(a)9, 11.

54. Account of congressional debate on 1970 amendments to the Omnibus Crime Control and Safe Streets Act of 1968, 1970 U.S. Cong. and Adm. News at 5805.

The Ohio Criminal Justice Supervisory Commission has indicated a desire to assume a stronger policymaking role.[55] Whether this will lead to more comprehensive and unified correctional policies and budgets remains to be seen. The LEAA itself has also charged State planning agencies with "...the responsibility of assuming a greater leadership and coordination role in the State law enforcement and criminal justice system."[56]

The National Advisory Commission on Intergovernmental Relations (ACIR) has recognized the planning and budgeting problems of State governments in this age of numerous Federal programs such as those funded by LEAA.[57] The ACIR, created by Congress in 1959 to monitor and recommend improvements in the Federal system, has noted an overall lack of centralized State planning and budgeting.[58] In its package of recommended State legislation, ACIR has proposed improvements in State planning and budgeting procedures. Of special relevance to Ohio is ACIR's view that "the overall, comprehensive planning function must be continuous and integrated with the executive budget function." The ACIR also recommends that a comprehensive State plan be published for easy reference by citizens, officials, and agencies.[59] Ohio planning and budgeting processes for adult corrections do not yet meet this standard.

55. Learning Systems, Inc., "A Report on the Ohio Criminal Justice Supervisory Commission Conference, June 21 to 29, 1973" (Boston, Mass: July 20, 1973), part III B.

56. Guideline Manual, ch. 3, par. 51.

57. U.S., Advisory Commission on Intergovernmental Relations, American Federalism: Into the Third Century, pp. 15-18, 37.

58. U.S., Advisory Commission on Intergovernmental Relations, State Legislative Program, "State and Regional Planning," subj. code 14-41-00, p. 1 (hereafter cited as State and Federal Planning).

59. State and Federal Planning, pp. 2, 3.

Florida, for example, has moved to make its LEAA State planning agency an integral part of all State planning, giving it specialized authority to set overall criminal justice standards and goals.[60]

According to Florida State planner Charles R. Davoli, the new arrangement should facilitate development of one statewide criminal justice plan, using up-to-date standards and goals and covering activities from all funding sources, not just LEAA-funded activities as in Ohio.[61]

Ohio's supervisory commission, however, faces major obstacles in coordinating correctional policies and budgets. An example of the problem, which may soon assume crisis proportions, is that Federal funds for many LEAA-supported programs in Ohio's correctional system will be automatically phased out over the next several years. The supervisory commission ruled on March 24, 1972:

> ...no [LEAA] action project will be granted funds for a period longer than necessary to establish it and demonstrate its usefulness, and then not more than three years full funding plus a fourth year at two-thirds and a fifth year at one-third of the third year.... [Emphasis added.]

The supervisory commission further stated:

> Every proposal for inclusion in the 1974 plan, to which this rule applies, must show: the anticipated source of funds for continuing the project when [LEAA] funding is stepped down and after it is discontinued.[62]

60. See Fla. Rev. Statutes, Ch. 23, and Governor's Executive Order 73-73, the latter redesignating the SPA supervisory board as the Governor's Commission on Criminal Justice Standards and goals, establishing as its primary task the development and implementation of statewide standards and goals for Florida's criminal justice system.

61. Charles Davoli, telephone interview, June 21, 1974.

62. State of Ohio, Ohio Department of Economic and Community Development, Administration of Justice Division, Directives for Criminal Justice Planning: Fiscal Year 1974, March 1973, Rule C-15, pp. 73-75.

In spite of the requirement to show anticipated sources of funds for State continuation of promising LEAA projects, staff of the Ohio Administration of Justice Division (AJD) told Commission staff:

> ...based on our current records of LEAA grants to the Department of Rehabilitation and Correction we cannot say for certain what the Department's actual budgeting for these projects really is now or is planned to be in the future. Your Advisory Committee's inquiry in this area has led to a request from this division to the Department of Rehabilitation and Correction for the necessary information.[63]

Subsequent information indicated that AJD gained no useful information from the Department of Rehabilitation and Correction. "All they gave us was information regarding our own [Federal] grant levels -- information we, of course, already had," stated one staff person. "They told us nothing about their budget plans."[64]

According to the AJD, no LEAA-funded projects within the Department of Rehabilitation and Correction have passed their fourth year, though some have continued over a total time period exceeding 4 years. This is possible, according to AJD staff, because the department could not spend the available LEAA money for certain projects fast enough to warrant a new grant each consecutive year. The effect of this is to give the department more than 5 years to operate many LEAA-funded projects while postponing the decision to fund or not fund from State sources.

Another development which eased the problem of finding State funds for LEAA-funded projects was a changed requirement for matching non-Federal contributions. In fiscal year 1973-74 the department, for the first time, was required to provide only 10 percent of the total cost of each project grant, rather than the 25 percent minimum previously required. AJD staff were unclear about the source or

63. Jack Harmeyer, Administration of Justice Division of the Ohio Department of Economic and Community Development, telephone interview, Aug. 15, 1974.

64. Jack Harmeyer, telephone interview, Oct. 10, 1974.

reason for this change, although staff in LEAA's Midwestern Regional Office said the change was made nationally because of the scarcity of State and local funds to pay a larger share of LEAA-funded projects.[65]

Despite these relaxed requirements for LEAA projects, the intent of that agency's legislation remains to fund innovative projects for possible takeover by other levels of government. Sufficient legislation and Federal and State regulations exist to enforce this intent.

The Ohio Citizens' Task Force may have had these facts in mind when it commented in its 1971 report:

> ...Federal funds now support the [correctional] academy program and in-service training. To achieve the goal of upgrading training, it is absolutely necessary for the State to commit itself to on-going appropriations for the extension and improvement of these training programs.[66]

Most of the department's innovative community corrections activity has been federally funded. If it is to continue, State funds must be found at some point.

Decreased use of incarceration may provide one source of State funds now going for other purposes. Another option would be increased appropriations. A more effective correctional system, making more use of community facilities, may also lead to savings in the areas of law enforcement and loss due to crime. State revenue raising efforts may also need examination. In a recent year, Ohio ranked last among the States in State and local revenue effort as a proportion of personal income. (See Appendix C.)

65. James Karbatsch, Region V, Law Enforcement Assistance Administration, telephone interview, Aug. 15, 1974.

66. Task Force Report, pp. C26-27.

CHAPTER V

TENSION IN OHIO PRISONS

Inmate Protests

Ohio's adult prisons have experienced a number of inmate protests over the past 10 years which have included some violent confrontations with loss of lives of inmates and staff. In June 1968, riots at the Ohio Penitentiary caused $1 million in damages, and prisoners accused the warden, Ernest Maxwell, of unfairness and lack of contact with inmates. Warden Maxwell retired and was replaced by Marion Koloski, a psychologist who announced plans to restore order by reducing the prison population and starting new programs. On August 21, 1968, Warden Koloski's efforts ended abruptly when 185 inmates seized 9 hostages. The Governor called up the National Guard who blasted through the prison walls to reach the rioters. Five prisoners were killed and 10 wounded. Warden Koloski was then replaced by Harold J. Cardwell, a major in the State Highway Patrol who had no previous experience in corrections. In 1972 Warden Cardwell resigned to head the Arizona prison system.

Since that time, nearly every Ohio prison has experienced some kind of group protest by inmates including workstoppages, hunger strikes, petition campaigns, and inmate suits in State and Federal courts. The issues have involved grievances about food services, visiting privileges, disciplinary procedures, medical care, and basic constitutional rights.

In 1972-73 some of these efforts took a more organized form in the activities of the Ohio Prisoners Labor Union (OPLU). In 1973 the union claimed to have active local chapters in several Ohio prisons and reported that 5,000 of the 9,000 State prisoners had signed membership cards. The OPLU advocated a minimum wage for prisoners and also became associated with issues such as inmate grievance procedures, medical care, and alleged guard brutality. Through its attorneys on the outside, the OPLU acted as plaintiff in several suits filed in Federal court. The Department of Rehabilitation and Correction refused to recognize the OPLU as a legitimate inmate organization. OPLU members alleged unlawful censorship of their publications and mail by prison authorities.

In May 1973 a work stoppage at the Southern Ohio Correctional Facility at Lucasville was attributed by prison administrators to OPLU leadership, who claimed half of the prison's inmates as members. After its own investigation, the Ohio Citizens' Task Force attributed the strike to a "crackdown" by guards. The strike led to the solitary confinement of several hundred inmates for the rest of 1973. On July 24, 1973, two guards were shot to death at the Lucasville facility. Inmate Wayne L. Rainey was convicted of murder in the death of one guard, and the court ruled that the other death was caused by a fellow guard's attempt to shoot Mr. Rainey. Several sources alleged that Mr. Rainey was assisted in getting a gun by as many as four correctional officers. At least one Lucasville guard is known to have been arrested several times while an employee of the prison.[67]

The killing of the guards was followed by extensive shakedowns of inmates, including confiscation of personal belongings listed by officials as "contraband." Several inmates sued to have their possessions replaced, and the Citizens' Task Force termed the shakedowns "excessive and unjust." The Governor agreed and directed the Department of Rehabilitation and Correction to replace the confiscated property and to refrain from punishing convicts for breaking regulations they did not know about.[68]

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67. D.L. McCormick, "Assault by Guard Prompts Lucasville Check," Cincinnati Post, Aug. 3, 1973.

68. Lee Leonard, "Gilligan Accepts Bulk of Lucasville Report," Cincinnati Post, Sept. 5, 1973, p. 10.

In April 1974 J. Raymond Twohig, Jr., of Columbus, lawyer for the Ohio Prisoners Labor Union, reported that the union was "dead" after its first year of life. Mr. Twohig blamed the Department of Rehabilitation and Correction for the demise of the organization and predicted more inmate protests and possibly escapes as a result of the disillusionment of the group's members.[69]

Other individual and group protests by inmates have occurred in recent years, and are cited in the following chapter.

Staff Protests

Though inmate protests have dominated news on Ohio's prisons, correctional officers appear to be equally active in defending their interests. At least three labor unions are competing for the allegiance of Ohio's more than 3,000 prison staff, most of whom are institutional guards. In addition to extensive statewide recruitment activity, the unions have staged "sickouts" (unauthorized work stoppages) and have criticized corrections administrators, charging them with excessive "permissiveness" in treatment of inmates. The largest work stoppage during the Advisory Committee's study affected six prisons for 12 days during July 1974, necessitated the use of National Guard troops at some institutions, and idled nearly 1,800 prison employees.[70] The strike was settled by a legislative agreement to raise State pay scales. Similar actions have occurred in 1975.

The three major unions organizing in Ohio's prisons are the Ohio Civil Service Employees Association (OCSEA), the American Federation of State, County, Municipal Employees (AFSCME), and the Teamsters Union Local 413.

69. Richard C. Widman, "Ohio Prisoners Union Is 'Crushed to Death'," Cleveland Plain Dealer, Apr. 17, 1974.

70. "Employees Back to Work After Pay Raise Strikes," The Communicator, July 1974, p. 1.

Much staff protest has centered on the Lucasville prison where a sickout occurred in January 1973 over seniority issues and again the following August after the deaths of the two guards described previously. Teamsters officials appear to dominate Lucasville union activity and have alleged that the institution is understaffed.

Simultaneous union organizing among inmates and guards has given structure to two power blocs in the struggle to control prison operations. This was acknowledged by former Governor John J. Gilligan in response to reports on problems at Lucasville. A reporter quoted Governor Gilligan:

> This facility is not going to be operated by either the inmates or the guards. It is going to be operated by the administration. The [inmates and guards] are going to obey orders.[71]

The Governor's interpretation of power relationships within the Lucasville prison echoes the words of professor Phillip Zimbardo at Stanford University:

> ...since both prisoners and guards are locked into a dynamic, symbiotic relationship which is destructive to their human nature, guards are also society's prisoners.[72]

Massachusetts' adult prisons have been strongly influenced by correctional officers' unions. According to Andrew Rutherford, former corrections administrator in England and a Fellow of the Academy for Contemporary Problems in Columbus, Ohio, the Massachusetts unions together with increasing inmate organizing have created a "highly volatile" situation which contributed to the 1973 resignation of Massachusetts Corrections Commissioner John Boone.[73]

71. "Task Force on Corrections Slaps Both Inmates, Staff at Lucasville," Cincinnati Enquirer, Sept. 5, 1973.

72. Haney, Banks, Zimbardo, Simulated Prison, p. 96.

73. Andrew Rutherford, "The Dissolution of the Training Schools in Massachusetts" (Columbus, Ohio: The Academy for Contemporary Problems, 1974), p. 23.

The Ohio Citizens' Task Force, after a followup visit to Lucasville in August 1973 recommended that legislation be enacted on staff labor problems that would: (1) provide collective bargaining for prison staff and limit representation to one union at each prison, and (2) authorize the State to staff prisons with Ohio Highway Patrol officers during labor disputes. Such legislation has not been enacted and the staff unionization process remains unresolved. Inmates, staff, and prison administration continue to function as three competing power blocs.

Community Involvement

The three power blocs in corrections--inmates, staff, and administrators--are now being joined by a fourth, the community. Nearly every corrections expert currently advocates "greater community involvement" in corrections. William K. Weisenberg, administrative assistant to the head of Ohio's adult prison system in 1973, told the Ohio Advisory Committee:

> Corrections has got to move into the community and the community has got to move into corrections. (Transcript, p. 615)

National leaders have also urged greater community involvement as a base of support for progressive corrections professionals:

> In light of the community's ambivalence toward corrections, lack of effort at collaboration with community groups and individual citizens is particularly unfortunate. In almost every community there are individuals and social groups with exceptional concern for problems of social welfare whose energies must be called upon. A lobby for corrections lies at hand, to be mobilized not merely by public information and persuasion, but also by encouraging the active participation of the public in correctional work.[74]

74. U.S., National Advisory Commission on Criminal Justice Standards and Goals, A Report on Corrections (Washington, D.C., 1973), p. 13.

The Ohio Citizens' Task Force reported inmate views on community participation:

> When the community comes inside the prison, conditions improve....Continuous outside supervision keeps the administration on its toes.[75]

From this perspective, the Citizens' Task Force in 1971 recommended the establishment of statewide and local citizen advisory committees on corrections. Such groups were to serve both to support and criticize, to be nonpartisan, and to represent "industry, labor unions, universities, churches, social service and medical organizations, and civic groups."[76] Many Task Force members reportedly viewed this recommendation as their most important proposal to State officials.

No statewide citizen advisory group was established until after the deaths of two corrections officers at the Southern Ohio Correctional Facility in July 1973. The lack of State action may have resulted from resistance to "outside observation" on the part of Ohio's corrections administrators. Dr. Joseph R. Palmer, deputy director for program services for the Department of Rehabilitation and Correction in 1973, told the Ohio Advisory Committee one pressure on corrections officials was:

> ...the seemingly unending 'study' of the operation of agencies and institutions by various individuals and groups, a great many of whom are not knowledgeable in corrections, [and] who seem determined to tell the professionals and the rest of society just what should be done. (Transcript, p. 588)

On August 7, 1973, the Ohio Advisory Committee, fearing renewed violence, publicly urged the Governor to establish a permanent citizen State advisory panel on prisons.[77] The

75. Task Force Report, p. C64.

76. Ibid., p. E38.

77. Nancy McVicar, "U.S. Group Urges Observers for Lucasville Prison," Columbus Citizen-Journal, Aug. 11, 1973.

Advisory Committee recommended that such a panel have unlimited access to State prisons and serve as "impartial observers" to help protect inmate and staff rights and hopefully prevent further loss of life. The Ohio Committee on Crime and Delinquency, members of the Ohio Citizens' Task Force, and others supported the Advisory Committee's position. The Governor, as an interim action, sent members of the Citizens' Task Force into the Lucasville prison as observers in the aftermath of the killings.[78]

On September 4, 1973, Governor Gilligan announced his administration's agreement, in principle, with the proposals for a citizen advisory panel. On February 6, 1974, he issued an executive order establishing a seven-member Governor's Advisory Panel for Rehabilitation and Correction. The panel, including several statewide, independent corrections experts and civic leaders, had authority to review all prison programs and policies and was required to report findings and recommendations at least annually to the Governor.

Unlike the body proposed by the Ohio Advisory Committee, the Governor's advisory panel was dependent on the Department of Rehabilitation and Correction for staff and office resources and for access to Ohio prisons. The departmental ombudsman was not under the advisory panel's authority, as was also recommended by the Ohio Advisory Committee.

The Governor's advisory panel began work in March 1974 by meeting with Department Director Cooper and visiting all prisons and State parole and probation offices.[79]

According to its chairman John Holscher, the advisory panel filed several reports of findings with Governor Gilligan. A subsequent request to the Governor's office for information on these findings was not answered. Mr. Holscher also stated that the advisory panel had received virtually no support for its operating expenses from State fund sources. "We hesitate to ask [the Department of Rehabilitation and Correction] for secretarial help because they are already overloaded," he said.[80]

Present Governor James A. Rhodes abolished the Governor's Advisory Panel for Rehabilitation and Correction in April 1975.

78. Ronald D. Clark, "Task Force Report Says Pen Crackdown 'Excessive, Unjust'," Akron Beacon Journal, Sept. 3, 1973.

79. The Communicator, Ohio Department of Rehabilitation and Correction, June 1974, p. 3.

80. John N. Holscher, letter to Eldridge T. Sharpp, Jr., Chairperson, Ohio Advisory Committee, Sept. 30, 1974.

CHAPTER VI

RIGHTS OF OHIO PRISONERS

During its 2-year investigation of Ohio's adult correctional system, the Ohio Advisory Committee heard many allegations that inmates were denied constitutional rights. These allegations were not limited to certain institutions or programs but appeared to be systemwide.

The largest number of complaints and the most serious allegations were made by prisoners in the Southern Ohio Correctional Facility at Lucasville, the Ohio State Reformatory at Mansfield, and the London Correctional Institution at London. The Department of Rehabilitation and Correction designates the Lucasville and Mansfield facilities as maximum security institutions and London as medium security.

The Advisory Committee gathered information through a variety of means:

1. Onsite inspections by Advisory Committee members and Commission staff at seven prisons;

2. Interviews with inmates and staff at each institution;

3. An informal, public hearing held in Columbus, Ohio, July 13 and 14, 1973, during which the Advisory Committee heard testimony from present and former inmates and staff, and government, community, and professional leaders involved in prison issues;

4. Nearly 200 letters and written complaints from inmates;

5. Approximately 44 exhibits submitted during the Advisory Committee's informal hearing;

6. Interviews with former staff and inmates;

7. Interviews with families and attorneys of inmates and with community leaders and organizations working with Ohio prisoners;

8. A survey of over 150 news articles on Ohio's prisons and several published and unpublished reports on conditions in Ohio prisons;

9. Extensive correspondence and interviews with administrators in the various institutions and in the central office of the Ohio Department of Rehabilitation and Correction in Columbus;

10. A survey through questionnaires mailed to 217 persons reported by the department to have been recruited through the LEAA-funded black recruitment program.

The Advisory Committee's analysis of this data uncovered many allegations of rights violations. In the absence of Federal or State statutes specifying the protected rights of prisoners, these allegations are presented in five categories based on the most general legal norm in this country, the United States Constitution: 1) due process, 2) equal protection, 3) first amendment rights, 4) freedom from cruel and unusual punishment, and 5) the right to life. Several non-statutory sources were also used to apply constitutional principles to Ohio's prisons, including:

(1) "Proposed Baseline For Minimum Standards of Civil and Human Rights For Inmates in Correctional Institutions" of the U.S. Commission on Civil Rights;[81]

(2) Report on Corrections of the National Advisory Commission on Criminal Justice Standards and Goals;

(3) Compendium of Model Correctional Legislation and Standards of the American Bar Association, Council of State Governments, National Council on Crime and Delinquency, and nine other national organizations;

81. The proposed baseline is available at the U.S. Commission on Civil Rights offices in Washington, D.C., and Chicago, Ill.

(4) The Administrative Regulations of the Ohio Department of Rehabilitation and Correction; and,

(5) Rulings of State and Federal courts, as cited throughout the chapter.

For safety or for legal purposes, the identities of some staff or inmate complainants are omitted from this report, as are the names of some individuals against whom allegations were made. A number of specific allegations received by the Advisory Committee were forwarded to the office of the Governor and to the Department of Rehabilitation and Correction.

1. Due Process of Law

> [No person shall] be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without compensation.
>
> . . . . . .
>
> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.[82]

Basic to any system of justice is the provision of fair, evenhanded procedures for airing complaints, settling disputes, and providing defense prior to punishment. Certain basic aspects

82. U.S. Const.,amend. V and VI (excerpted).

of constitutionally established due process of law now unquestionably extend, in principle, to persons incarcerated in State penal institutions.[83]

The judicial application of fundamental fairness to prison inmates has ramifications for many classic prisoner problems but especially for the important area of disciplinary punishment. Disciplinary punishment results in the denial of privileges and sometimes rights and ultimately may mean the loss of good time credit and prolong the time served in the penal institution. Accordingly, Ohio State courts and Federal courts have set out specific rules and procedures applicable to disciplinary proceedings, including the right to notice of the charges, the right to call witnesses on behalf of the inmate, the right to present documentary evidence in defense of charges, the right to an impartial decisionmaker, and the right to written findings of fact.[84]

A recent U.S. Supreme Court case, however, has narrowed due process rights of inmates in disciplinary proceedings to a more limited set of procedures than are guaranteed in parole revocation proceedings. The Court declined to mandate the right to counsel or to cross-examine witnesses for inmates charged with disciplinary violations.[85]

83. In re Lamb, No. 31984 (Ohio Ct. App., Eighth Dist., Cuyahoga Co., Feb. 22, 1973); Sostre V. McGinnis 442 F. 2d 178 (2nd Cir. 1971); Jackson v. Bishop 404 F. 2d 57, 333 F. Supp. 621 (E.D. Va. 1971).

84. Notice of charges: Adams v. Carlson, 488 F. 2d 619, 624 (7th Cir. 1973); Milanovich v. Whealon, C.A. 73-254 (S.D. Ohio, June 5, 1974). Right to present evidence: Adams v. Carlson, 488 F. 2d supra at 624; U.S. ex rel Miller v. Twomey, 479 F. 2d 701, 716 (7th Cir. 1973); Landman v. Royster, 333 F. Supp. 621, 653 (E.D. Va. 1971); Milanovich v. Whealon, supra, slip opinion at 68. Right to an impartial decisionmaker: Aikens v. Lash, 371 F. Supp. 482, 492 (N.D. Ind. 1974); Milanovich v. Whealon, supra, slip opinion at 68. Right to written findings of fact: Aikens v. Lash, 371 F. Supp. supra at 492; Diamond v. Thompson, 364 F. Supp. supra at 492.

85. Wolff v. McDonald, 418 U.S. 539 (1974).

Disciplinary Procedures

According to the Department of Rehabilitation and Correction:

> The enforcement of institutional rules shall be for the purpose of developing patterns of behavior which will be of help to the inmate in his future adjustment in the free community, and the maintenance of order in the institution. Enforcement of institutional rules shall be rehabilitation oriented, and for the purpose of developing self-control and self-discipline.[86]

Among written allegations that the Ohio Advisory Committee received from inmates, complaints about disciplinary procedures constituted the largest single category--72 out of 281 specific complaints, or 26 percent. Most inmate allegations about discipline came from the Ohio State Reformatory at Mansfield, providing 49 cases; the Southern Ohio Correctional Facility at Lucasville provided the next highest number, 16 cases. The Advisory Committee also received four complaints concerning discipline from Chillecothe Correctional Institute, two from the Ohio Reformatory for Women, and one from the London Correctional Institute.[87]

The department's own data, as reported by its ombudsman, tends to show a similar pattern: after complaints about parole and transfer, discipline was the largest category out of 23 categories reported for fiscal year 1972-73. The Lucasville and Mansfield prisons, moreover, also showed the highest numbers of complaints about discipline in the ombudsman's data.[88] The

86. State of Ohio, Department of Rehabilitation and Correction, Administrative Regulation 804.

87. All written complaints received by the Ohio Advisory Committee are on file by number and name of institution in the Midwestern Regional Office of the U.S. Commission on Civil Rights, Chicago, Ill.

88. State of Ohio, Department of Rehabilitation and Correction, Annual Report of the Ombudsman: 1973, p. 53.

second annual report of the ombudsman, covering fiscal year 1973-74, contained no summary of inmate allegations by category of complaint. No further reports have been issued.

Mohammed Ibn Jamiel Abu Sabour, a Lucasville inmate, told the Advisory Committee during its informal hearing:

> Prison discipline is despicable, designed to humiliate, dehumanize, and emasculate. Will is impeded and taken away at every turn. Respect is denied the prisoner and his family, friends, and lawyers. Respect must be mutual; it cannot be demanded. (Transcript, p. 92)

Many inmates alleged, both at the hearing and in written complaints, that disciplinary procedures in Ohio prisons were used to achieve absolute control over inmates' lives and not as a means for encouraging self-discipline, self-respect, and independent judgment.

The drive toward absolute control by some correctional officers has been reported in earlier studies of Ohio's prison discipline. An internal memorandum of the Citizens' Task Force on Corrections in 1971 reported that one rules infraction board had sent prisoners to the "hole" on charges such as "disrespect to a bar of soap" and "insolence to an egg."[89] Regulations still list "disrespect," "carelessness," and "aiding and abetting" as grounds for disciplinary action.[90]

89. Ohio Citizens' Task Force on Corrections, "Discipline and Censorship at Lebanon Correctional Institution" (Subcommittee report), May 1, 1971, p. 3.

90. Administrative Regulation 804(a). But note: "...it is constitutionally required by the due process clause that the rules specifying prohibited conduct and the range of penalties for their infraction be written with reasonable specificity so that the inmate has fair warning to conform...." Sands v. Wainwright, 357 F. Supp. 1062, 1090 (M.D. Fla. 1973); See also, Landman v. Royster, 333 F. Supp. 621, 654-656 (E.D. Va. 1971); Rhem v. McGrath, 326 F. Supp. 681, 691 (S.D.N.Y. 1971); Colligan v. U.S., 349 F. Supp. 1233 (E.D. Mich. 1972); Also Brant, Prison Disciplinary Procedures: Creating Rules, 21 Cleve., St. L. Rev. 83, 97 (May 1972).

The Ohio Advisory Committee received a written statement during its informal hearing from one inmate who said he was called before the rules infraction board for lying about the number of cockroaches he had observed crawling on food in the prison commissary of the London Correctional Institution where he worked. He had filed a grievance alleging the presence of "hundreds" of cockroaches. In the disciplinary hearing, the accused was allowed three supporting witnesses. The witnesses testified as follows: one had seen "colonies of roaches," another saw "gobs of roaches," and the third saw "millions" of them. The rules infraction board, therefore, found the accused guilty of lying because he had claimed to have seen "hundreds," and removed him from his job in the commissary. (Hearing Exhibit 42-1)[91]

Following are some examples of the written complaints about discipline received by the Advisory Committee:

One inmate alleged arbitrary use of solitary confinement:

> I asked an officer what was the time, and in reply he said, 'Nigger I think it's time that you spend a little time in the hole,' and I was put in the hole for 15 days. (OSR Complaint 46)[92]

Another prisoner complained of uneven punishment based upon race:

> Every time I go to court [rules infraction board] I hardly ever get a break like the white boy....Like when I was in D-Block for insolence and a white boy was down there for carrying a knife; he got 2 weeks and I got 60 days out of it. (OSR Complaint 48)

91. During its informal hearing in July 1973, the Ohio Advisory Committee received many documents pertaining to testimony. Each has been numbered and here and hereafter are cited only in text as above (U.S. Civil Rights Commission files).

92. Written complaints received by the Ohio Advisory Committee from inmates and some staff are cited here and hereafter only in the text by abbreviation of institution and number, as above. Abbreviations for the names of Ohio's prisons are: OSR - Ohio State Reformatory, LECI - Lebanon Correctional Institution, LCI - London Correctional Institution, CCI - Chillicothe Correctional Institution SOCF - Southern Ohio Correctional Facility, MCI - Marion Correctional Institution, ORW - Ohio Reformatory for Women (U.S. Civil Rights Commission files).

During a peaceful sit-in about conditions at the Ohio Reformatory for Women in early 1973 one inmate reported:

> These people have us locked in somewhat of a dungeon with 15 rooms and 58 women all trying to sleep the best way we can....We smell like animals, no baths, no toothpaste, no sheets, nothing. (ORW Complaint 3)

Another inmate claimed that disciplinary procedures were used as retaliation against inmates protected by a court order:

> I am a prisoner confined at Chillicothe Correctional Institution. I was one of the 51 inmates that was shipped to [the Southern Ohio Correctional Facility at] Lucasville illegally. We returned here April 5, 1973, by a court order. Since being here, we (51) have been harassed very much. In May I spent 19 days in the isolation (hole) only to be found not guilty of all charges. (CCI Complaint 2)[93]

Like most other areas of Ohio prison operations, disciplinary proceedings have come under centralized authority only since the creation of the Department of Rehabilitation and Correction as a separate State adult corrections agency in July 1972. Since that time, the department's director has periodically issued detailed administrative regulations on institutional operations including disciplinary procedures. In his 1972 memorandum transmitting new administrative regulations to all prison superintendents, B. I. Barton, then director of institutional operations, stated:

> Copies of these orders should be distributed to staff and inmate personnel. This should be done in a reasonable manner so that all parties may be aware of the new regulations.

93. Other inmate allegations regarding disciplinary procedures included 3 from Chillicothe Correctional Institution, 4 from Ohio Reformatory for Women, 1 from London Correctional Institution, 49 from Ohio State Reformatory, and 16 from Southern Ohio Correctional Facility (U.S. Civil Rights Commission files).

Both inmates and superintendents, however, testified during the Advisory Committee's informal hearing that, as a rule, inmates did not have copies of departmentwide disciplinary regulations. (Transcript, pp. 115, 116, 155, 257, 549, 550)

According to many inmates, their lack of familiarity with departmental rules meant that they never really knew what kind of behavior would incur disciplinary action against them, and it seemed to depend mainly on the reactions of individual staff rather than any objective, consistent criteria. Inmate Sabour told the Advisory Committee:

> As a rule, we are non-cognizant of what the rules are. We have to make elaborate manipulations to find out what we are being governed by. We usually find out about these Administrative Regulations once we violate one. (Transcript, p. 115)

J. Raymond Twohig, former head of the Ohio State University Law School legal clinic and an attorney who had worked with the Ohio Prisoners Labor Union, told the Advisory Committee:

> Generally, regulations are routinely ignored, especially by line staff who should be enforcing them. (Transcript, p. 650)

Mrs. Ysabel Rennie of the Ohio Citizens' Task Force on Correction, who participated in the Advisory Committee's informal hearing commented:

> It is my observation that in trying to judge what actual disciplinary procedures are from the written regulations and stipulations is like trying to judge Christian practices by reading the Ten Commandments. There is relatively little relationship. (Transcript, p. 43)

The Ohio Citizens' Task Force in 1971 commended the new guidelines and proposed that:

> The [department] should provide for periodic review of institutional compliance with these guidelines. At each institution a permanent

> standing committee, representing all major services, should be made responsible for implementing these guidelines and policies.[94]

Through early 1974, however, the Department of Rehabilitation and Correction had no routine process for monitoring adherence to disciplinary regulations. No institution had a committee explicitly charged with insuring overall implementation of the regulations. Some individual superintendents of institutions told the Ohio Advisory Committee that they had attempted to explain the meaning of the regulations to line staff, but this included little or no regular monitoring of staff performance. (Transcript, pp. 526, 595) Actual monitoring was done only on the initiative of individual superintendents or other staff and was not part of an ongoing evaluation of the new regulations. For example, in 1973 Martha Wheeler, then superintendent of the Ohio Reformatory for Women, told the Advisory Committee, "It is a constant battle to followup and make sure every [staff person] understands the State regulations." (Transcript, p. 562)

Since the department routinely has recorded all hearings of the rules infraction boards, all records are available for routine inspection if that were a departmental priority.

Legal Services

Due process of law entitles the inmate to access to the judicial system to petition for the redress of grievances.[95] Access to the courts is meaningless, however, without legal assistance in the preparation and filing of lawsuits,[96] unfettered communication between attorney and client,[97] and the availability of adequate

94. Task Force Report, pp. C13, C40.

95. Ex Parte Hull, 312 U.S. 546 (1949); Johnson v. Avery, 393 U.S. 483 (1969).

96. Taylor v. Perini, No. C69-275 (N.D. Ohio 1972).

97. Doe v. Bell, Civ. No. 71-310 (N.D. Ohio, Oct. 19, 1971); Jones v. Wittenburg 323 F. Supp. 93 (N.D. Ohio 1971); See also Wolff v. McDonnel, 42 U.S.L.W. 5190 (U.S. Sup. Ct., June 26, 1974).

law library facilities.[98] All of these have been acknowledged as basic rights of inmates, founded in Federal due process concepts. Further, one Ohio court has acknowledged a duty to protect its plaintiffs, particularly inmates, from retaliatory actions, harassment, and intimidation by prison personnel.[99]

The Advisory Committee was told that attorney-client visits were in some cases not allowed. This seemed particularly prevalent in the cases of "controversial" inmates or attorneys. J. Raymond Twohig, who was an attorney for the Ohio Prisoners Labor Union, told the Advisory Committee during its informal hearing in 1973:

> I was denied a visit at London Correctional Institution 2 weeks ago on the grounds that I didn't write ahead for permission. There is nothing in their regulations that said I have to write ahead for permission. It says attorneys can visit their clients on visiting days, just the same as other visitors can. (Transcript, p. 649)

During 1973 the LEAA funded an inmate legal services program through Capital University Law School. It provided three lawyers "to handle routine matters not connected with any suits against the State of Ohio; that is, appeals and other problems that prisoners might have." (Transcript, p. 39) The Department of Rehabilitation and Correction allowed that program to end in 1974 by neither reapplying for LEAA money nor budgeting State funds for its continuation. Robert K. Handelman, another counsel to the prisoners' labor union, told Commission staff in August 1974:

> The prisoners are now literally without any legal assistance at all, and nearly every inmate who wants to take legal action needs some degree of help.

98. Younger v. Gilmore 404 U.S. 15 (1971).

99. Lacey v. Gaver C.A. No. 72-214 (S.D. Ohio E.D., filed June 20, 1972), 1 Prison L. Rptr. 281 (1972).

The Advisory Committee was told that inmates who litigate against the Department of Rehabilitation and Correction become objects of harassment by institutional officials. The confiscation of legal papers and texts as "contraband" during guard shakedowns was reported to the Advisory Committee on several occasions.[100] One inmate at the Southern Ohio Correctional Facility described the confiscation of his personal belongings following the deaths of two guards in July 1973:

> I was escorted by a club-swinging smart racist punk who wanted to 'act mannish' while nine shotguns were pointed my way and was shouted orders like 'Sign this, we're sending this contraband home!' I looked to see what was contraband and it was two-thirds of my personal belongings: radio, tape player, tapes, clothing, legal papers, school work, religious studies, shoes, books, photographs, underwear.... I checked my jewelry and a silver ring was gone and a necklace my wife had given me 2 months ago with special blessings. [Emphasis added.]

Joyce Keller, staff of the Ohio Civil Liberties Union, told Commission staff in May 1975 that recently appointed director George F. Denton has established a general policy of not seeking negotiated settlements in many cases in which this would be both possible and beneficial to all parties. For example, Ms. Keller said, lawyers seeking to verify inmate allegations of involuntary medical experimentation have been told by departmental officials that medical records belong to the department, not to the inmate. Lawyers for inmates have been told, "You can sue us if you want the records."

100. As reported, for instance, in Ohio State Reformatory complaint number 2, subsequent information from same complainant in Advisory Committee files, Southern Ohio Correctional Facility complaint number 8, and other correspondence with witnesses on file.

At the present time the only available legal resources are the law libraries in each institution, formerly funded with a Federal grant. According to Mr. Handelman, the libraries are "not bad" since they subscribe to the main legal periodicals, but they lack major legal encyclopedias which are important in the overall planning of litigation.

Parole Processes

The parole procedure is another area of alleged due process violation in United States prisons. A recent U.S. Supreme Court decision,[101] while noting that revocation does not involve the "full panoply" of rights due a defendant in a criminal proceeding, has acknowledged that certain basic procedural guarantees[102] are to be accorded parolees prior to their return to prison for parole violations. However, courts have been more reluctant to accord due process rights at hearings for prisoners seeking parole.[103] Many inmates claim the parole process is more troublesome than disciplinary procedures.

Questionable staff practices sometimes affect parole decisions. One inmate alleged he had been illegally transferred to Lima State [Mental] Hospital without a hearing and was later denied parole at Chillicothe Correctional Institution for psychological reasons because of the earlier commitment record. (Transcript, p. 51) Arbitrary disciplinary action can also affect parole decisions. One inmate alleged:

101. Morrissey v. Brewer, 408 U.S. 471 (1972).

102. Ibid. "They [minimum due process rights] (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses....; (e) 'neutral and detached' hearing body...' and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole." Although Morrissey did not consider the right to counsel, other Federal courts have granted this additional right. See U.S. ex rel Bey v. Connecticut State Board of Parole, 443 f. 2d 1079 (2d. Cir. 1971). See also Gagnon v. Scarpelli, 411 U.S. 778 (1973).

103. Menechino v. Oswald, 430 F. 2d 403 (2d Cir. 1970).

> When the guards don't like a brother here they find different things to write him up for. For instance, when a brother is about to go to the parole board, he would be written up for disrespect to an officer. Or he might be written up for sodomy after the guards persuaded a homosexual inmate to say that the brother ripped him off. (OSR Complaint 42)

A written outline of allegations received by the Advisory Committee in July 1973 from William McDowell, a teacher at the Ohio State Reformatory, Mansfield, contained several parole-related charges:

> (1) The Adult Parole Authority gives differential treatment to blacks and whites for similar offenses, which leads to blacks receiving [longer and more frequent] continuances in many instances;
>
> (2) Additional time is often given, based on illegitimate, irrelevant, and illegal criteria;
>
> (3) The authority discriminates against blacks who have committed crimes against whites or have been members of black militant organizations; and
>
> (4) Residents commonly complain about the manner in which certain parole board members address blacks, especially since no blacks are on the panel.

Other allegations received by the Advisory Committee indicated that inmates' files often include unfounded, frivolous, and irrelevant information submitted by some prison staff.[104] Further,

104. In a letter to Clark G. Roberts, Oct. 14, 1975, John W. Shoemaker, Chief, Ohio Adult Parole Authority, stated that the State's 16,000 files on prisoners and parolees include vast amounts of communication including documents from courts, letters from relatives, employers, creditors, and the public. The file also accumulates information from the institution professional staff including psychologists, social workers, doctors and educators. "It is extremely unlikely, therefore, that we seek or include 'frivolous and irrelevant' information," he said.

as of mid-1973, inmates were afforded no access to their files, were given only perfunctory explanations if the parole board denied parole, and were not allowed assistance during parole hearings. These complaints have been the subject of litigation in Wagner v. Gilligan, a suit brought on behalf of inmates by the Ohio Chapter of the National Lawyers Guild.[105]

2. Equal Protection of the Laws--Racial Discrimination

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.[106]

Elementary constitutional law proscribes any action on the part of a State that results in discrimination on the basis of race. A State penal institution that operates to offend fundamental constitutional guarantees is subject to these prohibitions.[107] The closed environment of the prison, moreover, is replete with opportunities for significant deprivation of civil rights based on

105. Wagner v. Gilligan, No. 72-255 (N.D. Ohio, June 1972).

106. U.S. Const. amend. XIV, §1 (excerpted).

107. Johnson v. Avery, 393 U.S. 483 (1969) as cited in Procunier v. Martinez, 416 U.S. 396, 94 S. Ct. 1800, 42 U.S.L.W. 4606 (April 29, 1974); Jones v. Metzger, 456 F. 2d 854 (6th Cir. 1972); Milanovich v. Whealon, No. 73-254 (S.D. Ohio, June 5, 1974).

race. The equal protection provisions of the U.S. Constitution and the 13th amendment will not permit racial classification of prisoners or the assignment of prisoners to desirable jobs, housing, and training facilities in the institution on the basis of race, even where the prison attempts a justification based on grounds of institutional security.[108] Discrimination on the basis of sex should also be prohibited even though there are now no constitutional protections in this area. Women prisoners should receive no favored treatment because of their sex, nor should they be denied equal training and vocational opportunities.

The Advisory Committee received many specific written allegations of racial discrimination from inmates. Among these were 2 from Chillecothe Correctional Institution, 2 from Ohio Reformatory for Women, 47 from Ohio State Reformatory, and 1 from Southern Ohio Correctional Facility. Similar allegations were made in correspondence with witnesses and in several hearing exhibits.

Racial Characteristics of Prisoners and Staff

The number of minority inmates in Ohio's adult prisons has more than doubled since 1945, from 2,125 in 1945 to 4,460 in 1974. There are, however, fewer whites than in 1945--3,961 in 1974 compared with 4,313 in 1945. Minority prisoners, of whom 98 percent are black, constituted 53 percent of the prison population in 1974 as compared with 33 percent in 1945. By comparison, minorities made up only 7.6 percent of all staff of the Department of Rehabilitation and Correction in 1974.

As Table 9 shows, minority representation in Ohio's prison population is greatly disproportionate to minority representation in the total population. Figures for 1945 compared with those for

108. McClelland v. Sigler, 327 F. Supp. 829 (D. Neb. 1971); Taylor v. Perini, Civ. No. C69-275 (N.D. Ohio 1972).

TABLE 9

White and Minority Representation in Ohio Prisons and Total Populations 1945 - 1974

Year	White Inmates	Percentage of Total Inmates	Minority Inmates	Percentage of Total Inmates	Minority Percentage in Total Ohio Population##
#1945	4,313	67%	2,125	33%	6.5% (1950)
#1971	5,008	53.2%	4,403	46.8%	9.4% (1970)
*1973	4,013	48.5%	4,267	51.5%	9.5% (estimate)
**1974	3,961	47.0%	4,460	52.9%	9.6% (estimate)

Sources: # Secondary sources citing reports of the (then) Ohio Division of Correction.

Statistical Abstract of the United States: 1973 (U. S. Dept. of Commerce: Washington, D.C., 1973), p. 29.

* Institution-by-institution reports to the Advisory Committee in late 1972 and early 1973.

** Monthly Institutional Statistics, Correctional Data Center, Ohio Department of Rehabilitation and Correction, June 30, 1974.

1971 to 1974 show that the proportion of minority prisoners consistently has been more than five times greater than the minority proportion of the State's total population.

The greater minority representation in prisons is not totally explained by the higher crime rates in poor, minority communities. Although 30 percent of all those reported arrested nationally in 1970 were minority persons (1,883,947 of 6,257,104 arrests),[109] the minority percentage of the national prisoner population was one-third larger, at 40 percent.[110] Ohio's prison population was approximately 47 percent minority.

Of 8,280 inmates in Ohio's adult prisons in spring 1973, approximately 4,267 were members of minority groups (51.5 percent) and 4,013 were white (48.5 percent). Persons of Spanish speaking background, Asian Americans, and other minorities were reportedly present. There is a latino cultural organization at the Ohio State Reformatory. However, the Department of Rehabilitation and Correction used only the categories "black" and "white." Included in the 1973 total were 292 women prisoners at the Ohio Reformatory for Women in Marysville, constituting 3.6 percent of Ohio's adult inmate population.

By June 30, 1974, there were approximately 52 fewer white inmates and 192 more minority inmates in Ohio prisons than in early 1973. The proportion of whites was down to 47.1 percent and the minority proportion was up to 52.9 percent of the prison population. Within the female inmate population, minorities numbered 192 (63.6 percent) in 1974, and whites accounted for 110 (36.4 percent). The

109. U.S., Department of Justice, Federal Bureau of Investigation, Crime in the United States; Uniform Crime Reports--1970, p. 131.

110. U.S., Department of Commerce, Bureau of the Census, Persons in Institutions and Other Group Quarters, 1970 Census Report PC(2)-4E, Table 24.

total inmate population, therefore, was one-half minority while nearly two-thirds of the female inmate population was minority. Women prisoners were still 3.6 percent of the total prison population in 1974. Table 10 gives the overall racial composition of the staff and inmate populations of each institution in the spring of 1973. Table 11 gives the racial makeup of the inmate population as of June 30, 1974.

In spring 1973 there were 255 minority personnel out of a total staff of 3,237 working for the Department of Rehabilitation and Correction, or 7.9 percent minority. A disproportionately large number, 140 or 55 percent, worked either in the central office or for the Adult Parole Authority, having little or no contact with inmates. In 1973 the five prisons housing 73 percent of the State's minority inmate population (3,136 prisoners) were assigned only 20 percent of the State's minority correctional staff (50 staff persons).

By January 1974 minority staff had increased to 261, but total staff had also increased to 3,456, lowering the minority proportion slightly to 7.6 percent. Departmental data for that period indicated staff to be 84 percent male. Table 12 shows departmental staff by sex, racial group, and job category. All categories, except for clerical and office staff which are filled mainly by white women, are filled primarily by white males. Males hold 84 percent of all positions. The most heavily male job categories are Officials and Managers (96.7 percent), Protective Service Workers (Guards; 95.2 percent), and Skilled Craft Workers (97.7 percent). The most heavily white job categories are Technicians (97.3 percent), Skilled Craft Workers (97.1 percent), and Protective Service Workers (95.5 percent).

Information provided by the Department of Rehabilitation and Correction on minority representation among both inmates and staff in 1973 and 1974 was, in some cases, vague and incomplete. The data showed the following shortcomings:

1. Not all racial groups actually or possibly present among inmates were counted, including Mexican Americans, Puerto Ricans, other persons of Spanish speaking background, and Pilipinos.

2. Racial and ethnic data on over 100 prisoners (1.2 percent of the total) was listed as not available. John R. Beach, Electronic data processing manager for the Department of Rehabilitation and Correction, suggested that these inmates were all minorities, and probably included many persons of Spanish speaking background.

TABLE 10

Racial Composition of Staff and Inmate Population
in Ohio's Adult Correctional System
1973

Institution	All Inmates	Minority Inmates	Percent Minority	All Staff	Minority Staff	Percent Minority
1. Ohio Reformatory for Women	292	189	64.7%	176	8	4.5%
2. Southern Ohio Correctional	1,200	770	64.2%	491	11.5	2.3%
3. Ohio State Reformatory	1,800	1,025	56.9%	496	27	5.4%
4. Marion Correctional	942	480	51.0%	280	2	0.7%
5. Lebanon Correctional	1,365	672	49.2%	326	12	3.7%
6. Ohio Penitentiary	741	319	43.0%	349	33	9.5%
7. Chillicothe Correctional	1,018	432	42.4%	439	14	3.2%
8. London Correctional	922	380	41.2%	280	8	2.9%
Total in Institutions:	8,280	4,267	51.5%	2,837	115.5	4.1%
Central Office & Adult Parole Authority:	(Not Applicable)			400	140	35.0%
Total Staff:				3,237	255.5*	7.9%

*Includes 129 blacks (4.0 percent of all staff), 2 Asian Americans, 3.5 Native Americans, and 1 Mexican American (0.2 percent of all staff). The central office staff is 62 percent male. Data on sex of institutional staff was not provided.

Source: Inmate data reported separately by institutional superintendents between November 1972 and June 1973. Staff data reported by B.I. Barton, then Director of Institutional Operations, Ohio Department of Rehabilitation and Correction, March 1, 1973.

TABLE 11

Racial Composition of Inmate Populations in
Ohio's Adult Prisons
June 30, 1974

Institutions	White	Percent White	Black	Other Minority	N/A**	Percent Minority
1. Ohio Reformatory for Women	110	36.4%	188	2	2	63.6%
2. Southern Ohio Correctional	451	40.4%	664	-	1	59.6%
3. Ohio State Reformatory	796	43.0%	1,022	-	32	57.0%
4. Marion Correctional	503	46.2%	571	1	14	53.8%
5. Lebanon Correctional	637	49.9%	634	1	5	50.1%
6. London Correctional	616	50.4%	595	2	9	49.6%
7. Ohio Penitentiary*	89	53.3%	70	-	8	46.7%
8. Chillicothe Correctional	759	54.3%	608	-	30	45.7%
TOTALS:	3,961	47.0%	4,352	6	101	53.0%

* Now serving as a central prison hospital and known as the "Correctional Medical Center"

**This notation, used in original source, was not explained.

Source: State of Ohio, Ohio Department of Rehabilitation and Correction, Correctional Data Center, Monthly Institutional Statistics.

TABLE 12

White, Minority, and Female Staff by Job Category
Department of Rehabilitation and Correction
January 1974

Job Category	Total Employed	Male	Male Percentage	Female	Female Percentage	White	White Percentage	Minority Persons	Minority Percentage
Officials and Managers	120	116	96.7%	4	3.3%	102	85.0%	18	15.0%
Professionals	642	559	87.1%	83	12.9%	571	88.9%	71	11.1%
Technicians	75	65	86.7%	10	13.3%	73	97.3%	2	2.7%
Protective Service Workers	1,920	1,827	95.2%	93	4.8%	1,834	95.5%	86	4.5%
Para-Professionals	120	83	69.2%	37	30.8%	83	69.2%	37	30.8%
Office and Clerical	330	22	6.7%	308	93.3%	298	90.3%	32	9.7%
Skilled Craft Workers	173	169	97.7%	4	2.3%	168	97.1%	5	2.9%
Service and Maintenance	76	65	85.5%	11	14.5%	66	86.8%	10	13.2%
TOTALS	3,456	2,906	84.1%	550	15.9%	3,195	92.4%	261	7.6%

Source: Based upon "Utilization Analysis and Goals: Minorities and Women" (Proposed), Ohio Department of Rehabilitation and Correction, January 22, 1974.

Shortcomings in racial enumeration of offenders supervised by the Department of Rehabilitation and Correction were more evident in data on State parolees and probationers. Tables 13 and 14 give racial counts for both groups for each of the six regions covered by the Adult Parole Authority (APA). The categories of Mexican American, Puerto Rican, other persons of Spanish speaking background, and Pilipinos are again omitted. On June 30, 1974, 1,854 of the State's 4,889 parolees, or 38 percent, were not racially or ethnically identified in the department's data system. Among the 3,059 probationers under APA supervision at that time, 2,000 persons, or 65 percent, were unidentified racially or ethnically in the department's data system.

In summary, the Department of Rehabilitation and Correction had no knowledge in June 1974 of the racial backgrounds of 3,854 of 7,948 persons then under supervision of the Adult Parole Authority--48.5 percent of the APA's client population. John W. Shoemaker, Chief, Ohio Adult Parole Authority, in a letter to the U.S. Civil Rights Commission, Oct. 14, 1975, stated that the racial background of parolees "is not considered to be of pressing importance in the priority of objectives since all of our programs specifically prohibit racial discrimination." Furthermore, Shoemaker stated that the department's information system has been closed down, "because of economic considerations."

Shortcomings in racial enumeration may be partly due to the fragmented structure of the department since its separation from the Department of Mental Hygiene and Correction in July 1972. Each division was still operating with varying degrees of independence during the Advisory Committee's investigation in 1972 and 1973. The Department of Rehabilitation and Correction, in addition, had no centralized data processing system at the time to give accurate daily data on the inmate population. The Ohio Advisory Committee made a written request to the APA in 1973 for a racial count of that division's staff as well as its client population, based on a random sample of case files, but received no response.[111]

111. Valeska S. Hinton, equal opportunity specialist, U.S. Commission on Civil Rights, letter to Henry Grinner, Jr., superintendent, Probation Development, Adult Parole Authority, Mar. 27, 1973.

TABLE 13

Ohio Parolees by Race and Region, June 30, 1974

Racial or Ethnic Group*	Cincinnati/Percent		Akron/Percent		Cleveland/Percent		Columbus/Percent		Lima/Percent		Out of State/Percent		TOTALS/Percent	
Chinese	-	-	-	-	-	-	1	0.05%	1	0.2%	-	-	2	0.04%
Indian	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Japanese	-	-	-	-	1	0.1%	-	-	-	-	-	-	1	0.02%
Black	281	31.7%	143	23.9%	317	41.1%	602	27.9%	97	23.6%	14	21.2%	1,454	29.7%
White	224	25.3%	215	36.0%	158	20.5%	791	36.7%	138	33.6%	45	68.2%	1,571	32.1%
All Others	-	-	-	-	1	0.1%	5	0.2%	1	0.2%	-	-	7	0.14%
Unknown	2	0.2%	2	0.3%	4	0.5%	1	0.05%	1	0.2%	-	-	10	0.20%
N/A	380	42.8%	238	39.8%	291	37.7%	755	35.0%	173	42.1%	7	10.6%	1,844	37.7%
Sub-Totals of Racially or Ethnically Unidentified Clients	382	43.1%	240	40.1%	296	38.3%	761	35.3%	175	42.6%	7	10.6%	1,861	38.1%
TOTALS	887	100.0%	598	100.0%	772	100.0%	2,155	99.9%#	411	99.9%#	66	100.0%	4,889	99.9%#

*The racial and ethnic categories used here are those in use by the Ohio Department of Rehabilitation and Correction.

#Columns do not add to 100 percent due to rounding.

Source: Computer Data Center of the Ohio Department of Rehabilitation and Correction.

TABLE 14

Ohio Probationers Under State Supervision By Race and Region
June 30, 1974

Racial or Ethnic Group*	Cincinnati/Percent		Akron/Percent		Cleveland/Percent		Columbus/Percent		Lima/Percent		Out of State/Percent		TOTALS/Percent	
Chinese	-	-	-	-	1	0.2%	-	-	-	-	-	-	-	0.03%
Indian	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Japanese	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Black	18	3.8%	70	9.0%	35	5.9%	46	6.6%	16	3.1%	-	-	185	6.0%
White	160	34.0%	193	24.7%	108	18.2%	276	39.7%	131	25.4%	2	50.0%	870	28.4%
All Others	-	-	-	-	3	0.5%	-	-	-	-	-	-	3	0.1%
Unknown	46	9.8%	37	4.7%	1	0.2%	27	3.9%	17	3.3%	-	-	128	4.2%
N/A	247	52.4%	481	61.6%	444	75.0%	346	49.8%	352	68.2%	2	50.0%	1,872	61.2%
Sub-Totals of Racially or Ethnically Unidentified Clients	293	62.2%	518	66.3%	448	75.7%	373	53.7%	369	71.5%	2	50.0%	2,003	65.5%
TOTALS	471	100.0%	781	100.0%	592	100.0%	695	100.0%	516	100.0%	4	100.0%	3,058	99.93% #

*The racial and ethnic categories used here are those in use by the Ohio Department of Rehabilitation and Correction.

#Column does not add to 100 percent due to rounding.

Source: Computer Data Center of the Ohio Department of Rehabilitation and Correction.

Inmate Employment

Inmate job distribution by race is an important index of race relations and civil rights within prisons. The Advisory Committee requested and received information on the racial makeup of job categories at all institutions except the Southern Ohio Correctional Facility at Lucasville. The latter had few inmate jobs or other programs during the Advisory Committee's investigation.

There is reason to believe discrimination occurs when the proportion of minority persons in a job category is significantly higher or lower than the proportion of minority persons in the institution's total population and when no reasonable explanation for that difference exists. Further evidence of possible discrimination is the overrepresentation of minority inmates in low-status, low-skilled positions within the institution. Another factor in assessing whether discrimination is occurring in job assignments is the number of inmate allegations to that effect.

The majority of the more than 50 complaints of discrimination that the Advisory Committee received were in the area of inmate employment. Among them were the following allegations:

> A job at the institution which involves great physical effort is always assigned to a black inmate and never to a white inmate. (ORW Complaint 2).
>
> # # #
>
> During my incarceration here I've never known or heard of a black being assigned or permitted to work in the "photo lab." This is a blatant form of racial discrimination. (OSR Complaint 8).
>
> # # #
>
> I went before [the reclassification committee] for a job--they turned me down. However the same job was given to a white. There are about 1,000 black and about 600 white inmates. Mostly all of the jobs that could mean anything whites have them! (OSR Complaint 16).
>
> # # #

> My complaint is about the strong discrimination at Grafton Honor Farm (near the Ohio State Reformatory)--how they give the whites the easy jobs inside and all of the brothers have to work hard all day shoveling cow mess and any other nasty job they can find. (OSR Complaint 70-B)

Inmates also alleged discrimination in prison jobs during the Advisory Committee's informal hearing in 1973. Inmate Sabour of the Southern Ohio Correctional Facility at Lucasville stated:

> Most of the truck drivers' jobs, the jobs that I feel are meaningful, would be considered white jobs. I think we have ten blacks out of approximately 51 in the honor block...and those are the inmates who get the better jobs. (Transcript, p. 139)

Inmate Louis Mosley of the London Correctional Institution agreed:

> In proportion to the black population and the white population there is a great degree of discrepancy in terms of a black being in jobs that could be meaningful after they leave the institution as opposed to whites being in jobs that would be meaningful after they leave the institution. (Transcript, p. 279)

The racial makeup of selected job categories in six Ohio prisons is given in Table 15. In each case minorities tend to be underassigned to those jobs considered more desirable and overassigned to less desirable jobs as compared to their proportion in the institution's total population. The jobs are only a partial listing of those available in each institution, but they are representative of jobs considered desirable or undesirable. Thus, the categories with relatively few minorities tend to be those jobs with good working conditions which use skills transferable to outside employment (carpentry, appliance repair, machine shops, keypunch, printing, etc.). The reverse is generally true of the jobs having many minorities (laundry workers, janitors, etc.).

TABLE 15

Racial Representation in Selected Inmate Job Assignments at Six Institutions*

A. Ohio Reformatory for Women, Marysville, Ohio

Job Category	Inmate Assignments Minority (%)	White (%)
Butcher Shop	1 (20%)	4 (80%)
Hospital	7 (41%)	10 (59%)
Sewing	29 (88%)	4 (12%)
Laundry	24 (92%)	2 (8%)
Overall Inmate Population:	189 (65%)	103 (35%)

B. Chillicothe Correctional Institution Chillicothe, Ohio

Job Category	Inmate Assignments Minority (%)	White (%)
General Maintenance Pool	1 (11%)	8 (89%)
Machine Shop	1 (13%)	7 (87%)
Carpenter Shop	3 (16%)	16 (84%)
Commissary	2 (22%)	7 (78%)
Print Shop	9 (30%)	21 (70%)
Electric Shop	4 (31%)	9 (69%)
Laundry	29 (76%)	9 (24%)
Overall Inmate Population:	390 (42%)	537 (58%)

*Data supplied by the respective institutional superintendents during period of November 1972 to June 1973. Statistics on the Ohio Penitentiary (Columbus) and the Southern Ohio Correctional Facility (Lucasville) are not included here due to the transitional nature of those institutions at that time.

TABLE 15 (Cont.)

C. Lebanon Correctional Institution, Lebanon, Ohio

Job Category	Inmate Assignments Minority (%)	White (%)
Commissary	2 (17%)	10 (83%)
Machine Shop	2 (25%)	6 (75%)
Hospital	3 (27%)	8 (73%)
Key Punch Service	2 (29%)	5 (71%)
Plumbing Shop	4 (29%)	10 (71%)
Electric Shop	4 (31%)	9 (69%)
Computer Programming	20 (32%)	43 (68%)
Metal Furniture Shop	25 (78%)	7 (22%)
Corridor Cleaners	14 (82%)	3 (18%)
Overall Inmate Population	672 (51%)	658 (49%)

D. London Correctional Institution, London, Ohio

Job Category	Inmate Assignments Minority (%)	White (%)
Dental Clinic	0 (0%)	8 (100%)
Electric Shop	0 (0%)	7 (100%)
Machine Shop	1 (10%)	9 (90%)
Garage	1 (13%)	7 (87%)
Print Shop	1 (13%)	7 (87%)
Farm Labor Team	12 (17%)	59 (83%)
Commissary/Radio Room	2 (20%)	8 (80%)
Dining Room	31 (58%)	22 (42%)
Janitors (in all shops)	41 (66%)	21 (34%)
Overall Inmate Population	408 (37%)	699 (63%)

TABLE 15 (Cont.)

E. Marion Correctional Institution, Marion, Ohio

Job Category	Inmate Assignments Minority (%)	White (%)
Electric Shop	0 (0%)	7 (100%)
Plumbing Shop	2 (15%)	11 (85%)
Dental Services	1 (17%)	5 (83%)
Auto School	6 (22%)	21 (78%)
Carpenter Shop	3 (30%)	7 (70%)
Dormitory Porters	36 (63%)	21 (37%)
Furniture	39 (67%)	19 (33%)
Custodial School	9 (82%)	2 (18%)
Overall Inmate Population:	560 (49%)	588 (51%)

F. Ohio State Reformatory, Mansfield, Ohio

Job Category	Inmate Assignments Minority (%)	White (%)
Social Services Department	2 (8%)	23 (92%)
Carpenter Shop	2 (17%)	10 (83%)
Garage	4 (21%)	15 (79%)
Psychological Services Department	2 (22%)	7 (78%)
Welding Shop	6 (27%)	16 (73%)
Appliance Repair	5 (31%)	11 (69%)
Laundry	39 (95%)	2 (5%)
Shoe Shop	7 (100%)	0 (0%)
Overall Inmate Population	1,025 (57%)	775 (43%)

Black Recruitment

As shown previously on Table 10 only 4.1 percent of Ohio prison staff in 1973 were minorities, while inmates were 51.5 percent minority and increasing. In the same year, the National Advisory Commission on Criminal Justice Standards and Goals noted this as a national pattern and recommended extensive minority recruitment by correction agencies, including all necessary revision of job requirements.[112]

The Ohio Department of Rehabilitation and Correction has received Federal funds for minority recruitment efforts. The department envisioned two phases for its recuitment program:

(1) A "crash minority recruitment program" including extensive statewide publicity, relations with other agencies and private groups, and the recruitment and screening of "fifty to seventy-five qualified recruits who will be hired." [Emphasis added.]

(2) Efforts aimed at keeping minority employees on the job and institutionalizing a minority hiring process.[113]

In 1971 the Department of Rehabilitation and Correction received $50,000 from the Law Enforcement Assistance Administration which paid for a fulltime project director, vocational counselor, and secretary, as well as three halftime "vocational field workers." The department promised to provide another $19,325 in terms of time spent on the recruitment efforts by "1,539 management and line-staff personnel" already employed by the division. This served to satisfy the requirement that Federal funds be matched in the ratio of 75 percent Federal to 25 percent State funds and paid the cost of freeing correctional officers to attend sessions at the various institutions.

112. U.S., National Advisory Commission on Criminal Justice Standards and Goals, Report on Corrections (1973), pp. 471-475.

113. State of Ohio, Division of Correction, Ohio Department of Mental Hygiene and Correction, narrative statement accompanying application for LEAA Project No. 1269-00-F1-71, August 1971, p. 2.

The second phase covering calendar year 1973 was funded at nearly the same level as the first. After a year's gap in funding (fiscal year 1972-73), a third phase was funded for fiscal year 1973-74.

The State has only partially evaluated the black recruitment program. According to a report of the Department of Rehabilitation and Correction, during the first 2 years of the program, 4,900 to 8,700 persons were contacted, 1,162 to 2,962 potential employees were screened, and 221 to 345 persons were referred for employment, most of them to some section of the Department of Rehabilitation and Correction.[114] Neither the Department nor the director of the Administration of Justice Division, however, could say how many of the individuals referred were actually hired, at what levels, or whether they were still employed. (Transcript, pp. 450-452, 570, 571)

Because of the lack of available information on the black recruitment program's effectiveness, the Advisory Committee conducted its own followup investigation. In June 1974 the Advisory Committee mailed a questionnaire[115] to each of 208 persons reported by the Department of Rehabilitation and Correction to have been referred for employment.

The Advisory Committee received 46 answers (22 percent) and 37 questionnaires (18 percent) were returned undelivered because the addressee no longer lived at the address listed by the Department of Rehabilitation and Correction. A total of 125 persons listed by the department (60 percent) did not respond.

114. State of Ohio, Department of Rehabilitation and Correction, "Black Recruitment Program Activities Report: June 1972-March 1973," p. 1 (hereafter cited as Activities Report); list of persons referred for employment by the Black Recruitment Program; and Dr. Robert Gilbert, "Black Recruitment Program" (Dept. of Rehabilitation and Correction: n.d.). The ranges of numbers for those contacted, screened, and referred stem from the fact that each document reporting on the black recruitment program cited vastly different figures.

115. Files of U.S. Commission on Civil Rights, Washington, D.C. and its Midwestern Regional Office, Chicago, Ill.

Of those responding, 22 persons (48 percent) claimed that they had never been contacted despite the presence of their names on the department's list of those referred or hired. Of those responding, 24 (52 percent) said they had been referred for employment to the Department of Rehabilitation and Correction. At most, however, only 3 (7.0 percent) of those responding to the questionnaire, all minority males, appeared to be employed by the department

Earlier, in a February 1973 interview with Advisory Committee members, Department Director Dr. Bennett J. Cooper reported that 87 persons had been "placed" as a result of the black recruitment program. The list of persons referred for employment provided by the department later in 1973 was more conservative, claiming only that 14 of 208 persons (7 percent) reportedly referred for jobs were known to have been hired. A seperate check in the summer of 1974 of those 14 persons revealed that at least 8 did not currently work for the department and the other 6 could not be located.

Five men and five women responding to the Advisory Committee questionnaire said they were employed by the State of Ohio but not by the Department of Rehabilitation and Correction. Of the 24 persons reporting that they had been referred for employment in the department, most said that no jobs had been available when they actually applied for work. Several female respondents reported in followup telephone interviews that they had been recommended mainly for nonprofessional, clerical positions and that men usually were referred to the better paying positions.

The department's own brief evaluation of the program reported several general problems in minority hiring. These included such factors as the rural location far from metropolitan areas with large minority concentrations, low pay scales for correctional staff, and racial conflict within prisons which interferred with hiring and retention of new minority staff. In addition, the program had been set up with separate funds apart from the department's policy and decision-making processes, but yet the program was expected to have influence on departmental personnel policies. In fact, it was never coordinated with departmental operations. Dr. Robert Gilbert, the department's Federal grants manager, stated in his written report on the program:

> Lack of coordination has resulted in the black recruitment staff recommending applicants who either do not have qualifications for existing job vacancies or for whom there was no vacancy.

> After the applications were sent to central office, there was a lack of communication to see whether applicants were hired and how long they were retained after employment. There was a need for follow-up information to the central office personnel officer. The black recruitment program had functioned as its own entity, without tie-in to any specific division or department of the central office.[116]

An example of the lack of coordination is that halfway through the program's first year, in 1972, an "employment freeze" was imposed throughout the department because of the planned closing of the Ohio Penitentiary in Columbus. As a result, minority recruitment efforts were ordered to halt.[117] Lists of staff obtained from the department, however, indicate that total staff increased by approximately 200 between July 1972 and January 1974. The department's turnover rate is variously estimated to be between 10 and 60 percent annually, depending on the institutions and jobs in question.

In September 1973 central office staff met to assess recruitment program results. As a result, the director, Bennett J. Cooper, established an affirmative action council and coordinator and directed the development of a departmentwide plan more closely integrated with departmental procedures.[118]

The department received an LEAA grant for fiscal year 1973-74 of $50,000 for "recruitment of minorities," to be matched with $5,556 of State funds. The Advisory Committee has no information on the results of the most recent recruitment efforts.

Other Institutional Discrimination

The Advisory Committee also received complaints alleging discrimination in housing, dining, discipline, probation, parole, and actions of correctional officers. At London Correctional

116. R. Gilbert, "Black Recruitment Program," p. 2.

117. Activities Report, p. 2.

118. Ibid.

Institution, where most inmates live in large dormitories, guards reportedly direct new inmates to one or the other side of the dormitory on the basis of race. (Transcript, p. 280) At the Ohio State Reformatory at Mansfield, black and white inmates reportedly separate themselves by race at meals "automatically." (Transcript, p. 172) Some complainants alleged that correctional staff often seek to foster interracial tension as a means of controlling inmates. The Ohio State Reformatory was the source of an unusually large number (47) of such complaints, from both black staff and inmates. The superintendent of Mansfield reformatory, however, stated during the Advisory Committee's informal hearing that he had "no knowledge of any patterns of discrimination" in that institution. (Transcript, p. 488)

According to other participants at the hearing, minority staff experienced so much institutional racism at the Mansfield and Lucasville prisons that in 1973 many quit in groups at both institutions. (Transcript, pp. 169 and 175, and Hearing Exhibit 19). One black staff person, William McDowell, a teacher at the Mansfield reformatory, filed a complaint before the Ohio Civil Rights Commission alleging racial discrimination in promotions. After unsuccessful efforts to negotiate a solution with reformatory officials in 1973, the Ohio Civil Rights Commission issued a formal complaint. The case should proceed to a formal hearing where it could be dismissed, negotiated and settled, or remain unresolved, leading to the possible issuance of a cease and desist order by the State commission. According to Ohio Civil Rights Commission staff, that formal hearing had not yet occurred as of July 1975.

In July 1965 the Ohio General Assembly made imprisoned felons eligible for early release upon petition filed in court during his or her second 30 days of incarceration (Ohio Revised Code, 2947.06.1, as amended). Under this program, called "shock probation," a local program administered by Ohio's 88 County Common Pleas Courts, several thousand inmates have received probation. In a 1970 sample of 490 shock probationers, researchers from Ohio State University's Center for the Study of Crime and Delinquency found:

> (1) While blacks were at least 40 percent of Ohio prison population at the time, they represented only 19.8 percent of those granted shock probation (97 out of 490).
>
> (2) While 19.8 percent of whites granted shock probation received it in technical violation of the 60-day time limit, 34.0 percent of blacks granted shock probation received it under such violations. (See Table 16)

TABLE 16

Offenders Granted Shock Probation
by Length of Incarceration and Race

Race	Legal Release	Percent	Time Violations	Percent	Total	Percent	Percentage of All Offenders Granted Shock Probation
White	316	80.2%	78	19.8%	394	100.0%	80.2% (White)*
Black	64	66.0%	33	34.0%	97	100.0%	19.8% (Black)*

* Note: At the time these figures were current, over 40 percent of Ohio's adult prison population were minority persons (see Table 3.3 of this report).

Source: Based upon data collected and reported by Nancy J. Beran, Ph.D. and Harry E. Allen, Ph.D., in "Shock Probation: The Ohio Experience," Ohio State University Program for the Study of Crime and Delinquency (researched under LEAA grants Nos. 380-00-J-70 and 3860-00-J3-72), October 1973. Beran and Allen based their figures on data collected in 1966 and 1970.

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(3) Of the 380 inmates granted shock probation legally (within the 60-day limit) only 64, or 17 percent, were black.[119]

The researchers could not explain the racial disparities in shock probation but noted that they could result from factors in or out of the prisons. The researchers found that institutional conduct reports in inmate files were used by some judges when ruling on shock probation requests. The Advisory Committee received many allegations, however, that institutional conduct reports reflect untrue and/or racially biased accounts of inmate behavior (see pp. 55-60). Case law, furthermore, prohibits judicial use of such reports:

> In hearing such a motion, the defendant's good conduct in the penal institution is not material in determining whether the court should suspend further execution of sentence and place the defendant on probation.[120]

Researchers noted, however, that in at least 24.4 percent of all cases released under the statute, judges requested institutional conduct reports. Many other such requests probably went unrecorded,[121] and it is not known how many were made in cases of inmates ultimately denied shock probation.

Researchers Beran and Allen were also critical of the shock probation program at several other points:

119. Nancy J. Beran, Ph.D., and Harry E. Allen, Ph.D., Shock Probation: The Ohio Experience, Ohio State University Program for the Study of Crime and Delinquency (researched under LEAA grants Nos. 380-00-J-70 and 3860-00-J3-72), October 1973, pp. 16, 20 (hereafter cited as Shock Probation.)

120. State v. Viegel, 34 00(2d) 96 (___).

121. Shock Probation, p. 24.

(1) Shock probation showed no greater success rates than regular probation and in some cases was less successful;

(2) Judges were not following the statutory intent to use shock probation mainly for "naive first offenders;"

(3) Judges sometimes hand down harsh sentences for apparently "political" reasons and then later use shock probation to quietly reverse the impact of the sentence.[122]

Many inmates, especially at the Ohio State Reformatory alleged racial discrimination in the granting of regular parole. (Transcript, pp. 166, 167) Because of these allegations the Advisory Committee requested the numbers of minority and white parolees in Ohio. The information received from the Department of Rehabilitation and Correction (see Appendix D) indicates the following:

(1) Whereas whites made up only 48.5 percent of the State's prison population, they were 53 percent of total parolees on May 1, 1973.

(2) Among male parolees, whites were 53.8 percent.

(3) In June 1974 the department's correctional data center was unable to provide a complete description of parolees by race. It is unclear how the department was able to do so during the year prior to June 1974.

The frequency and scope of race discrimination allegations in Ohio prisons constitute an issue as large as any other issue in the system. Dale Huffman, a Dayton Daily News reporter, who has extensively investigated and written about Ohio prison conditions, said before the Advisory Committee:

> Blacks...and women in the institution get a rougher deal almost 100 percent of the time than white males. (Transcript, p. 69)

122. Ibid., p. 17.

These repeated allegations raise the question of further investigation and possible enforcement action.

State Remedies

Minority representation in the workforces of State agencies can be affected by the State Department of Administrative Services and the Ohio Civil Rights Commission.

The State Department of Administrative Services is responsible under an executive order of former Governor John J. Gilligan dated September 13, 1973, to collect and monitor all affirmative action plans of State agencies for hiring and promoting minorities and women. This executive order established policy and guidelines for nondiscrimination in State employment. The newness of this authority gives little basis on which to judge actual effectiveness. In late 1973 the Department of Rehabilitation and Correction submitted its first affirmative action plan to the equal opportunity section of the Department of Administrative Services, and the plan had not been approved as of August 1974. Joan Gilchrist, the correction department's affirmative action coordinator, told Commission staff at that time that the delay was partly due to "more information requests from the Federal Law Enforcement Assistance Administration."

Another reason for delay, she said, was a departmental request to the U.S. Equal Employment Opportunity Commission for a Bonified Occupational Qualification Exemption waiving the State seniority requirement that correctional officers first work in inmate residence areas before advancing to other correctional positions. Ms. Gilchrist said the exemption would make women eligible for correctional officer positions which are out of their reach under current personnel practices.

Charles Rudolph, staff of the equal opportunity section of the Department of Administrative Services told Commission staff in July 1975:

> We are trying to get the Department of Rehabilitation and Correction up to what we would call a true affirmative action plan. We think we've got them closer than ever before now.

The Ohio Civil Rights Commission is empowered to take complaints of discrimination in State employment and to resolve these problems through official action. The Commission has received few complaints of such discrimination in State prisons.

Action on alleged discrimination against prison inmates by State employees can be taken by both the Department of Administrative Services and the State attorney general if directed by the Governor.

The Department of Administrative Services performs as the State personnel agency and has power to enforce certain general standards of conduct among State employees.

> State employees may be disciplined or removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the Director of State Personnel ... or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office.[123]

This authority may be used by individual agencies. Responding to calls for removal of racist or brutal officers, Ohio correctional administrators have most often cited the difficulty of actually proving specific allegations. However, the corrections department has removed staff who have acted on behalf of inmates by criticizing department operations. During July 1973 Terry Dallmann, a social worker at the Southern Ohio Correctional Facility at Lucasville, sought to bring conditions at the prison to the attention of State officials. The conditions were also investigated and documented by representatives of the Ohio Citizens' Task Force on Corrections. Prison officials found time during the aftermath of the two guard deaths at Lucasville in July 1973 to prepare special evaluations on Mr. Dallmann's work justifying his removal in December 1973.

Mr. Dallmann is now suing State officials in Federal court for reinstatement and damages.[124] Mr. Dallmann is challenging his discharge as a violation of 1st and 14th amendment rights. The case went to trial in August 1975.

According to Andrew J. Ruzicho, assistant Ohio attorney general and chief of the civil rights section of the attorney general's office, the State attorney general can now prosecute State employees who abuse inmates' civil rights only after a specific request from the Governor. Mr. Ruzicho stated:

123. Ohio Rev. Code, §143.27.

124. Dallmann v. Summers, Civ. No. 73-514 (S.D. Ohio, filed Dec. 31, 1973).

> ...I would not recommend that the Ohio Civil Rights Commission be charged with investigating abuse of patients and/or inmates at State institutions. Rather, I would envision the attorney general's office requesting legislation making such conduct on the part of State employees a violation of the law, either civil or criminal. In Ohio, unless the Governor requests a special grand jury, the attorney general is without power to deal with criminal matters....[125]

Federal Remedies

The Federal Bureau of Investigation was involved in New York State prisons following the Attica tragedy in 1971. There is some evidence that FBI officials also investigated allegations of brutality at Ohio Penitentiary made during U.S. Senate hearings in 1970.[126] No Federal enforcement action, however, followed from those investigations.

The FBI has also reportedly investigated inmates and staff at the Mansfield reformatory. The FBI involvement was directed at black inmates who allegedly belonged to "extremist" organizations when residing in the free community. Mansfield staff person William McDowell alleged that FBI files available to Superintendent Robert C. White were unconstitutionally used to deny privileges to some black inmates. (Transcript, pp. 402, 403, Hearing Exhibit 32)

125. Andrew J. Ruzicho, letter to Frank E. Steiner, Oct. 23, 1974, (included as Appendix E).

126. Citizens' Task Force on Corrections, internal memorandum, Oct. 12, 1971, p. 26.

In 1971 the U.S. Department of Justice established the office of Institutions and Facilities within its Civil Rights Division to handle segregation and other violations of the civil rights of inmates in prisons and mental hospitals. The new office has filed and won several cases on behalf of inmates in Florida, North Carolina, Mississippi, and Alabama.[127]

The Equal Employment Opportunity Act of 1972 made State and local governments subject to Federal equal employment laws. The U.S. Equal Employment Opportunity Commission (EEOC) is empowered to enforce these Federal laws in the courts if necessary. Persons alleging discrimination by State agencies may file complaints directly with the EEOC.

Another possible source of assistance to victims of discrimination in State agencies is the new Office of Revenue Sharing of the U.S. Treasury Department, empowered to administer the State and Local Fiscal Assistance Act of 1972 (the "General Revenue Sharing Act"). It is illegal for any governmental agency to use Federal revenue sharing funds so as to cause or perpetuate racial discrimination.

In fiscal year 1973-74, the Ohio Department of Rehabilitation and Correction spent $2.7 million in Federal revenue sharing funds, spreading them throughout its budget and enabling it to decrease the amount of State general revenue funds by $326,200 from the previous year's level. (See Table 4) Allegations of discrimination in agencies spending Federal general revenue sharing funds may be filed directly with the Office of Revenue Sharing of the U.S. Treasury Department.

The Federal/State Combination: LEAA

Law Enforcement Assistance Administration programs have created agencies having both State and Federal civil rights enforcement authority. These are the official "State Planning

127. U.S., Department of Justice, Civil Rights Division, "Highlights: Fiscal Year 1973," June 15, 1973, pp. 5-6.

Agencies" (SPA's) which disburse and monitor the use of LEAA funds. Recipients of such funds are subject to Title VI of the 1964 Civil Rights Act, which prohibits racial discrimination in programs receiving Federal assistance.[128] SPA's are empowered to deny funds to other State agencies or units of local government which violate the Federal and State regulations applicable to LEAA grantees.

Nationally, LEAA and its SPA's have been criticized for their low level of civil rights compliance activity.[129] Nevertheless, LEAA and its affiliated State agencies have well-defined powers to secure the compliance of LEAA grantees with reasonable civil rights policies. Joseph L. White, who was then head of the Ohio SPA (Administration of Justice Division of the Department of Economic and Community Development), told the Ohio Advisory Committee that the SPA is free to cut off Federal funding to grantees who discriminate and is not required to seek prior approval of LEAA in Washington, D.C. (Transcript, p. 469). Mr. White said, however, that the Administration of Justice Division has so far followed the LEAA pattern of continuing to fund grantees alleged to be discriminatory while investigating complaints filed against the grantee in question. (Transcript, p. 467).

Though it is clear that the State planning agency can end funding of racially discriminatory grantees, the scope of this authority is in question.

In testimony before the Advisory Committee, Mr. White stated that his agency's civil rights cutoff power applied only to discrimination within LEAA programs rather than to discrimination practiced in any other area of an LEAA grantee's operations. (Transcript, p. 471) LEAA (Federal) guidelines applicable to SPA's, however, state:

128. 42 U.S.C. §2000d.

129. See, for instance, Lawyers' Committee for Civil Rights Under Law, Law and Disorder III: State and Federal Performance Under Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Washington, D.C., 1972), p. 8.

The State Planning Agency in accepting a grant from the Law Enforcement Assistance Administration for the operation of the State Planning Agency assures that it will comply and will insure compliance by its subgrantees and contractors with Title VI of the Civil Rights Act of 1964 and the implementing regulations of the Department of Justice (28 C.F.R. 42.101, et. seq., subpart C), to the end that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity which receives financial assistance from the Department of Justice. The SPA also assures that it will comply and will insure compliance by its subgrantees and contractors with the Department of Justice regulations and LEAA guidelines on equal employment opportunity in federally assisted programs (28 C.F.R. 42.201 and 42.301, et. seq., subparts D and E) to the end that there shall be no employment discrimination on the ground of race, color, creed, sex,or national origin, in such programs.[130] [Emphasis added]

The Ohio SPA has also not formalized and publicized its civil rights complaint-handling procedures. At the Advisory Committee's hearing, Mr. White stated:

> We have no...bureaucratic red tape in filing a grievance or complaint. Anyone can do it by even a letter, and it must be specific. It must be signed. We will not respond to anonymous mail, and it need not be restricted to civil rights. Any complaint that we get about any project, we investigate. (Transcript, p. 470)

130. U.S., Department of Justice, Law Enforcement Assistance Administration, Guideline Manual for State Planning Agency Grants (M4100.B, Dec. 10, 1973), ch. 1, par. 33.

The complaint-filing process, as outlined by Mr. White, is also largely unpublicized:

> The complaint process may be found in our guidelines for planning units, which are distributed to our regional planning units ....We have no....brochure or handbook on how to file a complaint. (Transcript, p. 471)

SPA's, however, are required under Federal guidelines to publicize their civil rights complaint procedures in specific ways:

> Among other practices to inform the public, the SPA shall display and have all subgrantees display posters which summarize the nondiscrimination requirements, explain the right to file a complaint, and state the name and address of the agencies with whom complaints may be filed. Complaints may be filed with the Director, Office of Civil Rights Compliance of LEAA or with the SPA. The SPA shall also include appropriate discussion of the nondiscrimination requirements and procedures in reports and other material which it makes available to the public.[131]

The Ohio SPA has received only one civil rights complaint against an LEAA grantee. (Transcript, pp. 466, 471)

131. Ibid., ch. 1, par. 33 (b) (6) (b).

3. First Amendment Rights

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.[132]

The first amendment can be an effective basis for safeguarding many of the personal civil liberties most crucial to an imprisoned person. "Because of the preferred status of these rights, a heavy burden is placed upon correctional authorities to justify restrictions."[133]

The opportunity to worship as he or she chooses is a freedom that cannot be denied an inmate, although courts have recognized limitations based on discipline problems and economic considerations.[134] The religious freedoms of inmates who profess belief in the traditional Protestant, Jewish, or Catholic faiths have for some time been acknowledged by prison administrators. The reality that religious freedom also extends to newer, more obscure faiths, particularly those of minorities, has been a more difficult concept for the penal system to accept.[135] Inmates' first amendment rights also cover several kinds of nonreligious gatherings, such as self-initiated study groups.

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132. U.S. Const., amend. I.

133. Sands v. Wainwright, 357 F. Supp. 1062, 1088 (M.D. Fla. 1973). See also Note, "The Rights of Free Expression in Prison," 40 S. Cal. L. Rev. 407 (1967); Sobell v. Reed, 327 F. Supp. 1294, 1303 (S.D.N.Y. 1971); Jackson v. Goodwin, 400 F. 2d 529 (5th Cir. 1968); Carothers v. Follette, 314 F. Supp. 1014, 1023-26 (S.D.N.Y. 1970); Barnett v. Rodgers, 133 U.S. App. D.C. 296, 410 F. 2d 995 (1969).

134. Sands v. Wainwright, 357 F. Supp., supra at 1084; U.S. ex rel Neal v. Wolfe, 346 F. Supp. 569, 574-575 (E.D. Pa. 1972); Landman v. Royster, 333 F. Supp. 621, 653 (E.D. Va. 1971); Knuckles v. Prasse, 302 F. Supp. 1036 (E.D. Pa. 1969).

135. Walker v. Blackwell, 411 F. 2d 23 (5th Cir. 1969); Long v. Parker, 390 F. 2d 816 (3rd Cir. 1968); Barnett v. Rodgers, 410 F. 2d 995 (D.C. Cir. 1969). See also, Fankino, "The Manacles and the Messenger: A Short Study of Religious Freedom in the Prison Community," 14 Cath. U. L. Rev. 30 (1965); Hollen, "Emerging Prisoners' Rights," 33 Ohio St. L. J. 1 (1972).

Mail going in and out of a prison is a vital link for inmates to the society for which they are being "rehabilitated." Courts and penal institutions in Ohio have been in the forefront of those acknowledging this right,[136] and the U.S. Supreme Court has recently reaffirmed the importance of uncensored mail communication between inmates and the outside world.[137] Censorship of incoming mail should be limited only to locating threats to institutional security, and this justification should in no way apply to mail sent by inmates to individuals outside the institution, regardless of how difficult that should prove to the penal administration.[138]

Personal interviews between inmates and newsmen, on the other hand, have not been held to be guaranteed by the first amendment.[139] The U.S. Supreme Court currently does not see the denial of inmate press interviews as an abridgment of the freedom of the press nor as a restriction of the inmate's freedom of speech. Rather, the Court sees such denials as only a specific instance of the general rule that no member of the general public has unfettered access to a prison.

Visitors have long been permitted to enter penal institutions but traditionally strict limitations have been placed on the relationship of the visitor to the prisoner, the times and circumstances in which visiting could take place, and the frequency and duration of visits.[140]

Although certain controls must be placed on the conditions under which visits can take place, the prison's requirements should not be used to hide inmates from individuals with whom they wish to communicate. Courts have recognized the function of visits in rehabilitation and have safeguarded them as a right of an inmate, not a discretionary reward for good behavior.[141]

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136. "In Jones v. Wittenberg, 323 F. Supp. 93 (N.D. Ohio 1971) this Court has held that prisoners in county jails must be given full freedom to communicate by visitation, telephone, or in writing with those persons whom they desire." Doe v. Bell, Civ. No. C71-310 (N.D. Ohio, Oct. 19, 1971).

137. Procunier v. Martinez, 416 U.S. 396 (1974).

138. Goodwin v. Oswald, 462 F. 2d 1237 (2nd Cir. 1972); Prisoners have a right to receive correspondence regarding unionization.

139. Pell v. Procunier, 417 U. S. 817 (1974) and Saxbe v. Washington Post, 417 U.S. 843 (1974).

140. Walker v. Pate, 356 F. 2d 502 (7th Cir. 1966) Cert. denied, 384 U.S. 966 (1966); Rowland v. Wolff, 336 F. Supp. 257 (D. Neb. 1971); half sister not allowed to visit inmate.

141. Jones v. Wittenberg, 330 F. Supp. 707, 717 (N.D. Ohio 1971) (relief order).

Mail, Visits, and Media

In 1971 Dr. Bennett J. Cooper, then director of corrections, ordered an end to mail censorship in Ohio's prisons.[142] He also established liberalized rules on visits and contacts with media personnel.[143] In the opinion of many prisoners and others, increasing these first amendment rights has been the most important change to date in Ohio's prisons.

For example, Ysabel Rennie said at the Advisory Committee's July 1973 informal hearing that, in her opinion, brutality had ceased to be a large-scale problem and attributed that to the removal of mail censorship. (Transcript, p. 48)

Inmates told the Advisory Committee that liberalized mailing and visiting rules had improved prisoner morale. (Transcript, pp. 249-251)[144]

In spite of liberalized departmental regulations, however, the Ohio Advisory Committee received a number of complaints from inmates and some citizens alleging some degree of censorship in mail, visits, and media contacts. Complaints about mail usually involved delays in delivery to prisoners. Inmates regarded such delays as indications of undue administrative tampering with mail. Administrative Regulations 814, however, requires that all incoming mail be opened and checked for contraband.

Reading of inmate mail is prohibited without specific, time-limited permission from the department's director. In checking for contraband, however, mail can easily be read without the required approval and with little or no way to determine whether that has occurred. The Advisory Committee received allegations that such unauthorized tampering does, in fact, occur. (Hearing Exhibit 22)

142. Administrative Regulations 814 and 814a.

143. Administrative Regulations 810 and 813.

144. See also, Ted Virostko, "Prison Mail: Ending of Censorship Boosts Ohio Inmate Morale," Cincinnati Post, Nov. 18, 1971.

According to Dale Huffman, Dayton Daily News reporter and a witness in the Advisory Committee's informal hearing, the media "have full access by mail to any inmate, and ...99 percent access if a newsman wants to interview somebody...." (Transcript, p. 87) Radio and television reporters, however, are not permitted by regulations to take tape recorders or television cameras into prisons, according to Leonard Schwartz, then staff counsel for the Ohio Civil Liberties Union. Mr. Schwartz told the Advisory Committee, "Perhaps it is just a matter of who knows who." (Transcript, p. 87)

Ombudsman and Grievance Procedures

Until his resignation January 31, 1975, George E. Miller was chief ombudsman for the Department of Rehabilitation and Correction. Departmental director of information Joe Ashley told Commission staff in April 1975 that under the new administration of Governor James A. Rhodes the ombudsman position has been "phased out," and the two ex-offenders who acted as assistants to Miller have been moved to positions in the Adult Parole Authority with other responsibilities. What follows is information on the operation of the ombudsman and the grievance procedures prior to 1975. This data provides a basis for Advisory Committee recommendations in both areas made later in this report.

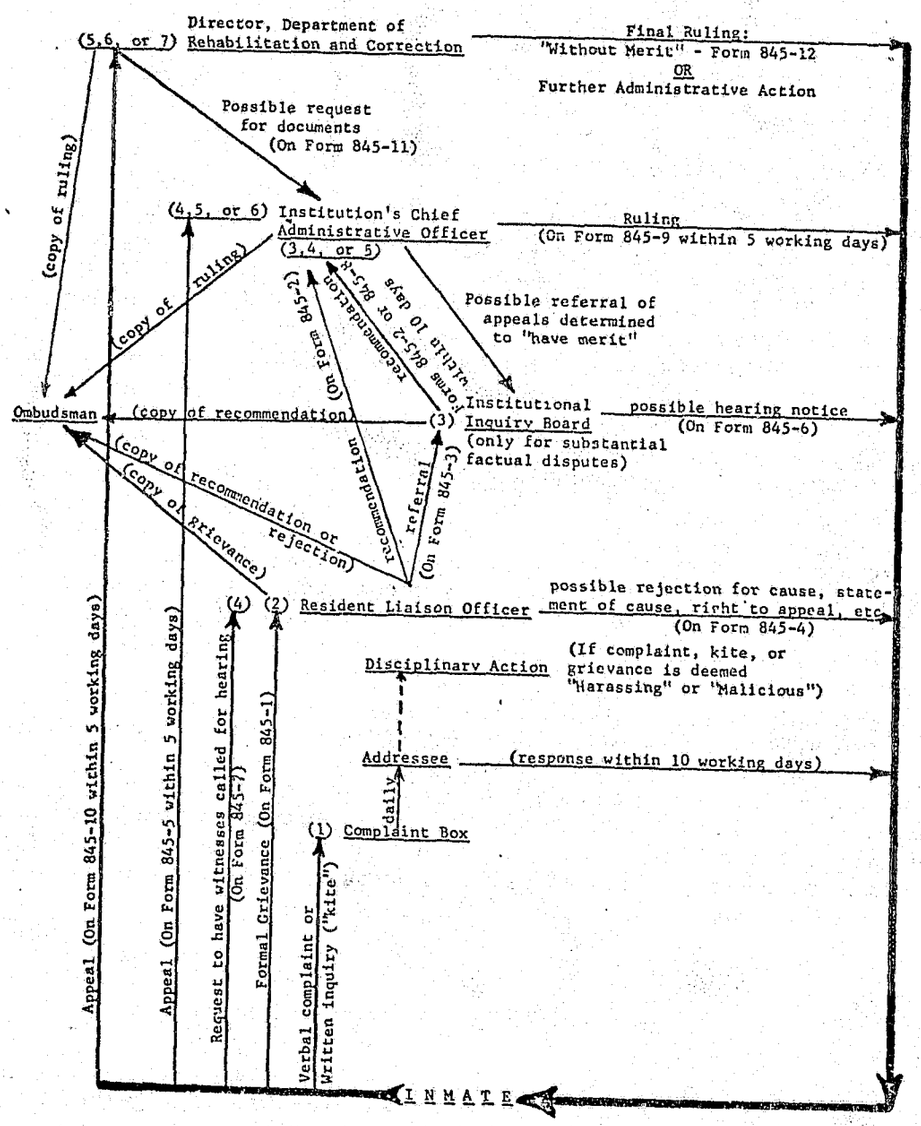
Prisoners and staff throughout Ohio's prison system told the Advisory Committee that grievance procedures and the ombudsman program were, at best, only for "show." Departmental grievance procedures, they said, were unduly complex and the ombudsman lacked independence from the prison administration.

Information available to the Advisory Committee gives significant support to these complaints. Administrative Regulation 845 governs inmate grievance procedures and regulation 847 governed the ombudsman's operation.[145] Using the steps for complaint-processing required under these regulations, Chart 2 on the following page diagrams the inmate grievance procedure as it was designed to operate through 1974.

145. See Appendix F of this report for Administrative Regulations 845, 847, and the Ombudsman's Internal Procedures.

CHART 2

Grievance Procedures Under Administrative Regulation 845
(As Revised August 1, 1974)



Note: Though not shown above, the Resident Liaison Officer receives copies of rulings of institutional chief administrators and of the Department's director. Numbers in parentheses indicate the order of the possible steps in the grievance procedure. This chart does not reflect the fact that the ombudsman post is now vacant.

Diagram developed by U.S. Commission on Civil Rights staff, based on Administrative Regulation 845 (as revised) of the Ohio Department of Rehabilitation and Correction.

The ombudsman concept was designed to counter the natural rigidity, self-perpetuation, and unending "channels" of bureaucracies. Originally conceived in Sweden in 1713, the ombudsman's role was defined as "general supervision to insure that laws and regulations were complied with and that public servants discharged their duties properly."[146] According to some correctional experts, the effectiveness of omsbudmen is enhanced by their independence from bureaucracies over which they have responsibility. Independent reportage and neutrality of performance enable the ombudsman to represent inmates, staff, and administrators equally.[147]

The Ohio Citizens' Task Force on Corrections, as well as this Advisory Committee, has urged the establishment of an independent penal ombudsman not subject to the control of corrections administrators.[148] In its July 1974 proceedings, the Midwestern Conference of the Council of State Governments, which included several Ohio representatives, resolved that "States adopt correctional ombudsman programs...[and]...that correctional ombudsman programs be placed in an agency, department, or branch of government that is independent of the State's correctional administration."[149]

Through 1974, however, the ombudsman was part of prison administration, appointed by and mainly responsible to the director of the Department of Rehabilitation and Correction.

146. Rudholm Sten, "Sweden's Guardians of the Law" in D.C. Rowat (ed.), The Ombudsman (London: G. Allen and Unwin, Ltd., 1965), p. 17, as cited in D.H. Goff and E.J. Shaughnessy, "The Feasibility of a Correctional Ombudsman" (New York: Correctional Association of New York, 1972), p. 1.

147. Goff and Shaughnessy, "The Feasibility of a Correctional Ombudsman," pp. 1, 20ff.

148. Ohio Advisory Committee to the U.S. Commission on Civil Rights, Proposal to Governor Gilligan, Sept. 24, 1973, p. 2.

149. Midwest Conference of the Council of State Governments, July 7-10, 1974, Resolution #3.

The deputy ombudsman asserted in October 1973 that the ombudsman's position within the department was an aid rather than a hindrance:

> At first it was questionable whether the program would work with the ombudsman inside the department. In an appraisal of this past year the 'inside' position has proved itself. Were the ombudsman to try to function outside the department, he would be without the ability to bring about compliance. By being within the department he can enlist help.[150]

Inmates and former staff, however, could recall no effective ombudsman activity as of July 1973, 6 months after the position was established. Many inmates seemed to have little or no information about the program. (Transcript, pp. 177, 420-425) The first and second reports of the ombudsman contained no overall evaluation of the ombudsman's attempts to resolve specific grievances nor even a report of the status of all complaints at year's end, as required in Administrative Regulation 847(4)b. (See Appendix F)

Now that the ombudsman is gone all grievances are handled through the regular grievance procedure. Maury C. Koblentz, commissioner of corrections during Governor Rhodes' first term and now administrative assistant to the director of the department, is in charge of any grievances which may reach the department's central office.[151]

Religion and Assembly

Freedom of association is crucial for inmates, whose normal channels of communication with others are severely limited and whose incarceration dissociates them from society.

150. Al Mack (deputy ombudsman), "From the Ombudsman's Office," The Communicator, vol. 1, no. 11 (October 1973), p. 16.

151. Telephone interview with Joe Ashley, director of information, Ohio Department of Rehabilitation and Correction, Apr. 29, 1975.

Courts have been reluctant to order even limited rights in this area,[152] and are only beginning to scrutinize the restrictions more closely.[153]

Inmate councils are vehicles through which inmates may exercise the right to assemble and to petition for redress of grievances. Revised Ohio regulations,[154] as well as those of correctional departments in other States, provide for the selection and operation of inmate councils as a forum for voicing prisoners' needs and grievances.

Inmate labor unions are a relatively recent phenomenon and such organizations may hold promise as a vehicle for bettering the working conditions of inmates.[155] However, the right to unionize may be a difficult legal principle to establish. The central reason for a labor union, improvement of wages, may not be available to an inmate group whose members have not yet secured legal recognition of their right to wages. Various constitutional theories, both State and Federal, have been cited as prohibiting just compensation to inmates for their work.[156] However, counter arguments, both statutory and constitutional, are emerging. Attorneys for an inmate labor union at Green Haven Prison, N.Y. defend its legitimacy under the Public Employees Fair Employment Act (Taylor Law) and the fifth amendment deprivation of property argument.

The principle of inmate assembly and, to some extent, inmate participation in prison mangement, is not new in either concept or practice. In the first quarter of the present century, Thomas M. Osborne, a noted pioneer in correctional practice, established inmate "governments" at the Auburn and Sing Sing prisons in New York and at the Naval Prison at Portsmouth, New Hampshire. Corrections depart-

152. They have ordered it, however, where a religious practice is involved. Walker v. Blackwell, 411 F. 2d 23 (5th Cir. 1969).

153. Fortune Society v. McGinnis, 319 F. Supp. 901, 904 (S.D.N.Y. 1970); Carothers v. Follette, 314 F. Supp. 1014, 1025-26 (S.D.N.Y. 1970); Burnham v. Oswald, 342 F. Supp. 880 (W.D.N.Y. 1972).

154. Administrative Regulation 846.

155. Black v. Ciccone, 324 F. Supp. 129 (W.D. Mo. 1970); Talley v. Stephens, 247 F. Supp. 683, 687 (E.D. Ark. 1965); See also "Bargaining in Correctional Institutions: Restructuring the Relation Between the Inmate and the Prison Authority," 81 Yale L. J. 726 (1972); "Unionizing America's Prisons--Arbitration and State Use," 48 Ind. L. Rev. 493 (1973).

156. Hudgins v. Hart, 323 F. Supp. 898 (E.D. La. 1971); Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970).

ments in other eastern States copied these efforts which allowed inmates to direct many of the institutions' operations, subject to an ultimate staff veto.[157] Such "governments" were viewed as important parts of a rehabilitative experience. More recently the National Advisory Commission on Criminal Justice Standards and Goals has recommended inmate participation in many areas of prison management.[158]

In Ohio, inmate assembly has not been a protected right except for the major religious denominations and groups such as the Jaycees and Alcoholics Anonymous. The situation has improved somewhat for other groups since 1972, at least administratively. Groups such as the Black Muslims and Sunni Muslims have been able to gain status as official inmate organizations. In some cases, religious dietary restrictions have been accommodated in prison menus. This new climate has made an important difference for some inmates. Mohammed Ibn Jamiel Abn Sabour, an inmate at the Lucasville prison, stated:

> Speaking for myself, [religious faith and practice] is the only thing that has kept my sanity, has kept me from being radical within the system....(Transcript, p. 111)

According to some inmates, however, these policies are not uniformly administered throughout Ohio's prison system. At Chillicothe, for instance, foods are usually cooked with pork fat, making them inedible by certain religious groups. The Advisory Committee received reports that Black Muslims at the London and Lucasville institutions were denied some religious privileges. (Transcript, p. 289; Hearing Exhibit 21)

157. See The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections (Washington, D.C., 1967), p. 49.

158. U.S., National Advisory Commission on Criminal Justice Standards and Goals, Report on Corrections (Washington, D.C., 1973), pp. 485-486.

Some inmates alleged that prison officials destroyed religious materials and harassed inmates because of their religious affiliation. The following complaints are illustrative:[159]

> The Sunni Muslims were recently given the right to provide religious services to Ohio State Reformatory residents--they were provided a room to be used as their mosque. The antipathy of white officers toward the Muslims was expressed on a few occasions when the officers (who are the only persons with keys to enter the mosque after it closes) entered during the night and destroyed literature and wrote racist statements on the blackboard. (OSR Complaint 5)

\# \# \#

> I am an Orthodox Muslim, I can't wear my religious cap but to only certain places then I have to take it off which is not part of my religious beliefs. (OSR Complaint 74)

\# \# \#

> There is no diet for the men who do not eat pork....When they go to eat there is always some type of pork served and they have to go without eating. There should be allowed certain substitutes for the men who cannot eat pork. (CCI Complaint 4)

Where all religious privileges and activity have been allowed, the groups have often performed educational and security functions usually assigned to staff and supported with State funds. At Lucasville, for instance, institutional programs were virtually nonexistent

159. In addition to the complaints quoted, others alleging violation of rights to religious expression and assembly included two from Chillicothe Correctional Institution, six from Ohio State Reformatory, two from Southern Ohio Correctional Facility, and many letters from inmates (U.S. Civil Rights Commission files).

during most of 1973. In May 1973 only 250 of more than 1,000 inmates were attending classes full- or part-time.[160] In this context the Sunni Muslims conducted their own work and education activities, thus providing an orderly life pattern for many inmates not being served with State resources by the institution itself. (Transcript, p. 118)

Several inmates told the Ohio Advisory Committee that correctional staff's seemingly hostile attitude toward some inmate groups may stem from the self-reliance exhibited by many of their members. (Transcript, p. 118) One inmate questioned the ability of the department's director of religious services to relate adequately to minority religious and cultural groups. (Transcript, p. 110)

The issue of inmate councils is an even clearer case of how protecting the first amendment rights of prisoners can serve to stabilize the prison and assist administrators. Beginning in early 1972, the London Correctional Institution had an elected inmate council as a result of inmate proposals made during a sitdown strike. (Transcript, p. 266) Prisoners from London had high praise for the short-lived council, stating that about 80 percent of its proposals had been enacted by prison administrators and that food quality, for instance, had improved "1,000 percent" during the council's tenure. (Transcript, p. 267)

In July 1972 administrators abolished London's council on the grounds that it had been "undemocratically elected" (Transcript, p. 602) and was serving as "a vehicle of unrest." (Transcript, p. 545) In place of the inmate council, administrators established ad hoc advisory committees in specific areas such as food, entertainment, and clothing. Members were chosen by the administration, and, according to inmates, the committees were unproductive, unknown to the general population, and therefore unrepresentative of inmate concerns. (Transcript, p. 265)

160. See information presented to the court in Milanovich v. Whealon, Civ. A. 73-254 (S.D. Ohio, June 5, 1974), at 5.

On August 9, 1972, then department director Bennett J. Cooper officially issued Administrative Regulation 846 directing that elected inmate advisory councils be established in each prison. Such a council was not, however, reestablished at London Correctional Institution.

The President's Crime Commission noted that non-elected inmate advisory councils, especially those oriented only to recreation and cultural activities, are:

> ...never a systematic effort to maximize self-government, as were the enterprises of pre-World War I days....[Inmate advisory councils] are somewhat comparable to student councils in high schools and colleges.[161]

The outlawing of the London inmate council may have been a factor in the rise of the Ohio Prisoners' Labor Union (OPLU) there in 1972 and 1973. Two London prisoners who were leaders in the union told the Advisory Committee that the London OPLU chapter did not start until after the inmate advisory council had been abolished. Inmate Louis Mosley said:

> Some of the things that the council was doing made it unnecessary to think about a labor union because we had a fairly good dialogue with the administration through the council. As I understand it, this is the initial purpose of the Ohio Prisoners Labor Union, to establish that type of dialogue. (Transcript, p. 268)

4. Freedom From Cruel and Unusual Punishment

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.[162]

161. U.S., President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Corrections (Washington, D.C., 1967), p. 49.

162. U.S. Const., amend. VIII.

Living Conditions

The earliest prisoner complaints heard by the courts generally concerned the physical conditions of prisons. These conditions were so deplorable that courts termed them violations of the eighth amendment's prohibition against cruel and unusual punishment and ordered individual facilities closed,[163] new facilities constructed,[164] and mandated such physical improvements as new plumbing, heating, lighting, ventilation, and furnishings.[165] Prison administrators responded that such orders involved the expenditure of funds, an area that courts could not enter. This argument has been roundly rejected by both Federal and State courts.[166]

Courts have also ordered reductions in the size of prison populations,[167] required specific plans for compliance with court orders,[168] appointed overseers to monitor the implementation of court orders and the condition of facilities,[169] and held prison administrators in contempt of court for failure to implement court orders.[170] In a short time, the courts have developed a broad range of remedies to effect changes in the living conditions of prisoners.

As a result of court action and the public's interest in correctional institutions, many deplorable prison situations throughout the country have been brought up to minimum standards of decency. The Ohio Advisory Committee, however, heard several allegations of unsuitable prison living conditions.

163. Baltimore Juvenile Case, Unreported Opinion, Sup. Bench of Baltimore City, Opinions of Aug. 3, 1971, Nov. 10, 1971. Hodge v. Dodd, cited in 6 Clearinghouse Rev. 287 (1972) (N.D. Ga. 1972).

164. Hamilton v. Landrieu, 12 Crim. L. Rptr. 2324 (1972).

165. Wayne County Jail Inmates v. Lucas, No. 54-362 (Mich. Sup. Ct., April 10, 1974), 3 Prison L. Rptr. 149 (1974).

166. Holt v. Sarver, 309 F. Supp. 362 (E.D. Ark. 1970); Hamilton v. Love, 328 F. Supp. 1182 (E.D. Ark. 1971); Jackson v. Bishop, 404 F. 2d 571 (8th Cir. 1969); Rozecki v. Gaughan, 459 F. 2d 6 (1st. Cir. 1972). Also see, Comment, "Enforcement of Judicial Financing Orders: Constitutional Rights in Search of a Remedy," 59 Geo. L. J. 393 (1970).

167. Curley v. Gonzales, C.A. No. 8372 (D. N.M., July 29, 1974.

168. Wayne County Jail Inmates v. Lucas, No. 54-362 (Mich. Sup. Ct., April 10, 1974), 3 Prison L. Rptr. 149 (1974).

169. Jackson v. Hendrick, No. 71-2437 (Philadelphia Ct. of Common Pleas, April 21, 1972).

170. Thiereault v. Carlson, 339 F. Supp. 375 (N.D. Ga. 1972).

Inmates said that food served at the Mansfield reformatory was often inedible. One inmate alleged that he had seen dead flies and rat guts, eyes, and tails in the food and drink. (Transcript, pp. 145-148) In 1971 the Citizens' Task Force strongly criticized conditions at Mansfield. After the Ohio Advisory Committee's informal hearing in 1973, inmates who had testified about conditions at Mansfield alleged that they were harassed by corrections officers in apparent reprisal for their public statements criticizing the prison. (OSR Complaints 4 and 6)

Robert C. White, superintendent of the Mansfield reformatory, responding to questions about contaminated food, said that board of health inspections were made about once every 2 months and that he reviewed the inspection reports with the staff person in charge of operations. (Transcript, p. 559) Superintendent White said, however, that the prison had no real control over the quality of food on a meal-by-meal basis. (Transcript, p. 558) Roger Warren, senior research associate of the Ohio Legislative Service Commission, stated in a letter October 8, 1975, to the U.S. Civil Rights Commission, that the legislative study committee for State prisons learned in 1973 on visits to the Ohio State Reformatory at Mansfield that the kitchen at that prison "...had repeatedly failed State health inspections and in fact had never passed one."

Other major complaints received by the Advisory Committee concerned facilities at the Lucasville prison which were incomplete during much of 1973. Though most physical essentials were present, few educational or training programs were functioning and the facility was understaffed. No complete explanation for the opening of Lucasville before its completion has ever been given, but there is some indication that the move was dictated by a crisis among correctional officers at the Ohio Penitentiary. State Senator William Bowen reported to the Advisory Committee in August 1973 that an officers' conspiracy to foment riots at the old penitentiary forced the administration to phase out that institution more quickly than originally planned in order to break up specific guard groupings. Violence had been increasing, he said, just before the move to the Lucasville prison. According to a report to the Governor at that time, there had been 18 inmate stabbings, 7 murders, and several attacks on guards at the Ohio Penitentiary before the decision was made to move to the Ohio Correctional Facility.[171]

171. Citizens' Task Force on Corrections, Special Committee to Study the Disorders at the Southern Ohio Correctional Facility, Report to Governor John J. Gilligan, pp. 1, 2 (Aug. 22, 1973), as cited in Milanovich v. Whealon, Civ. No. 73-254 (S.D. Ohio E.D., June 5, 1974), at 10.

The Advisory Committee also received information from inmates, officials, and community representatives that homosexual attacks occur in many Ohio prisons. Leonard Schwartz, then staff counsel for the Ohio Civil Liberties Union, reported receiving information that homosexual rapes occurred on a "daily" basis in some institutions. He cited one case at the Ohio State Reformatory in which a young inmate reported being raped 24 times in one incident. (Transcript, pp. 53-55, and Hearing Exhibits 13 and 14)

Department officials did not deny that multiple attacks had occurred in that case. Dale Huffman, Dayton newspaper reporter, told the Advisory Committee that he received inmate letters weekly alleging homosexual attacks. (Transcript, pp. 64, 65, 71) Prisoners at Southern Ohio Correction Facility at Lucasville and Superintendent Robert C. White of Ohio State Reformatory at Mansfield also reported the problem of homosexual activity to the Advisory Committee. (Transcript, pp. 126, 131, 557)

Solitary Confinement

What many consider the most severe and brutalizing form of punishment employed by prisons is solitary confinement. Life in solitary, the "hole," can be cruelly inhumane. Under the constitutional protection against cruel and unusual punishment, courts have ordered the end of such practices as unlimited solitary confinement and deprivation of clothing, food, sanitary, and medical facilities in any kind of correctional isolation.[172] Furthermore, an Ohio Federal court has recently held that "incarceration in administrative isolation constitutes a 'grievous loss' of liberty entitling [plaintiffs] to the protections of due process." The court acknowledged that the State has a substantial interest in seeing that prisoners are not arbitrarily placed in isolation or segregation because "arbitrary punishment has a deleterious effect on the rehabilitative goal and, arguably, erodes the authority necessary to maintain efficient custody."[173]

172. Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971); Hancock v. Avery, 301 F. Supp. 768 (M.D. Tenn. 1969); Knuckles v. Prasse, 302 F. Supp. 1036 (E.D. Pa. 1969), aff'd 435 F. 2d 1255 (2d Cir. 1970).

173. Milanovich v. Whealon, No. 73-254 (S.D. Ohio, June 5, 1974).

Two Advisory Committee members, Chairman Eldridge T. Sharpp, Jr., of Akron, and Dr. William E. Wilson of Canton, after visiting the Ohio State Reformatory's maximum security section in late 1972, declared it to be "definitely the most repressive and dehumanizing facility" they had ever seen.

Many States, including Ohio,[174] have specific restrictions on the duration and conditions of solitary confinement. The problem is assuring staff compliance with the rules, and the Advisory Committee received persuasive evidence that this remains a major problem in Ohio.

The Advisory Committee received official department reports of disciplinary hearings in which inmates received up to 105-day sentences in solitary confinement.[175] Of 34 inmates at Lucasville prison who received disciplinary sentences on July 9, 10, and 11, 1973, 12 received sentences above the 15-day maximum. One Lucasville inmate testified:

> Anything you get written up for can be very punitive. You are subject to go to close security for any offense--15 days, 30 days, 90 days. A fellow the other day got 88 days, or something like this. But it can go on and on, because once you get into that particular purview, you keep on getting offenses, so it can end up like a felony sentence if you are not very, very careful to have someone outside who can make it to Columbus, or some other place to get some help for you. (Transcript, pp. 127-128)

174. Administrative Regulation 805.

175. Exhibit 33: Report of Rules Infraction Board Hearings, Southern Ohio Correctional Facility, July 9-11, 1973 (U.S. Commission on Civil Rights files).

These apparent violations of Administrative Regulation 805 at Lucasville in July 1973 were never explained to the Advisory Committee during or after its informal hearing. Department officials declined comment at the time because of pending litigation on behalf of inmates.[176]

The organized, physical abuse of prisoners which was documented at the Ohio Penitentiary between 1968 and 1970 appeared to have declined through 1974. This was partly due to the work of the ombudsman, new grievance procedures, reduction of censorship, and presence at that time of outside observers in the prisons. However, the Advisory Committee continues to receive allegations of physical brutality from Ohio's prisons.

The following allegations from prisoners are representative of those received by the Advisory Committee throughout its investigation:

> A male guard hit a female inmate--this guard does not like black people--he makes unnecessary remarks to blacks quite frequently. (ORW Complaint 1)

\# \# \#

> The door in the control room was almost closed on me by one of the racist officers who works nights; he sees me coming and opens the door halfway--on entering the door he tried to catch me in it. (OSR Complaint 23)

\# \# \#

> I find it especially humiliating having to submit to arbitrary, unrestrained inspection without just cause wherein we have to bend over naked and part the cheeks of our rectum for inspection by one guard or a group of guards at their discretion and at any time or place. This is a fact! I think it would shock the public to realize how this degrading act is so widely implemented to the abuse of the eighth amendment [prohibition of cruel and unusual punishment]. (SOCF Complaint 7)

\# \# \#

176. Wagner v. Gilligan, No. 72-255 (S.D. Ohio W.D., filed June 1972).

> I was forced to walk to and from the institution's hospital barefooted in 6 inches of snow. While I was in the correctional cell a white resident turned a water hose on me without probable cause. An officer witnessed this incident and did nothing to prevent it. (OSR Complaint 14)[177]

A number of witnesses told the Advisory Committee that during the 1973 disturbances at Lucasville correctional officers turned on the prison heating system during warm days and turned on the air conditioning on cool nights as a means of harassing inmates. (Transcript, pp. 644, 645)

A large proportion of inmate letters to the Ohio Advisory Committee alleged verbal and psychological brutality by guards. Specific examples included racial epithets, deliberate manipulation of inmate behavior solely to demonstrate control, and denial of apparently trivial requests.

For example, an inmate at Ohio Reformatory for Women was denied permission to call home to inquire about her 4-year-old son's illness. The prisoner became distraught and attempted half-heartedly to escape, stopping of her own volition, and was subsequently placed in solitary confinement. (Transcript, pp. 209-212)

In 1971 the Ohio Citizens' Task Force on Corrections cited lack of training for correctional officers as a major problem underlying hostility between guards and prisoners and unacceptable treatment of prisoners. For more than 5 years, however, staff training funded by LEAA has been available in the Ohio prison system's correctional academy.

These continuing problems of staff-inmate relations may stem from the leeway accorded to line staff in their handling of inmates. As previously noted, disciplinary proceedings are not routinely monitored at higher levels in the prison system, and superintendents

177. The Advisory Committee received many other complaints of alleged brutality, including 1 from Chillicothe Correctional Institution, 1 from Ohio Reformatory for Women, 37 from Ohio State Reformatory, and 6 from Southern Ohio Correctional Facility (U.S. Commission on Civil Rights files).

often seem unaware of problems reported by inmates in their institutions. (Transcript, pp. 474-563)[178] Complicating the problem is the racial animosity between correctional officers and inmates.

Dale Huffman, Dayton Daily News reporter, observed:

> There are still far too many prison workers in this State, at all levels, who are fighting change. There are strongholds of 'old corps' prison philosophies in every single institution. There are uncountable instances of prison officials telling the top officials, 'We're for you. We'll do it your way.' Then they turn around and do it the same way they've always done it, and think they are right in doing so. And the age of these individuals doesn't make any difference because the Superintendent of one of Ohio's institutions is quite young, but he still carries on, whenever possible, the penal philosophy of his predecessors 50 years ago. (Transcript, p. 63)

178. See also information provided the court in Milanovich v. Whealon, C.A. No. 73-254 (S.D. Ohio, June 5, 1974), at 14.

5. The Right to Life

> A prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication taken from him by law ....[Emphasis added.][179]

Some courts have ruled that incarceration is sufficient punishment and does not require additional punitive measures to achieve its purpose. Consequently, inmates may be entitled to several kinds of benefits: those essential to the maintenance of simple physical life; those intended to develop educational, vocational, and interpersonal skills; and additional services such as access to radios, television, commissary privileges, and recreational facilities.

Medical Care

The right to adequate medical care for inmates has been founded in the 8th and 14th amendments and in the elusive right to life theory.[180] Since access to medical facilities and personnel is not available to inmates on their own volition, the prison has assumed the responsibility and perhaps the common law duty to protect them and to provide reasonable care.[181] Courts have heard inmates' complaints about lack of care for individual ailments[182] and have not hesitated to order implementation of Federal standards or medical professional standards to upgrade available medical service to inmates.[183]

179. Coffin v. Reichard, 143 F. 2d 443, 445 (6th Cir. 1944), cert. denied, 325 U.S. 887 (1945).

180. Ramsey v. Ciccone, 310 F. Supp. at 600 (W.D. Mo. 1970).

181. Wayne County Jail Inmates v. Lucas, No. 54-362 (Mich. Sup. Ct., April 10, 1974), 3 Prison L. Rptr. 149 (1974); Newman v. State of Alabama, Civ. 3501-N (M.D. Ala., Oct. 4, 1972); Bivers v. Six Unknown Agents, 403 U.S. 388 (1971). See also Alexander, "The Captive Patient: The Treatment of Health Problems in American Prisons," 5 Clearinghouse Rev. 16 (1972); Zalman," Prisoners' Rights to Medical Treatment," 63 J. Crim. L. 185 (1972).

182. Sanders v. County of Yuba, 247 Cal. App. 2d 748, 55 Cal. Rptr. 852 (Cal. App. ___).

183. Newman v. State of Alabama, Civ. 3501-N (M.D. Ala., Oct. 4, 1972).

The initial transfer of inmates to the Southern Ohio Correctional Facility in Lucasville from the Ohio Penitentiary and other sites occurred in 1972 before the new facilities were completely functioning. Inmates transferred in the early stages sued State officials, originally requesting that the court enjoin the Department of Rehabilitation and Correction from transferring any more inmates until the medical facilities were completed. Later, since most prisoners had already been transferred, plaintiffs requested the court to order the State to provide adequate medical care. The suit charges that since late March 1973, two inmate deaths at Lucasville have been due to lack of adequate medical treatment.[184] The suit, brought by members of the Ohio Prisoners' Labor Union, remained open on the docket of the Federal district court as of August 1975.

Medical personnel and care vary significantly among the several institutions -- from no facilities or staff to apparantly well-staffed and well-equipped hospitals such as the Correctional Medical Center in Columbus, formerly the Ohio Penitentiary. (Transcript, p. 37) A common inmate complaint concerns the unusual case, the midnight emergency, or the difficult-to-diagnose disease.

Medical decisions in Ohio prisons are sometimes made by non-medical personnel, probably unavoidably so in some cases since access to doctors or nurses must be granted by prison personnel. Procedures for getting medical attention in an emergency can be extensive. (Transcript, p. 38)

A high number of prescription drugs are administered in Ohio's prisons. With fewer than 300 inmates in the Ohio Reformatory for Women, two official figures place the number of drug prescriptions in 1973 at between 800 and 10,000.[185] The institution had no staff

184. Chapman v. Gilligan, No. 8700 (S.D. Ohio, May 19, 1973), 2 Prison L. Rptr. 402 (1973).

185. Testimony of Martha E. Wheeler, then superintendent of the Ohio Reformatory for Women (Transcript, p. 483) and letter from S. M. Patterson, assistant superintendent, to Wendell Metz, deputy assistant director, Department of Rehabilitation and Correction, Jan. 22, 1973.

pharmacist at the time these figures were current. (Transcript, p. 483) According to figures received in 1973 from the Ohio State Reformatory at Mansfield, 2,500 prescriptions were dispensed there each month.[186]

Less specific information on prescribed drug usage was given to the Advisory Committee, including the allegation from Dayton Daily News reporter Huffman that drugs are a main control device used by Ohio's prison administrators. (Transcript, pp. 70-71) Inmate Sabour made the same claim. (Transcript, p. 96) Prisons in Columbus, Marysville, and Lucasville were cited in this regard. (Hearing Exhibit 21)

Women at Marysville alleged that "forced hysterectomies" were performed. One inmate stated that women were often told they needed hysterectomies when they complained of routine gynecological disorders. (Transcript, pp. 244-246) In response to a request from the Advisory Committee, superintendent Wheeler reported that 17 hysterectomies were performed during the period July 1, 1970, through July 1, 1973.[187] The institution housed approximately 300 women during that time.

Amasa B. Ford, M.D., associate professor of community health and medicine at Case Western Reserve University School of Medicine in Cleveland, who has inspected medical facilities in several local and State prisons, told the Advisory Committee:

> I believe that there is a conflict between security and health priorities in any prison system, at all levels from the allocation of money at the State level down to whether a guard ignores or responds to a prisoner's request for medical assistance....The final decision lies with the corrective authorities and not with health professionals. Under these circumstances, planning, quality control, and correction of abuses in the health services is uncoordinated and ineffective.[188]

186. Report on Medical Services Provided for Residents (Mansfield: Ohio State Reformatory, n.d.), p. 10.

187. Martha E. Wheeler, letter to Dr. Eldridge T. Sharpp, Jr., chairman, Ohio Advisory Committee, Aug. 15, 1973, included as Appendix G of this report.

188. Amasa B. Ford, M.D., written statement to the Ohio Advisory Committee, July 14, 1973, p. 5.

Dr. Ford proposed a general arrangement, also advocated in Massachusetts and in use in the Federal prison system, in which "the responsibility for the planning and supervision for medical and health services is assigned to professionally qualified persons who work with, rather than subordinate to, State correctional authorities."[189]

Dr. Ford also suggested that a permanent State advisory committee for medical services in prisons be established, an idea which has been implemented, according to the Department of Rehabilitation and Correction.[190] The Ohio Advisory Committee has seen no direct evidence of the medical advisory committee's work.

Institutional Programs

Dr. Ford's analysis of the inherent conflict between prison security and health priorities may also be applicable to other kinds of programmed "treatment," as prison education, training, psychological, and social services are termed. In 1971 the Citizens' Task Force on Corrections noted the deep conflict between "custody" and "treatment" staff, attributing it to differences in pay, training, background, role, and purpose.[191] The Task Force suggested that these hostile attitudes may be a major barrier to effective rehabilitation.

There is widespread recognition that the rehabilitative needs of inmates are often ignored or sacrificed to other needs of the system such as administrative costs, new buildings, and weapons. Ohio courts have been in the forefront of judicially-ordered rehabilitation and training programs--both for inmates and for prison staff.[192]

189. Ibid., p. 6; See also Medical Advisory Committee on State Prisons, Report to the Commissioner of Correction and the Secretary of Human Services of the Commonwealth of Massachusetts (Boston: Commonwealth of Massachusetts Department of Public Health, Division of Community Operations, Dec. 29, 1971).

190. Ohio Department of Rehabilitation and Correction, "Response to the Report of the Task Force on Corrections" (Feb. 1, 1973), p. 64. See also "Report of the Ohio Department of Rehabilitation and Correction" (May 1974), p. 18.

191. Task Force Report, p. C24.

192. Jones v. Wittenberg, 323 F. Supp. 92, 330 F. Supp. 707 (N.D. Ohio 1971); Taylor v. Perrini, Civ. No. C69-275 (N.D. Ohio 1972).

State funding for rehabilitative programs provides for only a small number of treatment staff--psychologists, social workers, and teachers. In fiscal year 1968-69 the department employed as many as 1,527 custodial staff but only 40 social workers and 24 psychologists to treat 9,500 inmates.[193] In 1973 a former social worker at the Ohio Penitentiary told the Advisory Committee that prior to its closing that facility had a total staff of 400 and only 10 were social workers. His own caseload varied "from a low of 565 men to a high of 2,500." (Transcript, pp. 383-384) At the beginning of the 1973-1975 fiscal biennium, the State's goal of having a licensed, full-time psychologist in each prison had not been achieved.[194]

Staff members contacted by the Advisory Committee criticized the department for not involving treatment staff in any significant decision-making. One former social worker said:

> We were to be seen and not heard....In this monthly report that we submitted, we referred to some of the problems of the institution, and we were told that it was none of our business; that we were simply to submit reports and function in the traditional sense. (Transcript, p. 371)

Dr. William Gilbert, director of psychological services, stated:

> We are disturbed at the proportionally small amount of our time and effort that can be spent in individual and group treatment programming.

193. Task Force Report, p. C38.

194. Ohio Department of Rehabilitation and Correction, Proposed Budget and Operating Plan, 1973-75.

> We are most especially bugged, however, by the seeming lack of application of the results of the work we are called upon to do--individual personality and behavioral evaluations and predictions.[195]

Some treatment staff attempting to participate in institutional policymaking experienced reprisals from administrators. One social worker, who resigned after 5 years in the system, said that his suggestions to policymakers were met with harassment and threats and that his job performance ratings suffered as a result. (Transcript, pp. 372-375) Another treatment staff person, fired in late 1973 as an apparent result of his attempts to bring substandard conditions to the attention of superiors, sued the department for reinstatement and monetary damages. As of November 1975, the case had not been decided.

Overall inmate involvement in institutional programs is seemingly low. As shown previously (Table 8) no activity involves as many as 30 percent of the inmates, and all but two involve 10 percent or significantly less.

One inmate stated the opinion that "...treatment is a fallacy and utter hypocrisy." (Transcript, p. 92) The Citizens' Task Force on Corrections found this view widespread in 1971, reporting that many inmates entered programs only to impress the parole board.[196] An official report from one institution stated:

> Results of a survey indicate that 90 percent of inmates exposed to [program suggestions upon entering the prison] do become involved in positive institutional programs prior to their first hearing before the Adult Parole Board. However, only one-third of this group completes a program or programs.[197]

195. Dr. William Gilbert, "What Bugs the Bug Doctor," The Communicator, vol. 1, no. 11 (October 1973), p. 5; see also "Social Service Departments of Ohio's Adult Correctional Institutions," a report to the Citizens' Task Force on Corrections, November 1971, p. 4.

196. Task Force Report, p. 24.

197. State of Ohio, London Correctional Institution, "Implemented Treatment Programs at the London Correctional Institution," Nov. 6, 1972, p. 1.

Education and Work

Institutional education and work opportunities are often in conflict with each other and with custody priorities. Inmates at the London Correctional Institution, for example, can only use educational programs after a full day's work in the cannery, power plant, or other institutional work areas. (Transcript, p. 276) Inmates, furthermore, described work areas as hazardous with supervisors who are inadequately trained, and with antiquated equipment. (Hearing Exhibit 42-2)

Many inmates viewed the jobs as "...ways of making money for the State, punishing the inmate, and certainly not providing any value to the inmate himself." (Hearing Exhibit 42-3)

Another impingement upon work opportunities for inmates is the limited role of the Ohio Penal Industries (OPI), both legally and in practice. The State of Ohio has constitutional limitations which appear to entirely prohibit inmate employment in the private sector (Ohio Const. art. II, §41). OPI is therefore limited to Ohio public agencies as markets for its goods. Such limits were apparently based on the theory that prisoners would flood the labor market if allowed to work in private employment. Nationally, however, the American Bar Association has noted:

> The number of inmates involved is insignificant as a part of the national labor force, so we should not expect inmates to create a glut in the labor market.[198]

Ohio Penal Industries operates farms and a limited number of manufacturing facilities in the prisons. In early 1973 OPI's accounts receivable were almost entirely with State agencies as opposed to counties, municipalities, educational institutions, and libraries. Of a total $1.374 million accounts receivable, more than $1.353 million or 98.5 percent was owed by State agencies. The Department of Rehabilitation and Correction itself owed $470,900 or 34.8 percent.

Between July 1969 and February 1973, OPI's annual sales averaged $4.957 million, although there were differences between annual totals as high as 30 percent of the average because:

198. Neil M. Singer, "The Value of Adult Inmate Manpower" (Washington, D.C.: American Bar Association, Commission on Correctional Facilities and Services, November 1973), p. 14. See also Singer, "Incentives and the Use of Prison Labor," Crime and Delinquency, April 1973, pp. 200-211.

> Demand is sporadic, so production tends to be feast or famine - mostly famine....We were repeatedly struck by the large number of inmates sitting around the shops, waiting for something to do.[199]

The large amount of OPI business with the prison system itself indicates that inmate labor makes a significant contribution to operation of the prisons. This is more evident in light of the fact that many non-OPI inmate jobs are also institutional maintenance positions. The Ohio situation appears comparable to the national pattern observed by the Center for Correctional Economics of the American Bar Association: inmate maintenance labor is worth about half of the budgetary operating costs of Federal and State prisons.[200] Inmate labor, in effect, maintains its own prisons, and does so at very low rates. Inmate pay in Ohio prisons averages 10 to 12 cents an hour or $20 per month, an increase over the 3 to 10 cents an hour earned until several years ago.

Other Services

As in the case of institutional programs, the amenities of commissary, recreation, and radio-TV access vary significantly in the different institutions. In some cases, all such services have been removed as punishment for sitdowns, hunger strikes, or staff "sick-outs." Removal of such services is regarded by some prison administrators as an acceptable means of discipline for minor rule infractions.[201] The issue raised by inmates, however, is the arbitrary use of administrative power in this way. Reportedly, such action is often taken by line correctional staff without knowledge of superintendents or the latter's immediate subordinates or superiors.

Though questions of such things as television time or commissary may seem unimportant in a "free world" setting, they have become substantive issues in several Ohio prisons. A sitdown strike

199. State of Ohio, Auditor, Bureau of Inspection and Supervision of Public Offices, Audit of Ohio Penal Industries, filed May 29, 1973, pp. 4, 8.

200. Singer, "Inmate Manpower," p. 16.

201. Administrative Regulation 805.

in early 1973 at the Ohio Reformatory for Women was reportedly based to a large extent on issues such as commissary selections and prices. (Transcript, p. 230) An inmate audit of London commissary prices reported a 100 to 250 percent markup over purchase prices of items outside the prison. (Transcript, p. 283) Several institutional commissaries are reportedly audited now by departmental officials, though this was not the case in early 1973.

CHAPTER VII

SUMMARY AND CONCLUSIONS

Ohio, a leader in many areas of public life, can also lead in its handling of adult corrections by boldly facing the realities this Advisory Committee believes to exist in its correctional system today. Failure to do so will mean the continued denial of prisoners' rights and may even mean chaos in Ohio's prisons.

New Realities

Ohio elected officials and corrections administrators must face new factors in decisionmaking. Among these the most outstanding are:

* growing court commitments to Ohio prisons;

* increasing prison populations for the first time in 9 years;

* increased concern for inmate rights by the Federal judiciary;

* new national awareness among prisoners of their constitutional rights;

* a much higher proportion of minority inmates;

* greater public and professional disillusionment with the past performance of correctional institutions and programs;

* increased militancy of line correctional officers concerned for their job security and safety; and

Unfinished Business

These new and changing realities will require revision of State correctional policy and practice. This will be doubly difficult in Ohio because of the State's unfinished business in adult corrections which includes the following:

* the gap between rhetoric and reality in institutional treatment programs, development of community corrections centers, and State budget practices;

* a system of State reimbursement of county criminal court costs which rewards counties for sending offenders to State prison but not for placing them on probation;

* apparent unwillingness by State officials to consider developing State programs giving incentives to local courts to decrease commitments to State institutions;

* widespread fragmentation of State correctional policy, fund sources, decisionmaking, personnel, and accountability;

* continued racism throughout the prison system on both an individual and institutional level;

* over-dependence on time-limited Federal funds for most new and innovative programs;

* lack of uniform enforcement of State regulations, especially those designed to protect inmate rights;

* inadequate protection of inmates' first amendment rights, especially in the areas of assembly and grievance procedures.

Backsliding in 1975

Since the beginning of 1975 the Ohio prison system's unfinished business has increased, partly through actions of Governor Rhodes and department director Denton, which appear injurious to prisoner rights and peace in Ohio's prisons. One action was Governor Rhodes' abolition of the Governor's Advisory Panel on Rehabilitation and Correction, a body which had brought renewed hope to many prisoners and others that their pleas for objective investigation of prison problems were being heard. The second action was director Denton's decision not to replace retiring chief ombudsman George Miller, thus abolishing the office of ombudsman, a position which had been a first step toward more effective grievance procedures.

The Ohio Advisory Committee believes that the recent regressive trend in administration of Ohio's prisons will ultimately cost Ohio citizens much in terms of increasing budgets and possible injuries or deaths. Conversely, greater protection of inmate rights will have many benefits for all Ohioans. These will include lowered recidivism and the lessening of violent incidents within prisons.

Whether these benefits are immediate or long range, however, greater protection of Ohio prisoners' rights is required now. Adequate protection of inmate rights, furthermore, requires a major shift in policy, budget, and practice in Ohio adult corrections.

Toward Rights and Reintegration in Ohio Corrections

Ohio officials have accepted, at least rhetorically, two premises of modern correctional philosophy:

(1) Inmates have many more constitutional rights than previously thought, and these must be more adequately protected; and

(2) Ultimately, prisons are ineffective tools for deterrence or rehabilitation and must be largely replaced by smaller, community based programs for the nondangerous majority of offenders.

Ohio has not moved effectively to achieve either premise in practice. Regulations to protect inmate rights are often unenforced, and minimal State funds support community corrections which are dependent on dwindling Federal funds. Both problems have at least one common basis which will prevent the actual achievement of either inmate rights or community corrections. That common factor is the continued dominance of custody concerns in Ohio corrections at the levels of State budgets, legislative intent, administrative budgeting, and personnel. This dominance is so great that even new fund sources, such as the $2.7 million in Federal revenue sharing funds spent by the Department of Rehabilitation and Correction in fiscal year 1973-74, are immediately consumed by guards' salaries, overtime, and prison operations. The ancient attitudes of retribution and confinement still run Ohio's prisons.

Ohio's own general revenue funds must be redirected to both institutional treatment within prisons and to community corrections as the best replacement for prisons. Both are crucial because both are currently stymied by Ohio's institutional corrections establishment, which consumes State general revenue funds for custody concerns. Such changes will, in part, require new State appropriations.

More is needed, however, than funds. Simply put, power in State corrections must be removed from the nearly complete control of those who emphasize custody at the expense of other alternatives. Priorities for the use of available funds must change. Ohio should set goals in the following two areas:

(1) Replacement of most State prisons with community-based alternatives to incarceration; and

(2) Greatly increased protection for the rights of prisoners now incarcerated.

The first goal will require development of a State plan listing the prisons to be closed in priority order with a timetable for the accomplishment of that goal. The second goal will require greatly increased monitoring of prison staff performance and stronger sanctions for staff who violate inmates' legal rights.

Such major administrative and structural change is probably impossible without the involvement of all three branches of Ohio government, concerned citizens, and selected Federal officials. Each party has specific responsibilities within an overall strategy for Ohio corrections. Advisory Committee proposals for specific parts of such a strategy are detailed in the following section.

CHAPTER VIII

FINDINGS AND RECOMMENDATIONS

Finding 1: Correctional Planning and Budgeting

Ohio's adult correctional system is fragmented in a number of ways: in policies, funding sources, decisionmaking processes, and staffing. Ohio may be said to have several adult correctional systems serving different purposes with different funds allocated by different officials who supervise different staff. This occurs despite the requirement that Federal safe streets funds be spent only as part of a unified, statewide plan. Many federally funded projects stressing staff training, new prison programs, and community corrections will be automatically phased out soon if they are not funded with State monies. The absence of coordinated State corrections policy or practice results in the continued denial of inmate rights, minimal public accountability for State corrections programs, and a coming crisis in prison programs.

Recommendation:

The Ohio Advisory Committee to the U.S. Commission on Civil Rights recommends to the Governor:

(a) that a unitary correctional planning and budgeting authority be developed within the executive branch. Such an authority should include representatives of the Department of Rehabilitation and Corrections central office, each adult prison, the Adult Parole Authority, the Criminal Justice Supervisory Commission, the new Governor's Advisory Panel on Rehabilitation and Correction, and any other State department overseeing funds used in Ohio adult State corrections;

(b) that this new, unitary correctional authority be directed to develop a comprehensive State policy and budget plan, consistent with a new program of State probation subsidies designed to reduce court commitments to State prisons (Finding and Recommendation 4).

(c) that this unitary authority be directed to develop affirmative plans for State takeover of all LEAA-funded projects in the Department of Rehabilitation and Correction that are worthy of continuation.

(d) that this unitary authority develop ways to facilitate accountability of Ohio adult State corrections to both the general assembly and the public.

Finding 2: Legislative Oversight

The current lack of a unitary State correctional policy and budget authority is matched by the virtual absence of effective legislative oversight. The general assembly, while legally charged with approving or disapproving budget priorities, in fact merely approves or disapproves budget totals. This process effectively eliminates the legislature as a part of State correctional policymaking. Rather than a policymaking body, the legislature has been perceived as a "policy-ending" body whose only interest is budget cutting.

Recommendation:

The Ohio Advisory Committee recommends that the general assembly reestablish its policymaking authority by developing new, specific procedures for the oversight and monitoring of Ohio adult corrections including:

(a) stipulated program priorities within appropriation bills for the Department of Rehabilitation and Correction;

(b) mutually agreed-upon goals for Ohio adult corrections within departmental appropriations bills;

(c) creation of more earmarked State funding sources to channel general revenue funds

now given essentially with "no strings" to the Department of Rehabilitation and Correction;

(d) increased staffing of such legislative arms as the Legislative Services Commission, its Legislative Budget Office, and other oversight agencies of the general assembly; and

(e) increased program auditing, after the example of the Federal General Accounting Office of the U.S. Congress, to evaluate the performance of State-funded correctional programs.

Finding 3: LEAA Scrutiny of State Plans

Federal laws and regulations require States receiving funds from the Law Enforcement Assistance Administration (LEAA) to develop "comprehensive" statewide plans. State criminal justice activities, however, are in most cases fragmented and uncoordinated with each other and with local and Federal priorities. Ohio planning and budgeting for adult corrections clearly illustrate this problem. The State's Administration of Justice Division has been unable, in some cases, to secure information on planning and budgeting from the Department of Rehabilitation and Correction as required under Federal and State regulations.

Recommendation:

The Ohio Advisory Committee recommends to the Law Enforcement Assistance Administration of the U.S. Department of Justice that its regulations governing State Planning Agencies (SPA's) be revised in the following ways:

(a) that SPA's be required, as a condition for receiving LEAA funds, to describe and analyze the functions of all State-level criminal justice planning and budgeting agencies, divisions, and officials to determine the degree of actual integration of State criminal justice planning and budgeting;

(b) that SPA's be required to submit affirmative State plans for achievement of unified State criminal justice planning and budgeting procedures covering all criminal justice functions and fund sources. Such plans

should include timelines for achievement of the required procedures and institutional structures.

(c) that SPA's be allotted future Federal funds in proportion to their States' actual achievement of comprehensive, statewide criminal justice planning and budgeting as measured, in part, by the extent that States maintain promising projects formerly funded with Federal monies.

Finding 4: State Probation Subsidy

Court commitments to Ohio prisons continue to increase and prison populations are rising again after a 9-year decline. Many public and private agencies in Ohio have advised decreased use of incarceration in total institutions as a viable method of correcting criminal deviance. At present there is no State strategy in Ohio to change commitment rates and encourage use of community correctional facilities, although State correctional officials have stressed their intention to move toward a community corrections strategy. The State of California has devised highly effective programs in this area using State probation subsidies. This was recommended in 1971 by the Ohio Citizens' Task Force on Corrections.

Recommendation:

The Ohio Advisory Committee recommends to the Governor and general assembly the passage of legislation creating a probation subsidy program for Ohio. Such a program should grant subsidies to local counties or groups of counties for additional probation services as incentives to reduce commitment rates to State prisons. Subsidy levels should be flexible and geared to the prevailing cost of living. Local governments should be given maximum control over the use of such subsidies consistent with sound correctional practice and the over-all public good of the State. The implementation of such a program in Ohio should be part of a State commitment to close most of Ohio's prisons in favor of greatly increased use of probation and State-funded, community-based, correctional facilities and services. Because of its antiquated condition, the first institution which should be closed is the Ohio State Reformatory at Mansfield.

Finding 5: Criminal Cost Reimbursement

The State of Ohio selectively reimburses counties for criminal court costs of indigent offenders when such offenders are committed to State prisons. Because counties must pay the criminal costs for indigent offenders not sentenced to State prison, the present procedure rewards counties for sending offenders to prison. Seven of the State's 88 counties received 65.4 percent of the $6.9 million in State criminal cost reimbursements over the past 4 fiscal years. The same seven counties account for the majority of Ohio's rapidly increasing commitments to State prisons.

Recommendation:

> The Ohio Advisory Committee recommends that the Ohio General Assembly repeal sections 2949.18, 2949.19, and any other sections of the Ohio Revised Code that encourage county courts to commit offenders to prison for reasons unrelated to the potential danger of the offender to the community. The Advisory Committee further recommends that, if State reimbursement of county court costs is necessary for fiscal reasons, the general assembly authorize an across-the-board reimbursement formula such as used in other States.

Finding 6: Minority Hiring Plans

Although a growing majority of Ohio's adult inmate population was of black, Latino, or other minority background in 1973, the correctional staff was 4.1 percent minority in prisons, and in 1974 it was 7.6 percent minority overall (including prisons, central office, and Adult Parole Authority). This disparity contributes to a hostile prison atmosphere conducive to the denial of the rights of both inmates and staff. The Department of Rehabilitation and Correction has not published an affirmative action program for hiring of minorities and women. Attempts to recruit minority staff with Federal monies appear to have been tangential to the department's regular operations and unsuccessful. External action is necessary, both because of the small number of minority staff and the allegations of racial harassment made by existing minority staff.

Recommendation:

> The Ohio Advisory Committee recommends to the Governor and the Department of Rehabilitation and Correction that the latter's affirmative action plan for hiring minorities and women be publicized to solicit assistance in its implementation from every possible source. To the Ohio Criminal Justice Supervisory Commission, furthermore, the Advisory Committee recommends special monitoring of minority hiring within the Department of Rehabilitation and Correction. The supervisory commission should seek the cooperation and assistance of other State agencies having affirmative action responsibilities as well as the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice. If departmental progress in hiring and retention of minority staff does not meet reasonable goals agreed upon by the relevant agencies, the supervisory commission should take steps to end the correction department's LEAA projects by cutting off funds.

Finding 7: Correctional Data Collection

Department of Rehabilitation and Correction records of the racial and ethnic backgrounds of persons under its supervision are poorly organized and incomplete. The department's data system, for instance, apparently has no such information regarding 48.5 percent of the individuals supervised by the Adult Parole Authority. When such data have been collected, moreover, such categories as Pilipino, Mexican American, Puerto Rican, and other persons of Spanish-speaking background have been omitted. These deficiencies can hamper administrative planning, coordination with other parts of the criminal justice system, and development of adequate services for minority inmates.

Recommendation:

> The Ohio Advisory Committee recommends that the Department of Rehabilitation and Correction devise a more comprehensive system of categories and procedures for collecting necessary data now and in the future on the racial and ethnic backgrounds and sex of persons who come under its supervision. The Advisory Committee further recommends that the department base this information on self-identification that such data be made public on a frequent, regular basis.

Finding 8: Staff Transfers

Development of an effective State probation subsidy program would help reduce the prison population thus making some State prisons unnecessary. However, many Ohio prisons provide significant economic support, through payrolls, within their respective localities. Correctional officers in Ohio and other States have reacted to strategies of "decarceration" with legitimate concern for their own job security. Some observers in California, Ohio, Massachusetts, and elsewhere have in fact claimed that correctional officers have precipitated crises within prisons scheduled to be phased out in order to protect their jobs.

Recommendation:

The Ohio Advisory Committee recommends to the Governor and general assembly that concurrent with development of an effective State probation subsidy program and the closing of prisons found to be unnecessary, a State plan be devised for transfer of correctional staff to employment in other State agencies. Such a plan should:

(a) be developed in consultation with representatives of correctional staff affected;

(b) include guarantees that staff phased out of prison positions will incur no loss in pay or seniority as a result of transfers to other agencies;

(c) include necessary retraining of all transferred staff to insure their future employability; and

(d) be accompanied with action by the State administration to seek the active support of public employee organizations in Ohio corrections for the goals of more humane treatment of inmates and stricter observance of State regulations designed to protect inmate and staff rights.

Finding 9: Citizen Involvement in Policymaking

Corrections administrators and penologists throughout the Nation advocate community participation in adult corrections. Throughout the term of Ohio's former Governor, John J. Gilligan, which ended in 1974,

this State was overcoming its resistance to the systematic involvement of citizens in corrections in more than a voluntary, case-by-case manner. This was exhibited in the operation of several local prison advisory committees and in the establishment of the Governor's Advisory Panel for Rehabilitation and Correction in February 1974. Though this original advisory panel was limited by the lack of resources, it represented a significant step toward greater community involvement in Ohio correctional policy-making and management. This body, however, was officially abolished by present Governor James A. Rhodes in April 1975.

Without major citizen contribution to correctional programs, these tend to degenerate to a power struggle between inmates, correctional staff, and administrators.

Recommendation:

The Ohio Advisory Committee strongly recommends to Governor James A. Rhodes the immediate re-establishment of a permanent Governor's Advisory Panel for Rehabilitation and Correction, with membership as diverse in viewpoint as the original panel.

Furthermore:

(a) the panel should be given its own paid staff;

(b) staff and other expenses should be paid with State funds from outside the Department of Rehabilitation and Correction to help insure independence for the panel's investigations and recommendations;

(c) the panel's reports should be made public;

(d) the panel should be directed to cooperate with the Ohio Criminal Justice Supervisory Commission to seek a unitary State correctional policy and budget process. (Finding and Recommendation 1)

(e) The Advisory Committee recommends that if such an independent panel is not established by the Governor, the general assembly move to establish a body of this type having the characteristics recommended here and responsible for reporting regularly to the general assembly and all citizens of the State of Ohio.

The Advisory Committee further recommends to the Governor and the Department of Rehabilitation and Correction the establishment of public advisory panels for all institutions and for each program and service area of the department. Each advisory panel should be representative of the appropriate professional and commercial interests and include major representation from citizens at large. Each panel should be directed to issue public, as well as internal, reports of its work. These panels should play a critical as well as supportive role.

Finding 10: Prisoner Civil Rights Legislation

Despite a recent reversal in the courts' "hands-off" attitudes toward prisoner rights cases, the legal status of such rights is incompletely defined. As a result, State and Federal courts often deny hearings to legitimate prisoner pleas; decisions may not follow key precedents protecting such rights; prison administrators are still granted excessive discretionary authority; and administrative regulations mandating inmate rights often go unenforced in Ohio and elsewhere. In sum, State and Federal courts stand essentially alone, when they stand at all, on behalf of inmate rights.

Recommendation:

The Ohio Advisory Committee recommends:

(a) to the Ohio General Assembly the enactment of a "Civil and Human Rights Law for Inmates of State Correctional Institutions." In formulating the act, the legislature should use as one guide the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals;

(b) to the United States Congress, the same action, to cover all correctional institutions, State and Federal;

(c) that both State and Federal prisoner rights laws seek to codify and carefully define the protected rights of prisoners, the responsibilities of courts to protect those rights, the criminal and civil sanctions appropriately imposed upon violations of such laws, and the changed status of departmental regulations on inmate rights as a result of the passage of such laws;

(d) to State and Federal legislators that grievance and enforcement machinery be built into such prisoner rights laws in the form of added investigative and enforcement capacities of State and Federal agencies, including offices of attorney general;

(e) to the U.S. Congress, amendment of the 1968 Safe Streets Act and other Federal laws providing assistance to criminal justice agencies, so as to make enactment of State prisoner rights laws and provision of enforcement machinery prerequisites for State and local receipt of Federal funds for corrections activities;

(f) to the U.S. Commission on Civil Rights, that it publicly support enactment of strong laws to protect prisoners' rights as detailed in the preceding five points.

Finding 11: Prison Disciplinary Procedures

Inmate dissatisfaction with Ohio prison disciplinary procedures is extremely high. Copies of rules are not uniformly available to inmates and are often interpreted too loosely in favor of correctional officers' judgment. No routine, systemwide monitoring of disciplinary procedures occurs. Racial discrimination, furthermore, appears to be rampant in disciplinary proceedings.

Recommendation:

The Ohio Advisory Committee recommends to the Department of Rehabilitation and Correction:

(a) that the central administration assure responsibility for duplicating all regulations affecting inmate behavior and rights in sufficient quantities for distribution to all inmates, their families, and other interested parties;

(b) that all records of prison disciplinary proceedings, including tapes of Rules Infraction Board hearings, be routinely monitored and analyzed by personnel responsible to an independent penal ombudsman to insure staff compliance with disciplinary regulations;

(c) that all rules infraction boards and institutional inquiry boards include at least one minority staff person as a prerequisite for meeting to hear cases;

(d) that analyses of disciplinary proceedings be given on a regular basis to the general public and to a reestablished Governor's Advisory Panel on Rehabilitation and Correction or comparable body created by the general assembly;

(e) that staff violation of departmental regulations be cause for dismissal and that dismissal be more frequently used as a means of controlling and preventing staff abuse of inmates;

(f) that prison superintendents be regularly and formally evaluated by top management of the Department of Rehabilitation and Correction, in consultation with lower level staff, inmates, and citizen representatives to insure effective control of line correctional staff by superintendents.

Finding 12: Legal Services for Prisoners

Legal services to Ohio adult prisoners unable to hire lawyers are virtually nonexistent after the end of an LEAA funded, legal assistance program.

Recommendation:

The Ohio Advisory Committee recommends to the Governor and to the Governor's Advisory Panel on Rehabilitation and Correction that a statewide legal assistance service be initiated as soon as possible. Such a service should be funded and directed independently of the Department of Rehabilitation and Correction. Funds for the operation of such a service should not come from sources intended only for limited "pilot" projects. Finally, and most importantly, any legal services program for prisoners instituted by the State should place no administrative restrictions on prisoners' use of that program for the assertion of any legal right.

Finding 13: Ombudsman and Grievance Procedures

Inmates and many outside observers regard present grievance procedures as overly complex, time-consuming, and undependable. The ombudsman, furthermore, is not sufficiently independent of prison administration to provide adequate "backup" when grievance procedures fail. In addition, the new Governor, James A. Rhodes, and the new Director of the Department of Rehabilitation and Correction, George F. Denton, have not staffed the office of ombudsman since the resignation of its most recent incumbent, George Miller, in early 1975.

Recommendation:

The Ohio Advisory Committee recommends that the ombudsman position be removed from the payroll of the Department of Rehabilitation and Correction and reestablished with an independently funded staff as Ohio's Independent Penal Ombudsman. The ombudsman should at all times and without exception have access to all institutions and records of the Department of Rehabilitation and Correction. The ombudsman should report directly to the Governor, to the Ohio Criminal Justice Supervisory Commission,

and to whatever legislative or executive corrections advisory panel may be established as recommended herein. (Finding and Recommendation 9)

Finding 14: Inmate Advisory Councils

Although elected inmate advisory councils are uniformly advocated by correctional experts and mandated in Ohio regulations, they do not exist in several Ohio prisons. The substitute bodies, ad hoc committees in specific issue areas, are less visible to and representative of inmates, and less effective in achieving internal communication and resolution of conflicts. Lack of inmate councils has contributed to less orderly forms of inmate expression.

Recommendation:

The Ohio Advisory Committee recommends to the Department of Rehabilitation and Correction the reestablishment of elected inmate councils in all institutions. Such councils should not be limited in their relationships to staff of their respective prisons. Rather, they should also establish regular channels of communication with higher authorities in the department, with whatever advisory panel on rehabilitation and correction, which may be reestablished, and with the Ohio General Assembly. As recommended by the National Advisory Commission on Criminal Justice Standards and Goals, inmates should be given a greater role in managing the institutions in which they are confined. Effective, elected, inmate councils can be one means to that end.

Finding 15: Alleged Involuntary Hysterectomies

The Ohio Advisory Committee has received several allegations from separate, unrelated sources that inmates at the Ohio Reformatory for Women may often be coerced by State officials into submitting to hysterectomies. If such is or has been the case, it would be a reprehensible, inhumane, and illegal practice deserving of vigorous prosecution.

Recommendation:

The Ohio Advisory Committee recommends to both the U.S. Department of Justice and the Ohio attorney general a thorough investigation of allegations of forced sterilization of female prisoners in Ohio. This Advisory Committee further recommends to whatever advisory panel for rehabilitation and correction which may be reestablished, as well as to all concerned Ohio citizens, active monitoring of this investigation and of the overall medical care afforded Ohio's women prisoners.

Finding 16: Prison Medical Care

Prison medical care is jeopardized by conflicting priorities of security and inmate labor. Prison medical decisions are often made by nonmedical, security personnel, and medical treatment, including drugs and some surgery, is sometimes given for security rather than health reasons.

Recommendation:

The Ohio Advisory Committee recommends to the Department of Rehabilitation and Correction that responsibility for the planning and supervision of health services be assigned to professionally qualified persons who work with, rather than subordinate to, institutional and central office correctional staff.

The Advisory Committee further recommends that the department's medical advisory committee immediately begin monitoring the prescription of drugs throughout the system to insure the medical necessity of such treatment. Regular reports on the number, type, and purpose of drug prescriptions for inmates should be made to a reestablished executive or legislative advisory panel on rehabilitation and correction and to the general public.

Finally the Advisory Committee recommends that the Department of Rehabilitation and Correction establish a central office division of medical services, staffed by trained medical professionals responsible for providing and overseeing medical care for all persons incarcerated in State correctional institutions.

APPENDIX A

Description of Program Areas, Fiscal Year 1973-74, Expenditure Report of the Ohio Department of Rehabilitation and Correction.

APPENDIX A

Description of Program Areas Used in the Fiscal Year 1973-74 Expenditure Report of the Ohio Department of Rehabilitation and Correction

Program Area	Sub-Areas*
General Administration	None
Treatment	Social Services Medical Religious Reception & Classification Psychological Other
Custody	None
Operations	Business & Personnel General Facility Maintenance Food Service Laundry, Uniforms & Clothing Utilities & Heat Other
Education	Academic Vocational Adult Basic Other
Community	Probation Parole Furlough Halfway Houses Correction Centers Reintegration Centers Other
Employee Education & Training	None
Prisoner Compensation	None

* Each sub-area, with the exception of Prisoner Compensation, is further sub-divided in expenditure reports into one or more categories such as salaries, equipment, maintenance, etc.

Source: Allotment Coding Work Sheet, Department of Rehabilitation and Correction, Fiscal Year 1973-74.

APPENDIX B

Projects Within the Ohio Department of Rehabilitation and Correction 1971-74, Funded Under the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

Source: Administration of Justice Division, Ohio Department of Economic and Community Development, July 14, 1973.

Department Projects Identified in the 1971 Ohio Comprehensive Plan

Project Title	Requested	Funded
1. Staff Development	$ 521,070	$ 521,070
2. Expanded State Probation	240,284	237,675
3. Black Recruitment	80,000	54,110
4. Citizen Volunteers	78,296	78,296
5. Central Reception (Interim Computerized Correctional Information System)	80,000	80,000
6. Symposia on Forensic Psychiatry and Laws	46,800	not listed
7. Treatment of Sociopathy	60,000	60,000
8. Alcoholic Rehabilitation Program	42,375	42,375
9. Reformatory Community Reintegration	150,000	150,090
10. Law Libraries for Incarcerated Offenders	86,739	86,739
11. Planning a Treatment Program for "Intractable" Inmates in Maximum Security Segregation	105,720	105,720
12. Para-Professional Case-Aide Training Program	47,541	40,000
13. Community Reintegration Centers	474,516	474,516
14. Use of Ex-Offenders as Parole Officer Aides	105,519	104,800
15. Jail and Workhouse Standards - a Feasibility and Planning Study	52,200	not funded
16. A Planning Study of the Adult Parole Authority	22,281	22,281
17. Multi-Disciplinary Treatment, Remotivation, and Education Program	66,307	50,542
18. Correctional Center for Female Parolees	56,334	56,334
19. Halfway House Program	37,722	37,722
20. Ohio Criminal Justice Seminar		64,600
21. Ascherman Act Seminar		46,800
	$2,353,704	$2,313,670

Department Projects Identified in the 1972 Ohio Comprehensive Plan

Project Title	Requested	Funded
1. Interim Computerized Information System	$ 450,000	$ 450,000
2. Comprehensive Staff Development and Training	550,000	450,000
3. Recruitment of Black Personnel	50,000	50,000
4. Adult Probation Development and Improvement - Phase II	240,284	240,188
5. Reformatory Community Reintegration - Phase II	150,000	131,445
6. Alcoholic Rehabilitation - Phase II	100,000	100,000
7. Citizen Volunteers - Phase II	78,296	78,296
8. Institutional, Vocational and Educational Program Implementation	96,868	54,477
9. Study for the Evaluation and Improvement of Ohio Penal Industries	100,000	not funded
10. Feasibility of "Community-Based" Institutions - A Pilot Model	100,000	38,446
11. Halfway House and Community Services Development Program	75,000	75,000
12. Reintegration Centers for Female Offenders	93,965	93,965
13. Treatment of Sociopathy - Phase II	77,533	60,592
14. Using Ex-Offenders as Parole Officer Aides	226,500	226,500
15. Community Reintegration Centers	475,000	474,996
16. Planning for a Reception, Diagnostic and Research Center for Adult Male Offenders	170,000	(Cancelled)
	$3,033,446	$2,523,905

* Establishment of Community Based Female Rehabilitation Sys. (substituted)

Department Projects Identified in the 1973 Ohio Comprehensive Plan

Project Title	LEAA Support
1. Central Reception (Interim Computerized Information System)	$ 550,000
2. Comprehensive Staff Development and Training	450,000
3. Community Reintegration Centers	455,550
4. Reformatory Community Reintegration	233,000
5. Use of Ex-Offender as a Parole Officer Aide	259,875
6. Adult Probation Development and Improvement	240,068
7. Multi-Disciplinary Treatment, Remotivation, and Education Project	95,353
8. An Evaluation of Treatment and Reintegration Modalities as Related to Institutional Classification and Specialization	75,000
9. Treatment of "Addicted" Inmates	90,000
10. Volunteer Services for Incarcerated Offenders	91,398
11. Para-Professional Case Aide Training Program	93,965
12. Correctional Center for Female Offenders	93,965
13. Citizen Volunteers (Man-to-Man Corrections)	95,000
TOTAL	$2,823,174

Department Projects Identified in the 1974 Ohio Comprehensive Plan

Project Title	LEAA Support	State Support	Total
1. Adult Probation Development	$ 159,845	$ 17,773	$ 177,681
2. Alcoholic Rehabilitation	38,482	4,275	42,757
3. Establish Community Rehabilitation System for Females	37,012	4,118	41,130
4. Volunteer Services	123,000	13,667	136,667
5. Multi-Disciplinary Treatment Remotivation and Education	123,381	13,713	137,094
6. Comprehensive Departmental Drug Treatment	215,000	23,889	238,889
7. Individualized Basic Education	91,635	10,133	101,768
8. Directed Probation Services to High Crime Areas	239,250	26,583	265,833
9. Parole Board Hearing Officers	113,300	12,589	125,889
10. Institutional Vocational Program	53,132	5,904	59,036
11. Identification of Violence Prone	60,000	6,989	66,989
12. Behavioral Treatment Environment	69,516	7,724	77,240
13. Relationship of Religion & State	15,000	1,667	16,667
14. Corrections Panel	20,000	2,222	22,222
15. Recruiting Minority Personnel	50,000	5,556	55,556
16. Evaluation of Treatment Modalities	64,802	7,200	72,002
17. Structured Community Release	356,250	47,500	403,750
18. Post-Sentence Investigation	412,500	55,000	467,500
	$2,242,105	$ 266,502	$2,508,607

APPENDIX C

State and Local Revenue From Own Sources, by State

Source: Richard E. Thompson, Revenue Sharing: a New Era in Federalism (Revenue Sharing Advisory Service: Washington, D.C., 1973).

State and Local General Revenue from Own Sources by State

State	Personal income calendar year 1969 (millions)	General revenue from own sources fiscal year 1970 (millions)	Revenue effort (col. 2 as a percentage of col. 1) (percent)	General revenue from own sources under the average revenue effort of the 10 States with the highest revenue effort	
				Amount[1] (millions)	Excess over actual (millions)
	(1)	(2)	(3)	(4)	(5)
Wyoming	$1,073	$213.0	19.85	$185.7	—$27.3
North Dakota	1,852	340.6	18.39	320.6	—20.0
New Mexico	2,879	528.1	18.34	498.4	—29.7
Wisconsin	15,376	2,700.5	17.56	2,661.6	—38.9
Hawaii	3,060	534.8	17.48	529.7	—5.1
Vermont	1,426	248.2	17.41	246.8	—1.4
New York	81,384	14,006.3	17.21	14,087.6	81.3
South Dakota	1,995	340.9	17.09	345.3	4.4
Alaska	1,258	[2]211.9	16.84	217.8	5.9
Arizona	5,709	957.2	16.77	988.2	31.0
Nevada	2,037	338.7	16.63	352.6	13.9
Mississippi	5,234	869.6	16.61	906.0	36.4
California	83,408	13,747.6	16.48	14,437.9	690.3
Utah	3,132	513.4	16.39	542.1	28.7
Minnesota	13,448	2,184.9	16.25	2,327.8	142.9
Louisiana	10,413	1,687.8	16.21	1,802.5	114.7
Montana	2,172	351.7	16.19	376.0	24.3
Colorado	7,569	1,194.6	15.78	1,310.2	115.6
Iowa	9,870	1,541.2	15.61	1,708.5	167.3
Washington	13,093	2,002.9	15.30	2,266.4	263.5
Oregon	7,261	1,108.9	15.27	1,256.9	148.0
Idaho	2,120	320.9	15.14	367.0	46.1
Nebraska	5,230	783.8	14.99	905.3	121.5
Maryland	15,336	2,297.3	15.98	2,654.7	357.4
Delaware	2,218	331.0	14.92	383.9	52.9
Maine	2,987	442.3	14.81	517.0	74.7
Michigan	35,010	5,100.3	14.57	6,080.0	979.7
Massachusetts	22,722	3,233.3	14.23	3,933.2	699.9
Kansas	8,096	1,148.4	14.18	1,401.4	253.0
Oklahoma	7,825	1,106.5	14.14	1,354.5	248.0
Alabama	9,116	1,269.9	13.93	1,578.0	308.1
West Virginia	4,735	658.7	13.91	819.6	160.9
Florida	22,396	3,109.7	13.89	3,876.7	767.0
Kentucky	9,202	1,261.5	13.71	1,592.9	331.4
Georgia	14,253	1,941.8	13.62	2,467.2	525.4
Illinois	47,340	6,270.4	13.25	8,194.6	1,924.2
North Carolina	15,030	1,983.8	13.20	2,601.7	617.9
Arkansas	4,963	648.8	13.07	859.1	210.3
Pennsylvania	43,182	5,612.6	13.00	7,474.8	1,862.2
Rhode Island	3,515	456.2	12.98	608.4	152.2
South Carolina	7,018	909.5	12.96	1,214.8	305.3
Tennessee	11,189	1,442.1	12.89	1,936.8	494.7
Virginia	15,441	1,985.2	12.86	2,672.8	687.6
Texas	36,458	4,679.0	12.83	6,310.9	1,631.9
Indiana	18,868	2,393.2	12.68	3,266.1	872.9
New Jersey	30,312	3,787.3	12.49	5,247.0	1,459.7
Connecticut	13,784	1,712.9	12.43	2,386.0	673.1
Missouri	16,085	1,993.0	12.39	2,784.3	791.3
New Hampshire	2,489	303.4	12.19	430.8	127.4
District of Columbia	3,768	[4]449.4	11.93	652.2	202.8
Ohio	40,145	4,732.5	11.79	6,949.1	2,216.6
Total, 10 States	116,012	20,081.5	17.31	20,081.5	----------
Total, 41 States	628,470	87,906.0	13.99	108,807.7	20,901.7
Total, 51 States	744,479	107,987.5	14.51	128,889.2	20,901.7

[1] Under the fiscal year 1970 actual relationship between revenue and personal income and under the average relationship between revenue and personal income of the 10 States with the highest percentage relationship between revenue and personal income.

[2] Derived by applying to the personal income of each of the States the average revenue effort (17.31 percent) of the 10 States with the highest revenue effort.

[3] Exclusive of $900,041,605 derived from bonus mineral lease—North Slope; also exclusive of interest on investment of this item.

[4] General revenue from own sources does not include any Federal contribution or Federal aid.

Note: Details may not add to totals because of rounding.
Source: Compiled and computed by the Staff of the Joint Committee on Internal Revenue Taxation.

APPENDIX D

Parole Distribution by Race and Sex
May 1, 1973

DEPARTMENT OF
REHABILITATION AND CORRECTION

INTRADEPARTMENTAL REFERENCE

August 13, 1973

TO: Joseph R. Palmer, Ph. D., Deputy Director
Program Services

FROM: George Kaitsa, Economist Planner GK 1372
Division of Planning and Research

SUBJECT: Federal Civil Rights Commission Information Request

Parole Distribution by Race and Sex on May 1, 1973

	Male		Female	
	Actual Cases	%	Actual Cases	%
White	2494	53.8	69	34.7
Black	2111	45.5	130	65.3
Latino	27	0.6	0	0.0
American Indian	2	*	0	0.0
Other	4	*	0	0.0
Total	4638	100.0	199	100.0

*Less than 1/10 of 1%

GK:mc
cc: Dr. C.S.T. Cho

By .....

APPENDIX E

Statutory enforcement Powers of the Ohio Attorney General and the Ohio Civil Rights Commission in cases of alleged violation of prisoners' civil rights.

OFFICE OF THE ATTORNEY GENERAL

STATE OF OHIO
COLUMBUS 43215

William J. Brown
Attorney General
George L. Jenkins
First Assistant Attorney General
James A. Laurenson
Chief Counsel
William F. O'Neil, Jr.
Executive Assistant Attorney General

October 23, 1974

Mr. Frank E. Steiner
Equal Opportunity Specialist
United States Commission on Civil Rights
Midwestern Field Office
U. S. Courthouse & Federal Building
219 South Dearborn Street, Rm. 1428
Chicago, Illinois 60604

Dear Mr. Steiner:

This is in response to your letter of September 25, 1974, to Earl M. Manz of my office, concerning a request for certain information regarding the involvement of the Ohio Attorney General's Office in the enforcement of alleged civil rights violations in state agencies. Please excuse the delay in responding.

In your letter you raised the following questions:

1. What is the present scope of the Ohio Attorney General's civil rights enforcement power in relation to the activities of State agencies? Is this defined in State statutes and regulations?

ANSWER: Under state statute Ohio Revised Code, 4112, state agencies fall within the jurisdiction of the Ohio Civil Rights Commission. The Ohio Attorney General's Office is the legal counsel for the Ohio Civil Rights Commission and therefore handles all litigation in the administrative process and in the state and federal courts. Our statute defines "person" as "....and the state, and all political subdivisions, authorities, agencies, boards, and commissions thereof." The statute

proscribes discrimination based upon sex, race, ancestry, national origin, and religion in the areas of housing accommodations, employment, and public accommodations.

2. What has been the actual extent of civil rights enforcement activity (including investigation, prosecution) to date, regarding State agencies, of the Ohio Attorney General?

ANSWER: There have been numerous investigations of other state agencies including the state Department of Mental Health and Mental Retardation, the state Department of Transportation, and the state Bureau of Employment Services, and several state universities to name a few. Several of these state agencies are involved in litigation at the present time. There has also been several matters that are before our office which involves municipal agencies such as the police departments and municipalities.

3. In the case of civil rights violations alleged by Ohio's incarcerated offenders to have been committed by state employees what would the state's Attorney General's role be? Specifically, would the Attorney General's role be hampered in any way by an apparent conflict between his enforcement duties in the two areas of violations of the criminal code and of civil rights-related laws? Would he, in effect, run the risk of being counsel both for and against the State of Ohio?

ANSWER: Under Chapter 4112 of the Ohio Revised Code, civil rights violations outside the areas of housing, employment and public accommodations would not be covered by that statute. Therefore, civil rights violations against prisoners committed by state employees would not fall within the meaning of Chapter 4112. However, as has happened in the past, when there has been abuse of patients by the employees at a state institution, the Governor has the authority to request the Attorney General to investigate and prosecute the individuals involved. This in fact was done in 1971 involving Lima State Hospital, a mental hospital for the criminally insane. In that case, the Attorney General's Office provided counsel for both the state and the defendants. This is not an unusual practice in the State of Ohio since the Attorney General's office represents all state agencies in any litigation and in many cases, particularly in the

civil area, the Attorney General's office is involved in representing both sides of the controversy. For example, as in the answer to No. 2, the Civil Rights Section of the Attorney General's office would represent the Ohio Civil Rights Commission and another section of the Attorney General's office would represent the other state agency involved in the litigation. This is pursuant to state statute.

4. In your opinion is any further statutory authority required for the Ohio Civil Rights Commission to receive, investigate and act upon alleged civil rights violations received from inmates in Ohio's adult correctional institutions?

ANSWER: We are presently attempting to amend the Ohio laws against discrimination so that state law comports with federal law. However, I would not recommend that the Ohio Civil Rights Commission be charged with investigating abuse of patients and/or inmates at state institutions. Rather, I would envision the Attorney General's Office requesting legislation making such conduct on the part of state employees a violation of the law, either civil or criminal. In Ohio, unless the Governor requests a special grand jury, the Attorney General is without power to deal with criminal matters. It may be more appropriate to provide for civil remedies and have the Attorney General's Office deal with such problems directly rather than relying upon another state agency to investigate and/or prosecute.

If you have any questions, please call me at (614) 466-7900.

Sincerely,

WILLIAM J. BROWN
Attorney General

Andrew J. Ruzicho

ANDREW J. RUZICHO
Assistant Attorney General
Chief, Civil Rights Section
30 East Broad Street
Columbus, Ohio 43215

APPENDIX F

Administrative Regulation 845: Grievance Procedures for Residents August 1, 1974 (Rev.)

Administrative Regulation 847: Ombudsman

Memorandum from the Office of the Ombudsman--Internal Procedures July 1, 1974 (As Revised)

Source: State of Ohio, Department of Rehabilitation and Correction, 1974 Annual Report of the Ombudsman.

DEPARTMENT OF REHABILITATION AND CORRECTION

JOHN J. GILLIGAN — GOVERNOR
BENNETT J. COOPER — DIRECTOR

ADMINISTRATIVE REGULATION

PAGE NUMBER	REGULATION NUMBER
1 of 3	845

SUBJECT: Grievance Procedures for Residents

EFFECTIVE DATE: August 1, 1974 (REV.)

AUTHORITY: BENNETT J. COOPER, DIRECTOR

REGULATIONS AFFECTED: STATUTORY REFERENC

1. A complaint, as used herein, is an oral statement of the resident's problem. A kite, as used herein, is a written statement of the resident's problem or request for information. A grievance, as used herein, is a formal request for administrative action commenced by the filing of Form 845-1.

2. The Managing Officer of each institution or facility shall install locked boxes or mail boxes into which residents may place kites. All kites placed in these boxes by residents are to be collected daily and routed directly to the addressee. Residents shall receive either a written or verbal response to a complaint or kite as soon as possible, but in no event in more than ten working days after receipt of the complaint or kite by a staff member or administrator, recognizing that resolution of the problem may take a longer period of time. Normal and routine requests and inquiries shall be handled informally.

3. If the resident does not receive a satisfactory response to his complaint or kite within the ten working days, he may file a formal grievance with the Resident Liaison Officer on Form 845-1. Grievance forms shall be made readily available to all residents at the office of the Resident Liaison Officer. The grievance may be given directly to the Resident Liaison Officer, or placed in a locked box or mail box used for kites. A copy of the grievance shall be immediately forwarded to the Ombudsman by the Resident Liaison Officer.

4. The primary responsibility of the Resident Liaison Officer is to investigate grievances filed by residents, which the resident has not been able to resolve through complaints and kites. The Resident Liaison Officer may also receive and act upon complaints and kites; provided, however, wherever feasible, the complaint or kite shall be referred to the proper staff member or administrator for action, subject to the ten working days response requirement.

5. If the grievance involves no substantial factual dispute, the Resident Liaison Officer shall investigate the grievance, make findings of fact, dispose of the grievance, or make recommendation to the Managing Officer on Form 845-2 & forward it to the Managing Officer or his designee, and one copy to the Ombudsman. If the grievance involves a substantial factual dispute, the Resident Liaison Officer may handle the dispute himself, or refer the dispute to the Institutional Inquiry Board on Form 845-3. Whether or not the factual dispute is substantial shall be determined by the Resident Liaison Officer after a preliminary investigation.

6. Complaints, kites or grievances determined by the Resident Liaison Officer to be wholly without merit may be rejected. Grievances may also, in the discretion of the Resident Liaison Officer, be rejected where the resident has failed, without just cause, to contact the person able to solve his problem before filing the grievance. All rejections shall be made on Form 845-4, and a copy forwarded to the Ombudsman. In the event of a rejection, the Resident Liaison Officer shall: (a) inform the resident of the rejection and the reasons;

NOTE: This Revision is currently under consideration and will become effective 8/1/74."

(b) inform the resident of the name of the proper staff member or administrator to contact to solve his problem, if applicable; and (c) inform the resident that he may appeal the rejection of the grievance to the Managing Officer on Form 845-5, within five working days. In the event it is determined on appeal that the grievance has merit, the grievance shall be referred to the Institutional Inquiry Board for processing.

7. Each Managing Officer shall appoint three employees to serve on the Institutional Inquiry Board. One of these employees shall be designated by the Managing Officer as permanent Chairman of the Institutional Inquiry Board. The Managing Officer shall also appoint several alternate members who may serve in the absence of a regularly appointed Board Member. At least one member of every such Institutional Inquiry Board shall be an officer of lieutenant rank or above, and at least one member shall be from the treatment staff.

8. No employee directly responsible for the condition or action being grieved may sit on the Institutional Inquiry Board that hears that particular case.

9. The Institutional Inquiry Board shall meet at least weekly, provided that one or more grievances have been filed with the Chairman of the Board by the Resident Liaison Officer.

10. A resident shall have an opportunity to personally appear at any investigative hearing whenever there is any substantial factual dispute. Notice of the hearing shall be given to the resident on Form 845-6. In such cases, the resident may request the Resident Liaison Officer to call a reasonable number of witnesses, including residents, to testify, and to present documentary evidence. The request shall not be unreasonably denied. Reasons for denial shall be specified. In determining whether the request is reasonable, the resident shall be required to state in writing for the record the nature of the testimony or documents to be given, on Form 845-7. The hearing body shall have the right to summon any witnesses - residents or staff - or documents it deems appropriate. Requests for witnesses shall be forwarded by the Resident Liaison Officer to the Chairman of the Institutional Inquiry Board when appropriate.

11. The hearing body shall file a written report regarding its factual findings and recommendations with the Managing Officer on Form 845-2 or Form 845-8, as appropriate, within ten working days after the case is received by the hearing body, with one copy to the Resident Liaison Officer, if the Institutional Inquiry Board is the hearing body, and one copy to the Ombudsman.

12. The Managing Officer or his designee, after evaluating the report of the hearing body shall advise the resident in writing on Form 845-9, within five working days, as to what action, if any, he has taken or intends to take. Copies shall be sent to the Resident Liaison Officer, Chairman of the Institutional Inquiry Board, and to the Ombudsman. Copies of the decision, grievance, copies of the report of the hearing body, and copies of the Managing Officer's response to the resident shall be maintained in the office of the Resident Liaison Officer for at least three years. In no event shall such copies be made part of the Resident's Record Office Master File.

13. If, after receiving the official response from the Managing Officer, the resident still feels that the grievance has not been resolved to his satisfaction, the resident may appeal to the Director of the Department of Rehabilitation and Correction, or his designee, on Form 845-10, within five working days. Upon receipt, one copy shall be sent to the Ombudsman, and one to the resident's Managing Officer and Resident Liaison Officer.

14. The Director or his designee shall review all grievances submitted. Upon request, the Managing Officer shall forward all relevant documents to the Director or his designee. Such request shall be on Form 845-11. If, after reviewing the grievance, the Director or his designee feels that the case is without merit, he will so advise the resident in writing, on Form 845-12, with copies to the Managing Officer, Resident Liaison Officer, and the Ombudsman.

15. If the Director or his designee is of the opinion that the grievance has merit, or that further investigation of the grievance is in order, he will take such administrative action as he deems appropriate.

16. Thereafter, the Director or his designee will make a final determination and so advise the resident in writing on Form 845-12, with copies to the Managing Officer, Resident Liaison Officer, and to the Ombudsman.

STATE OF OHIO

DEPARTMENT OF REHABILITATION & CORRECTION

JOHN J. GILLIGAN — GOVERNOR
BENNETT J. COOPER — DIRECTOR

ADMINISTRATIVE REGULATION 847
SUBJECT: OMBUDSMAN

1. The Department Ombudsman shall be responsible to, and report directly to the Director.

2. Staff personnel responsible to the Department Omoudsman shall have all necessary authority to perform their assigned duties.

3. The Office of the Department Ombudsman shall have the following primary responsibilities:
   A. Receive, investigate, and evaluate inquiries, problems, and complaints of correctional staff and inmates or persons responsible to a Departmental institution or agency.
   B. Self-initiate inquiries whenever facts come to the attention of the Office of the Department Ombudsman from whatever source, indicating that an inquiry should be made.
   C. Investigate administrative practices within the Department of Rehabilitation and Correction to insure that all Ohio statutes, and rules and regulations of the Department of Rehabilitation and Correction and relevant institutional and agency rules and regulations are being followed.

4. In addition to the primary responsibilities of the Office of the Department Ombudsman as set forth above, the duties of the Office shall include the following:
   A. The keeping of a separate file as to each inquiry or complaint received, or investigation made. Each such file shall include copies of all written matters concerning such file, a written summary and the disposition. A disposition shall be made of each case.
   B. The preparation of an annual report, in which a statistical summary is made as to the number and nature of cases opened during the year, the number of cases disposed of during the year, and the status of all cases at the end of the year. The annual report shall also include recommendations for changes in legislation or administrtive practices, where applicable.
   C. Periodic visits to each institution or agency.
   D. Such other duties as may be assigned by the Director.

5. All books, records, and files of Department and institutional or agency personnel shall be open to the Office of the Department Ombudsman upon request. Written requests for information by the Department Ombudsman addressed to correctional or agency staff shall be answered without unreasonable delay.

6. Copies of all case summaries and dispositions shall be forwarded to the parties concerned, with a copy to the Director and to the Governor.

STATE OF OHIO

DEPARTMENT OF REHABILITATION & CORRECTION

JOHN J. GILLIGAN — GOVERNOR
BENNETT J. COOPER — DIRECTOR

7. Whenever an inquiry or complaint is received by the Office of the Department Ombudsman from any offender under the jurisdiction of the Department, action may be deferred and the matter forwarded to the relevant institution or agency for processing as a grievance under Section 845, if applicable. Authority shall be retained, in such referrals, to intervene and make independent investigations at any time.

Memorandum from the Office of the Ombudsman - Internal Procedures

DATE: July 1, 1974 (As Revised)

A. POLICY:

The authority of the Office of the Ombudsman is set forth in Administrative Order #847. It should be remembered that Ohio is one of the few systems in the world that has both an Ombudsman and a grievance procedure.

The purpose of both is to protect individuals from injustice through the application of an administrative system of controls, and through an abuse of administrative discretion. In order to insure the proper balance between the Office of the Ombudsman and the administrative process, it is essential that individual complaints be channeled through the grievance procedure set forth in Administrative Order #845. The role of the Ombudsman at this point is three-fold.

FIRST: To make certain that the complainant is aware of the Grievance procedure.

SECOND: To monitor the grievance procedure to insure compliance by the administrative authorities.

THIRD: To grant direct intervention if use of the grievance procedure, under the facts of the case, would be a vain or useless act.

The Ombudsman does not make policy; his function is to make certain that policy is implemented according to established procedures. He is not directly involved in an appeal of an administrative decision; his function is to make certain that the appellate procedure is followed by the responsible administrator. In short, the administrative process, with its checks and balances should not be short-circuited by the Ombudsman unless absolutely necessary.

The Ombudsman cannot and should not wait until a complaint is made. Often, silence speaks louder than words. Independent investigation of conditions and observance of administrative policies are therefor essential.

Finally, it is necessary to bring to the attention of the Governor and Director periodically, or in the Annual Report of the Ombudsman, any observations or recommendations relative to the need for new policy in a particular area, or change of policy in the event that existing policy is either unworkable or unjust. Change of policy may come about either through the administrative process or the legislature process.

As the authority of the Ombudsman flows directly from the Governor and the Director, all administrative personnel are obligated to cooperate to the fullest. This authority must be exercised with discretion.

B. RESPONSIBILITIES OF PERSONNEL:

It shall be the responsibility of all personnel working in the Office of the Ombudsman to familiarize themselves in depth with all statutes, administrative regulations, administrative orders and policy decision relevant to the Department of Rehabilitation and Correction.

Memorandum from the Office of the Ombudsman - Internal Procedures

Information coming to the attention of the Office of the Ombudsman shall be regarded as being made in strict confidence and shall not be discussed with anyone outside the Office of the Ombudsman without the expressed approval of the Chief Ombudsman. All personnel working in the Office of the Ombudsman shall be responsible to the Chief Ombudsman, and through him to the Director. For purposes of reference Mr. Miller shall be referred to as the Chief Ombudsman and Messrs. Mack and Bostic shall be referred to as Ombudsman.

C. CORRESPONDENCE:

Administrative Policy P-002 of December 15, 1972, shall apply to all correspondence received by the Office of the Ombudsman not directly relating to the duties as set forth in this memorandum of internal procedure.

Correspondence received by the Office of the Ombudsman from a resident which should be directed to other personnel in the Department of Rehabilitation and Correction, shall be forwarded to the proper personnel accompanied by the transmittal form attached hereto.

D. RECORDS:

1. Index

An index file card system shall be kept for each complaint received by the Office of the Ombudsman within its jurisdiction. The index shall show the name of the complainant, the number of the pocket (see below) and if a resident is involved, name, number and social security number if available. In the event the complainant and the resident are not one and the same, separate index cards shall be kept. The index cards shall be kept in alphabetical order.

2. Filing Systems

A separate file in an 8" x 11" manila envelope pocket shall be kept on each matter handled by the Office of the Ombudsman. The pocket shall designate the year in which the complaint was made and the number within that year in which a complaint was made. Consequently the first complaint during the year 1974 would show on the file 74-1, the second complaint 74-2 and so forth.

In addition each pocket shall be coded alphabetically, the number to precede the year as follows:

A. Complaints received from inmates.

B. Complaints received from non-inmates, concerning a particular inmate or group of inmates.

C. Complaints received from non-inmates, which do not concern an inmate or group of inmates.

D. Complaints received from staff.

E. Complaints received from non-staff, concerning a staff member or group of staff members.

F. Complaints received from non-staff, which do not concern a staff member or group of staff members.

G. Complaints which are self-initiated by the Office of the Ombudsman.

H. Field investigations by Ombudsman.

I. Complaints ordered investigated by Director.

Two pocket systems shall be kept, one for active cases and one for closed cases. As soon as a case is closed it shall be removed from the active file, a case summary prepared, a copy of which is attached hereto, and the pocket, in which shall be placed a copy of the case summary, transferred to the closed file. It shall remain a permanent record of the Office of the Ombudsman. In addition to the case summary placed in the appropriate file pocket, four additional copies of the case summary shall be made, one for the Governor, one for the Director, one for the complainant and one for a separate file to be known as a case summary file.

The case summary file shall be a separate file in which all case summaries are contained. The case summary file shall be kept in numerical order, by year.

Separate file shall be made of the Annual Reports filed by the Ombudsman, speeches by the Ombudsman, documents prepared for use by the Ombudsman, forms used by the Ombudsman and general correspondence.

A loose leaf notebook shall be kept which shall contain all relevant statutes, rules, regulations, decision of the Director on disciplinary appeals, documents, and procedures used by the Office of the Ombudsman.

E. TELEPHONE CALLS:

Whenever a call is made to the Office of the Ombudsman concerning a matter within the jurisdiction of the Ombudsman, a request should be made that the person make his request in writing and direct it to the Office of the Ombudsman. Due to the nature of the confidentiality of a file, as a general rule no information should be given over the telphone. Under all circumstances, if given, it should be on a need to know basis.

Discretion shall be used in making a summary of the conversation. Summaries should be kept whenever the telephone caller alleges a specific complaint or problem which is under the jurisdiction of the Ombudsman and need further investigation. Telephone summaries should be immediately placed upon the desk of the Chief Ombudsman for review.

F. CLASSIFICATION OF COMPLAINTS:

Below is listed a classification of complaints that may be made to the Office of the Ombudsman. Following the file number the nature of the complaint, should be listed in brackets, i.e. A73-1 (6). They are:

1. Adult Parole Authority
2. Intra-institution Transfers
3. Classification
4. Re-Classification
5. Legal Matters
6. Medical
7. Program Treatment
8. Speak-outs
9. Religion
10. Racial Matters
11. Property Loss
13. Property Contraband
14. Mail
15. Visits
16. Staff Harrassment
17. Use of Force
18. Protection - Self-initiated
19. Protection - Suggested
20. Social Service Matters
21. Disciplinary
22. Honor Placement
23. Resident Government Groups

G. PROCEDURE - COMPLAINTS RECEIVED FROM RESIDENTS:

1. Every complaint received from a resident which is not referred to other Departmental personnel pursuant to Administrative Policy P-002, shall be acknowledged in writing. A file pocket shall be maintained for that particular complaint and an index card prepared. The following procedure shall apply:

a) A reply in writing shall be made to the complainant.

b) The resident shall be informed of the existence of the grievance procedure as set forth in Administrative Order #845 and requested to contact his Resident Liaision Officer.

c) A copy of the reply shall be forwarded to the Resident Liaison Officer at the institution of the resident.

d) Thereafter, the procedure as set forth in "K" below shall apply.

e) After the case is resolved or completed, the file pocket shall be removed from the active file and placed in the closed file along with a case summary.

H. PROCEDURE - COMPLAINTS RECEIVED FROM NON-RESIDENTS:

1. People representing Residents. Every complaint received from non-resident which is not referred to other Department personnel pursuant to Administrative Policy P-002 shall be acknowledged in writing. An index card and pocket file shall be prepared, containing all relevant data. A reply letter shall be sent to each person in which they are notified of the grievance procedure as set forth in Administrative Order #845. The person is encouraged to contact the appropriate Resident Liaision Officer.

2. People not representing Residents. Letters received from people not representing individual resident or groups of residents shall be referred to the appropriate Departmental personnel pursuant to the Administrative Policy P-002. No case file need be prepared, unless the Chief Ombudsman determines otherwise.

I. PROCEDURE - COMPLAINTS RECEIVED FROM STAFF:

Whenever letters are received from staff concerning an administrative complaint the letter should be acknowledged by a reply, with a copy to the Managing Officer, and to the Director of Personnel of the Department of Rehabilitaion and Correction

a file opened and recommendation made that the individual utilize the grievance procedure of the State Department of Personnel. Thereafter, the procedures set forth in G above, shall apply, where applicable.

J. PROCEDURE - SELF-INITIATION BY THE OFFICE OF THE OMBUDSMAN:

Complaints may be initiated by the Office of the Ombudsman either on the basis of letters or other communications received by the Office of the Ombudsman, or on the basis of a field audit by the Ombudsman.

It shall be the responsibility of the Ombudsman to periodically visit each institution or agency within the Department of Rehabilitation and Correction to ascertain that Statutes, Administrative Rules and Regulations and Policies are being implemented and that no staff nor inmate is being denied access to the grievance procedure or protection of the Statute or Rule and Regulations.

1. Self-initiated complaints. Whenever the Office of the Ombudsman decides that a complaint should be self-initiated, the decision shall be made by the Chief Ombudsman. There shall be no further administrative review of this decision.

2. Field audits. Wherever possible, the institution shall be informed that an Ombudsman is coming to the institution in order to make an audit. At the termination of each field investigation, a report shall be made with one copy to the Chief Ombudsman, one to be placed in the file, and one to be forwarded to the Managing Officer. All Departmental and institutional records shall be opened to the Ombudsman upon request without censorship or delay. All personnell, both resident and staff, shall be made available to the Ombudsman upon request without delay. Any deviation from this policy shall be reported immediately to the Director and the Governor.

K. PROCEDURE - COMPLAINTS MADE TO RESIDENT LIAISON OFFICER

1. Each Resident Liaison Officer shall follow the procedure as set forth in Administrative Order 845. (See Appendix B).

2. As soon as possible after july 1 of each year, each Resident Liaison Officer shall forward to the Office of the Ombudsman an Annual Report containing a summary of the year's activities.

L. ANNUAL REPORT:

An annual report shall be submitted to the Director and to the Governor covering the activities of the prior fiscal year.

APPENDIX G

Hysterectomies Performed Upon Inmates of the Ohio Reformatory for Women, July 1970 through June 1973.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

OHIO REFORMATORY FOR WOMEN

ROUTE 5, BOX 2
MARYSVILLE, OHIO 43040

August 15, 1973

JOHN J. GILLIGAN
GOVERNOR
BENNET J. COOPER
DIRECTOR
(MISS) MARTHA E. WHEELER
SUPERINTENDENT

Mr. Eldridge T. Sharpp, Jr., Chairman
Ohio State Advisory Committee
United States Commission on Civil Rights
c/o Midwestern Regional Office
219 South Dearborn Street, Room 1428
Chicago, Illinois 60604

Dear Mr. Sharpp:

As you requested on July 14 at the hearings in Columbus, I am sending you information regarding hysterectomys performed in this institution.

In the fiscal year beginning July 1, 1970 and ending June 30, 1971, 5 hysterectomys were performed. All of them were performed by our Ob. Gyn. Consultant, Dr. Roberto Villalon. In the fiscal year beginning July 1, 1971 and ending June 30, 1972, 4 hysterectomys were performed. Two of them were performed by Dr. Villalon and 2 of them by Dr. James Sampsel, a General Surgeon who practices in Marysville. During the fiscal year beginning July 1, 1972 and ending June 30, 1973, 8 hysterectomys were performed. Of those, 5 were performed by Dr. Villalon, 1 by Dr. Sampsel and 1 by Dr. Lawrence Gould, Ob. Gyn. Specialist who practices in the Marysville area.

Of course, giving you these numbers of operations can in no way assure you that the surgery was necessary nor can it indicate the quality of surgery which was performed. I can only remind you that all 3 of these surgeons are fully qualified in their specialities. They are not in training, but are in full practice. They are extremely busy men who have no need to look for patients in order to practice their skills. In all of these cases, the decisions to intervene surgically were made on the basis of symptoms presented and complaints registered by the patients. In all cases, the patients had requested the surgery and had given the usual consent.

I hope this is the information which you desire.

Sincerely,

(Miss) Martha E. Wheeler,
Superintendent

S. M. Patterson,
Assistant Superintendent

MEW/SMP/mm

APPENDIX H

Draft copies of this report were sent to Ohio corrections officials and Federal agencies for their comment. Substantive changes suggested by their response have been incorporated in this final report and are noted by asterisks. The response of the current director of the Ohio Department of Rehabilitation and Correction is reprinted here in full text, along with the original letter of transmittal of the draft report.

MIDWESTERN REGIONAL OFFICE
230 South Dearborn Street, 32nd Floor
Chicago, Illinois 60604
Telephone (312) 353-7371

September 26, 1975

Mr. George F. Denton, Director
Ohio Department of Rehabilitation
and Corrections
1944 Morse
Columbus, Ohio 43215

Dear Mr. Denton:

Enclosed is a draft report of the Ohio Advisory Committee to the U.S. Commission on Civil Rights concerning the Ohio Prison system. It would be helpful to the Advisory Committee if you would have your staff review the report and share with us your comments.

Our primary concern is that the factual information on which conclusions in the report are based is accurate. We realize that, parts of the report are a matter of judgment based on our research. Our conclusions, therefore, may differ from the interpretation made by your agency personnel. To the extent that such instances occur, we shall make every effort to reflect your position.

In view of the fact that our Advisory Committee wants to release this report this fall, we expect to be sending it to the printer shortly. Therefore, I would appreciate receiving your comments no later than October 15, 1975. It is important that we have your response on or before that date so that we can give adequate consideration to your comments.

Thank you very much for your assistance in this matter. In addition, I would like to express this Advisory Committee's appreciation for the cooperation which we received from your personnel during the course of this study.

Sincerely,

Clark G. Roberts

CLARK G. ROBERTS
Regional Director

Enclosure

UNITED STATES COMMISSION ON CIVIL RIGHTS

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MIDWESTERN REGIONAL OFFICE
230 South Dearborn Street, 32nd Floor
Chicago, Illinois 60604
Telephone (312) 353-7371

September 25, 1975

Mr. George F. Denton, Director
Ohio Department of Rehabilitation
and Corrections
1944 Morse
Columbus, Ohio

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Sincerely,

Clark G. Roberts

CLARK G. ROBERTS
Regional Director

Enclosure

STATE OF OHIO

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OCT 24 1975

DEPARTMENT OF REHABILITATION AND CORRECTION
1050 Freeway Drive, North, Suite 403
Columbus, Ohio 43229
(614) 466-6190

JAMES A. RHODES, Governor

GEORGE F. DENTON, Director

October 14, 1975

Mr. Clark G. Roberts
Midwest Regional Director
U.S. Commission on Civil Rights
230 South Dearborn Street - 32nd Floor
Chicago, Illinois 60604

Dear Mr. Roberts:

This is in reference to the Report of the Ohio Advisory Committee to the United States Commission on Civil Rights which this office received September 29, 1975.

Although we have not been furnished with a transcript, we have studied the offered document. From standpoints of objectivity and validity, we find the report unacceptable on the basis that much of it is editorializations and lacks substantive support.

Lack of valid objectivity can well be established early in the report in the following inferred criticism of Court decisions by Mr. Leonard Schwartz (as found on Page 8):

> "They (Courts) usually refuse to look behind
> the decision of prison administrators and
> merely defer to their expertise."
> "(Transcript, p.58)"

Are we then to assume that a handful of persons, whose names appear frequently throughout the report (and generally lacking in actual experience as correctional administrators), constitute expertise opinion in relationship to this report? I think not.

It becomes obvious quickly in the document that opinions of selected persons are taken to represent the gospel of what the report intended. Unfortunately, many of these opinions represent unwarranted assumptions rather than valid conclusions.

A point in fact is the recurrent and age-worn premise, expounded increasingly in recent years by prison critics, that prisons serve no useful purpose and should be abolished. This thesis of presumption could well be argued longer than the time consumed in the report preparation.

One might ask, in retrospect, on this highly adversary and debatable question, that we re-examine the basic purpose of the establishment of correctional facilities. We have progressed considerably from the former punitive concept of prison confinement. With recognition of already increased probation, suspended sentences, etc., what alternatives should be substituted for hard-line and chronic offenders?

If expressions contained in the document are expressions of desired reality, then society in general might well mourn for the offenders and chastise the offended.

With crime currently rampant on the streets as never before and more brutual offenses being committed by younger offenders, correctional administrators today are pressed sorely to consolidate gains in recent years from the onslaught of public opinion seeking vengeance against the offender.

The foregoing references are offered as dialogue in questioning the "expertise" reflected in the editorial expressions contained in the document.

Even more pronounced and to the point of established validity are the numerous quotations of penal inmates who make certain allegations as contained in the report. The document presents these complaints as true happenings without reference whether the Committee checked the validity of the allegations. The report, in this respect, indicates a naivete with regard to attitudes and information obtained from penal inmates.

We do not hold that complaints of prisoners should go unheeded. In a penal system as large as the Ohio correctional program, we receive allegations of the kind presented to the Committee. Every complaint is checked by staff personnel. In a great majority of such cases, we have found they do not contain factual basis.

A great portion of the report represents opinions on the basis of unsubstantiated information by unidentified individuals. Again, one must wonder whether the Committee exerted effort, if any and how much, to determine the facts. Or was there blanket acceptance of editorialization and unsubstantiated allegations?

We cannot accept faulty perceptions on the part of some people, inexperienced in prison administration, who assume only the offenders tell the truth while criminal justice officials are untrustworthy. This premise we strongly reject.

We shall be available at a mutually agreed time in the event you would wish to discuss further the report.

Very truly yours,

George P. Denton, Director

GFD/sr

* U. S. GOVERNMENT PRINTING OFFICE : 1976 634-512/163

END