52112

Judicial Intervention in Corrections: A Case Study

BY RICHARD L. SCHUSTER, PH.D., AND SHERRY A. WIDMER*

SINCE 1964 there has been a dramatic increase in the number of court cases dealing with prisoners' rights and prison conditions. What effect court rulings have had in this area is a matter for debate; however, the consensus seems to be that few drastic reforms have taken place. This article will develop one possible explanation for the limited degree of change. A brief review of the history of judicial intervention will be presented, followed by a discussion of the evolution of the effects of intervention. The final part of the article will be devoted to a case study of a particular instance of judicial intervention and the project formed to implement it. Implications for the evolution of judicial effectiveness and for the consideration of future work in "prison reform" will be offered.

History of Judicial Intervention

Our interest in judicial intervention must be limited to the Federal court since state courts have shown little interest in intervening in prison affairs. Until recently, even Federal courts almost exclusively followed the "hands off" doctrine with regard to prison affairs, which is summarized by the statement: "courts are without power to supervise prison administration or to interfere with the ordinary prison rules."[1] The justifications for nonintervention were many: (a) the argument for seperation of powers, (b) the lack of judicial expertise, and (c) fear of undermining prison discipline.[2] This is not to say that all Federal courts followed the "hands off" doctrine. In 1944 a Sixth Circuit court ruling held that: "A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law."[3] However, this position was virtually ignored by all Federal courts until the 1960's.[4]

The courts began to move away from the "hands off" position in the 1960's due substantially to the resurrection of the long neglected 1871 Federal Civil Rights Act (codified as Section 1983 of Title 42 of the U.S. Code). The key decision was *Monroe* v. *Pape* (in 1961) which applied the Federal act to state violations of civil rights guaranteed by the Federal constitution. Three years later in *Cooper* v. *Pate,* the United States Supreme Court applied the Civil Rights Act such that prisoners of state institutions had the right to sue state officials in Federal courts. A long string of cases has followed this decision. No attempt will be made here to provide a survey of these cases but interested readers may wish to consult the annual report on the development of correctional law in *Crime and Delinquency* or *Virginia Law Review* (1971).

Courts do, however, have procedural limits to their role in intervention. A condition or treatment in the prison must reach a level of a constitutional abuse before a Federal court can act.[5] No matter how undesirable the conditions in a prison may be, unless a prisoner can show that there has been deprivation of a constitutional right, there are no grounds for intervention.

Evaluation of the Extent of Judicial Intervention

Some writers have indicated that the gains of prisoners have been more symbolic than real.[6] A number of major problems exist for prisoners attempting to acquire rights through litigation. This section will deal with some factors that have been used to explain the limits on the scope of judicial intervention.

In the early 1960's Federal courts received 2,000 petitions annually. Now 17,000 petitions are received and one-quarter of these are devoted to allegations of denial of civil rights in prisons.

* Dr. Schuster is an assistant professor at Valparaiso University, Valparaiso, Indiana. Ms. Widmer is a doctoral candidate at The Ohio State University. The authors are indebted to the directors and staff of the Prison Classification Project for their aid and cooperation. Without them this study could never have been completed.

[1] *Banning* v. *Looney,* 213 F.2d 771 (10th Cir.); cert. denied, 348 U.S. 859.
[2] Brian Glick "Changes Through the Courts," in Erik Olin Wright (ed.) *The Politics of Punishment.* New York: Harper and Row, 1973. p. 284.
[3] *Coffin* v. *Reichard,* 143 F.2d 443 (6th Cir., 1944).
[4] *Yale Law Review.* "Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts." 72 (Jan., 1963). p. 506.
[5] *Virginia Law Review.* "Decency and Fairness: An Emerging Judicial Role in Prison Reform." 57 (June, 1971) p. 843.
[6] Fred Cohen "The Discovery of Prison Reform." *Buffalo Law Review.* 21 (1972) p. 863, 865.

A major problem according to the Dennenbergs is that because of the hearing load judges cannot possibly give petitions anything more than a cursory glance.[7] Despite this large number of petitions only a small fraction may ever be granted a hearing.[8] Kimball and Newman report that in only 8 percent of reported cases did the decision entitle the prisoner to release or some substantial benefit.[9] Even in those cases in which prisoners win, there may be no appreciable gain in rights or improvement in conditions.

Another major source of limitations may be the internal structure of the legal system. First, courts are limited to the scope of the issue in the case before them. For example, brutality may clearly exist within a certain prison but if the prisoner's suit concerns only deprivation of medical care, the court may only order implementation of medical care services. There would be no justification for an order that banned the use of strip cells or whippings. Second, implementation is limited only to the institution being sued. Unless the entire state system is the focus of the suit, each separate facility would have to be sued to affect changes in all of the state's facilities. Third, a ruling in one district or circuit applies only to that district or circuit. Judges in other jurisdictions are not bound by these decisions. Suits in other districts have to be brought to gain compliance of institutions in those districts even if prison conditions are identical. Further, there is no guarantee that a suit won in one district will also be won in another district. Fourth, even if a prisoner has a good chance of winning a case, he/she may be transferred out of the district in which the appeal was made. The court may then declare the case was moot and a new case will have to be initiated to correct the abuses. Fifth, a case won at the district level may be appealed at the circuit court level and then at the Supreme Court level. Each appeal may take a year or more. Many district court judges will delay the implementation of an order until the completion of appeals. Abuses may continue for several years without correction, even though the prisoner has won the case. In other words, a prisoner who has won a case regarding the constitutionality of segregation cell conditions may still spend 2 years in those conditions. Finally, courts may not have the machinery to supervise implementation. The courts may feel that implementation is correctly the role of the legislature or executive of the state not of the court. In many cases the courts have simply relied on the officials in the defendant institution to guarantee implementation.*

* Many of the above reasons for limitation of the scope of judicial intervention may be valid problems; however, in some cases judges have not been hindered by them. Judge Johnson in *James* v. *Wallace* ordered the entire state system into compliance, established machinery to oversee compliance and ordered immediate compliance despite pending appeals. The justifiability of Judge Johnson's actions will be tested in the upcoming appeals.

This last limit of the court (i.e., lack of supervisory machinery) has been linked to what some people see as the most significant impediment to prisoners' rights—the circumvention of court orders by prison administrators. This phenomenon has been referred to in organizational literature as slippage. Sol Rubin proposes that prison administrators' reactions to a court order may fit one of three categories: provocative, defensive, or positive responses.[10] Rubin feels that very few officials react with a positive response, rather, many respond with behavior that is provocative and the great bulk of administrative behavior is defensive.[11] Thus, even if prisoners do get a case reviewed, have an affirmative ruling from the court, and win all of the appeals, they may still not gain any of the benefits of the court's intervention according to this view. The prison officials may impede implementation in a variety of ways. Glick's case study of John vanGeldern concerning court rulings on the right of access to the courts is an example of how "officials have simply ignored court rulings or made insignificant superficial adjustments."[12]

The question remains: Has court intervention made any appreciable difference in prisoners' daily lives. The answer depends on whose judgment or criteria one accepts. Kimball and Newman feel that winning even one case has effects reaching far beyond its face value.[13] Greenberg and Stander state that ". . . the prison system is almost totally nonresponsive to 'due process of law' or 'law' itself."[14] Hawkins' statement that ". . . to say that nothing has been changed as a result of prison litigation and judicial intervention runs counter to available evidence" takes a middle ground.[15] Yet even Hawkins is led to con-

[7] R.V. Dennenberg and Tia Dennenberg "Prison Grievance Procedures." *Corrections Magazine.* 3 (Jan.-Feb., 1975) p. 30-32.
[8] B.E. Bergeson, III "California Prisoners: Rights Without Remedies." *Stanford Law Review.* 35 (1972) p. 19-20.
[9] Edward L. Kimball and Donald J. Newman "Judicial Intervention in Correctional Decisions." *Crime and Delinquency.* 14 (1968) p. 3.
[10] Sol Rubin "The Administrative Response to Courts Decisions." *Crime and Delinquency.* 15 (1969) p. 377-386.
[11] Sol Rubin "The Impact of Court Decisions on the Correctional Process." *Crime and Delinquency.* 20 (1974) p. 33.
[12] Brian Glick. Op. Cit. p. 295.
[13] Edward L. Kimball and Donald J. Newman. Op. Cit. p. 3.
[14] David F. Greenberg and Fay Stender "Prisons as a Lawless Agency." *Buffalo Law Review.* 21 (1972) p. 808.
[15] Gordon Hawkins *The Prison.* Chicago: The University of Chicago Press, 1976, p. 149.

clude that there may not be any substantial alteration in prison conditions.[16]

As noted earlier, a favorite explanation for this apparent lack of reform has been the "reaction" of administration officers in the prison system who "impede," "thwart," "ignore," or otherwise "circumvent" court orders. This implies, on a personal level of analysis, that prison administrators and staff are operating in "bad faith" and if they would merely accept the philosophy of reform they could "get ahead of the Courts."[17] As Thomas has noted: "The resistance of officers to reformative measures has traditionally been reduced to pseudopsychological discussion about 'punitive personalities.' "[18] This explanation ignores the fact that prisons are complex organizations set within a larger "organization" referred to as the "justice system." As such, they are beset with problems resulting from institutional pressures, constraints, and contingencies. In the final portion of this article a case study of an attempt to implement part of a recent court order will be used to illustrate the need to evaluate the effects of judicial intervention in more than just psychological and/or personal terms.[19]

Judicial Intervention: A Case Study

The court case that spawned this case study is *James* v. *Wallace* (cited under *Pugh* v. *Locke,* 406 F. Supp. 318 [1976]). This case has been cited as possibly the most sweeping decision yet.[20] Bronstein noted that *James* was an attempt to look at the "substantive and systemic issues in prison" and issue an order dealing with these defects.[21] Judge Johnson's order focused on 11 aspects of prison management and required detailed compliance in each aspect. These aspects are: (1) overcrowding, (2) segregation and isolation, (3) classification, (4) mental health care, (5) protection from violence, (6) living conditions, (7) food service, (8) correspondence and visitation, (9) educational, vocational, work and recreational opportunities, (10) physical facilities, and (11) staff. This order was backed up by the following statement:

> Let the defendant state officials now be placed on notice that failure to comply with the minimum standards set forth in the order of this Court filed with this opinion will necessitate the closing of those several prison facilities herein found to be unfit for human confinement.[22]

And further force was provided by the threat of contempt citations to those defendants and their agents who did not attempt to comply within the alloted time schedule. Judge Johnson also set up machinery for operationalizing and supervising his decision in the form of a Human Rights Committee which was to monitor compliance.

Section III of Appendix A concerning classification ordered the Alabama Board of Corrections (BOC) to contract with the University of Alabama Department of Correctional Psychology to perform the actual classification of prisoners. This segment of the court order was undertaken by a group called the Prison Classification Project (PCP). Schuster was employed by the PCP to classify prisoners. His experience in this project provides the data for the case study. The PCP was authorized on June 28, 1976, and was to implement the section in *James* dealing with classification.*

*III. *Classification*
1. By April 15, 1976, the defendants shall file with the court a plan for the classification of all inmates incarcerated in the Alabama penal system. The Board of Corrections shall contract with the University of Alabama Department of Correctional Psychology to aid in the implementation of that plan. The classification shall be fully completed no later than August 16, 1976.
2. The plan to be submitted to the court shall include:
(a) due consideration to the age; offense; prior criminal record; vocational, educational and work needs; and physical and mental health care requirements of each inmate;
(b) methods of identifying aged, infirm, and psychologically disturbed or mentally retarded inmates who require transfer to a more appropriate facility, or who require special treatment within the institution; and
(c) methods of identifying those inmates for whom transfer to a pre-release, work-release, or other community-based facility would be appropriate.
3. The classification of each inmate shall be reviewed at least annually. (*Pugh* v. *Locke,* 406 F. Supp. 318 [1976]).

After initial study, the PCP developed a set of guidelines for the assignment to a custody level (Appendix A).** Procedures for the classification of inmates were also developed in this early period. The procedure to be followed by each person engaged in classification will be described here. The person doing the interviewing of the inmate (the monitor) picked up a packet of folders for a particular inmate. This packet consisted of (a) an institutional jacket which contained all of the inmate's prison records (e.g., disciplinaries, medical reports, time sheets, etc.), records of movement within the Alabama system, escapes, parole, parole revocations, presentence reports, letters written to prison officials, prison actions taken and other information; (b) a cen-

[16] *Ibid.,* p. 150.
[17] Allen F. Breed "Advocacy Within the System." Proceedings of the 103rd Annual Congress of Corrections of the American Correctional Association, 1973, 284-286.
[18] J.E. Thomas *The English Prison Officer Since 1850: A Study in Conflict.* Boston: Routledge and Kegan Paul, 1972, p. 220.
[19] For a more detailed discussion of organizational constraints and contingencies see: James D. Thompson *Organizations in Action.* New York: McGraw-Hill Inc., 1967, p. 18.
[20] Charles S. Prigmore and Richard T. Crow. "Is the Court Remaking the American Prison System." FEDERAL PROBATION. 40 (1976) p. 5.
[21] Alvin J. Bronstein "Correctional Policy and Judicial Intervention." Read at the annual meeting of the American Society of Criminology, Tuscon, Arizona, November, 1976, p. 2.
[22] *James* v. *Wallace* (cited supp. nom. *Pugh* v. *Locke,* 406 FS 318 [1976]) p. 331.

tral file which was a duplicate of the institutional file except that it tended to be more complete since the central file was not as subject to manipulation, and (c) a "psychological" file which consisted of MMPI or other personality test scores, WRAT test scores and IQ test scores. After reviewing these records and a sometimes available correctional counselor's (guard) report about the inmate the monitor interviewed the inmate to: validate information in the files; obtain the inmate's version of "official" reports; determine what the inmate desired for vocational or educational goals; clarify ambiguities or contradictions in information; and sometimes to simply "get a feel" for the personality of the inmate. During this stage the inmate would be informed of the monitor's tentative recommendations. The recommendations were recorded on the Recommendation Summary (Appendix B). Inmates were allowed to express their views in favor of or against these recommendations. The monitor then presented his/her recommendations to the Board which consisted of at least one senior staff PCP person and one BOC representative (senior PCP and BOC representatives may have been the same person). Any disagreements with the tentative recommendation were resolved at this point. The inmate was then recalled and Board members questioned him/her regarding his/her background, problems, etc. An effort might be made at this time to clear up any unresolved problems. The final recommendations were agreed upon and presented to the inmate. Again prisoners were asked if they agreed with everything that had been stated. In very few instances did inmates state that they could not "go along with" the recommendations of the Board.

** The appendices are available by writing to Dr. Schuster at Valparaiso University, Valparaiso, Indiana 46383.

The literature concerning organizational policy implementation and delegation of authority has long discussed the problem of interpretation of policy statements.[23] Those who formulate policy in organizations are rarely the same people who implement it. Therefore, some degree of interpretation of what is "actually meant" by the policy statement is required. If the policy is passed through several levels in the hierarchy the number of reinterpretations increases accordingly. Parsons has noted that as an order moves down the hierarchy, distortion occurs because of (1) resistance by lower members, and (2) interpretation.[24] Each successive interpretation means that more of the interests and perceptions of the individuals at each level are imparted to the policy. Another problem often noted is that participants in each successive level in the hierarchy may interpret the policy more conservatively than those above them or actually resist its implementation. Thus participant resistance and reinterpretation of policy constitute the two major sources of policy distortion. This phenomenon has loosely been referred to as "slippage." Corwin defined slippage as a discrepancy between the intent of policy as formulated and the way it is implemented at each successive level or eschelon.[25] In analyzing the operation of the PCP the concept of slippage will be utilized to illustrate that even when individuals are supportive of a policy change, they must still work within the constraints and in that context must convert abstract policy into real practices.

The major area in which PCP members were required to institute practice from policy was in the operationalization of "dangerousness." Prisoners were to be classified in one of five custody classifications. The guidelines in the Custody Grade Assignment form provided some interpretation of how to operationalize the levels. This form made the requirements for Maximum, Medium and Minimum custody fairly specific. However, distinguishing between Maximum-Close and Minimum-Community custody levels was a much more difficult proposition.

The distinction between Minimum and Community Custody proved to be the most difficult since the major determinant for Community Custody was ability to "meet the responsibilities associated with community placement." PCP members were instructed that "No offender should be kept in a more secure condition or status than his potential risk dictates." However, the fear of putting people into community custody who would create a "crime wave" in the work release areas was always with us. Since no concrete criteria existed for distinguishing between minimum and community custody, the final decision was based on the interpretation of dangerousness which each individual monitor developed to ascertain "fitness" for community release. Guidelines were provided for maximum custody but there was still ambiguity. "Recent episodes of extreme violence"

[23] Phillip Selznick "Foundations of the Theory of Organization," in Amitai Etzioni (ed.) *Complex Organizations*. New York: Holt, Rinehart and Winston, 1961, p. 21.

[24] Talcott Parsons "Suggestions for a Sociological Approach to the Theory of Organizations." *Administrative Science Quarterly*. 1 (1956) p. 63-85 and 225-239.

[25] Ronald G. Corwin Unpublished lecture notes. The Ohio State University, November 14, 1977.

was to be interpreted as a "violent episode" within the past 6 months. However, the question of what to do with someone involved in a stabbing within the past 8 months became partially the decision of the individual monitor. Similarly, counting a "stabbing" with a fork (that very well may have been an act of self-defense) as "extreme violence" was at the option of the monitor. None of this is to argue that monitors made "bad" decisions. It is only to point out that the major determination of PCP members—that of custody level—depended, to a great extent, on individual interpretation of what was the policy concerning custody (i.e. the conditions requiring individual interpretation were very conducive to promoting slippage.)

Exacerbating the need to operationalize the concept of "dangerousness" was the widely varied background of PCP members. The largest proportion of monitors (over 40 percent) were trained in clinical psychology. The other approximately 60 percent of the staff was composed of people with degrees in law, prelaw, sociology, social welfare, history, criminal justice, southern culture, counseling, and social psychology. Even among those trained in correctional psychology there was a variation on what "measures" were important indicators of such criteria as "fitness" for community custody. Some monitors relied heavily on MMPI profiles; others were behaviorally trained and asked inmates questions along that line. Those not trained in psychology developed whatever "seat of the pants" method with which they felt comfortable. This widely divergent set of backgrounds also meant that interpretation of the policy set out by Judge Johnson was a function of the individual's preference. Judge Johnson had stated that there needed to be a system of classification. The directors of the PCP developed guidelines which interpreted Johnson's order. In turn, monitors had to interpret these guidelines within the framework of their own personal training and experience. A further problem was that the PCP hired people at several points during the course of the project. These people were trained by "more experienced" individuals. Thus, the interpretation of guidelines was passed from the older monitor to the newer ones and again a process of interpretation existed. The reinterpretation again allowed for slippage.

A further problem that affected a monitor's interpretation of what recommendations to make was the differing perception of the role of the PCP. Some people felt the PCP was to carry out its order to classify inmates within the existing Alabama prison structure. These individuals felt that if work release centers or vocational classes were filled there was no sense making those recommendations. Others felt that the PCP was to be an advocate of change. Following this belief meant assigning inmates to programs even if they did not exist in order to pressure the BOC into providing additional or new programs. A monitor's position of the role of the PCP affected his/her interpretation of how to classify inmates. Since no clarification was presented by the directors of the project, this problem existed until late in the project when everyone realized that there were not enough classes or work release positions anyway, so the PCP might just as well be an advocate for change. Thus, the environment within which monitors perceived the operation of the PCP affected their interpretation of the policies of the project.

A second area of policy implementation was manifested by the emphasis on classification of inmates for custody grades. The only written guidelines were the Custody Grade Assignment. However, Judge Johnson's court order emphasized classification for educational, health and work needs as well as for custody levels. Monitors did attempt to take into consideration inmates' requests for work assignments, educational classes, vocational training or health needs, yet this always seemed to be a secondary function. Usually these classifications were made simply by asking the inmate what he/she wanted and going along with any requests he/she made. Very seldom were attempts made to ascertain the validity of a request in relation to the inmate's ability or future prospects. The location of work release centers, type and number of vocational or junior colleges' classes or the procedures for health care were items of information that were only sporadically provided to monitors. Again, asking prisoners was a common method of obtaining this knowledge. Eventually lists containing this information would be posted. Interestingly, the Custody Grade Assignment guidelines were required reading for all monitors yet the information on classes, vocational courses or work release was not, nor was it systematically provided to monitors.

The emphasis on classification for custody grade may be an example of the formulation of a practice that accentuates one aspect of the policy to the detriment of other aspects. Decisions had to be made regarding what areas of classification

were to be the most important and custody was selected. Though the other areas of classification were not ignored, they did not receive the same attention that they might have with another interpretation. Again, the concept of slippage applies to this interpretation process.

A third problem that affected monitors' actions was the time consideration. Because of a court suit filed by the BOC, the PCP directors felt that monitors had to step up their output of cases. Monitors averaged about four inmates per day and the directors felt this should be raised to five or six per day. This increased pace decreased the amount of time spent with each inmate which may have affected decisions concerning recommendations. More importantly, however, the time pressure affected the training of new monitors. Members of Schuster's cohort received approximately one full day's training before "soloing" with an inmate and making recommendations on their own. Monitors who joined the project near the time of the BOC suit received very minimal training. In one particular case, the new person received less than a half hour of verbal explanation concerning how to fill out forms and was then sent to monitor an inmate by herself. This time constraint had to affect the interpretations that the new monitors made about classification policy. This illustrates the concept of slippage caused by the successive reinterpretation of an order as it is passed down through various hierarchical levels. Because the policy was transmitted not only from the directors to senior members, to monitors but now from experienced monitors to new people. This transfer procedure under the above conditions had to affect the interpretations put on policy statements.

A concept also discussed by Selznick is cooptation.[26] Though not to be equated with slippage, the cooptation of members of an organization, even to a minor extent would affect their interpretation of the policies to be implemented. To some limited degree, the PCP staff was coopted by the BOC. All data at the PCP's disposal, other than what monitors gained during interviews with inmates, was provided by the BOC. Prison records were the product of a correctional institution's policies and procedures. The PCP had no knowledge of what criteria correctional counselors (guards) had used in writing up disciplinary reports. It was "common knowledge" that certain institutions had stricter rules than others. An inmate with several "disciplinaries" may never have gotten them if he/she had been at another center. It was also known that inmates could get disciplinaries torn up in return for turning in contraband. None of these problems with the official records could be controlled by monitors, so files were assumed to be "correct." Monitors were thus subtly following the prison staff's definition of who was dangerous or unfit and who was not (i.e., the dangerous or maladjusted individual had a "bad" institutional record). Monitors sometimes attempted to "interpret" official data as either more or less serious than it appeared on its face. In these cases the monitor developed a perception of the inmate during the interview that did not fit the "official" record. An example would be to say that the two cases of fighting were not indicators of violent behavior because the inmate was merely defending himself. The guidelines indicated that fighting was a violent act and recent incidents were to be criteria for at least medium custody. However, in this case the monitor would "interpret" the official data to fit a different set of perspectives. The concept of slippage is evident in this use of the data. An interpretation is made about what the policy really is concerning violent behavior and how official data does or does not fit that policy.

Finally, slippage is illustrated by the policy of allowing inmates to be present and free to comment on all deliberations of their recommendations and the practice that developed. The intent of the project directors had been to make the process of classification as open to the inmates as possible. In operation, however, it did not work out this way for two reasons. First, most inmates were not willing to disagree, argue or dispute recommendations. The classic statement uttered by one inmate was: "Yessir, anything you want is fine with me." Even when inmates were informed that project members would not hold anything they said against them, there was generally a blanket endorsement of anything the board wanted to recommend. Little else probably could be expected from people who had learned that conformity was the only way to survive in prison. Second, inmates were to be allowed to discuss their case with the board and no decisions were to be made "behind an inmate's back." However, early in the project board members felt uncomfortable rationalizing and making decisions about inmates to their faces, so the board developed the

[26] Phillip Selznick *TVA and the Grass Roots*. Berkeley, California: University of California Press, 1949.

practice of discussing the case and making tentative decisions before the inmate was brought in for questioning. The board session with the inmate became a period to clear up any questions that board members had and to explain the reasons for the recommendation. The prisoner was not a part of the discussion of the case as had originally been envisioned. This discrepancy from the ideal developed because it had never been explicitly stated that inmates were required to be present at *all* deliberations. Again, since board members interpreted the policy of the project to fit their perceptions, the concept of slippage is illustrated.

Conclusion—Implications

Policy statements carried out by people other than those who formulate them, entail some degree of interpretation. If it can be assumed that some degree of slippage exists every time policies are implemented in an organization, it can also be assumed that no court decision will be implemented precisely as it was envisioned by the judge. The PCP staff was highly in favor of Judge Johnson's court order. Yet, as the case study above indicates, there were abundant examples of reinterpretations of policy statements to fit the reality of the situation or the perception of PCP members (i.e., slippage). If slippage is found in a group that agrees with the underlying philosophy of a policy statement and hypothetically would interpret it within the same framework as those who formulated it, one would expect much more slippage to exist when groups not philosophically compatible are expected to implement policy statements. Thus, even if prison officials make "good faith" attempts to carry out court decisions, there might still be gaps between the decision and the actual implementation.

This article is not an attempt to excuse the apparent lack of improvement in prison conditions in this country. However, the case study illustrates that factors other than simple "bad faith" may be operating. As noted earlier evaluations of implementation of court policy tend to rely on "pseudopsychological" explanations for apparent noncompliance. The tendency has been to compare the court's position with "actual" implementation and when the two did not coincide to assume *ipso facto* that prison officials were exhibiting "bad faith." The solution to this problem would be simple—replace "uncooperative" (or unenlightened) prison officials with "cooperative" (or enlightened) ones. We should have learned long ago that this "solution" only proved to be illusory. Rubin[27] and Thomas[28] both point out that prisons are similar to any other organization. Prison administrators and staff react to changes in a manner similar to administrators and staff in any other bureaucracy. (The one major difference often cited is the hidden functioning of prisons. Yet how much does the average person know or want to know about the functioning of a restaurant kitchen or an auto assembly plant.)

When prisons are called upon to implement court ordered change, they must view the court order in the context of a larger picture. In organizational terms the court is not the only environment faced by prison officials. Their perception of what legislators, the larger public, and other members of the justice system demand of them affects their actions. Within the institution, staff and inmates both may impede change.[29] The final interpretation of the court's policy will be a function of these and other structural constraints, so any understanding of the effectiveness of judicial intervention must consider them. A better understanding of the prison as an organization will provide a more useful basis for understanding how to implement change. Bronstein's argument that changes in prisons will occur only with larger systemic changes makes a great deal of sense in this context.[30] Instead of simply criticizing specific prison officials for "impeding" change, we must seek solutions through a better knowledge of organizational contingencies and constraints.

[27] Sol Rubin, 1974, Op. Cit., p. 133.
[28] J.E. Thomas, Op. Cit., p. 220-221.
[29] Donald R. Cressey "Sources of Resistance to Innovation in Corrections." Cited in Sue Titus Reid (author) *Crime and Criminology.* Illinois: The Dryden Press, 1976, p. 705.
[30] Alvin J. Bronstein, Op. Cit.

BIBLIOGRAPHY

Bergeson, B.E. III, 1972, "California prisoners: rights without remedies." Stanford Law Review 35: 1-50.

Breed, Allen F., 1973, "Advocacy within the system." Proceedings of the 103rd Annual Congress of Corrections of the American Correctional Association: 281-287.

Bronstein, Alvin J., 1976, "Correctional policy and judicial interventions." Read at the annual meeting of the American Society of Criminology, Tuscon, Arizona, November.

Cohen, Fred, 1972, "The discovery of prison reform." Buffalo Law Review 21: 855-887.

Cressey, Donald R., 1976, "Sources of resistance to innovation in corrections." Cited in Sue Titus Reid (author) Crime and Criminology. Illinois: The Dryden Press.

Dennenberg, R.V. and Tia Dennenberg, 1975, "Prison grievance procedures." Corrections Magazine 3 (Jan.-Feb.): 29-44, 61-62.

Glick, Brian, 1973, "Changes through the courts." in

Erik Olin Wright (ed.) The Politics of Punishment. New York: Harper and Row.

Greenberg, David F. and Fay Stender, 1972, "Prison as a lawless agency." *Buffalo Law Review* 21: 799-838.

Hawkins, Gordon, 1976, The Prison. Chicago: The University of Chicago Press.

Kimball, Edward L. and Donald J. Newman, 1968, "Judicial intervention in correctional decisions." Crime and Delinquency 14: 2-13.

Parsons, Talcott, 1956, "Suggestions for a sociological approach to the theory of organizations." Administrative Science Quarterly. 1: 63-85 and 225-239.

Prigmore, Charles S. and Richard T. Crow, 1976, "Is the court remaking the American prison system." FEDERAL PROBATION 40: 3-10.

Selznick, Phillip, 1949, TVA and the Grassroots. Berkeley, California: University of California Press. 1961, "Foundations of the theory of organizations." in Amitai Etzioni (ed.) Complex Organizations. New York: Holt Rinehart and Winston.

Rubin, Sol, 1969, "The administrative response to court decisions." Crime and Delinquency 15: 377-386. 1974, "The impact of court decisions of the correctional process." Crime and Delinquency 20 (April): 129-134.

Thomas, J.E., 1972, The English Prison Officer Since 1850: A Study in Conflict. Boston: Routledge and Kegan Paul.

Thompson, James D., 1967, Organizations in Action. New York: McGraw-Hill Inc.

Virginia Law Review, 1971, "Decency and fairness: An emerging judicial role in prison reform." 57 (June): 841-884.

Yale Law Review, 1963, "Beyond the ken of the courts: a critique of judicial refusal to review the complaints of convicts." 72 (Jan.): 506-553.

Court Cases

Banning v. *Looney*, 213 F.2d 771 (10th Cir.); cert. denied, 348 U.S. 859.

Coffin v. *Reichard*, 143 F.2d 443 (6th Cir., 1944).

Cooper v. *Pate*, 378 U.S. 546 (1964) per curiam.

Monroe v. *Pape*, 365 U.S. 167 (1961).

Pugh v. *Locke*, 406 FS 318 (1976).

* Corwin, Ronald G. Unpublished lecture notes. The Ohio State University: November 14, 1977.

END