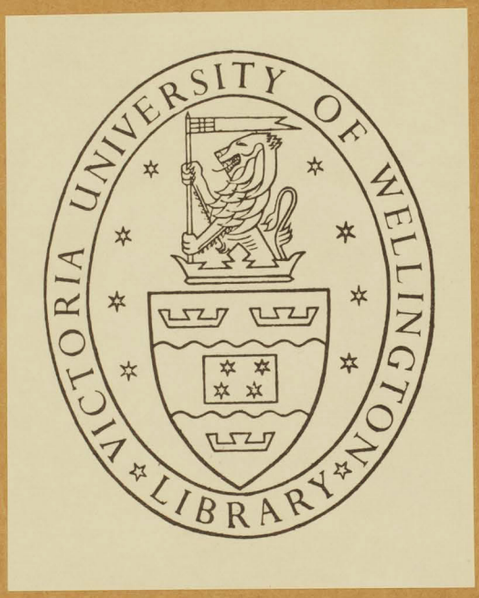
L.L.M. Research Paper

1976

WEISS, G.H. Legal services for prisoners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# LEGAL SERVICES FOR PRISON INMATES

RESEARCH PAPER IN LEGAL AID
SUBMITTED FOR THE L.L.M. DEGREE

VICTORIA UNIVERSITY OF WELLINGTON,
WELLINGTON, NEW ZEALAND

1974

# LEGAL SERVICES FOR PRISON INMATES

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## FOREWORD

Unfortunately this paper did not turn out the way in which it was intended by the writer. The aim of the paper was to carry out an empirical study into the legal problems of prison inmates. The results of such a study would have, hopefully, provided a more concrete basis for any discussion on the implementation of a prison legal services programme in this country.

However, the Department of Justice refused a request by the writer that he be permitted to interview 50 inmates at Wellington Prison. Accordingly, the writer was forced to rely for his factual material solely on interviews with half a dozen ex-inmates (including two former lawyers) as well as on discussions with the Superintendent and Welfare Officer at Wellington Prison.

The writer wishes to thank Mr. D. Jones of the Wellington Probation Service for his efforts in arranging the interviews.

# CHAPTER 1

## LEGAL AID IN NEW ZEALAND - THE DEVELOPING PATTERN

The provision in New Zealand of legal aid for persons of modest means has been particularly tardy and only in fairly recent years has an attempt been made to establish a comprehensive legal aid scheme.

The non-existence, until recently, of an organised and structured legal aid system in New Zealand did not necessarily mean, however, that people of small or moderate means were denied the benefit of legal advice and assistance: members of the legal profession often made their services available without any charge whatever to a client who was unable to pay the normal costs of legal services. As Professor Caldwell points out:

> ...it is almost certainly true that the very lack of formalised legal aid schemes fostered a tradition of service within the legal profession itself, so that it could fairly be claimed that nobody with a good case was prevented from litigating it because of lack of money. (1)

The provision of legal aid accordingly proceeded on a rather haphazard basis. In civil cases, legal aid was available to poor people by an application to the Court under the ancient procedure of in forma pauperis. However, the procedure was rarely used[2] partly because it appeared too complicated and also 'the standard of living is such in New Zealand that very few people could be poor enough to qualify for this type of aid."[3]

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(1) R.A. Caldwell - 'Legal Aid - The Pattern' (1974) N.Z.L.J.63

(2) For a recent example, see Perkowski v Wellington City Corporation (1959) N.Z.L.R.1, which involved an appeal to the Privy Council under the in forma pauperis procedure.

(3) Transcript of television interview on legal aid given by the Secretary of the New Zealand Law Society, September, 1966.

As far as criminal legal aid was concerned, 'the traditions of the profession and the rudimentary provisions for indictable offences of the Justices of the Peace Amendment Act 1912, amplified by the Poor Prisoners' Defence Act 1933 were regarded as adequate.'(4)

An attempt to introduce legal aid in civil litigation was made in 1939 with the enactment of the Legal Aid Act. The purpose of the Act was to authorise the making of regulations which would ensure that poor persons would have legal aid available to them. With the advent of the Second World War, however, the implementation of the Act was precluded and it never went into effective operation.

After the war, further discussion took place on the question of establishing a State-supported legal aid system. The Right Honourable J.R. Marshall gave a most succinct summary of the course of events during this period when speaking to the Legal Aid Bill in 1969:

> .... there were protracted negotiations with the Law Society and it became clear that the legal profession was not prepared to co-operate in any sort of formal legal aid scheme. The profession regarded it as unnecessary and undesirable, and indeed looked on it .... as presenting a threat to the independence of the profession. This, by the way, was very much in contrast with the situation in England. There a far-reaching legal aid scheme was introduced in 1949 with the approval, and indeed the blessing, of the legal profession .... In any event the New Zealand Government agreed in 1951 to drop the proposal for a legal aid scheme. In return the Law Society gave a formal undertaking to ensure that no person with a reasonable case would be prevented from bringing or defending legal proceedings because he could not afford to pay for them, or pay for the services of a lawyer in the ordinary way. This undertaking, although it was a proper one and indeed in some respects a generous one, did not really add anything new because it was, in effect, a formal confirmation of an obligation that the legal profession has always accepted. The Government has not made, nor has it

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(4) Caldwell, loc. cit. p.63

ever been asked to make, a financial contribution It is not unfair to say that this arrangement worked only because it has not been perhaps as widely known as it might have been and so has not been widely used. (5)

## The Offenders Legal Aid Act 1954

The provisions of legal aid in criminal cases was placed on a statutory footing in 1954 with the enactment of the Offenders Legal Aid Act.[6] One commentator has noted that 'the statute and scheme are stark in their simplicity.'[7] The Act provides that in any criminal proceedings any Court having jurisdiction may grant legal aid to any person charged with or convicted of any offence.[8] The Court is enjoined to have regard to [9]

(a) the means of the person charged or convicted
(b) The gravity of the offence;
(c) In respect of any appeal, the grounds of the appeal;
(d) Any other circumstances that in the opinion of the Court are relevant.

## Legal Aid Act 1969

Work on a legal aid scheme for civil cases began in earnest about 1963, when an officer of the Department of Justice examined the legal aid schemes in England and the Scandanavian countries. At the same time the Law Society was preparing its own proposals, which were based fairly closely on the English Scheme. The Government introduced a Legal Aid Bill in the 1966 session of Parliament but it was not proceeded with and was eventually withdrawn. Between 1966 and 1969 there were prolonged discussions between the Minister of Justice and departmental officers and representatives of

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(5) Parliamentary Debates - Vol 363 at p 2680-1.
(6) Under s.3 of the Act, the Governor-General is empowered to make such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of the Act. The Regulations currently in force are the Offenders Legal Aid Regulations 1972 (S.R.1972/176)
(7) Caldwell loc. cit.p.64. for a recent article criticising the operation of the Act, see Grant - 'The Future of Legal Aid' (1974) N.Z.L.J.42
(8) s.2(1) Offenders Legal Aid Act 1954
(9) s.2(2)

the New Zealand Law Society. As a result of these negotiations, the Legal Aid Act 1969 was passed.

The rationale behind the Act was explained by the Minister of Justice at the time:[10]

> The essence of the case for State-supported aid in civil cases can be simply stated. It arises from the basic responsibility of every State to ensure justice for its citizens and this responsibility is not truly fulfilled so long as any citizen is prevented by lack of means from having his grievances aired and determined fairly and adequately by the Courts. The same concept is behind Article 7 of the Universal Declaration of Human Rights, which provides that all shall be entitled, without any discrimination, to the equal protection of the law. This requires that the balance of justice should not be loaded in favour of the man with means, the large corporation, or the State itself.

The scheme established by the Act applies only to legal aid in proceedings and does not extend to the provision of legal advice (unlike the Legal Aid and Advice Act 1949 (U.K.)).[11] Briefly, legal aid is available in all courts and in any administrative tribunal or judicial authority, provided that the District Legal Aid Committee to which application is made considers that the case requires legal representation and that the applicant would suffer substantial hardship if legal aid were not granted.[12] In all cases,[13] a District

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(10) Parliamentary Debates (Vol. 363 p.2681

(11) The granting of legal aid for appeals to the Privy Council is subject to certain conditions: either the applicant must be the respondent to the appeal in which case the grant of aid must be approved by the Minister of Justice, or alternatively, the Attorney-General must certify that the appeal involves a question of law of exceptional public importance and that the grant of legal aid is desirable in the public interest. s.15(1)(g)

(12) s.15(1)(h) Legal Aid Act 1969

(13) Section 15(2) specifies certain proceedings in respect of which legal aid may not be granted. One significant exception is the unavailability of legal aid for divorce proceedings. The omission of aid for such proceedings was deliberate since its inclusion would have greatly inflated the cost of the scheme.

Legal Aid Committee may refuse legal aid if it considers inter alia that the applicant's prospects of success are not sufficient to justify the grant of aid.(14)

The cost of the scheme is met primarily by the Crown, although the legal profession also bears its share: practitioners engaged in legal aid cases are obliged to absorb 15 percent of the costs involved in undertaking such work. The applicants for legal aid are, as a general rule, expected to make a minimum contribution of $30.00 (unless the District Committee considers that the making of such a contribution would cause substantial hardship(15) and they must satisfy certain financial conditions.(16)

The establishment of a civil legal aid scheme, however, was not without its critics, One eminent legal practitioner in particular, launched a scathing attack on the scheme, protesting vehemently that such a scheme was entirely unnecessary:

> No reason has been adduced to establish that such a scheme is necessary in our reasonably affluent society .... It should be unnecessary to point out that because a scheme of legal aid has been thought to be needed in such other countries as the United Kingdom it does not follow that such a scheme is needed here. Indeed it is difficult to avoid the unkind suspicion that New Zealand is to acquire a legal aid scheme for the same reason as it has a security service and a national ballet - we don't really need one but it seems the correct thing to do to have one ..... The automatic liberal response to the suggestion of legal aid in civil cases is to favour such a scheme. When the situation is examined through practical rather than starry eyes the institution of such a scheme as is proposed can, I contend, be clearly seen as neither necessary nor desirable. (17)

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(14) S.32 (1)

(15) S.17 (2) (c)

(16) See ss 17-19 of the Act, which specify the criteria in detail.

(17) D.F. Dugdale 'Against Legal Aid' (1967) N.Z.L.J. 65-66

Recent Developments

One serious flaw in the legal aid scheme as it exists at present is that both the Offenders Legal Aid Act 1954 and the Legal Aid Act 1969 provide assistance only for the purposes of representation and litigation; provision of aid for the giving of legal advice is outside the ambit of both Acts.

To counter this deficiency, a number of voluntary schemes have sprung up throughout New Zealand. In particular, a number of Legal Advice Centres have been established. Generally speaking, these Centres carry out three separate functions:

(a) Legal Advice Service
(b) Legal Referral Service
(c) Form Filling Centre

The principal reason for the formation of these Legal Advice Centres was to:

> .... provide a facility for those persons who were unable or unwilling to seek legal advice in the normal way. Essentially the Centres were aimed at poor persons, that is, those persons who were unable to afford these services. Quite clearly there are a number of such people in New Zealand, in particular pensioners, either old age pensioners or invalid pensioners with fixed incomes who often need some legal advice or aid but are unwilling to obtain it because they fear the cost of it ... There are also others in New Zealand who are poor by virtue of their circumstances in that the breadwinner is on a low wage and his income is almost totally committed to paying rent, food expenses, clothing and education expenses for his family.
>
> Also it appears clear that there were many persons who were either too shy or too socially inadequate to attend at a solicitor's office. (18)

The Centres are operated on a voluntary basis[19] under the auspices of the District Law Societies and receive no financial assistance from Government, although City Councils often provide the facilities (such as buildings or rooms) necessary for the running of the Centres.

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(18) N.W. Williamson - 'Legal Referral Centres' (1974) N.Z.L.J. 128
(19) The lawyers and students who participate in the operation of these

Another recent innovation has been the establishment and implementation this year of a duty solicitor scheme. A voluntary scheme had been operating with notable success for over a year in Christchurch,[20] but it was evident that an organised national scheme, supported and financially assisted by the Government, was required.

The scheme is an addition to, and not a substitute for, the present civil and criminal legal aid schemes. Its purpose is to provide aid and assistance to defendants before they appear in Court. "In general, the duty solicitor will not appear for the defendant at the hearing of the charge unless it is obvious that the matter should be dealt with at once. In that case, he may appear for the defendant on a plea of 'guilty' and address the Court to mitigate sentence."[21] The duty solicitor may appear before the Court to seek bail, or to apply for an adjournment of the case.

Conclusion

It has been noted by one observer that

> It is unfortunately true to say that until recently New Zealand has not been overzealous in providing financial assistance to persons of modest means in the conduct of their legal business. (22)

This country's tardiness in providing adequate legal assistance for its citizens of poor or modest means is, in no small measure, attributable to the somewhat primitive belief entertained by some people (including a number of short-sighted, penny-pinching politicians and departmental bureaucrats) that there is no right to legal assistance for any member of the community. The somewhat cursory examination of the history of legal aid in New Zealand undertaken above reveals that too few people, especially those who occupy positions of power and influence, are aware that to ensure that every citizen is entitled

(19 Cont'd.. centres do so voluntarily and are not paid for their services.
(20) For a description of the scheme, see K.N. Hampton - 'The Duty Solicitor' (1974) quoted in 'At Last the Duty Solicitor' (1974) N.Z.L.J. 311 at 312.
(21) The Secretary of the New Zealand Law Society, Mr. W.M. Rodgers, (NZLJ. 78.
(22) R.A. Caldwell, loc. cit. p.63

to equal justice and protection before the law, the community as a whole bears the onus of providing adequate legal assistance to everyone, regardless of their means. The provision of legal aid in New Zealand will continue to be limited and restricted until it is generally realised that the right to legal assistance is as much a fundamental right in our society as the right to proper medical services.

Accordingly, it is with some hesitation that the writer puts forward the idea of establishing a legal assistance programme for prison inmates. The very notion of providing legal assistance to prisoners would undoubtedly strike many people as absurd and preposterous. Indeed, no less a person than the Chief Justice of the United States has recognised the difficulties involved in convincing people that the provision of legal assistance is an essential factor in the rehabilitation of inmates (which, incidentally, is claimed to be the main aim of the corrective process in this country):

> ...Then the A.B.A. (American Bar Association) standards take another step which twenty years ago would have seemed absurd to many reasonable people. This step is the recognition of the value of providing trained counselling to all prisoners on a systematic basis and the use of lawyers and law students whenever possible thwough the co-operation of bar associations, law schools and leg al aid offices. The ideal program recommended for the future is even more; it is to establish a small but continuing staff available to all prisoners to advise them and to prepare applications in appropriate cases. This may seem unwise, even now, to many reasonable people unless they think through the problem...If they do this I think they would be persuaded.(23)

Furthermore, if one may be permitted the luxury of putting forward yet another general observation of the histery of legal aid in New Zealand, it would be fair comment to suggest that any pwoposal which involves the State in the extension of the provision of legal advice is likely to become bogged down in bureaucratic wrangling between Government departments, Ministers of the Crown,

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(23) Burger:"Post Conviction Remedies: Eliminating Federal-State Friction" 61 Journal of Criminal Law, Criminology and Police Science 148 (1970) at p.149

and the Law Society. One need only mention that it was barely five years ago that a comprehensive civil legal aid scheme was established in this country, while in England similar legislation had been enacted in 1949.

One therefore arrives at the rather saddening conclusion that not only must a great number of people be convinced of the benefits and social advantages accruing from the provision of legal assistance for prison inmates, but also that any prison legal services programme, if it is to be established in the near future, must be essentially voluntary in nature.(24) To leave the matter in the hands of various Government departments is to invite undesirable delay in the implementation of what is, in the writer's estimation, a most laudatory attempt at plugging a significant gap in the provision of legal services for all members of the community.

Areas of Concern

There are basically three areas in which legal advice and assistance to inmates is considered desirable:

(1) Advice in relation to appeal
(2) Advice in relation to civil matters generally
(3) Legal representation at disciplinary hearings.

It is proposed to discuss these three areas in turn.

(24) Although, ideally, any prisoner legal aid programme would be organised on a formal basis with the financial assistance and support of Government.

# CHAPTER 2

## LEGAL ADVICE IN RELATION TO APPEAL

> ...When a convicted person steps through the prison gates, he first begins to realise fully what has happened to him.(25)

It is a fundamental human characteristic that people confined want freedom and that they will complain and press for freedom whether they deserve it or not. It is therefore not surprising that one American survey carried out in a maximum security prison revealed that of the inmate population interviewed, almost two-thirds were concerned about the propriety of their convictions.(26)

This concern over the question of appeal arises from the fact that sometimes inmates arrive in prison without ever having been adequately advised as to whether or not there are grounds for a successful appeal. The 1964 Report on Criminal Appeals by Justice (the British section of the International Commission of Jurists) referred to this very problem :

> ...Where a prisoner was represented at the trial and has been sentenced to imprisonment, his legal advisers may visit him in the cells at the court to discuss the question of an appeal, or they may not. It is usually felt that it is better not to have any lengthy discussion with the prisoner at this time as to the desirability of an appeal, and it is often not convenient. Both the defendant and his advisers are too apt to become involved in the arguments to examine the situation dispassionately and in such a way as to give a reasonable estimate of the

(25) O'BRIEN - "Legal Services for Prison Inmates" Wisconsin Law Review 514 (1967) at p. 517.

(26) O'BRIEN - loc.cit.

> chances on appeal. Unless there are grounds of appeal which are obvious even without a transcript, the prisoner is taken away to the prison without having received any really useful advice, even if his legal advisers have been to see him. Very often, a newly convicted prisoner goes to prison without any opportunity to discuss the possibility of an appeal at all, either because he was not represented at the trial, or because his legal representatives do not visit him, or because he is too bewildered to think of asking for guidance, and they do not offer any. (27)

It may therefore be possible to justify the fact that lawyers, immediately after the trial, do not advise prisoners as to whether or not there might be grounds for a successful appeal. However, can one justify the fact that sometimes lawyers never bother to communicate with or visit their clients once they are imprisoned ?

The results of a study into legal advice and criminal appeals undertaken by Michael Zander in 1972[28] revealed that a high proportion (54%) of the inmates interviewed[29] felt let down by the fact that they were not visited by their lawyers in the cells immediately after conviction or in prison at a later stage. The prisoners' comments included the following :

...Lawyers were not in the least interested in my case.

...My solicitor did me a raw deal. He wanted to go on holiday.

...I was expecting them to come and see me but they didn't.

...They couldn't be bothered.

...I was taken down below and my counsel and solicitor went off for lunch.

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(27) Report on Criminal Appeals (1964) by Justice (under the chairmanship of Edward Sutcliffe Q.C.) at pp.48-49.

(28) Zander - "Legal Advice and Criminal Appeals"(1972) Criminal Law Review 132.

(29) The inmates interviewed in the survey were inmates who had actually appealed to the Court of Appeal (Criminal Division).

A questionnaire was sent to the barristers and solicitors (who had represented the inmates involved in the survey) asking whether they had thought it desirable for the client to be seen immediately after the verdict and, if so, whether it had been possible to see him. Those who said they had not thought it desirable were asked why not.

There were only three cases (out of 75-80) in which lawyers said they had wanted to but had not been able to see a client. In all three the reason was stated to have been pressure of time.

In the cases where the lawyers said that they had not considered it desirable a variety of reasons was given. Some thought that their client would not be in a receptive mood immediately after conviction and sentence. Some said they themselves needed time for reflection before broaching the problem of an appeal. In one case, the barrister said he left to catch his train and that the solicitor was going to see his client; the solicitor, however, said he had not seen the client - because there were no grounds for an appeal. In another case, Queen's Counsel said he did not see the client "because the result was fantastically favourable" (the sentence was four years for manslaughter).

Zander concludes that :

> ...One is bound to say that none of these reasons seems a valid excuse for not seeing one's client at the end of a trial, if only as a matter of courtesy... One is inclined to wonder whether the Law Society should not give a ruling on the point. This should provide that the solicitor was always responsible to ensure that the client was seen at the end of the case and to inform him whether grounds of appeal were thought to exist or not... The gesture would cost little; its absence is remembered and resented. One moment the lawyer is apparently acting as the client's champion, the

next he disappears without even saying goodbye.[30]

(30) Zander, loc.cit., at pp. 151-152.

In assessing the relevance of Zander's study to New Zealand conditions, two factors must be borne in mind:

(i) In England, unlike New Zealand, there is no fusion of the two branches of the legal profession, and a defendant, if represented at the trial, will generally have employed the services of both a solicitor and a barrister. Accordingly, there arises the possibility of a misunderstanding between the barrister and solicitor as to who should see the defendant after trial and perhaps discuss the prospects of appeal with him - the barrister thinking that the solicitor will see the client and the solicitor thinking that the barrister will undertake that task - with the result that the defendant is seen by neither of his legal representatives.

(ii) The inmates interviewed in the survey were represented under legal aid. Taking perhaps a rather cynical attitude, lawyers in such cases may not be as interested in a client's welfare as if the client himself was footing the bill.

The New Zealand Experience

It would probably be fair comment to suggest that, at present, the majority of inmates in our institutions have had the benefit of some form of legal representation or advice at the trial stage. However, as was pointed out above, although an inmate may have been legally represented it does not necessarily follow that he has been adequately advised on the question of appeal by his lawyer. Although the practice of visiting clients after trial or sentencing varies from lawyer to lawyer, the impression gained by the writer from talking to a number of ex-inmates is that, generally speaking, most lawyers, for one reason or another, do not consult with their clients on the question of appeal after trial.(31)

It must therefore be conceded that there are numerous instances where prisoners arrive in prison without ever having received any useful advice on the question of appeal. For example, where a person has not been represented at his trial he is not likely to have received any legal advice as to whether or not to appeal against conviction and/or sentence. Likewise, even if a person has been represented, there is a very real likelihood that the question of appeal has not been adequately canvassed by his legal representative.

Arrival in Prison

What happens, then, when an inmate arrives in prison? And, in particular, what is the position of an inmate who has received little, if any, useful advice on the likely success or failure of an appeal ?

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(31) Indeed, one ex-inmate, a former lawyer, considered that a study in New Zealand along the lines of Zander's survey would yield similar results.

On arrival in prison, the inmate is informed by the Chief Officer of his rights of appeal. The prisoner then signs a form (see Appendix A) which in effect states that he has had his rights of appeal explained to him. Inmates are informed that they have a limited time in which to lodge an appeal and are also told that the form which they have signed is not an appeal form. The inmate is asked to indicate on the form whether

(a) he wishes to appeal; or

(b) he does not wish to appeal; or

(c) he is undecided.

If the inmate states that he wishes to appeal or that he is undecided, the Chief Officer informs him that he should contact the Welfare Officer, who takes over the case.

The inmate then gets in touch with the Welfare Officer. If the inmate has been represented at his trial, the Welfare Officer contacts his lawyer and tells him that the inmate is considering appealing. Difficulties arise, however, where an inmate does not have a lawyer (or where, as is often the case, the inmate's lawyer cannot be reached because the inmate has forgotten his name) since the Welfare Officer and, indeed, the other staff at the institution, are not supposed to give inmates any advice in connection with an appeal.(32) In such cases, the inmate normally has to make up his own mind whether to appeal, without any trained legal advice to assist him in arriving at a decision.

If an inmate decides to appeal, and does not have a lawyer acting for him, he must prepare and fill out the appeal form himself. The Welfare Officer does not, as a rule, draft the grounds of appeal, although he will sometimes provide some assistance to the inmate. The Welfare Officer interviewed by

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(32) The Welfare Officer interviewed by the writer stated that in such a case,

> ...I would say to him 'What did you expect?' I would point out to him that you don't appeal for old time's sake. You must show that the sentence is out of all reason and not just a little bit harsh.

the writer pointed out that although he certainly did not draft the grounds of appeal,

> ...I will write down what they tell me and I may actually rephrase something. But there are cases where you have to put words in some inmates' mouths.

Adequacy of the Present System

Are the present procedures existing within our institutions for the giving of competent advice on the question of appeal adequate?

The prison authorities appear to consider that inmates are sufficiently catered for on the question of appeal : not only are their rights of appeal explained to them as soon as they arrive in prison, but also a Welfare Officer gives whatever assistance he can (or, rather, whatever assistance he is permitted to give) to inmates who wish to appeal or who are undecided whether to or not.

The views of the ex-inmates interviewed, as one might expect, contrasted sharply with the assessment of the prison authorities on the matter. One ex-inmate, a former lawyer, stated :

> ...A considerable number (of fellow inmates) would come to see me all the time for advice on appeal, asking what they could do about appeals, how they should do it, who they should see, etc. ... There was no readily available system of advising inmates on questions of appeal.

Asked why inmates did not contact persons within the institution, such as the Welfare Officer, for advice on appeals, another ex-inmate replied :

> ...They are within the prison system and they are therefore suspect for that very reason. Even though they may be the most willing, helpful guys, they are suspect.

This sentiment was echoed by another interviewee :

> ...There was no trustworthy system of advising inmates on appeal. Needless to say, most inmates look askance at the prison authorities themselves, or the Chaplain, or the Welfare Officer, or social workers.

A further difficulty with the present system - leaving aside the suspicion with which officers and functionaries of the prison system are regarded by inmates - is the fact that the officers are not supposed to give inmates advice on the question of appeal. If an inmate has been unrepresented, or has no lawyer acting on his behalf, then he is left to his own resources to make up his mind whether to appeal, and to fill in his notice of appeal, without any legal advice to assist him. As a result the notices of appeal submitted by inmates are often characterised by confusion and incoherency. The Report by Justice concluded that :(33)

> ...The result is that in practice prisoners are often left to their own devices in deciding whether to appeal and in filling in their notices of appeal. Thus they are obliged to present their arguments in their own words, selecting those facts and grounds which appear to them to be most pertinent. They are without the advice which if it were available, would in many cases prevent an appeal being commenced.
>
> ...The results were well expressed by Lord Devlin in an address to the Fourth Annual General Meeting of Justice in June 1961, when he said: "Anyone who has to read the pages and pages that are covered by prisoners who write down statements of their own in prison for the purpose of the Court of Criminal Appeal will know how useless they are from the point of view of the defence, because they do not know what are the important things to bring forward."

One must also bear in mind that even if officers were permitted to give advice, they are not legally trained or qualified and, accordingly, it is possible that any advice given by officers to inmates on matters of appeal may be quite erroneous.

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(33) Op.cit., at p.51.

One further aspect of the present system must be discussed. Under the Penal Institutions Act 1954, every Visiting Justice has the power to visit and inspect the institution from time to time and, in his discretion, to interview any inmate: s.10(3)(a). Furthermore, Regulation 74 (2) of the Penal Institutions Regulations 1961 (S.R.1961/161) provides that every inmate shall have the right to interview a Visiting Justice. It might therefore be argued that these Visiting Justices, with their legal backgrounds and expertise and the advantage of being apparently independent of the prison administration, should be consulted by the inmates on matters relating to appeal. However, even if an inmate does consult a Visiting Justice on a question of appeal, it would appear that the Visiting Justice would be obliged to refuse to give any advice to the inmate and would merely inform him that he should consult the Welfare Officer. The Superintendent interviewed by the writer stated that in a case where an inmate asked for advice on appeal

> ...The Visiting Justice would quite correctly say that this is a matter to be discussed with your solicitor. The Visiting Justice is aware that the Welfare Officer handles these cases.

In addition, it seems that the Visiting Justice generally appears at the institution in his disciplinary capacity and, consequently, inmates may be reluctant to approach him on matters of appeal.

Summary

In view of the comments made above, one may legitimately entertain some reservations about the adequacy of the present system provided within the prison for the giving of competent advice to inmates on matters relating toappeal. Evidence suggests that often inmates are left to their own resources to come to a decision about appeal, without the benefit of legal advice. Furthermore, inmates are extremely distrustful of the

prison authorities and any assistance which they may proffer.

It must not be thought, however, that the existing procedures are hopelessly ineffective; indeed, it is probably correct to surmise that the needs of many inmates in relation to appeal are fulfilled.

What is proposed, however, is merely an improvement of the existing scheme whereby a lawyer, independent of the prison system, would be available to advise inmates inter alia on matters relating to appeal. As one ex-inmate commented :

> ..I think it would be an advantage for a solicitor to come to the prison because he has the beautiful advantage of being independent, and the prison authorities are tarred with the brush of being part of the prison administration and this makes them suspect.

Suggested Schemes

Several ideas have been mooted to overcome the deficiencies of a system whereby inmates are deprived of adequate legal advice on questions relating to appeal.

The Report by Justice states :

> ...It has been suggested to us by several of our witnesses and correspondents that there should be available in every prison or other custodial institution an independent legal advice service, properly organised and efficiently run, whose duties would include giving advice to prisoners concerning the desirability or otherwise of an appeal. (34)

(34) Op.cit., at p.65.

The Report then suggests two alternatives :

Either

(a) a full-time independent legal representative at every prison or serving a group of prisons, called an Appeals Officer. The duties of such a person would include the following :

(i) To assist the prisoner to contact his own legal advisers unless he wishes otherwise.

(ii) To advise the prisoner who has no other legal adviser on the advantages and disadvantages of appeal, and his prospects of success.

(iii) In proper cases to assist in drafting the original notice of appeal.

(iv) In proper cases, to explain the reasons for rejection of application or appeal.

(v) To advise on matters arising after the dismissal of the appeal.

(Note: It is important that the legal representative should be independent of the Home Office, and perhaps he should be appointed by some body such as the Law Society.)

Or

(b) a scheme whereby a local solicitor or barrister might visit the institution once or twice a week for up to two hours, probably in the evenings, to meet newly convicted prisoners and discuss with them their cases and the desirability or otherwise of an appeal, and, where they were represented at the trial, to contact the legal representatives of the convicted person on his behalf for the same purpose. The duties of such a person might include all those mentioned under (a) above.(35)

The report recommended that a scheme along the lines of scheme (b) should be introduced throughout the penal system.

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(35) Op. cit. at p.66

Chief Justice Burger, in an article previously referred to, mentions the practice adopted in Holland:

> ..... there a trained team from the Ministry of Justice, usually three, with backgrounds in law, psychology and counselling, make regular visits to all institutions of confinement. Their responsibility is to inquire as to the basis of the confinement, hear the grievances of prisoners, and make reports to the Minister of Justice as to cases which appear to call for some remedy. In a sense these trained teams are like bank examiners, or health inspectors. Their method provides a regular avenue of communication designed to flush out the rare case of miscarriage of justice and the larger number of cases in which the prisoner has some valid complaint or deserves re-examination of his sentence. The mere existence of such an avenue of communication exercises a very beneficial influence. (36)

In America, there are numerous prisoner legal assistance projects which are geared to providing advice to inmates on all legal problems (not merely on matters of appeal). Some of these programmes are discussed in detail later in the paper.

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(36) Burger - 'Post Conviction Remedies : Eliminating Federal-State Friction' 61 Journal of Criminal Law, Criminology and Police Science 148 (1970) at p.150

## CHAPTER 3

## LEGAL ADVICE ON CIVIL LEGAL PROBLEMS

It has been noted by one observer that[37]

> ..... it is becoming increasingly clear that prisoners have amultitude of civil legal problems that demand some kind of legal advice or legal assistance. The same wide variety of civil legal problems that exist in any community exist among inmates with the only difference being that inmates are much less able or prepared to cope with them.

One American survey, based upon a legal assistance project at a Wisconsin prison, categorised the legal problems most common among inmates as follows:[38]

(1) Domestic Relations Problems
   (a) Divorce Actions
   (b) Actions Relating to Children (e.g. Custody)
   (c) Opposition to Termination of Parental Rights and Placing for Adoption.

(2) Financial Matters
   (a) Preventing Repossession of Property
   (b) Debts
   (c) Actions Against Inmate or Member of his Family.
   (d) Suits by Inmates to Collect Wages Earned Before Incarceration.
   (e) Action for Injuries Sustained While Incarcerated.

(3) Dealings with Government Agencies (e.g. application for reinstatement of driver's licence).

(4) Complaints Against the Correctional Institution (e.g. failure to provide adequate medical treatment or complaint concerning correspondence privileges).

It would appear that inmates in New Zealand have very much the same sorts of civil legal problems as those

(37) Ashman - 'The Rhetoric and Reality of Prison Reform' 56 The Judicature 7 (1972 at p.11 and see also Hubans and Linde 'Legal Services to the Indigent Imprisoned' 23 Legal Aid Brief Case 214 (1965)

(38) Comment - 'Resolving Civil Problems of Correctional Inmates' Wisconsin Law Review 574 (1969) at pp 575 - 577.

experienced by their counterparts in the United States. One interviewee, a former lawyer, stated:

> The most common civil legal problem prevalent amongst inmates was debts. A lot of them had a large number of debts. Outside of that, probably matrimonial problems. A few property problems too.... Also advice on actions within the prison, I guess, was fairly frequently sought.

Another ex-inmate remarked that:

> Inmates have all kinds of civil legal problems: separation problems, housing problems, divorce problems, rent problems etc. The bulk of the problems were mainly matrimonial. All the time inmates would ask me what they should do, what their rights were, and so on.

It is trite comment to suggest that imprisonment often creates or aggravates inmates' civil problems. Take matrimonial difficulties as a classic example. "Family relationships among those who have been incarcerated are often strained to the breaking by the conviction and subsequent removal of the individual from his family. (39) One former inmate remarked:

> Matrimonial problems constitute one of the major problems of prison life. I have seen it happen so often - the inmate's marriage breaks up. Prison is one of the greatest destroyers of marriage I can think of.

Inmates' reactions to legal problems are compounded by the fact that they are shut off from the outside world and, consequently, legal problems become seemingly more acute.

> Inmates are, to a large extent, isolated persons. Their community, family, and employment relations have been severed, at least temporarily. They most often do not have access to resources beyond the prison walls. As a result, feelings of inability to affect the events important to their lives are prevalent. In many instances, it is difficult to obtain accurate information, to say nothing of affecting the events.

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(39) Ibid, p.574.

> The inability to alleviate these problems can have an adverse effect on inmate adjustment. Efforts to rehabilitate inmates can easily be frustrated by external events which are unsettling to the inmate and cause him to become embittered. (40)

This statement was confirmed by comments made by several former inmates:

> The inmate's greatest concern is something that is happening on the outside to his family or property. This is something they have no control over. There is nothing they can do. This is one of the major reasons why a lot of guys go over the wall .... A thing that gets at you a lot within the system is the lack of control over external circumstances.
>
> This is one of the most frustrating features of prison life - the inability to get onto events happening outside, to find out what's going on and to do something about it.

What procedures, then, exist within our institution to alleviate and resolve the civil legal problems of inmates ?

Most prisons have the benefit of the services of a full-time social worker, employed by the Justice Department, who handles an inmate's problem only at a social worker's level. Social workers are not legally trained and therefore do not consider themselves competent to render advice; legal counselling is accordingly outside the scope of their duties. If it is felt that an inmate needs a legal opinion, the Welfare Officer is contacted and the inmate is helped to get in touch with a solicitor.

It would seem therefore that, at a superficial level anyway, inmates' needs in this area are adequately catered for. However, one comes up against the very problem discussed earlier in relation to appeal, viz. that inmates are distrustful of any functionaries who operate with the blessing of the prison system. Consequently, inmates may be somewhat reticent about approaching such persons for assistance in dealing with

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(40) Ibid, at p.577

their problems[41] The Superintendent interviewed by the writer did not consider, however, that inmates harboured such suspicions:

> I do not believe that there are inmates who will not to to the Social Worker or the Welfare Officer if they've got a problem. There may be the odd one who wants help from nobody and who wants to do it himself..... Myexperience has been that if they want assistance they will come alright.

Inmates are also apparently entitled to seek advice on civil legal problems from a Visiting Justice. One Visiting Justice commented that although most of his interviews with inmates concerned petty administrative problems, such as length of hair,

> the other interviews are mostly domestic for the inmates. Many of the matters as to sentencing appeals, marital status and so on could be dealt with by the visiting solicitor, but the inmates seem to appreciate the opportunity to talk to a Magistrate, and especially when I follow up with any answers on the next visit. It is a safety valve which would seem to have value as such. (42)

Visitors from the Prisoners Aid and Rehabilitation Society (P.A.R.S.), a volunteer group which assists inmates while imprisoned and upon release, also provide a channel for helping inmates with their legal problems. However, as one ex-inmate commented, the Society does have its limitations with respect to legal counselling of inmates.

> They (P.A.R.S.) have limited legal knowledge. Also also some people will not go to them because they are part of the prison system. They have the co-operation of the prison authorities and if you have their co-operation, it's pretty hard to go against them.

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(41) Difficulties also arise in cases where, for example, an inmatewishes to obtain legal advice on whether tobring an action against the Justice Department for some wrong alleged to have been done to him. How can he expect to obtain independent legal advice from persons employed by the Department. The advantage of access to independent legal counsel in such a situation is obvious.

(42) It is considered, however, that the success of such a 'safety valve' is dependent largely on the personality of the particular Visiting Justice and to what extent he is trusted and respected by the inmates. For example, since April 1973 there have been 36 inmate interviews with a Visiting Justice at Wellington Prison and only one of those interviews touched upon legal advice.

CONCLUSION.

In the interests of both inmates and the prison authorities, it is desirable that the nagging civil legal problems which affect inmates are resolved quickly and compe tently. However, the dispensing of legal advice to inmates on civil legal problems does not appear to proceed in any organised, structured manner, but rather on a somewhat makeshift basis. The availability of independent legal counsel to advise inmates on their legal problems would provide much-needed competent legal assistance to inmates and would undoubtedly relieve inmates of some of the anxieties that might develop over the lack of resolution of important legal matters. The writer accordingly concurs with the proposal advanced in the Report on Criminal Appeals by Justice that:

> There might also be room for the development of a more general legal advice service in the prisons, covering domestic and employment problems of a specifically legal nature on which the welfare officer is not in a position to advise, and other similar problems. (43)

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(43) Report on Criminal Appeals at p.66

## CHAPTER 4

## LEGAL REPRESENTATION AT DISCIPLINARY HEARINGS

### The Statutory and Regulatory Provisions Relating to Disciplinary Hearings

Under the Penal Institutions Act 1954, every Superintendent of an institution is charged with the general administration of the institution: s.7. Every Visiting Justice has power to deal with offences against discipline: s.10.(4)

Section 32 details certain types of offences against discipline, e.g. where an inmate disobeys any lawful order of any officer, or behaves in an offensive, threatening, insolent, insulting, disorderly or indecent manner. et c.(44)

Section 33 outlines the powers of Visiting Justices in relation to offences by inmates, Section 33 (1) provides that every Visiting Justice shall have power to hear any complaint relating to any offence against discipline alleged to have been committed by any inmate. Section 33(2) states that every such hearing and examination shall be in the presence and hearing of the inmate charged with the offence, who shall be entitled to be heard and to cross-examine any witness.

Where the Visiting Justice is of opinion that in the circumstances of the case the inmate should be charged before a Court with any offence under any enactment other than this Act, instead of being dealt with under this section, he may in his discretion decline to proceed with the hearing and direct that an information be laid accordingly; s.33(4).

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(44) Section 32(1)(e) contains an interesting type of offence. This subsection provides that every inmate commits an offence against discipline who 'In any other way, offends against good order and discipline'. This is, in effect, a 'catch-all' offence which is so vague and imprecise that it could encompass virtually anything. Furthermore, the inmate has no defence against the superintendent's decision that some act does offend 'against good order and discipline'. The retention of such an offence is indeed questionable.

The powers of the Superintendent to deal with offences are outlined in s.34. The Superintendent only has power to hear complaints relating to offences against discipline under s.32(1). Under s.34(4) the Superintendent may in his discretion at any time before imposing a penalty -

(a) Refer the case to a Visiting Justice (to be dealt with under s.33); or

(b) He may direct that the inmate be charged before a Court.

Under s.35 there is a right of appeal to a Visiting Justice against a decision of the Superintendent in any disciplinary hearings. However, where the alleged offence against discipline is heard by a Visiting Justice, there is no right of appeal from his decision.(45)

The Penal Institutions Regulations 1961 (S.R.1961/161) outline the procedure to be adopted in the hearing of disciplinary charges.

Regulation 75 provides that when an inmate has been reported for an offence the charge against him shall be heard as soon as possible.

Whenever any inmate is charged with an offence against discipline under s.32 of the Penal Institutions Act 1964, he shall be notified of the charge a sufficient time before the hearing to enable him to prepare his defence: Reg. 76(1). Where the Visiting Justice or Superintendent hearing the charge is satisfied that the inmate has not had a proper opportunity to prepare his defence, the hearing of the charge shall be

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(45) This question of an appeal against the decision of a Visiting Justice is current under review at the Justice Department. Two possibilities have been considered:
(1) Appeal to a Judge, who would go into the institution to hear the appeal.
(2) The appointment of lawyers as Visiting Justices for the purpose of offence proceedings with an appeal then to a Magistrate.

adjourned: Reg. 76(2).

Regulation 78 states that

(1) At the commencement of the hearing the charge shall be read to the inmate, who shall then be asked how he pleads.

(2) If the inmate pleads guilty he shall be given an opportunity to make an explanation before any penalty is imposed.

(3) If the inmate pleads not guilty the case against him shall be presented, and he shall then be given an opportunity to present his own case and to call witnesses on his behalf. Any witnesses may be cross-examined.

(4) If after hearing all the evidence the Visiting Justice or the Superintendent, as the case may be, is satisfied that the case against the inmate is proved he shall so inform the inmate, and before imposing any penalty be shall give the inmate an opportunity to make an explanation.

No provision is made under either the Penal Institutions Act 1954 or the Penal Institutions Regulations 1961 for legal representation of inmates at disciplinary hearings.

The Nature of Disciplinary Hearings

The question which must be answered initially is whether disciplinary hearings are in the nature of a judicial inquiry aimed at establishing an inmate's guilt before he is punished, or whether they are intended tobe merely a formal method of upholding the authority of the prison administration in order to secure the orderly running of the institution.

It is evident from Regulations 75-78 (outlined above) that disciplinary hearings must clearly be regarded as judicial in nature. In fact, however, one suspects that the proceedings are little more than a formality. One former inmate commented:

> The disciplinary hearings which are conducted in prison are examples of 'kangaroo courts' at the worst.

> The system is so bad: the inmate is expected to defend himself against a charge laid by an officer whose word is taken virtually as gospel. If you call him a liar you are likely to be thumped even harder.

When questioned about the rights (such as the right to cross-examine witnesses) extended to inmates under the Penal Institutions Regulations 1961, the interviewee replied :

> You have virtually no right of cross-examination because the moment you start to fire questions which may be considered a little bit rude or a little bit unnecessary, you arelikely to be told that you just cannot do that. You cannot question these officers who have harassed you. The right to cross-examine is merely a right which exists on paper.

The impression gained by the writer from a number of interviews with former inmates was that although inmates had certain rights under the Regulations, they were generally afraid to exercise these rights for fear of recrimination or victimisation by prison officers. One ex-inmate remarked:

> A system of vindictiveness operates within the prison: you either tow the lie or they (the officers) will get back at you some other way. This is a very hard system to combat.

Legal Representation

Disciplinary hearings are obviously intended by the Penal Institutions Regulations 1961 to be conducted in the nature of a judicial inquiry. The essence of any such inquiry is that justice be done between the parties. Unfortunate as it may seem, it is considered that perhaps the only way in which justice can be ensured at a prison disciplinary hearing is to allow lawyers to represent inmates charged with offences. It must be remembered that inmates, if found guilty of an offence against discipline, are liable to punishment (including forfeiture of remission which, in effect means the imposition of an extra term of imprisonment.(46)

(46) See s.33(3) and s.34(3) of the Penal Institutions Act, 1954.

It would indeed be rather saddening if an innocent inmate, who happened to be extremely shy, inarticulate and reticent was to be found guilty of an offence because of his inability to present his case properly and effectively.

There has been a growing recognition within the Justice Department that some reforms are necessary and desirable in this particular area. It has been suggested that provision should be made for another inmate to represent the one charged. While this marks a significant step in the right direction it is doubted whether this would be sufficient panacea for the defects which currently exist in the present system. One ex-inmate commented that the proposal

> ..... could be useful in a lot of instances, but I rather feel that the system itself is going to curtail a lot of good that could come out of it simply by the amount of pressure that can be brought tobear upon the inmate representing the inmate charged. Why is he going to be given any more liberty to attack the veracity of an officer simply because he is better able to do so than a speechless inmate ? I cannot see cross-examination privileges being extended to him. I can see him being subjected to a number of restraints in what he could do. I can see that system sounding okay in theory, but not very well in practice.

At present, inmates charged with offences against discipline are not permitted to engage the services of lawyers to appear on their behalf at disciplinary hearings. The rationale beind such aprohibition is perhaps best illustrated by the following extract from a judgement delivered by Judge Wyzanski Jr. in an American case, Nolan v Scafati:(47)

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(47) 306 F Supp. 1 (D.Mass.1969) In this case, Nolan, an inmate complained to the Court that, inter alia he had been denied the right to counsel when he appeared before a disciplinary committee. The Judge ruled that the right to counsel is not available to an inmate in a prison disciplinary hearing.

> It is to be borne in mind that neither the Superintendent, nor the Committee, nor any guard had a lawyer. Lawyers are not customarily involved in prison disciplinary matters ..... Whatever may be the rights of persons who have the full freedoms of civic life, those who have been placed under the control of a prison authority are not entitled to the full panoply of a trial, before disciplinary steps are taken. When society places a man in prison it has a most important interest in preserving the executive authority of the prison superintendent. While the warden is not to be an arbitrary autocrat he has no need to listen to quibbles and quiddities before he exercises his commanding authority to secure both the outside community and the prison community from danger reasonably apprehended.

Furthermore, to suggest that lawyers be allowed to appear on behalf of inmates at disciplinary hearings is to incur the displeasure of some Superintendents and other prison administrators who consider lawyers as 'outsiders' who threaten to disrupt the tranquillity of prison life.(48) Bearing in mind that prison administrators are faced with the perennial problems of maintaining security, control and discipline within the prisons, it might be argued that to allow lawyers to intervene in the disciplinary process is to invite instability and lack of control within the institution. One can, of course, sympathise with the plight of prison administrators in this respect; after all, society directs them to confine, often within inadequate institutions, persons who have transgressed the law and requires that the confinement of those persons be controlled and disciplined. It is not surprising then, that some prison administrators are concerned at the effect on prison life which might result from the introduction of lawyers into the prison disciplinary process.

In addition, if one accepts that, in practice, disciplinary hearings are merely a formality, then the introduction of

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(48) Although the Superintendent interviewed by the writer had no objection to inmates being represented by lawyers, provided that officers of the prison administration also had the right to have lawyers acting on their behalf.

lawyers into the disciplinary process will ensure that the hearings will be conducted more in the nature of a judicial enquiry (as the 1961 Regulations obviously contemplated that they should be). Undoubtedly some prison administrators feel that lawyers would 'gum up the works' by turning disciplinary hearings into something akin to court cases, with extensive legal wrangling between counsel on opposing sides.

A more basic problem, however, would be the difficulty in getting lawyers to take on such cases. Lawyers have more than enough work at the moment and, consequently, may be unwilling to drive a considerable distance to an institution to represent a client at a disciplinary hearing, especially if the charge involved the alleged breach of a minor offence.

Although the problems associated with legal representation at prison disciplinary hearings are very real, it is the contention of the writer than, in principle, there can be little argument over the desirability of allowing lawyers to appear on behalf of their clients at prison disciplinary hearings.

However, one qualification must be made: it is considered that, initially, legal representation of inmates should be available only where the inmate is charged with a serious breach of discipline.(49) There are several reasons why this qualification

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(49) There may be a case, in the future, for extending legal representation to inmates charged with minor offences. However, it is felt that the present climate of opinion is such that legal representation for all offences (whether serious or minor) is not considered practicable nor, indeed, desirable. One further point must also be discussed, viz. what offence constitutes a 'serious' breach of discipline? Under the Penal Institutions Act 1954, the Superintendent has power only to deal with certain offences against discipline, and has limited powers of punishment (see s.34). The Visiting Justice, on the other hand, can deal with any disciplinary charges and has much wider powers of punishment (see s.33). In practice, it would appear that most serious breaches of discipline are dealt with by Visiting Justices. It is submitted that the sections in the Act dealing with offences against discipline would have to be substantially rewritten, specifying clearly what offences are to be considered as 'serious'. The superintendent would have power to deal only with minor offences and would be restricted in the punishment he could impose (in particular, he should not be able to order any forfeiture of remission.) The Visiting Justice would deal with all serious

has been recommended. In the first place, if legal representation at disciplinary hearings were to be permitted, there would be an immediate 'rush', with many inmates engaging lawyers simply to find out what benefits they could reap from the new system. If lawyers were permitted to appear on behalf of clients charged with trivial offences, the efficiency of the running of the institution might be seriously impaired with disturbing results for both the prison authorities and the inmates.

Secondly, as was suggested above, there may be difficulties in getting lawyers to appear on behalf of inmates charged with relatively minor offences.

Thirdly, the proposal represents an essentially pragmatic compromise between two opposing viewpoints: those who consider that lawyers should be not be permitted to intervene in the prison disciplinary process and those who think that they should. Inherent in the writer's recommendation is the premise that neither viewpoint provides an entirely satisfactory or practical answer to the problem. The contemporary situation within our prisons demands that the prohibition against legal representation of inmates at prison disciplinary hearings be repealed. In suggesting that lawyers be allowed to represent only inmates charged with serious breaches of discipline, it is considered that the objections of the supporters of both viewpoints are partially overcome.

CONCLUSION

Whatever views people may entertain on whether lawyers should be allowed to represent inmates at prison disciplinary hearings, there is no doubt that it is a question to which much attention must be given in the near future. One observer has made some pertinent remarks on this topic:(50)

(49) contin/d. breaches of discipline. Provision might also be made for lawyers to represent inmates in cases where an inmate, having had his case dealt with by the Superintendent, appeals to the Visiting Justice against the Superintendent's decision.

(50) A. Ashman, loc. cit. p.10.

> The paranoia which characterises the institutional climate requires that we go out of our way to present a model of perfect fairness in handling offenders and their complaints. Such a model would say loudly through action to the inmates that prison administrators care about them as human beings andbelieve that their ideas and feelings are important and merit a full and fair hearing.

Perhaps the introduction of lawyers into the disciplinary process would go some way towards achieving this 'model of perfect fairness in handling offenders and their complaints'. (51)

(51) It should not be thought, however, that disgruntled inmates in New Zealand are impotent in airing their grevances. The Penal Institutions Regulations 1961 contain special provisions for dealing with complaints of inmates. Regulation 73 provides that within a week of the application being made, the Superintendent shall hear the application of every inmate who has made a request to see him. In addition, every inmate has the right to interview an Inspector of Prisons and/or a Visiting Justice.
The department of Justice also allows inmates to write uncensored letters to the Ombudsman and the Minister of Justice.

## CHAPTER 5

## AMERICAN LEGAL ASSISTANCE PROJECTS

Numerous legal assistance programmes for prison inmates have been, and in fact still are, operating in the United States. The marked proliferation in the number of these programmes in recent years is attributable to the 'mounting recognition by the courts, law schools, lawyers and the general public of the legal needs of prison inmates'.(52)

It is proposed to give a brief description of several prison legal services programmes in the United States.

(1) Privately-Funded Prison Legal Assistance Projects (53)

The Massachusetts Post-Conviction Legal Services Demonstration

In 1965 a private group in Massachusetts, known as the Massachusetts Correctional Association, established the Post-Conviction Legal Services Demonstration Project, to provide legal assistance to Massachusetts prison inmates. A lawyer knowledgeable in the post-conviction area was appointed as a full-time co-ordinator. His primary task was to oversee the activities of volunteer attorneys,but it was soon learned that volunteer attorneys had neither sufficient time nor expertise for the highly specialised work that was required. Subsequently, law students were enlisted and utilised under the supervision of the fulltime attorney.

There were several ways in which an inmate was directed to the Legal Services Project. An inmate's letter to a community service agency, public official,or ordinary citizen

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(52) Cardarelli and Finkelstein - 'Correctional Administrators= Assess the Adequacy and Impact of Prison Legal Services Progress in the United States' 65 Journal of Criminal Law and Criminology 91 at p.92.

(53) The information in this section is taken from Jacob and Sharma - 'Justice After Trial: Prisoners' Need for Legal Services in the Criminal Correctional Process' 18 University of Kansas Law Review 493 (1970) at p.598.

might be forwarded to the office, or letters originally addressed by inmates to the courts might be placed in the hands of the Attorney-Co-ordinator. Those inmates assisted also encouraged others to inquire of the Project directly.

Based upon their experience in operating the Project, the sponsors recommended:

(1) The assignment of volunteer lawyers to the post-conviction problems of prison inmates does not provide a satisfactory answer.

(2) The magnitude of the post-conviction legal needs of prisoners and the importance of this issue for prison administrators, as well as inmates, demands the establishment of a permanent, well-staffed legal service, commensurate in quantity and quality with medical and other professional services long made available to correctional institutions. Ultimately, the public's concept of justice will compel it.

(3) There is considerable agreement that the responsibility for a permanent post-conviction legal service should rest with a public rather than private agency.

(2) Law Student Programmes for the Assistance of Prison Inmates

The great majority of prison legal services programmes in the United States are operated by law schools. A recent survey of the 143 law schools within the United States found that of the ninety-seven respondents, forty-two had prison legal services programmes in operation. Furthermore, a follow-up investigation of the forty-six law schools that did not respond indicated an additional twenty-one schools with programmes providing such services.(54)

(a) The University of Connecticut Programme(55)

In December 1968, the University of Connecticut established a prison legal services programme. The purpose of the

(54) Cardarelli and Finkelstein. loc. cit. p.92

(55) See Jacob and Sharma, loc. cit. p.607

programme is to assist prisoners who claim they are illegally imprisoned. Students maintain regular office hours at the prison. To obtain the services of a student, the prisoner fills out an application form. A student then interviews the inmate to ascertain the grounds for his claim of illegal detention. The student investigates the facts, researches the law and drafts a memorandum for the faculty advisor. If a meritorious claim is discovered, the appropriate post-conviction petition is drafted for the inmate. In cases having exceptional educational value the faculty advisor fills the appearance and proceeds as counsel of record with the continued assistance of the student. In all other cases the inmate's petition is accompanied by an application for the appointment of counsel. When counsel is appointed, the student makes his services available to the attorney.

(b) University of Kansas Legal Assistance Project[56]

The University of Kansas legal assistance project was established in 1965.

Prison inmates apply for legal assistance by sending a completed form to the law school. Each case is assigned to a team of students who interview the inmate at the prison. The students attempt to verify every statement offact made by the prisoner. No unqualified opinion is expressed unless all of the prisoner's assertions have been verified by investigation. Frequently the trial transcript must be reviewed, and verifications must be sought from prosecutors, defence counsel, and other persons connected with the proceedings. When students have developed an understanding and have reached a conclusion concerning the question raised by the inmate, they prepare a memorandum summarising their findings.

In cases which have merit, the appropriate motions and other pleadings to be filed by the inmate are drafted for him.

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(56) See Wilson "Legal Assistance Project at Leavenworth'' 24 The Legal Aid Brief Case254 (1966)

The programme does not attempt to represent inmates in the courts, but does attempt to procure the appointment of counsel for them.

The organisers set up several objectives for the programme:

(1) To assist inmates with problems arising out of inter-personal relationships both in and out of the prison.
(2) To identify and assist those inmates with substantial legal problems.
(3) To discourage frivolous and unsubstantial litigation.
(4) To augment the normal institutional counselling services.
(5) To provide an educational experience for law students.

According to the organisers, there has been some evidence of success on each count.

Other law school programmes provide legal counselling for inmates on civil legal problems as well as on questions relating to appeal.

SUMMARY

The recognition of inmates' legal needs in the United States has resulted in the proliferation of numerous prison legal services programmes. The above description of several of these programmes provides an interesting illustration of how inmates' needs in this area can be dealt with. However, the suitability in the New Zealand setting of legal assistance programmes operated by law schools is open to question.

## CHAPTER 6

## CONCLUSION

The superficial examination undertaken in this paper reveals that, generally speaking, the procedures currently existing within our prisons for the dispensing of legal advice to inmates on their legal problems are in need of considerable improvement. Evidence suggests that inmates are often left to their own resources to resolve any pressing legal problems which confront them. A failure to overcome these problems can often lead to an inmate developing feelings of bitterness, resentment and frustration - feelings which are hardly conducive to lowering the tensions which are prevalent in many of our penal institutions.

It is accordingly suggested that a start be made to implementing : an organised legal assistance scheme whereby inmates would be adequately advised on all their legal problems. The necessity for such a scheme is apparent since it is clear that

> Inmates of correctional institutions have both criminal and civil legal problems to a greater degree than the average person in the free community. Providing medical service for inmates is no longer open to question. Similarly, the legal problems that confront inmates should be dealt with intelligently, particularly when we know that more than 95% will return to the free community. (57)

In examining the proposed format of any projected legal services programme for prison inmates, it is considered by the writer that either of two possibilities (both canvassed in greater depth in the Report on Criminal Appeals by Justice) may suffice.

Firstly, it has been proposed that a scheme be established whereby a full-time independent lawyer would service a prison

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(57) Ashman - 'The Rhetoric and Reality of Prison Reform' 56 The Judicature 7 (1972) at p.13

or group of prisons. This legal officer would perhaps be appointed by the New Zealand Law Society, but paid by the Government. In relation to appeal, the duties of the lawyer would include contacting newly convicted inmates, advising them fully of their rights of appeal, assisting them to contact their own legal representative, and so on. Where an inmate does not have a legal adviser, the lawyer would assist him in drafting his notice of appeal. The lawyer would also be available to give legal advice to inmates on any civil legal problems which they are concerned about. Where an inmate's problem is of such a nature that legal representation is considered essential, the legal officer would help the inmate to contact a lawyer.

An alternative scheme which has been suggested envisages a local lawyer visiting the institution once or twice a week and advising inmates both on mattersof appeal as well as civil legal problems. This scheme might conceivably work along similar lines to the legal referral services currently operating in the Wellington region (with law students possibly assisting the visiting Lawyer). Inmates wishing to make use of the service would make appointments with the Chief Officer. Lawyers willing to act on behalf of inmates would place their names on a roster. If an inmate's problem required the services of a lawyer, the problem would be referred to one of the lawyers on the roster.

As far as legal representation at prison disciplinary hearings is concerned, both schemes might assist an inmate charged with a serious breach of discipline to contact a lawyer to appear on his behalf.

In deciding which of these schemes should be implemented in our penal system, several points should be noted.

In relation to the first scheme suggested above, one difficulty which arises is that the legal officer, although independent, would probably be paid by the Justice Department of the Government. He may, therefore, be subject to some form

of departmental pressure, subtle or otherwise, in the exercise of his duties. If, for example, the legal officer has been busily advising inmates to bring actions against the prison authorities for wrongs alleged to have been done to them, the Justice Department may pressure him to desist from advising inmates to pursue such courses of action.

Also, if the legal officer is paid by the Justice Department or the Government (as he presumably would be) the possibility arises that inmates may regard him as a mere 'stooge' of the prison authorities and as just another part of the criminal justice system and, consequently, may not approach him for legal advice.

The success of such a scheme will accordingly depend not only on whether the legal officer will, in fact, be independent of any departmental or governmental pressure, but also on whether he can display and demonstrate his independence to the inmates. Failure to achieve both these factors will, in all likelihood, diminish the prospects of success of a legal services programme along these lines.

The second proposed scheme also has its attendant difficulties. Chief among these is the question of who, if anyone, will pay the visiting solicitor for the time and effort involved in taking part in the scheme. If the Crown pays the lawyer, there is again the possibility of the lawyer being regarded as part of the prison system and therefore suspect. If, on the other hand, the lawyer is not paid, the scheme will operate largely on a charitable basis, with lawyers in effect performing a highly beneficial service for the community, without any reimbursement. To retain the element of charity in the provision of legal aid is, in the opinion of the writer, obnoxious and totally unacceptable.

Another difficulty is that prison administrators will undoubtedly want a voice in selecting the visiting lawyer.

Some lawyers = perhaps because of their political or moral leanings - may simply be unacceptable to prison authorities. If, for example, a lawyer had consistently campaigned for improvement of penal conditions and had displayed a highly critical attitude towards penal administrators, a Superintendent may have grave reservations about permitting him to come into the institution to advise inmates on their legal rights. To what extent, then will penal administrators be permitted to 'select' the visiting lawyer ?

Both schemes outlined above share one common problem - that of overcoming inmates' suspicions. It is plain that any legal services programme must give the appearance of being independent of the prison system, since the beneficial aspects of such services can be virtually nullified if the programme is viewed by the inmates as operating under the direction of the prison administration.

However, daunting the problems in implementing a legal services programme for prison inmates may seem, nevertheless some thought must be given to establishing such a scheme in the near future. The provision of legal services for inmates represents an exciting possibility for the future development of legal aid in our community.

Criticisms of Legal Services Programmes

Unfortunately, there are, and will continue to be, obstacles which stand in the way of implementing a legal assistance scheme for prison inmates.

One of the major obstacles to be overcome is to combat the semi 'siege mentality' of many prison administrators, which perceives of lawyers as 'outsiders', unsympathetic to the problems confronting the penal system. Such an attitude is perhaps understandable since

> Any system as traditionally insulated from aggressive public scrutiny and burdened by decades of cumulative problems as is the prison system is bound to be

> sensitive to the prospect of any further challenge from the outside. This is especially true if the outsiders are perceived as being independent of internal controls, immoderate, unco-operative and without knowledge or understanding of the goals and priorities of the correctional process. (58)

Consequently, one of the chief difficulties involved in establishing any prison legal services programme is to convince prison administrators that the establishment of such a scheme will not seriously affect the maintenance of security, discipline and control within the institution. The problem is such that 'anything that appears to threaten the delicate equilibrium of the institution or the preservation of internal order, will be perceived as a matter of the greatest consequence and may be subject to the fullest resistance.... by correctional staff and personnel.(59)

Genuine though these fears of disruption within the prison may seem, the results of an American survey of correctional administrators(60) suggest that these fears may be largely unfounded. The survey attempted to determine the impact of prison legal services programmes on correctional institutions as perceived by those whose primary responsibility was the day to day administration of the institution. Correctional administrators involved in the survey were asked whether legal services would tend to increase inmate hostility against the institution. Surprisingly, less than 12 percent of the respondents believed that prison legal services had the undesirable effect of increasing inmate hostility against the institution, while almost 85 percent of the respondents considered that legal services did not have such an effect. Respondents were also asked whether prison legal services would tend to have an adverse effect on prison discipline and security. The results indicated that 83 percent of the respondents foresaw no such effect.

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(58) Cardarelli and Finkelstein - 'Correctional Administrators assess the Adequacy and Impact of Prison Legal Services Programs in the United States' 65 Journal of Criminal Law and Criminology 91, at p.101

(59) Cardarelli and Finkelstein, loc. cit. p.94

(60) See Cardarelli and Finkelstein, loc. cit.

In sum, more than 80 percent of the correctional administrators involved in the survey believed that prison legal services did not have any negative impact on internal order. Indeed, there is every reason to believe that legal services for inmates might promote security and discipline within the institution: 80 percent of the respondents believed that legal services provided a safety valve for grievances of inmates against the institution and, therefore, made a positive contribution to the maintenance of internal order. One administrator, echoing the sentiments of many others, noted:(61)

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

The report of a survey carried out by the Centre for Criminal Justice at Boston University(62) stated that:

> Interviews conducted with inmates revealed that they saw the difficulty of living with in-prison legal problems in terms of dependency, helpfulness, aggravation, anger, impotence, and bitterness; these feelings found expression in violent and escapist behaviour. A number of these inmates implied that the provision of legal assistance is an important element in reducing the potential for intra-institutional violence.

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(61) Cardarelli and Finkelstein, loc. cit p.96

(62) See Centre for Criminal Justice, Boston University - 'Perspectives on Prison Legal Services: Needs, Impact and the Potential For Law School Involvement' (Hereinafter referred to as 'Perspectives on Prison Legal Services') The project included a national survey of state correctional administrators, prison wardens and prison welfare officers as well as a national survey of law schools operating legal services programmes. It should be noted that the article by Cardarelli and Finkelstein is an expanded version of this survey.

One former inmate interviewed by the writer commented:

> I think that a lawyer advising inmates on civil and criminal legal problems would be an advantage to the prison authorities, especially because it is helping the problems of inmates. The disciplinary problems that you get in prison administration are often caused by the fact that a particular prisoner is often upset by something. Very often it is a criminal or civil matter which he is uptight about - he is wondering what his wife is doing, or whether she has run off with someone, or how the kids are. etc.

Unfortunately, due to the sheer lack of any New Zealand research in this area, the writer must rely heavily on American material for assistance. The relevance of such material to New Zealand conditions is open to question. For example, it would probably be correct to state that American inmates are much more politically and legally conscious than their New Zealand counterparts (although the situation may now be changing). As a result, American penal administrators, when confronted with a situation where inmates were not only conscious of but were also demanding recognition of their legal rights, may have found that the implementation of a legal services programme appeased the demands of militant inmates. This may account in part for the overwhelming opinion expressed by correctional administrators that prison legal services do not disrupt discipline and security within the institution and may, in fact, promote internal order and stability. Nevertheless, it is considered by the writer than in the absence of any other evidence, the American material is of persuasive assistance in examining the validity of certain criticisms and objections which have been raised concerning legal services programmes. In particular, the American surveys adduced above cast some doubt on the assertions made by penal administrators that legal services may adversely affect internal stability within institutions.

One criticism which has been levelled at prisoner legal assistance schemes is that such schemes will be deluged by, and in fact will encourage, frivolous and groundless claims by inmates, thereby dissipating the energy and resources of both the lawyers invdved in the programme and the courts which have

to process the claims. Indeed, the dilemma facing any legal services programme is

> to afford the maximum opportunity for an inmate with a legitimate issue to effectively present it to a court while minimising the potential flood of groundless claims. The need is to develop an adequate system or program for discovering the legitimate claims of the most reticent inmate and to provide the competent advice and help necessary to effectively present these claims. (63)

The survey carried out by Boston University revealed that the vast majority of inmate requests for assistance (86 percent) from legal services programmes were regarded as non-frivolous. Almost two thirds of the law schools who operate legal services projects estimated that less than 25 percent of their requests are frivolous. (N.B. The Report of the survey does not outline the criterion employed in assessing whether an inmate's request is frivolous or not). The survey concluded that :

> These data provide a preliminary basis for the belief that the energies of prison legal services programs have not been dissipated on large quantities of outrageous or highly whimsical inmate requests for legal assistance. (64)

Indeed, there is an equally convincing argument that prison legal services, far from increasing frivolous claims and petitions to the courts, actually reduce the number of such requests. The point is obvious, take for example, the case of an inmate who considers, quite erroneously, that he has a good chance of a successful appeal against conviction and/or sentence. If he isleft to his own resources to decide whether to appeal or not, without the benefit of legal advice, he willprobably appeal, even thought it is abundantly clear to everyone except the inmate, that he has little or no chance of success. If, on the other hand, he has the benefit of legal advice and is

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(63) A. Ashman, loc. cit. at p.12
(64) Perspectives on Prison Legal Services, op.cit. pp2-3

informed that his prospects for a successful appeal are very dim, there is every reason to expect that the inmate will not appeal. The Boston University survey found that 80.5 percent of the law school respondents who operate prison legal services programmes indicated that such services have a positive effect in reducing frivolous inmate petititions to the courts. The results suggest that 'the availability of credible legal advice can play a very important role in clarifying legal questions which might otherwise result in ill-conceived, court-bound petitions.'(65)

Furthermore, the difficulty with the argument that legal services will increase frivolous claims by inmates is that the word 'frivolous' is open to varying interpretation. Obviously, if an inmate is concerned about something or harbours some grievance, no matter how petty it may appear, it is proably far from frivolous in his estimation. Therefore, what may seem trivial or frivolous to the reasonable member of the free community may, in fact, have serious and complex overtones for an inmate. By way of illustration, take the case of an inmate who, after some time in prison, is told by the prison authorities that instead of unlimited correspondence privileges which he previously enjoyed, henceforth he is only allowed to write two letters a week. The inmate in question enjoys writing letters to his family and friends, since such correspondence constitutes one of his remaining links with the outside world. If he were to complain to a visiting lawyer about this restriction on correspondence, would his grievance be classified as frivolous ? To the ordinary man in the street such a complaint may seem trivial; but to the inmate, restriction of correspondence privileges may amount to a serious interference in one of the few rights which he still retains. Similarly, take the case of an inmate who believes, for one reason or another, that he did

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(65) Ibid. p.3.

not receive a fair trial. Although it may be obvious to perhaps everyone else that his belief is totally erroneous and misguided, nevertheless the inmate's persistence in regarding himself as a casualty of a miscarriage of justice will affect his whole attitude. As a result, the inmate's belief that he has been wrongly imprisoned may assume the proportions of a serious personal problem, whereas to someone perhaps more detached from the situation, it is clear that an appeal by the inmate has absolutely no chance of success. Although an appeal in such a case may seem frivolous to everyone else except the inmate, perhaps it is in the interests of all concerned thatthe inmate's appeal be heard and he be given his day in court.

To claim, therefore, that legal services will encourage frivolous claims is to often define 'frivolous' according to an objective yardstick, assessed by the standards of the free community, whereas it should be looked at from a subjective point of view, viz. does the inmate concerned consider his problem or grievance frivolous ?

The attitude of the public must also be taken into account when considering whether to establish a legal services programme for prison inmates. Critics of such projects

> have asked why society's time, attention and money should be devoted to persons who have shown themselves to be anti-social, irresponsible and, the argument goes, unworthy of the esteem or help of their fellow man. (66)

Such criticism - based upon what one may loosely label as the 'human garbage' concept of prisoners - ignores one of the basic aims of our criminal justice system: rehabilitation or treatment of the offender. And, as Linde comments:

> One may question the need of legal services to the inmates in a correctional institution. It would be easy to assert that this type of service is a

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(66) Jacob and Sharma - 'Justice After Trial: Prisoners' Need for Legal Services in the Criminal - Correctional Process' 18 University of Kansas Law Review 493 (1970) at p.512.

> luxury and superfluous. However, after our short experience of a year (providing legal services to Minnesota prison imates), we are firmly convinced that a legal problem of an inmate should receive the same consideration which any medical, psychiatric, dental and social problem would be given. It would be unthinkable to allow a person with a broken leg to go without medical attention. Legal problems, likewise, do exist and sometimes they require immediate help and action. (67)

One point, however, needs to be emphasised. It is doubted whether the community would tolerate the dispensing of free legal advice to inmates by, perhaps, a State-supported legal assistance program, while a substantial proportion of the free community are denied such advantage or privilege. Such an attitude is understandable and it must be stressed that, as far as legal aid is concerned, the provision of legal services for prison inmates must assume a rather low priority. However, with the increasing developments in the field of legal aid and advice in this country - such as the legal aid scheme, legal advice centres and the duty solicitor scheme - there would appear to be few people who are unable to obtain some form of legal advice or assistance. While the position is far from perfect, nevertheless some thought must now be given to implementing a prison legal services programme, since it is clear that no only do inmates have legal problems to a greater degree than the ordinary citizen in the free community, but also that the current procedures within our institutions for dealing with inmates' legal problems are in need of improvement.

## The Positive Aspects of Prison Legal Services

Some positive aspects of prison legal services have already been touched upon, viz. that such services may promote security and discipline within the prison, as well as possibly reducing the amount of frivolous petitions to the Court by inmates.

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(67) Linde - 'Let's Disbar the Jail House Lawyer' Proceedings of the American Correctional Association 124, at p.126 (1962)

In addition, it has been suggested that the provision of legal services may contribute towards the rehabilitation of inmates. 'Underlying this assumption is the premise that the incarcerated offender is often beset with frustrations which ultimately handicap him in his efforts to successfully rejoin the community upon release, and that legal problems of varying descriptions often compound these frustrations.' (68)

Jacob and Sharma consider that:

> As a matter of sound correctional and rehabilitative practice it is important that the prison inmate's legal needs be met. The preoccupation of an inmate with his legal problems can thwart the process of rehabilitation. He cannot concentrate on a vocational, educational, or other therapeutic training programme if he has hanging over him a Damocles sword in the form of a persisting legal problem, any more than he could if he had a nagging toothache. The provision of legal services to prisoners is in no way a luxury, but an absolute necessity in combating the spectre of high recidivism and increasing crime rates. (69)

The survey conducted by Cardarelli and Finkelstein found that treatment directors[70] 'were overwhelmingly (97%) of the opinion that an inmate's eventual rehabilitation and successul reintegration into society are significantly affected by unresolved legal problems, and that such unresolved legal problems are an impediment to effective participation in treatment programs. (71) Similarly, almost 92 percent of the correctional administrators believed that legal assistance to inmates reduced inmate tensions created by unresolved legal problems.

It should be noted, however, that a very small number of correctional administrators involved in the survey felt that legal services for inmates 'could have a detrimental effect on the rehabilitative process by diverting the inmate's attention from the difficult task of restructuring his basic

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(69) Loc cit, at p.511
(70) Probably the American Equivalent of our prison welfare officers.
(71) Loc. cit. at p.98
(68) Cardarelli and Finkelstein, loc cit, at p 96

attitudes and values.'(72) One warden remarked:

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

In the same vein, one administrator considered that 'the degree of legal intervention has reached the point where many inmates are looking only to legal loopholes for release rather than the rehabilitative route.'(73)

Despite the views expressed by a minority of correctional adminstrators, the American experience of prison legal aid programmes has, according to Silverberg, confirmed the belief that

> clarification of the legal process as it has been applied to him (the inmate) .... removes festering doubts in many cases and may help set a man's sights on rehabilitation rather than revenge. (74)

Supporters of prison legal services also claim that such services may contribute to an improvement in inmate attitudes towards law and the legal process and may provide a counterweight to the often prevailing inmate view that the criminal justice system is 'stacked' against him. It has been argued that:

> Prisoners have a great many misconceptions about the law .... These large-scale misconceptions are symptomatic of the erroneous assumptions of many inmates

(72) Loc. cit. at p.97
(73) Loc. cit. p.97
(74) H. Silverberg - 'Law School Legal Aid Clinics' 117 University of Pennsylvania Law Review 970 at p.976 (1969)

> that they have been unjustly treated in the criminal justice process, feelings which cause distrust and resentment toward the courts and the legal system. Many of the prisoners find the entire system unfair: all too often it punishes the poor or members of minority groups while allowing the rich, who are able to obtain superior representation, to go free. Disparity in the length of sentences given defendants with similar backgrounds for similar crimes aggravates resentment. Providing legal representation to prisoners besides serving to dispel some of their misconceptions would be conducive to their rehabilitation and resocialisation. (75)

Theorganisers of a Massachusetts Post-Conviction Services Project, in evaluating its impact, commented that the project 'provided inmates with competent legal advice concerning a variety of problems. This, in turn, prevented an inmate from dwelling on real or imagined grievances. Such grievances left unresolved, often lead to deterioration of morale, a contagious element which adversely affects both inmates and correctional personnel alike. The morale was improved by the fact that an inmate now had a means to unburden himself and this indicated to the prisoner that the law does possess a degree of humanity and that incarcer ation was not tobe equated with a legal system that convicted and then ignored indigent people. Later, when released the offender might not be quite as disillusioned or embittered by the manner in which the legal system had dealt with him. (76)

The Boston University project adduced some interesting results which tended to support the contention that legal services may improve inmate attitudes towards the law and the legal process. The project compared the attitudes towards law of newly-admitted inmates who subsequently applied for legal assistance with a sample of newly-admitted inmates who made no subsequent application for legal assistance. The experi mental group of inmates, those who requested legal assistance, were found to have changed significantly from their

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(75). Jacob and Sharma - loc. cit. pp 511-512

(76) Cited in Jacob and Sharma loc. cit. at p.599

initial attitudes towards the law at admission to the institution. The control group of inmates, on the other hand, were found not to have changed from their initial position. (There were no statistically significant differences in attitude between the two groups at admission to the institution.) The project's report commented that the results although not conclusive

> appear to suggest that those inmates who requested legal assistance from an available legal services delivery system did, at the time of first contact with that system exhibit a significant change in their attitudes toward the law. Specifically, the applicants for legal services were found to have become significantly less negative in their attitudes towards the law and legal institutions than those inmates who had not applied for legal assistance. (77)

A caveat must be lodged, however, over the use of these results. The project's report gives no guide as to thecomposition of the sample groups of inmates, so that it is unclear whether the inmates were first offenders or maximum security prisoners. (The makeup of the sample groups may have some bearing on the results.) Secondly, it is not at all clear by what methods the change in inmates' attitudes was assessed. And, finally, the results merely reveal that the attitudes of the inmates had become less negative; they do not demonstrate that inmates adopted a more positive attitude towards the law and the legal process. Despite these reservations, the results of the Boston University project on this point do have some value.

The American experience of prison legal services has revealed yet another positive feature of such programmes: inmate reaction to prison legal services has been outstandingly favourable, despite the fact that that inmates' cases are often rejected by the courts. The report of the Boston University (77A)

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(77) 'Perspectives on Prison Legal Services' op.cit. at pp12 -13

(77A) Ibid. at p.15

project noted

> Inmate satisfaction with the prison legal services project far exceeded the rate of favourable outcome in processing inmates' cases. Whereas favourable results for inmates were achieved in 37.2% of the cases processed, 75% of inmate-clients indicated that they were satisfied with the manner in which their cases were handled ..... Both surprising and gratifying to theproject's staff was the inmates' apparent capacity to regard as satisfactory the efforts which were made on their behalf even though specific results were not always achieved for them.

Prison legal services, at the very least, demonstrate to inmates that someone cares about their problems and inmates are often quick to appreciate any assistance given to them.

Problem : The Antagonistic Lawyer

Before concluding this paper, it is perhaps worthwhile mentioning one serious problem encountered in the operation of legal assistance projects in the United States. Cardarelli and Finkelstein note that although correctional administrators are highly receptive to the introduction of legal services programmes, nearly half of the administrators involved in the survey considered lawyers to be unsympathetic to their problems. The complaint was often made that lawyers involved in legal assistance projects frequently enter the institutions as 'uncooperative antagonists of the administration and hostile to the correctional system.'(78) One administrator claimed that:

> .... many legal services attorneys who visit institutions present themselves as an enemy of the institution and thus they project themselves as being fighters of the system rather than legal advisors.

Other administrators believed that the lawyers were more concerned about their 'own causes' rather than those of the inmate. One respondent argued that legal services

> may tend to further open the door to attorneys who are more interested in the 'social causes' than in the legal rights of their inmate clients. i.e. seek to 'use' the inmate to further ideologies. (79)

(78) Cardarelli and Finkelstein, loc. cit. p.100
(79) Ibid. p.100

One cannot avoid the suspicion that these criticisms of lawyers voiced by correctional administrators are often little more than 'admonitions to legal services lawyers to work within the system and to cooperate with prison authorities' (80) and 'veiled demands that lawyers subvert their sober professional judgements to the expressed needs of correctional administration' (81 Nevertheless the problem does seem to be a very real one, at least in the eyes of penal administrators.

In implementing any prison legal services programme, therefore there must obviously be frequent consultations between penal administrators and lawyers, so that any difficulties which may eventuate in the operation of such a programme can, hopefully, be dealt with in a harmonious and friendly manner, free of any feelings of bitterness and acrimony. By adopting this course of action, perhaps this unpleasant problem which has arisen in the United States can be avoided here.

SUMMARY

No one, least of all the writer, would deny that the implementation of a legal services programme for prison inmates will involve some considerable practical difficulties. Daunting though these problems may appear, one must be cautious lest the rationale behind the provision of prison legal services be forgotten; the purpose of any legal assistance programme is surely the protection of people's legal rights. Underlying the support for any prison legal services project is the premise that it is consistent with fundamental principles of justice. As one prison administrator commented :

> I know of no legitimate arguments against protecting people's legal rights. If the state is diligent in protecting the rights of its least citizens, prisoners, I can feel more secure about my own. (82)

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(80) Ibid, p.101
(81) Ibid. p.101
(82) Ibid, p.102

APPENDIX A:

WELLINGTON PRISON

Date / /19

*The Superintendent*

*Sir,*

(a) I wish to appeal . . . . against Sentence / Conviction / Conviction and sentence

(b) I do not wish to appeal

(c) I have appealed (Solicitor's name _____)

(d) I am undecided, but have had explained to me the time allowed to lodge my appeal.

Imposed on me in the Supreme Court / Magistrate's Court

on _____

I have had explained to me my rights of appeal, and wish to

(a) Work while awaiting the result

(b) Be treated as a remand prisoner, understanding how this decision may affect my sentence

(Please cross out items which do not apply.)

*Signed* _____

*Date* _____

I wish to withdraw my decision dated / /19

*Signed* _____

*Date* _____