Due Process in California Prison Disciplinary Hearings*

INTRODUCTION

In recent years, federal courts have taken an increased interest in one particular state administrative function: the due process required in disciplinary hearings in state penal institutions. Both the extent to which the federal courts are willing to become involved and the elements of due process which they find necessary in prison disciplinary hearings vary throughout the federal circuits.

How do California's prison disciplinary procedures compare to the evolving standards of due process? What is the impact on California's prison disciplinary procedures of the court's requirements of particular elements of due process? To answer these questions two California penal institutions, San Quentin and California Institute for Women were chosen for study.

Descriptions of facilities and procedures used at these two penal institutions are outlined and analyzed to determine the actual practice of prison discipline and how it comports with due process requirements. Statistical data was compiled at both of these institutions. Through analysis and comparison of this data, inferences have been drawn regarding the adequacies of the disciplinary procedures presently employed at these institutions.

DUE PROCESS IN THE FEDERAL COURTS

HISTORY

At one time when a person was convicted of a felony and confined in a state penal institution, he left his constitutional rights

*This study was done with the permission of the California Department of Corrections. The views expressed herein do not necessarily reflect the position and policy of the department.

and the protection of the federal law outside the prison gates. The Constitution gave him habeas corpus rights to protect against unlawful imprisonment,[1] but once it was established that conviction was proper, federal courts declined to intervene in the internal administration of state penal institutions.[2] It was a cliche' of the law that federal courts, "...do not have the power to control or regulate the ordinary internal management and discipline of prisons operated by the states."[3]

This is no longer the law. The United States Supreme Court has supported the intervention of federal courts to protect the fundamental constitutional rights of state prisoners:

> There is no doubt that discipline and administration of state detention facilities are state functions. They are subject to federal authority only where paramount federal constitutional or statutory rights supervene. It is clear, however, that in instances where state regulations applicable to inmates of prison facilities conflict with such rights, the regulations may be invalidated.[4]

The Constitution now follows the inmate into prison.[5]

FUNDAMENTAL RIGHTS

The question is no longer whether the inmate has any consti-

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[1]U.S. CONST. ART. 1, § 9.

[2]Comment, *42 U.S.C. Section 1983: An Emerging Vehicle of Post Conviction Relief for State Prisoners*, 22 U. FLA. L. REV. 596, 607 (1970).

[3]United States *ex rel* Wagner v. Ragen, 213 F.2d 294 (7th Cir. 1954) citing: Siegel v. Ragen, 180 F.2d 785, 788 (7th Cir. 1950); United States *ex rel* Morris v. Radio Station WENR, 209 F.2d 105 (7th Cir. 1954); Kelly v. Dowd, 140 F.2d 81 (7th Cir. 1944); Stroud v. Swope, 187 F.2d 850 (9th Cir. 1951).

Other courts have held similarly: Curtis v. Jacques, 130 F. Supp. 920 (W.D. Mich. 1955); Fussa v. Taylor, 168 F. Supp. 302 (M.D. Pa. 1959); Peretz v. Humphrey, 86 F. Supp. 706 (M.D. Pa. 1949); Grove v. Smyth, 169 F. Supp. 852 (E.D. Va. 1954).

For a review and critique of this approach see, Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506 (1963); Note, *Judicial Intervention in Prison Administration*, 9 WM. & MARY L. REV. 178 (1967); Comment, *Prisons and Prisoners*, 5 SUFFOLK U. L. REV. 259 (1970).

[4]Johnson v. Avery, 393 U.S. 483 (1969).

[5]This position was taken as early as 1944 where the court said in Coffin v. Reichard, 143 F.2d 443 (Ky.), "prisoner loses only those (rights) expressly or by necessary implication" taken away by incarceration.

tutional rights which federal courts must protect but rather which rights are fundamental and should, therefore, be protected.[6] Yet it remains an obvious fact that a citizen's rights are necessarily curtailed by imprisonment. How do the courts determine which claimed rights must be protected? How does this curtailment apply to the right to a hearing which conforms to the procedural standards of due process prior to imposition of disciplinary sanctions?

THE DYNAMICS

The standard in *Coffin* v. *Reichard* that a prisoner loses only those rights which the exigencies of incarceration make it necessary he lose, while often cited, does little more than state a lofty goal.[7] The real dynamic of these cases is the balancing of the importance of the rights claimed by the inmate against the state's legitimate interest in orderly incarceration. This dynamic is especially apparent in the developing line of cases which hold that procedural due process is a right which must be provided the inmate before he can be disciplined by the prison administration.

INMATE'S INTERESTS

Procedural due process protects some substantive right or

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[6]Such fundamental rights include: the right to be free from cruel and unusual punishment, Johnson v. Dye, 175 F.2d 250 (C.A. Pa. 1949) *rev'd* on other grounds, *sub nom.* Dye v. Johnson, 338 U.S. 864 (1949); right to be free from cruel and unusual punishment is as fundamental as speech or religion, Holt v. Sarver, 300 F. Supp. 825 (E.D. Ark. 1969); ready access to the courts, Burns v. Swenson, 430 F.2d 771 (8th Cir. 1970); Gilmore v. Lynch, 319 F. Supp. 105 (N.D. Cal. 1970) *aff'd sub nom.* Younger v. Gilmore, 404 U.S. 15 (1971); right to consult an attorney, Johnson v. Avery, 393 U.S. 483 (1969); exercise of religious freedom, Cooper v. Pate, 382 F.2d 518 (7th Cir. 1967); Cooper v. Pate, 378 U.S. 546 (1964); Northern v. Nelson, 315 F. Supp. 687 (N.D. Cal. 1970); right to be free from racial discrimination, Lee v. Washington, 390 U.S. 333 (1968); Johnson v. Avery, 393 U.S. 483 (1969); for a discussion of these developments see Barkin, *The Emergence of Correctional Law and the Awareness of the Rights of the Convicted*, 45 NEB. L. REV. 669 (1966); Turner, *Establishing the Rule of Law in Prisons: A Manual for Prisoners' Rights Litigation*, 23 STAN. L. REV. 473 (1971); Comment, *42 U.S.C. Section 1983: An Emerging Vehicle of Post Conviction Relief for State Prisoners*, 22 U. FLA. L. REV. 596 (1970); Note, *Prisoners' Rights Under Section 1983*, 57 GEO. L.J. 1270 (1969).

[7]Sostre v. Rockefeller, 312 F. Supp. 875 (S.D. N.Y. 1970); Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970).

fundamental interest, (if none is involved there is no procedural right); therefore, in weighing the inmate's claim that he is being denied a fundamental right when punished without a due process hearing the courts consider the interest sought to be protected by procedural due process. The two major interests involved are the conditions and the length of imprisonment.

The conditions of confinement involved in these cases stem from the transfer of the inmate as a disciplinary measure to segregation quarters (variously called solitary confinement, strip cells, the hole, etc.). Precisely what it means to be confined in segregation is a question of fact which varies from case to case, but the conditions are always Spartan at best. The cell itself is sparsely furnished, some, strip cells, are completely unfurnished.[8] The diet may be limited – in one case a bread and water diet was used.[9] The inmate is denied normal contact with the other inmates, and the usual benefits of prison life (school, work, recreation, reading) he loses almost all privileges and is usually not allowed to leave the cell.[10] In some of the cases the conditions to which the inmate was confined as punishment were severe enough to sustain a separate attack on Eighth Amendment grounds of cruel and unusual punishment.[11]

The second interest threatened as a result of prison discipline is length of confinement. In many states an inmate earns a given number of days of good time for every given number of days served without a rule infraction or every day of work performed. Since this good time is applied to lessen the time he must serve, the severity of its loss is obvious. Good time can be lost either because it is impossible to earn good time while con-

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[8]Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970); Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Ca. 1971).

[9]Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

[10]Carothers v. Folette, 314 F. Supp. 1014 (S.D. N.Y. 1970); Bundy v. Cannon, 328 F. Supp. 165 (D. Md. 1971); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Ca. 1971); Sostre v. Rockefeller, 312 F. Supp. 875 (S.D. N.Y. 1970); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971); Morris v. Travisono, 310 F. Supp. 857 (D. R.I. 1970).

[11]Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970); Kritsky v. McGinnis, 313 F. Supp. 1247 (N.D. N.Y. 1970); Sostre v. Rockefeller, 312 F. Supp. 875 (S.D. N.Y. 1970); Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

fined in segregation[12] or it can be taken directly as a disciplinary sanction.[13] California does not have a good time system "because of internal inconsistency with the indeterminent sentence."[14] However, the Adult Authority or Women's Board of Terms and Parole, which determine the length of confinement, consider the disciplinary record of an inmate an indication of his adjustment, thus any major disciplinary action has a direct effect on the term of confinement.[15]

ADMINISTRATION'S INTERESTS.

The interests of the prison administration, on which the courts dealing with procedural due process within the prison have focused, fall under the rubric of orderly incarceration. This is expressed as the need for swift discipline, for maintaining order in a potentially violent environment, for respect of the given order of the institution, and the need for any available information about an incident.[16] These are considerations the courts cannot ignore.[17] But recently courts, in balancing these interests of the prison administration and those of the inmate, have found

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[12]Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970); Bundy v. Cannon, 328 F. Supp. 165 (D. Md. 1971); Nolan v. Scafati, 430 F.2d 548 (1st Cir. 1970); Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970); Sostre v. Rockefeller, 312 F. Supp. 875 (S.D. N.Y. 1970); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

[13]Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970); Bundy v. Cannon, 328 F. Supp. 165 (D. Md. 1971).

[14]Clutchette v. Procunier, 32 F. Supp. 767, 777 (N.D. Cal. 1971). Since there is no fixed number of years an inmate must serve, there is nothing to which good time can be applied.

[15]*Id.* and interviews conducted at California Institute for Women, Corona, California, November 22, 23, 1971 and at San Quentin State Prison, San Quentin, California, December 20-22, 1971.

[16]Note, *Judicial Intervention in Prison Administration*, WM. & MARY L. REV. 178, 189 (1967); Note, *Beyond the Ken of the Courts*, 72 YALE L.J. 506, 516 (1963); Milleman, *Prison Disciplinary Hearings and Procedural Due Process—The Requirement of a Full Administrative Hearing*, 31 MD. L. REV. 27, 40 (1971).

[17]Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970); Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970); Kritsky v. McGinnis, 313 F. Supp. 1247 (N.D. N.Y. 1970); Nolan v. Scafati, 306 F. Supp. 1 (D. Mass. 1969); Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971) (suggests that if rehabilitation were a motivating goal, the need for required due process protections would be mitigated).

that the inmates interests must be protected by a hearing providing due process protections.[18]

The scale tips in this direction for several reasons. The abuses that can arise are an important factor; often there has been no hearing whatsoever,[19] guards have been left in almost total control of the sanctions which will be imposed as well as left to judge the instances of infraction,[20] prisoners have been left for months in segregation without a formal charge ever being filed against them.[21] Another important factor is that the imposition of sanctions is often thinly veiled punishment for exercising some constitutionally protected right.[22]

A third factor is that the punishment meted out without a hearing providing due process often constitutes cruel and unusual punishment.[23] In sum, the potential for abuse on the part of the prison administration is so great and has so often occurred

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[18]Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Ca. 1971); Bundy v. Cannon, 328 F. Supp. 165 (D. Md. 1971); Nolan v. Scafati, 430 F.2d 548 (1st Cir. 1970); Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970); Kritsky v. McGinnis, 313 F. Supp. 1247 (N.D. N.Y. 1970); Carter v. McGinnis, 320 F. Supp. 1092 (W.D. N.Y. 1970); Smoake v. Fritz, 320 F. Supp. 609 (S.D. N.Y. 1970); Meola v. Fitzpatrick, 322 F. Supp. 878 (D. Mass. 1971); Morris v. Travisono, 320 F. Supp. 857 (D. R.I. 1970); Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971); Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971); Rodriguez v. McGinnis, 307 F. Supp. 627 (N.D. N.Y. 1969) (reversed holding all necessary procedures had been followed); Rodriguez v. McGinnis, 9 *Crim. L. Rptr.* 2052 (1971); Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970); Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970).

[19]Smoake v. Fritz, 320 F. Supp. 609 (S.D. N.Y. 1970).

[20]Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

[21]Bundy v. Cannon, 328 F. Supp. 1965 (D. Md. 1971); Carter v. McGinnis, 320 F. Supp. 1092 (W.D. N.Y. 1970); Smoake v. Fritz, 320 F. Supp. 609 (S.D. N.Y. 1970).

[22]Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970) (right to correspond with courts and with attorney); Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970) (right to legal assistance); Nolan v. Scafati, 430 F.2d 548 (1st Cir. 1970) (right to legal assistance); Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971) (right to legal assistance, access to courts); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971) (legal assistance).

[23]Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970); Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970); Kritsky v. McGinnis, 313 F. Supp. 124 (N.D. N.Y. 1970); Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

that the rationale of institutional security cannot outweigh the interests of the inmate.[24]

The application of this balancing test also means that "the extent to which procedural due process must be afforded...is influenced by the extent to which he [the inmate] may be 'condemned to suffer grievous loss'."[25] The court in *Sostre* v. *McGinnis* concludes that determining that inmates must be afforded procedural protections is not difficult but that "[t]he difficult question, as always, is what process is due."[26]

WHAT PROCESS IS DUE.

This question has not yet been fully answered by the courts. Due process takes its form from a particular context. In seeking to define what process is due in a prison disciplinary hearing the courts consider the following factors: 1) the nature of the right involved; 2) the nature of the proceeding and the nature of the state action involved; 3) the burden due process places on the proceeding and the state's interest in summary proceedings.[27] Thus the interests which play the lead roles in determing whether a fair hearing is required play a similar role in determining which of the traditional elements of procedural due process must be provided.

Two main points emerge from the courts' analyses: 1) the more grievous the loss threatened to the inmate, the more procedural

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[24]For a discussion of the right-privilege distinction as it applies in this context see: Note *Procedural Due Process in Peno-Correctional Administration: Progression and Regression*, 45 ST. JOHN'S L. REV. 468, 472 (1971); *Contra*, Brief for Appellants, Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971) on appeal to United States Court of Appeals for the Ninth Circuit (1971).

[25]Goldberg v. Kelly, 397 U.S. 254, 263 (1970), citing Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring.)

[26]Sostre v. McGinnis, 442 F.2d 178, 196 (2nd Cir. 1971).

[27]For a general discussion of the application of this balancing test see: Note, *Judicial Intervention in Prison Administration*, 9 WM. & MARY L. REV. 178 (1967); Note, *Procedural Due Process in Prison Disciplinary Actions*, 2 LOYOLA U. L. REV. 110, 124 (1971); Note, *Procedural Due Process in Peno-Correctional Administration: Progression and Regression*, 45 ST. JOHN'S L. REV. 468, 476 (1971); Milleman, *Prison Disciplinary Hearings and Procedural Due Process—The Requirement of a Full Administrative Hearing*, 31 MD. L. REV. 27, 44 (1971); Note, *Beyond the Ken of the Courts*, 72 YALE L.J. 506 (1963); Singer, *Bringing the Constitution to Prison—Substantive Due Process and the Eighth Amendment*, 39 Cin. L. Rev. 650, 677 (1970).

protections are required;[28] 2) a prison disciplinary hearing is not a full adversarial hearing, the panoply of procedural protections provided at a criminal trial is not required.[29] The Courts which have undertaken to articulate the precise elements of procedural protections necessary in the prison context are not in agreement.

ELEMENTS OF DUE PROCESS

However, there is agreement that certain elements of due process are necessary: 1) written notice to the inmate of the alleged infraction, 2) an opportunity to be heard, (i.e., there must be a hearing at which the inmate can at least explain his side), 3) an impartial fact finder, 4) a determination based on the evidence, as implied in the first three requirements.[30]

There is a second group of procedural requirements which, while not all courts find them necessary, do not meet with outright disagreement. These include: 1) a written record,[31] 2) the inmate's right to be informed of the nature of the evidence against him,[32] 3) the requirement of notice of specific number of days before the hearing,[33] 4) the right to appeal.[34] These are more of less extensions and dimensions of the basics above and do not present a serious threat to the administration's interests or significantly burden the proceeding beyond the above requirements.

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[28]This is developed in Clutchette v. Procunier, 328 F. Supp. 767, 781 (N.D. Cal. 1971).

[29]Turner, *Establishing the Rule of Law in Prisons: A Manual for Prisoners' Rights Litigation*, 23 STAN. L. REV. 473, 499 (1971); Sostre v. McGinnis, 442 F.2d 178, 196 (2nd Cir. 1971).

[30]Nolan v. Scafati, 306 F. Supp. 1 (D. Mass. 1969); Kritsky v. McGinnis, 313 F. Supp. 1247 (N.D. N.Y. 1970); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971); Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970); Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970); Bundy v. Cannon, 328 F. Supp. 621 (E.D. Va. 1971); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971); Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970); Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971).

[31]Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970).

[32]Nolan v. Scafati, 306 F. Supp. 1 (D. Mass. 1969).

[33]Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971) (requires seven days notice). This also goes to how soon a hearing must be held, a question not usually presented in these cases because the facts on which they come up are most often that there has been no hearing whatsoever or it has been granted within a reasonable time but was without sufficient procedural protections.

The third group of procedures raise the most difficult problems: 1) the right to call voluntary witnesses,[35] 2) the right to cross-examine adverse witnesses,[36] 3) the right to counsel or counsel substitute.[37] These rights are more difficult to balance against the interests of the prison administration because they appear to pose a greater threat to administration control and, given the non-adversarial nature of the hearing, place a greater burden on the hearing. Those courts which find these elements to be essential base that finding on the severity of the threat to the inmate's interests. Thus it is a question of how the court applying the balancing test sees the relative importance of the interests involved.

It must be noted that these procedural requirements are not absolutes; in certain instances the interests of the administration in maintaining security outweigh the interests of the inmate. For example, in time of emergency an inmate may be confined in detention without a hearing;[38] if there is a legitimate medical reason, such as threatened suicide, he may be confined for his own protection.[39] The limits of such administrative action have not yet been extensively explored by the courts, but it is clear from this line of cases that administrative segregation cannot be used simply to avoid providing a hearing.[40] The use of

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[34]Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971) (this is an equal protection argument in this case because there is an unofficial right to appeal which the court holds must be offered to all inmates equally if it is offered at all); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971) (does not require appellate procedure but sets standards which it must meet if it is offered); Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970) (the question was raised in plaintiffs claim but relief on this point was not specifically granted in the injunction).

[35]Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970), overruled on this point by Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971); Bundy v. Cannon, 328 F. Supp. 165 (D. Md. 1971); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

[36]Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971); Bundy v. Cannon, 328 F. Supp. 165 (D.Md. 1971); Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970) (overruled on this point by Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

[37]Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970) (overruled on this point by Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971).

[38]Carter v. McGinnis, 320 F. Supp. 1092 (W.D. N.Y. 1970); Smoake v. Fritz, 320 F. Supp. 609 (S.D. N.Y. 1970).

[39]Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970).

[40]Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970).

administrative segregation for this purpose would make the courts' work in this area comic.[41]

INNER SANCTUM.

While the administration of state penal institutions is no longer an unassailable citadel of administrative law,[42] there remains the traditional reluctance to become involved in the internal affairs of state penal institutions. The due process questions involve the courts in a substantial reaching into the inner sanctum of prison life,[43] even recently not all courts have

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[41]This question is presently being litigated in a suit filed March 10, 1972 in the Ninth Circuit District Court, Carter *et. al.* v. Craben *et. al.*, (Civ. S. 2388).

[42]Wright v. McMann, 321 F. Supp. 127, 132 (N.D. N.Y. 1970).

[43]Courts have applied various forms of relief: 1) ordering that new regulations meeting the standards of due process which they articulate be presented for their approval – Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970) (overruled in Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1970); Carothers v. Follette, 314 F. Supp. 1014 (S.D. N.Y. 1970) (defers to the court in Sostre v. Rockefeller which had already required this); Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970) (also defers to the Sostre court's order); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971) (the appellate court in Clutchette v. Procunier refused to stay this part of the order; Letter from the Office of Evelle J. Younger, Attorney General, State of California, January 25, 1972; Letter from William Bennett Turner, Counsel for Plaintiff, January 22, 1972 [on file, U.C.D. Law Review Office]): 2) acting as arbiters between parties who promulgated an agreed upon set of rules – Morris v. Travisono, 320 F. Supp. 852 (D.R.I. 1970); Bundy v. Cannon, 328 F. Supp. 165 (D. Md. 1971); 3) ordering the release of prisoners confined in segregation without due process – Smoake v. Fritz, 320 F. Supp. 609 (S.D. N.Y. 1970); Carter v. McGinnis, 320 F. Supp. 1092 (W.D. N.Y. 1970); Sostre v. Rockefeller, 312 F. Supp. 863 (S.D. N.Y. 1970) (taken as a preliminary step) (the appellate court in Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1970), affirmed the holding that Sostre's initial detention in punitive segregation was unlawful.); 4) ordering the return of good time taken without due process – Wright v. McMann, 321 F. Supp. 127 (N.D. N.Y. 1970); Kritsky v. McGinnis, 313 F. Supp. 1247 (N.D. N.Y. 1970); Rodriguez v. McGinnis, 307 F. Supp. 627 (N.D. N.Y. 1969) (reversed in Rodriguez v. McGinnis, *Crim. L. Rptr.* 2051 (1971), holding that discipline was imposed properly, but the dissent reiterates the factual question whether the inmate was really given a hearing on and punished for the named infraction or for another non-punishable offense – refusal to disclose source of contraband); 5) ordering an annotation on an inmate's confinement in segregation had been illegal – Burns v. Swenson, 300 F. Supp. 759 (W.D. Mo. 1969) (reversed on appeal; Burns v. Swenson, 430 F.2d 771 (8th Cir. 1970).

been willing to assume this responsibility.[44] However, the United States Supreme Court in *Haines* v. *Kerner* said: "Whatever may be the limits of inquiry of the courts into the internal administration of prisons, allegations such as those asserted by petitioner...are sufficient to call for the opportunity to offer supporting evidence."[45] Haines was a 66 year old inmate who was confined in segregation after refusing to discuss an incident in which he struck another inmate with a shovel. He alleged physical injuries and a denial of due process. This supports the trend of courts to be more willing to take these cases. The anticipated result of having more courts grapple with the problem is a development and clarification of the law in this area.

CALIFORNIA DEPARTMENT OF CORRECTIONS REGULATIONS

In California, the ultimate hope of inmate discipline is to develop in the inmate self-reliance, self-control, self-respect, and self-discipline; not merely the ability to conform to the rules, but the ability and desire to conform to accepted standards for individual and community life in a free society. This goal can only be realized through such a modification of beliefs and such a corresponding change of attitude as to bring them into harmony with those held by society in general. It is the policy of the Department of Corrections to administer inmate discipline in such a way as to conserve human values and dignity and to bring about such desirable changes in attitude.[46]

This policy regarding inmate discipline is carried out under specific guidelines issued by the Director of the Department of

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[44]Wells v. Procunier, (71-2099) (Civ. S. 1804) (E.D. Cal. 1971), (dismissed); Sullivan v. Ciccone, 311 F. Supp. 456 (1970); Burns v. Swenson, 430 F.2d 771 (8th Cir. 1970). Some courts apply an arbitrariness test that avoids the tougher due process standards: Krist v. Smith, 309 F. Supp. 497 (S.D. Ga. 1970); Dabney v. Cunningham, 317 F. Supp. 57 (E.D. Va. 1970); Howard v. Smyth, 365 F.2d 428 (4th Cir. 1966); Courtney v. Bishop, 409 F.2d 1185 (8th Cir. 1969); Graham v. Willingham, 384 F.2d 367 (10th Cir. 1967); Landman v. Peyton, 370 F.2d 135 (4th Cir. 1966).

[45]Haines v. Kerner, 92 S. Ct. 594 (Jan. 1972).

[46]STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS, RULES OF THE DIRECTOR OF CORRECTIONS. CH. IV, ARTICLE 5, INMATE DISCIPLINE, (hereinafter cited as DIRECTOR'S RULES), Policy Regarding Inmate Discipline.

Corrections. The Director acquires the authority to issue these guidelines from sections 5054[47] and 5058[48] of the California Penal Code.

The general duties of all prison personnel are outlined in the first section of the Director's Rules dealing with inmate discipline. Director's Rule D4501 states that:

> The discipline of inmates is the responsibility of every employee, regardless of his assignment. Such discipline may include correcting, counseling and/or advising the inmate regarding acceptable behavior. If after a reasonable period, such correction and counsel proves ineffective a written report of the facts shall be submitted...
>
> When the behavior of an inmate results in a more serious violation of the rules or of the law, it is the duty of any employee having knowledge of the violation to immediately report the facts in writing. A copy of the ...(report) will be given to the inmate within a 24 hour period. Any charge reducing the offense charged shall be discussed with the writer.[49]

The head of each penal institution in California must establish a plan for the administration of inmate discipline, which must conform with the Director's Rules and be approved by the Director before adoption.[50] Each institution must have a Disciplinary Officer and/or Disciplinary Committee.[51] The Disci-

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[47]CAL. PEN. CODE § 5054 (West 1968) states:

> The supervision, management and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the director.

[48]*Id.* § 5058 states:

> The director may prescribe rules and regulations for the administration of the prisons and may change them at his pleasure.

These code sections leave the Director of Corrections a great deal of discretion in developing the guidelines for prison discipline.

[49]DIRECTOR'S RULES, § D4501, *supra* note 46, Responsibility of Employees.

[50]*Id.* § D4502, 1. Administration of Discipline of Inmates.

[51]*Id.* § D4502, 2.

plinary Officer must consider and dispose of minor matters of discipline where no danger to safety, property, or life exists. More serious or persistent violations are the responsibility of the Disciplinary Committee.[52] A new statewide directive now mandates that when an inmate is found not guilty, the violation form will be destroyed, leaving no permanent record in the inmate's file.[53]

If an inmate is found guilty of a rule violation, a disciplinary officer has authority, subject to the approval of the institutional head, to subject the inmate to: 1) counseling and/or warning, 2) reprimand, 3) temporary loss of one or more privileges, 4) one or more week-end or holiday lockups, 5) assignment to a special work detail, and 6) confinement to quarters not to exceed 30 days.[54] For more serious rule violations, the Disciplinary Committee may order any of the above dispositions plus: 1) permanent loss of one or more privileges, 2) confinement to an isolation cell, 3) recommendation to the Adult Authority, (or Women's Board of Terms and Parole) for appropriate action, and 4) recommendation to the Director of Corrections regarding forfeiture of earnings.[55]

The Disciplinary Officer or Disciplinary Committee may suspend the sentence associated with any of the authorized disciplinary actions.[56] The Chief Disciplinary Officer also has the power to commute isolation when satisfied that the inmate is penitent or desires to conform to the fules.[57]

The length of confinement in isolation cells has recently been reduced to a maximum of 10 days from the prior maximum of 30 days.[58] There is an exception to this rule:

> ...[I]f in the opinion of the institutional head, the discipline and safety of the institution so requires, an inmate may be kept in such confinement for a longer period than (10) days with the approval of the director.[59]

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[52] *Id.* § D4502, 3.

[53] *Id.* § D4502, 4. This is a new procedure outlined in DEPARTMENT OF CORRECTIONS ADMINISTRATIVE BULLETIN NO. 45/71, issued October 15, 1971.

[54] *Id.* § D4503(a), Authorized Disciplinary Actions.

[55] *Id.* § D4503(b).

[56] *Id.* § D4504.

[57] *Id.* § D4505.

[58] *Id.* § D4511. This is a new procedure outlined in DEPARTMENT OF CORRECTIONS ADMINISTRATIVE BULLETIN NO. 45/71, issued October 15, 1951.

[59] *Id.* § D4518.

No matter what else is done, no cruel or corporal punishment is permitted in California penal institutions.[60]

Inmates who feel that they have been unjustly dealt with may write to the Chief Disciplinary Officer or Associate Warden, Custody in an attempt to appeal. The Directors Rule make no mention of the avenue of appeal.[61]

SAN QUENTIN

PHYSICAL PLANT.

San Quentin is California's oldest and largest prison facility.[62] It has the capacity to hold 3,900 inmates,[63] but as of January 1, 1972 only approximately 2,229 inmates were housed there.[64] The steady reduction in inmate population within the past few years[65] has made it possible to have almost all prisoners assigned to individual cells.[66] This has eased tensions normally associated with having men share cramped living facilities with virtually no privacy. It is the hope of prison administrators that in the near future, as the prison population continues to decline, all inmates will be able to have individual cells.[67]

Because of San Quentin's age and size, coupled with changing philosophies about corrections, it is difficult to maintain the

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[60]*Id.* § D4518.

[61]I have been told by several department administrators that inmates may appeal. They are allowed intra-institution mail service entitling them to write to administrators concerning grievances, but the rules do not state, nor are the inmates told by the Disciplinary Committees that they have any right to appeal.

[62]CALIFORNIA CORRECTIONAL SYSTEM STUDY, PRISON TASK FORCE REPORT, at 53a (July 1971) (hereinafter cited as KELDGORD REPORT).

[63]*Id.*

[64]Statistics obtained from the Office of the Warden, San Quentin, January 3, 1972.

[65]There has been a steady decline in California's prison population. The Department of Corrections' institution population numbered 22,680 persons in June 30, 1971, which was a decrease of 4,602 persons, or 16.9% from June 30, 1970. San Quentin's population has dropped from 2,864 on June 30, 1971 to 2,229 as of December 31, 1971. This decline is accounted for partially through increased use of parole and probation. STATE OF CALIFORNIA, HUMAN RELATIONS AGENCY, DEPARTMENT OF CORRECTIONS, ADMINISTRATIVE INFORMATION AND STATISTICS SECTION, RESEARCH DIVISION, CHARACTERISTICS OF FELON POPULATION IN CALIFORNIA STATE PRISONS BY INSTITUTION, JUNE 30, 1971.

[66]Interview with Acting Associate Warden, Custody, San Quentin State Prison, at San Quentin, December 20, 1971.

[67]*Id.*

institution in a safe, secure and sanitary fashion.[68] It is simply d dreary and depressing place for most inmates.[69]

ORIENTATION AND THE INSTITUTION PLAN REGARDING DISCIPLINE.

All men who are to be incarcerated at San Quentin go through an orientation process.[70] At this time they are given a copy of rules and regulations which must be followed while at the institution. These rules range from defining allowable personal property through outlining restricted areas and expected conduct. The "San Quentin Prison Institution Plan for the Administration of Inmate Discipline" establishes the procedures to be followed in all cases in which inmates are charged with violating prison rules.[71] This plan is in accord with the Director's Rules.

The Institution Plan provides that when an employee believes an inmate's conduct seriously violates some prison rule, the employee is required to report the facts in writing on Form CDC-115.[72] All 115's are heard by an officer of the Unit Disciplinary Court within one day of the violation write-up. The Court (a single officer) has the power to dismiss the violation, impose a limited amount of punishment or refer the case to the Disciplinary Committee.[73] The Disciplinary Committee presiding over the hearing is composed of "not less than four of the following persons or their alternates: Warden, Associate Warden,

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[68]KELDGORD REPORT, *supra* note 62. Personal observation of physical plant, the South Cell Block, "the longest in the world," which includes the Administrative Segregation units is especially dark and dreary, with garbage on the floor. No one liked these conditions. The staff was apologetic. Several suggested it should be torn down.

[69]*Id.*

[70]Interview with Acting Associate Warden, Custody, San Quentin State Prison, at San Quentin, December 20, 1971.

[71]*Id.* The SAN QUENTIN INSTITUTION PLAN FOR THE ADMINISTRATION OF INMATE DISCIPLINE, is available at San Quentin State Prison (hereinafter cited as the INSTITUTION PLAN).

[72]See generally Clutchette v. Procunier, 328 F. Supp. 767, 733-777 (N.D. Cal. 1971) for an excellent description of disciplinary procedures at San Quentin with only minor changes. As of October 15, 1971, inmates are to receive a copy of the form CDC 115 within 24 hours of the write up rather than merely getting notice of the report by receiving a form CDC 263. DEPARTMENT OF CORRECTIONS ADMINISTRATIVE BULLETIN 71/45 made this rule mandatory statewide.

[73]DIRECTOR'S RULES, § 4502, *et. seq.*, *supra* note 46; WARDEN'S RULES, SAN QUENTIN STATE PRISON, CHAPTER IV, ARTICLE 5, Q4502.1 (hereinafter cited as WARDEN'S RULES).

Custody; Associate Warden, Classification and Treatment; Program Administrator of the Unit involved; one member of the Psychiatric staff. ..."[74]

There are three categories of disciplinary infractions established in Section ID-III-08 of the Institution Plan: "administrative", "disturbance", and "major".[75] Disturbance and "major" violations should always be referred to the Disciplinary Committee by the Disciplinary Court,[76] but any serious case may be referred regardless of the category in which it falls.

DISCIPLINARY PROCEDURES: VIOLATIONS REPORTED.

From January 1, 1971 through December 20, 1971 there were 2,887 violations written up on form 115's by the staff.[77] These were broken down into: 1,727 administrative violations, 644 disturbance violations, and 516 major violations.[78] Roughly 80 percent of these reports were handled solely by the Disciplinary Court. The remaining 20 percent are referred to the full Disciplinary Committee for final disposition.[79]

From October 1, 1971 through December 20, 1971 there were

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[74]*Id.* § Q4502.2.

[75]Interview with Acting Associate Warden, Custody, of San Quentin State Prison and Custody Office Files Officer, San Quentin State Prison, December 20-22, 1971; Clutchette v. Procunier, 328 F. Supp. 767 n. 4, 773 (N.D. Cal. 1971).

Section Id-III-08 of the INSTITUTION PLAN states that "administrative" offenses are those "of a minor nature where no serious threat to institution security is involved." Examples include "non-serious contraband", "disobeying orders," failure to comply with routine requirements like haircuts, "belligerent attitude or abusive language" and gambling.

"Disturbance" offenses are those "which can or have threatened the good order of the Institution, but are not of major importance." They include "fighting", "threatening employees," "conduct which could lead to violence," "unlawful gatherings," "immorality," use of intoxicants, deliberate destruction of state property up to $100 and possession of contraband.

"Major" offenses include "all cases involving commission of a felony crime and/or seriously threatening the security and good order of the Institution." Examples are escape, homicide, "felonious assault" on staff or other inmates, possession of "dangerous contraband" such as narcotics or weapons, serious destruction of state property in excess of $100 and participation in a work stoppage or riot.

[76]WARDEN'S RULES, Q4502,1, *supra* note 73.

[77]San Quentin State Prison Log of Disciplinary Court Action, (Cumulative Record).

[78]*Id.*

[79]*Id.*

1,480 violations written up on 115's. Of these, approximately 250 were heard by the Disciplinary Committee.[80]

[80] *Id.* a sample of 254 cases was taken from the Disciplinary Committee records from the months of July through December 1971. The official charges were as follows: inmate behavior, 88; contraband, 31; inmate responsibility, 26; obeying orders, 17; use of stimulants or sedatives, 14; unauthorized areas, 11; care of state property, 8; respect towards officials, 8; work furlough, 7; inmate work performance, 5; hours of work, 4; escape, 4; conduct which could lead to violence, 3; not ascertainable either because inmate has been transferred or released, 28.

The charge is not always an accurate description of the actual infraction. For example, being in possession of contraband weapons has been charged as inmate behavior, contraband and escape during this 6 month time period. Being intoxicated while in the prison facility has been charged as inmate behavior, contraband and use of stimulants or sedatives.

Listing the actual events will give a more accurate description of the rule infractions which compose the approximately 20% of all violations deemed serious enough for disciplinary committee action. Many charges are broken down into several events which means that one inmate's acts will be described by several events. For example, an inmate found with "home brew" may be described as being intoxicated and in possession of contraband while being written up as violating inmate behavior. Therefore the total number of events will greatly exceed the number of cases studied.

Events:

Verbal abuse of staff	44
Disobeying orders	28
Fighting	23
Escape	15
Intoxicated at San Quentin	14
Abusive Language	14
Attack	13
Destruction of State Property	13
Contraband other than weapons, drugs or alcohol	12
Erratic Behavior	12
Under influence of drugs at San Quentin	10
Late for a lock up	10
Failure to return from temporary community release	10
No return work furlough	9
Felonies other than escape	8
Contraband Weapons	8
Contraband Alcohol	8
Verbal fight	8
Unauthorized areas	8
Out of bounds	7
Absent from work	7
Contraband drugs	7
Immorality	6
Self Mutilation	5
Asking for special favors	3
Unexcused absence from school	3
Work furlough (other than no return, late, intoxicated)	3

THE HEARING ATMOSPHERE.

The Disciplinary Committee meets twice per week and makes the rounds to the different units of the prison. The facilities within the cell blocks vary. The hearing may take place in a converted cell or in a custodial office. In almost all cases the room is too small which tends to make the people involved uncomfortable and makes the handling of necessary papers and files difficult.[81]

At the outset of a hearing, before the inmate is called in, the Committee will look at the violation and discuss its merits along with the inmate's past record and psychological file. From personal observations it seems that the committee members are usually fairly set in their ideas as to what the determination should be at this point.[82] Next the inmate will be called in and be informed that he is now in front of the Disciplinary Committee. If the violation is also considered a felony serious enough to be referred to the County District Attorney (i.e., a serious assault, possession of weapons, etc.), the inmate is read his Miranda[83] rights and told that the violation will be referred to the County District Attorney for possible prosecution. The Disciplinary Committee will still discuss this type of violation with the inmate although they are not allowed to make any disposition until the District Attorney has decided not to prosecute.[84] With less serious violations, the charge will be read to the inmate if he

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Intoxicated, work furlough	2
Absent, work furlough	2
Late for Pass	2
Inciting a Riot	2
Work performance	2
Unexcused lock	1
Late to Work	1
Attempted Escape	1
Late Work furlough	1
Others	8

[81]Personal viewing of Disciplinary Committee hearings at San Quentin, December 21, 1971. Interviews with Disciplinary Committee members at San Quentin, December 20-22, 1971.

[82]*Id.*

[83]See Miranda v. Arizona, 384 U.S. 436 (1966).

claims no knowledge of the incident, and he is given the opportunity to speak in his own behalf to explain his conduct.[85]

PLEA, FINDINGS AND DISPOSITION.

If the inmate is willing to talk there may be a short counseling type session to try to show the inmate the poor judgment that caused him to violate the rule or regulations. After this, the inmate leaves the hearing room and the Committee discusses what punishment if any should be levied against the inmate. At this point the personal philosophies of the Committee members come into play. The more custodial and punishment oriented members will come into conflict with the treatment oriented members. The discussion among the Committee members seemed open and honest. After a decision is reached, the inmate is called in and he is told of the Committee's decision.[86] If found guilty, the inmate is then led out to whatever punishment may await him.[87]

APPEAL.

The inmate has the right to appeal the Committee's holding by

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[84]Clutchette v. Procunier, 328 F. Supp. 767, 774 (N.D. Cal. 1971) described and expressed displeasure over the old procedure of carrying out a full disciplinary hearing including punishment, when an inmate remained silent pursuant to his constitutional rights involving a violation that was given to the District Attorney. San Quentin administrators ended this practice in mid December, 1971. This practice was deemed to be double punishment.

[85]Of the 223 cases where the inmates plea could be ascertained, 107 plead guilty, 81 plead not guilty and 35 either refused to plead or their cases were heard in absentia. Cases were heard in absentia when an inmate refused to attend the hearing and when the inmate was an escapee. In both of these situations, the disciplinary committee proceeded without the inmate.

[86]Of the 220 cases where the Committee's findings could be determined, 4 inmates were found guilty with mitigating circumstances, 19 were found guilty with extenuating circumstances, 76 were found guilty with an explanation, 99 were found guilty without an explanation, 2 were found guilty with a negative explanation (an admitted purposeful violation) and 20 were found not guilty and had the charges dismissed. The more mitigated the guilt, the less severe punishment would be.

[87]Personal viewing of Disciplinary Hearings at San Quentin, December 21, 1971. Although the violations by inmates went from non-violent to violent, trivial to serious, the Disciplinary Committee used only a few of many possible dispositions to punish most offenders.

134 out of the 234 men punished lost their privileges for 30 days. This included the right to see movies, make purchases at the canteen, etc.

writing a letter to the Chief Disciplinary Officer or the Associate Warden, Custody.[88] He may ask for a personal interview to discuss the matter. This avenue of appeal is open merely because of the inmate's access to the prison mail system entitling the inmate to write to the Warden regarding grievances. The inmate is not told of this procedure at his hearing.[89] Although this avenue is open, inmates rarely avail themselves of it. Some may not know they have the right, others may not want to cause unneeded friction, but in most instances no appeal is made because the inmate is guilty of the charge of which he is accused.[90]

INMATE'S ATTITUDE.

It is difficult to assess the inmate's feelings toward the hearing procedure.

> The only way to find out how the inmate feels is to dress in blue and be in front of the man.[91]

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170 men received sentences including from one to ten days of isolation. 46 men had their isolation time suspended. Two men received two day sentences. Eight men were sentenced to three days. Nine men were sentenced to four days. 34 men were sentenced to five days. Three men were sentenced to six days. Four men were sentenced to seven days. Three men were sentenced to eight days. One man was sentenced to nine days. 62 men were sentenced to the maximum allowed, 10 days.

In 30 cases, the Disciplinary Committee sent recommendations to the Adult Authority regarding the inmates lack of ability to obey regulations and advising them against granting the inmate a parole date. 39 inmates had their custody status raised, i.e. from minimum to medium, etc.

In 54 cases the Committee decided that the inmate should be reclassified. (This could change or revoke job or school assignments. It may also mandate a transfer of living facilities.)

In 25 cases, inmates were punished by the Committee even though the case was also being sent to the County District Attorney for possible prosecution. This practice ended in mid-December relying on Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971.) Currently Disciplinary Committee action is held in abeyance in this type of case until the county District Attorney has had time to act.

Mere warnings and reprimands were used with only the most minor problems. They were used 27 and 20 times respectively.

[88]Interview with Acting Associate Warden, Custody, San Quentin State Prison, at San Quentin, December 20, 1971. Interview with members of counseling staff and members of Disciplinary Committee of San Quentin, December 21, 1971.

[89]Personal observation of Disciplinary Hearings at San Quentin, December 21, 1971.

[90]*Id.*

[91]Interview with San Quentin inmate on December 22, 1971.

Undoubtedly they would be more bitter and resentful if they had no right to speak in their own behalf, especially in those instances where they are, in fact, innocent of the charge. Many inmates and some guards feel that the inmate cannot truly get a fair hearing without a true adversary system; including the right to confront your accuser, cross-examine, and have counsel or counsel substitute.[92]

ADMINISTRATORS' ATTITUDE.

Most administrators feel that some if not all of these changes are forthcoming due to the pressures of recent cort cases.[93] Their concerns seem to be mainly budgetary. They also show concern for their staff who will have to put in extra hours to make sure such procedural safeguards are properly given to the inmate population. The problem of causing increased friction between inmate and line officer has been played down. Most staff interviewed feel that the net result will be a reduction of 115's reported and an alternative type of action developed, such as warnings and reprimands, to deal on the spot with the more minor infractions.[94]

Some staff at San Quentin invision the setting up of actual judicial courts within the institution as the only way the courts and inmates will be satisfied in regard to the prisoner's rights.[95] The general staff state of mind is "if the courts want it, they will have it."[96]

A few administrators attribute the recent public and judicial interest in prisoner's rights to outside radical demonstrations. Many are hesitant to change the current system, saying that

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[92]Interview with inmates and line officers on December 20, 21, 22, 1971.

[93]See Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971) Wells v. Procunier _____ F. Supp. _____. (71-2099) (Civ. S. 1804) (E.D. Cal. 1971).

[94]Interviews with Administrators and Line Officers at San Quentin State Prison, December 20, 21, 22, 1971.

[95]*Id.* But many inmates may also feel that a judicial system that puts them behind bars in the first place can not now treat them any better. This type of prisoner, who feels that he has been treated unfairly by being put in prison will not find courts within the institution to be a very effective balm.

[96]Interviews with Administrators and Line Officers at San Quentin State Prison, December 20, 21, 22, 1971.

things have been run for 100 years without any major changes and without all the publicity there would not be a need to change now.[97] But traditional procedures are changing and administrators seem to be making a good faith effort to comply with judicial guidelines.[98]

PROBLEMS ENCOUNTERED IN THE SAN QUENTIN DISCIPLINARY PROCESS.

There are several problems inherent in the present disciplinary system at San Quentin. The system is run principally for punishment.[99] The inmate clearly must pay for his wrongdoing. There is little use of counseling as a method of showing an inmate the error of his ways.[100] In this context the hearings may be anathema to the generally espoused prison goals of developing self-reliance, self-control, self-respect and self discipline in the inmate.[101] The Committee members have a wide range of possible dispositions to levy,[102] but heavy reliance is placed on depriving the inmate of privileges and of invoking isolation time.[103]

Many of the more lenient dispositions are used by the Disciplinary Court which handles the nearly 80% of the 115 infractions which are not sent to the Disciplinary Committee.[104] Yet with such a wide variety of infractions coming before the Committee, it seems that dispositions which better fit the infractions could be levied. These problems may generally be termed philosophical in that they stem from administrative attitudes on punishment and discipline.

Although the prison administrators professed no policy change

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[97] *Id.*

[98] There has been much cooperation between the California Department of Corrections, San Quentin Administrators and the Federal District Court (N.D. Cal.) in planning new disciplinary procedures for San Quentin. The general prison staff seems to be meeting these changes in disciplinary guidelines with at least a cautious acceptance.

[99] For statistics on discipline, see note 87, *supra*.

[100] *Id.* See Appendix A, Table 2, *infra*.

[101] See discussion accompanying footnote 46, *supra*.

[102] DIRECTOR'S RULES, § D4503(a)(b), *supra* note 46, Authorized Disciplinary Actions. See discussion accompanying footnotes 54 and 55, *supra*.

[103] Statistics on Discipline, see Appendix A, Table 9, *infra*.

[104] Records of Disciplinary Court and Disciplinary Committee, Cumulative Log, San Quentin.

in the issuance of 115's in recent months, the Disciplinary Court and Committee Cumulative Log generated a peculiar statistic – from January 1, 1971 through December 20, 1971 there were 2,887 115 reports issued.[105] Of these, 1,480 or over 50% were issued during the last three months of the year, October 1, 1971 through December 20, 1971.[106] All employees encountered with this fact found it curious, yet could offer no explanation for its occurrence. One partial explanation could be an increased concern for security after an incident in late August in which three inmates and three correctional officers were killed in an alleged escape attempt.[107] It seems incongruous that there was no readily ascertainable explanation for this statistic generated from a smooth running disciplinary system. The system also has several procedural problems which can be alleviated by invoking due process requirements.

FACT FINDING.

The committee tends not to believe the inmate who comes before it. The Committee, though justified in many instances, is in such an authoritarian position in relation to the inmate that it will compose a suitable statement of facts when not satisfied in this respect by the inmate. This type of "game" being played between inmate and Committee can be easily remedied. If the inmate had the right to confront his accuser and have some right of cross-examination, the Committee would be able to get a more accurate version of the incident without being put in the position of either believing the inmate or making up its own version. Due Process seems to require this additional procedure if the inmate is truly to be afforded a fair hearing.[108] In this instance Dean Wigmore's famous quote regarding cross-examination being the greatest legal engine for finding the truth is persuasive.[109] In one specific case where four inmates were written up

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[105] *Id.*

[106] *Id.*

[107] Sacramento Bee, August 22, 1971, at 1, col. 1.

[108] See Goldberg v. Kelly, 372 U.S. 335 (1963); Clutchette v. Procunier, 328 F. Supp. 767, 783-784 (N.D. Cal. 1971); Landman v. Royster, 333 F. Supp. 621, 653 (E.D. Va. 1971).

[109] Cross examination is beyond any doubt, the greatest legal engine ever invented for the discovery of truth. 5 WIGMORE § 1367 (1940); California v. Green, 399 U.S. 149, 158 (1970).

for participating in a fight it was clear that all the inmates were not equally culpable. The report given to the Committee was unclear as to who the aggressors were and when the inmates were interviewed separately they did not elucidate the matter. Consequently, the Committee, though not sure of the actual facts thought it best to punish all those involved equally. This was the most expedient thing for the Committee to do but had the inmates had the right to confront the guard who witnessed the event it is conceivable that an innocent victim of an attack would not have been sentenced to 10 days in isolation.[110] This is a clear example of a problem due process can remedy by merely affording the inmate simple fact finding tools.

PUNISHMENT.

Another portion of the proceedings where administrative expediency has an adverse effect on the inmate's rights is in the area of punishment. Punishment at San Quentin does not seem to fit the "crime". Almost everyone gets differing versions of essentially the same punishment, including a 30 day loss of privileges and isolation time from 1 to 10 days.[111] This approach is easy for administrative housekeeping but does not comport with institutional goals of rehabilitation and individual treatment. Due Process would seem to impose a requirement that the punishment reasonably fit the crime.[112] More definite standards should be set to give inmates reasonable notice of the consequences of the various violations that they may commit. To be sentenced to 10 days of isolation for possession of non-dangerous contraband (in one case, small nude photos of wife) seems to offend notions of procedural fair play where possession of this contraband is punished just as harshly as an inmate who instigates a fight.[113] This second inmate is a much greater threat to institutional security yet punishment is identical.[114] Due process requirements in this area, making disposition more logical to correctional goals is consistent with other

[110]Actual cases from Disciplinary Committee Cumulative Log, San Quentin.
[111]See note 114, *supra;* Appendix A, Table 9, *infra.*
[112]Clutchette v. Procunier, 328 F. Supp. 767, 781 (N.D. Cal. 1971), suggestion of schedule of applicable punishments to determine what due process procedures were required.
[113]Actual cases from Disciplinary Committee Cumulative Log, San Quentin.
[114]*Id.*

rights being afforded inmates[115] and would not be much of a burden on the prison administration.

APPEAL.

Although no court has gone so far as to require a formal appeal process for prison disciplinary hearings, there is that right at San Quentin.[116] The main criticism of the San Quentin procedure is that the inmates are not given formal notice of this proceduring during the hearing.[117] Due Process would seem to obligate the Disciplinary Committee to give the inmate notice of this right during the disciplinary proceedings. There is no additional burden placed on the prison authorities by requiring them to give this notice, yet it would insure that all inmates coming before them would have equal knowledge of this procedure. As it stands now, inmates who do not realize that they have the right to use the prison mail to appeal a disciplinary hearing decision are at a clear disadvantage to those that do have this knowledge. If procedures are to be truly standardized under due process requirements this simple notice is imperative.

RACIAL BIAS.

There are some problems inherent in the Disciplinary Hearings which can not be remedied in actual practice by the advent of more due process requirements. The most noticeable problem to present itself from analysis of San Quentin data is in the area of racial bias. Although the statistical analysis is by no means conclusive, it indicates a bias towards a greater number

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[115]Courts have required: 1) advance notice of the character of the prohibited act and the punishment particular conduct will incur, Talley v. Stephens, 247 F. Supp. 683, 689 (E.D. Ark. 1965); 2) notice of the violation of prison regulations, Wright v. McMann, 257 F. Supp. 739, 745 (N.D. N.Y. 1965) reversed on other grounds, 387 F.2d 519 (2nd Cir. 1967); 3) determination of guilt and assessment of punishment by an impartial body, Jackson v. Bishop, 268 F. Supp. 804, 815 (E.D. Ark. 1967) (Vac. 404 F.2d 571); 4) the right of the accused to speak in his own behalf, Landman v. Peyton, 370 F.2d 135, 140 (4th Cir. 1966).

[116]Personal viewing of Disciplinary Committee hearings at San Quentin, December 21, 1971. Interviews with San Quentin Disciplinary Committee members, December 20-22, 1971.

[117]*Id.*

of write'ups[118] and harsher punishments of Blacks and Chicanos than of White inmates.[119] Blacks and Chicanos tend to be sentenced to longer stays in isolation while White inmates are more likely to be the subjects of reprimands, counseling and suspended sentences without the additional penalty of isolation. Even though such discrimination violates due process, if proven, it could not be adequately remedied given the current racial make up of San Quentin prison administrators and well known biases running generall throughout American culture.

PHILOSOPHY.

Two recent authorittative studies, THE PRESIDENTS COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE[120] and the CALIFORNIA CORRECTIONAL SYSTEM STUDY[121] (KELDGORD REPORT), have stressed that to be effective discipline should be preventative if possible, i.e., having positive incentives for good behavior rather than just negative procedures for discouraged behavior. They also stress that good discipline must be fair and consistent and take into account individual differences so far as possible.[122] Specifically the KELDGORD REPORT queries whether the disciplinary policies of California penal institutions may not be exacerbating, rather than improving disciplinary problems.

The KELDGORD REPORT comments on the high number of indi-

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[118]Population break down by race:

White	46.5%
Chicano	16.2%
Black	35.4%
Other	1.9%

Information taken from STATE OF CALIFORNIA, HUMAN RELATIONS AGENCY, DEPARTMENT OF CORRECTIONS, *Characteristics of Felon Population in California State Prisons by Institution.* June 30, 1971.

Infractions in Study by race:

White	66	28.2%
Chicano	85	36.3%
Black	81	34.6%
Other	2	.9%

[119]Statistics on Dispositions controlled by race, see Appendix II, Table 10, *infra.*

[120]PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS, 50-51 (1967).

[121]KELDGORD REPORT, *supra* note 62, at 32.

[122]*Id.* at 37.

while there are still frequent serious incidents challenging the security of the system.[123]

These comments seem to be especially true at San Quentin where discipline is meted out on an almost assembly line fashion without any noticeable alleviation of disciplinary problems. The tendency to apply increasing amounts of the remedy at hand when a little of it has not done the job is apparent at San Quentin.

CONCLUSION

Due process is not a panacea for inadequacies of current prison disciplinary processes. One who espoused such a theory would be naive. Due process must be balanced with practicality in determining how prison goals can best be achieved.

The goals of prison administration must be crystalized. At present, some administrators pay lip-service to rehabilitation viduals "locked up" at a given time in California institutions while other administrators, some criminologists, and some state officials make it clear that the main objective is to protect the rest of society. They feel this is done by the simple act of locking a man up.[124] Administrators of this bent feel that the second priority is punishment and thirdly, if possible, an attempt should be made to rehabilitate the man. This is reflected in disciplinary procedures by the high incidence of maximum isolation sentences compared with the other possible dispositions.[125] The Disciplinary Committee results were clearly weighted towards punishment for the violation rather than counseling to show the inmate his poor judgement.[126] This philosophy is not working well, if the goal is to have the inmate conform to accepted stan-

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[123]*Id.* at 37, citing DEPARTMENT OF CORRECTIONS MEMORANDUM JANUARY 7, 1971, STATE OF CALIFORNIA. 241 men serving disciplinary sentences of 30 days or less, 983 men serving for own protection or protection of others, without any substantial reduction of rule violations.

[124]Interview with various levels of San Quentin Staff at San Quentin, December 20-22, 1971. Interview with John Irwin, Ph.D., Criminology, by Robert Strand in Sacramento Bee, December 12, 1971, at B 10, Col. 1.

[125]See note 87, *supra* in regard to statistics on Dispositions of San Quentin Disciplinary hearings; in addition see, Appendix A, Table 9, *infra*.

[126]*Id.*

dards; punishment does not seem to deter inmates from acting in unaccepted ways.[127]

Assuming that in our civilized society retribution should not take place and that rehabilitation of most inmates is possible and desirable, San Quentin cannot now perform that function. Enforced idleness is no way to instill in a man notions of self-respect, self-control and self-reliance, yet there are long waiting lists at San Quentin for vocational and educational assignment.[128] The two main reasons for this are the lack of present facilities and the lack of funds to develop new facilities. The current problem stems from the age of the physical plant. It is difficult to have a viable modern penal system in an institution whose major facilities were built in the middle of the last century.[129]

This enforced idleness is also counter-productive to rehabilitative goals and puts an added strain on the disciplinary procedures.[130] Many infractions seem to stem from the fact that an idle man needs some diversion, be it contraband drugs, "home-made hootch," etc. As it stands, men are driven into the disciplinary process because they have no opportunity to do anything constructive. These men are being punished for failure to tolerate an intolerable system. The remedy for this problem lies outside the disciplinary machinery *per se.* With greater educational and vocational opportunities the disciplinary process would be directly benefited by the fact that it would not have to deal with the men who violate rules largely out of boredom. This problem will be remedied at San Quentin in the near future because the Governor has announced that San Quentin will be closed down in 1974.[131] This is a positive move by the State although the reasons for this move were more budgetary than humanitarian.[132]

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[127]There is a high rate of recidivism within the disciplinary system. Several inmates were seen 4 or more times during the sixth month period studied. Many other inmates were seen more than once. San Quentin Disciplinary Court and Committee Cumulative logs.

[128]Interviews with Administrative Staff, at San Quentin, December 20-22, 1971.

[129]KELDGORD REPORT, *supra* note 62, at 53a.

[130]Opinions stressed by several members of counseling staff and line officers during interviews at San Quentin, December 20-22, 1971.

[131]State of the State Message by Governor Ronald Reagan, January 6, 1972, at 9a.

[132]*Id.*

Prisons, quite naturally, mirror many of the problems encountered in outside sciety: inadequate education,[133] substandard housing,[134] and racial prejudice,[135] to name just a few. Adherence to constitutional guidelines in Disciplinary Hearings will not erase the effects created by these social problems on the disciplinary procedures.

However, many of the problems encountered in San Quentin Disciplinary Hearings are apposite for due process remedies.

A procedure that can guarantee an honest and truthful fact finding process coupled with reasonable and consistent results would help instill a feeling of worth among inmates who will realize that they are being treated fairly. A fair process like this would instill both a feeling of self-respect and a feeling of respect for the authorities. These goals are clearly within reach through application of due process requirements.[136] But it must be stressed that due process alone will not make the California Department of Corrections into a model penal agency.

Prison reformers must keep in mind that merely tidying up the form of prison administration is not the goal. Real changes in attitude must occur if the prison system is to come close to matching the rehabilitative model. There is a necessity for a

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[133]CHARACTERISTICS OF FELON. POPULATION IN CALIFORNIA STATE PRISONS, SAN QUENTIN. STATE OF CALIFORNIA HUMAN RELATIONS AGENCY, DEPARTMENT OF CORRECTIONS, ADMINISTRATIVE INFORMATION AND STATISTICS SECTION, RESEARCH DIVISION, JUNE 30, 1971.

Grade Placement	Number	Percent
Total	2683	100.0
Illiterate	72	2.7
Grade 3	48	1.8
Grade 4	153	5.7
Grade 5	249	9.3
Grade 6	279	10.4
Grade 7	415	15.5
Grade 8	441	16.4
Grade 9	402	15.0
Grades 10-11	513	19.1
Grades 12 and over	111	4.1

Median Grade 7.8

[134]Personal observation of San Quentin physical plant. Interviews with Line Officers at San Quentin in regard to the many problems in day to day upkeep and sanitation, December 20-22, 1971.

[135]See discussion accompanying footnotes 118 and 119, *supra.*

[136]See discussion accompanying footnotes 108-117, *supra.*

dual pronged attack on the short-comings of correctional administration utilizing both due process requirements and policy changes. This can only come with an all out effort by the state to uplift this long ignored institution.

The courts in their recognition of the inmate's right to judicial remedy for administrative abuses[137] have opened the way for a larger commitment to uplift the correctional system. Yet the courts do not have the resources and legislative ability to develop the policies and procedures that are needed to revise the California penal system.[138]

It seems that the most obvious place to look for systematic penal reform is in the State legislature.

However, its actions have met resistance by the Department of Corrections.[139] Moreover, the Legislature seems reluctant or unable to make the comprehensive changes suggested in the KELDGORD REPORT.[140]

Perhaps the next alternative source of reform is in the Department itself. But the differences between the California Institute for Women and San Quentin indicate the degree of independence which the individual institutions have. The Warden or Superintendent of each institution is responsible for that institution, the Directors rules are merely a guide which they apply to the individual institution. Even if the Department's hold on individual institutions could be strengthened, the Legislature should still determine direction in terms of policy and social goals.

CALIFORNIA INSTITUTE FOR WOMEN

CONTEXT

California Institute for Women (CIW), located a few miles

[137]Haynes v. Kerner, 92 S. Ct. 594 (1972).

[138]For an article that feels that the courts are so equipped, see, Clements and Ferguson, *Judicial Responsibility for Prisoners: The Process That is Due*, 4 CREIGHTON L. REV. 47 (1970-71).

[139]Interview with Philip Guthrie, Chief, Community Relations and Information, California Department of Corrections at Sacramento, California, October, 1971.

[140]Interview with Robert Keldgord, Program Director, Keldgord Report, Board of Corrections, State of California, Human Relations Agency, at Oakland, California, November 1971. Mr. Keldgord anticipated the changes would be made through a combination of the actions of the legislature, the Director of Corrections, the Adult Authority and other concerned agencies.

outside Corona, California, is the only state facility for women felons in California. There are several features of CIW which distinguish it from San Quentin and which are important influences in the disciplinary process there.

CIW is a low population institution housing between 550 and 600 women in dormitories of 120 each.[141] One advantage of the small inmate population at CIW is the apparent accessibility of even the high level staff to individual inmates. Another advantage is that there is little enforced idleness at CIW; since the inmates perform most of the maintenance functions of the institution almost 100% of its inmates can be employed in such services.[142]

The average time spent in CIW is very short. The average stay at CIW is 17.8 months[144] however, there are currently 50 women with minimum terms of seven plus years.[145]

A distinctive feature of CIW, compared to the men's institutions, is that all felons are confined in one institution regardless of seriousness of the original crime or of custody status.[143] Those committed for serious felonies are found to be as responsive to the program at CIW as those sentenced for lesser offences and do not have a higher percentage of disciplinary reports.[146] There are about 25-30 women in close custody.[147] The close cuscustody classification at CIW means that they are watched more closely, although they are housed on the campus and generally participate in the daily routine as any other inmate.[148] One expects this to have an impact on inmate adjustment to disci-

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[141]Interview with Associate Superintendent, in charge of Discipline and Classification, California Institute for Women, at Corona, California, November 23, 1971 (hereinafter cited as Interview with Associate Superintendent.) This represents a drop from 940 in 1966. The monthly inmate turnover rate is about 50.

[142]Interview with Disciplinary Committee members at California Institute for Women, Corona, California, November 22, 1971 (hereinafter cited as Interview with Disciplinary Committee Members).

[143]Inmates are assigned to various custody statuses which imply varying degrees of freedom based in part on escape and violence potential. The degrees of custody at CIW are, Close, Medium, Minimum. The privileges of each classification can be found in Directors Rules D4204, *supra* note 46.

[144]Interview with Associate Superintendent, *supra* note 141.

[145]Interview with Superintendent, California Institute for Women, Corona, California, November 22, 1971 (hereinafter cited as Interview with Superintendent).

[146]Interview with Superintendent, *supra* note 145. It was possible to check this on the basis of the data available to this study.

[147]Interview with Associate Superintendent, *supra* note 141.

[148]Interview with Disciplinary Committee members, *supra* note 142.

pline, especially comparing this situation to that in the men's institutions where recurrent discipline or adjustment problems can be transferred to another (usually more secure) institution and there high custody classifications are kept in high security institutions or housing units away from the general population. While close custody inmates show a higher proportion of infractions,[149] most of the infractions involved a very low degree of violence,[150] even considering incidents where a fight *potentially* could have started.[151] There were no incidents during the period studied in which an inmate was attacked with anything more ominous than a trash bucket or a glass of water,[152] compared to recurrent attacks with dangerous weapons in the men's facilitis.

Moreover, from May to October there were only 183 incidents of rule violations severe enough to warrant a 115, the most severe disciplinary action.[153] Yet, in terms of recalcitrance, the population at CIW is just as tough as that at the men's institutions;[154] inmates still knowingly break the rules; they are equally a part of a criminal-inmate subculture.[155] What explains this non-violent, low-infraction pattern? It has been suggested that these patterns emerge because of the nature of the sex roles in the United States, and because women are simply less violent than men.

> Moreover, women are said to be more dependent, emotional, less aggressive, and less prone to violence than men. It is said that women generally show less initiative in openly defying authority, whereas men have been defined as independent, violent, and aggressive.[156]

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[149]See Appendix B, Table 4, *infra*.
[150]See Appendix B, Table 7, *infra*.
[151]See Appendix B, Table 8, *infra*.
[152]Case # 82, Case # 76, Case # 134 of the 115's in the sample (hereinafter cited as Case #).
[153]In an interview with chief custodial staff at CIW it was estimated that a ratio of 2:1 incidents occurring to incidents reported on a 115 (severe infractions) or 128 (minor infractions) was approximately accurate. It was also estimated that there was a ratio of 10:1 between 128's and 115's. Extending that, we can estimate that there may have been another 18-20 serious violations in that time, still not a high number.
[154]Interview with Superintendent, *supra* note 145.
[155]For an analysis of this theory see: J. IRWIN, THE FELON, (1970); R. GIALLOMBARDO, SOCIETY OF WOMEN (1966); Giallombardo, *Social Roles in a Prison for Women*, 13 SOCIAL PROBLEMS, 271 (1965-66).
[156]*Id.*

However, these are more assumptions than proven facts and the patterns that emerge at CIW could as easily be the result of the many advantages of having so few inmates with which to deal;[157] the need to actually try to deal with each inmate's problem rather than simply shift her to another institution; and the philosophy and policy of the institution's administration.[158]

PHILOSOPHY

The Philosophy at CIW is that the whole institution is corrective, "disciplining" the inmate towards self-control and her eventual release.[159] Discipline, in terms of imposing sanctions for rule violations, reiterates this philosophy. It is the imposition of external control where internal controls fail.[160] In a recent memo on disciplinary procedures, discipline was defined as having two objectives: 1) maintaining order, 2) "helping the inmate to develop her own inner discipline and acceptable conduct."[161] Another directive includes this instruction to the Disciplinary Committee, "the interview will be primarily centered on problem solving, with every attempt being made to help the inmate learn more acceptable behavior."[162] Thus, discipline is corrective both in terms of educating the inmate about the particular infraction (why she should not do it) and in terms of the philosophy of the institution (instilling self-control). As we shall see, this philosophy plays an important role in the formal disciplinary procedures at CIW.

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[157]KELDGORD REPORT, *supra* note 62, at 41, 54, suggests the desirability of low population institutions.

[158]Interview with Superintendent, *supra* note 145, in whose opinion these are important factors in explaining the infraction pattern at CIW.

[159]Interview with Associate Superintendent, *supra* note 141.

[160]CALIFORNIA INSTITUTE FOR WOMEN, MEMO ON EXPERIMENTAL DISCIPLINARY PROCEDURE FOR C.I.W. MAIN CAMPUS 1 (1971) (hereinafter cited as C.I.W. DISCIPLINARY MEMO) (on file in the U.C.D. Law Review Office.)

[161]*Id.*

[162]CALIFORNIA INSTITUTE FOR WOMEN, DISCIPLINARY PROCEDURES, C-1:06(B)(5) (June 11, 1969) [hereinafter cited as DISCIPLINARY PROCEDURES] (on file in U.C.D. Law Review Office).

BASIC LEVELS OF DISCIPLINE

Discipline is handled on three levels at CIW; staff, Cottage Team, and Disciplinary Committee.[163]

STAFF.

A minor incident may be handled informally by a staff member by "individual counseling, instruction and/or warning."[164] If this fails, a 128 incident report is written.

COTTAGE TEAM.

Minor infractions[165] are reported on Form 128 at CIW.[166] At CIW, the 128's are handled by the Cottage Team, which is composed of custodial grades 1, 2, & 3 and the correctional counselor;[167] one or two women from the cottage may optionally be included. Thus, these minor incidents are dealt with by the staff and inmates closest to the inmate—those assigned to her cottage. The team meets once each week to consider these disciplinary reports.[168]

The Cottage Team functions primarily as a counseling unit. However, if counseling fails to correct the behavior, the Team is empowered to impose mild sanctions.[169] If the Cottage Team

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[163]Compare San Quentin, discussion accompanying footnotes 72-74, *supra.*

[164]DISCIPLINARY PROCEDURES, C-1:04. The inmate attitude may also be discussed in group counseling, thus exerting peer group pressure on the inmate as well.

[165]Examples of those incidents considered minor are: Contraband other than narcotics or intoxicants, abuse of mail privileges, inappropriate dress, absent from count, minor destruction of State property, fights where no one is injured, violation of Personal Contact rules, possession of small amounts of money, refusal to work or poor performance, disrespect for staff, obscene language, horseplay, improper use of food, bartering, stealing. DISCIPLINARY PROCEDURES 0-1:05(B)(3).

[166]128's are also used to record any unusual behavior or incident. DISCIPLINARY PROCEDURES C-1:05(B)(1), (2).

[167]Grade one is custodial only and works in the cottage with the inmates at all times, grade two is custodial but also performs administrative functions, grade three is the administrative head of the cottage team. One team is assigned to each cottage. Each cottage houses 120 women. Interview with Disciplinary Committee members at CIW, *supra* note 142.

[168]Interview with Associate Superintendent, *supra* note 141.

[169]Such sanctions include: Counseling/warning, temporary loss of privileges, weekend lock-up in own room, assignment to special work detail, restrictions, and recommendations made by Community Group, and "creative, corrective action in amount and kind to produce desirable changes in attitude and/or actions." DISCIPLINARY PROCEDURES, C-1:05(B)(6).

fails in its efforts to correct the inmate, it may refer her case to the Disciplinary Committee. It is then treated as a 115 violation.[170]

It is estimates that about ten 128's are written to every 115.[171] Thus, this counseling unit is a mainstay in the disciplinary system at CIW. There is no routine review of the 128's and their disposition, nor are they brought to the attention of the Board of Terms and Parole[172] so as to directly affect parole status, though they may appear on the record summary which is prepared for the Board's use.[173]

Since the sanctions involved at this level of the disciplinary process are not severe and since the 128's apparently have only minimal effect on the evaluations of the Board of Terms and Parole, extensive procedural due process protections would not be required by law in the Cottage Team's treatment of the 128's.

THE DISCIPLINARY COMMITTEE.

More serious infractions are handled more formally and can carry heavier sanctions. "When the conduct of the inmate is a serious violation of rules or laws this violation is immediately reported on Form CDC 115."[174]

Very often the difference between a 128 infraction and a 115 infraction is one of degree.[175]

The four most frequently recurring infractions are late re-

[170]*Id.* at C-1:05(C)(2).

[171]Interview with Disciplinary Committee members, *supra* note 142.

[172]Interview with Superintendent, *supra* note 145.

[173]Interview with Associate Superintendent, *supra* note 141.

[174]DISCIPLINARY PROCEDURES, C-1:04(4). The infractions described as necessitating a 115 are: initiating a disturbance, attempted escape, major destruction of state property, use of narcotics, intoxicants, pills or possession (including paraphernalia), assault with or possession of a weapon, fighting resulting in injury, injury or threat to staff, attempt to secure favors from staff, overt sexual acts, refusal to obey an order, possession of money in excess of one dollar, out of bounds (there are areas of the campus which an inmate cannot enter such as near the fence), voluntary lock, attempted suicide, self-mutilation, psychotic behavior, and investigation of any of the above. The infraction of "voluntary lock" consists of the following: Each inmate is assigned to a specific task or activity each day (i.e., her job or school). If she does not report as assigned she must remain locked in her quarters. Since it is the inmates choice not to go to her assignment, this is called a voluntary lock. DISCIPLINARY PROCEDURES, C-1:05(C).

[175]Interviews with Disciplinary Committee, *supra* note 142.

turn from a pass, disobeying a staff order, erratic behavior,[176] and fighting.[177] The frequency distribution of infractions reported on the 115's indicates the sorts of behavior with which the Disciplinary Committee deals and the sort of serious infractions in which the inmates indulge and for which inmates get written. It gives some indication of the institutional interests involved.[178] It also raises the question why certain infractions occur more frequently, and how the fact that a large number of infractions go unreported effects the frequency distribution? Though the final answers are beyond the scope of this study, there are several possible explanations which suggest themselves and should be born in mind in considering this disciplinary system: 1) the custodial staff may report those infractions which impinge most on their personal value system; 2) they may report those violations which threaten the staff member's authority (*e.g.*, the high frequency of the infraction of disobeying orders);[179] 3) they may report the most visible infractions (*e.g.*, it is obvious when an inmate returns several hours late from a pass, when she disobeys a staff order, fights, cuts her wrists, it is not so obvious when she keeps a store of "hootch"[180] or drugs); 4) some types of offenses may be effectively handled at the 128 level so as never to necessitate a 115; or 5) the way in which staff exercises its discretions as to whether to write a 128 or a 115 may keep certain infractions from ever appearing in the sample of 115's. There is a lot happening that cannot be reflected on the fact of the 115's and the formal disposition of the cases in the Disciplinary Committee hearings but which remains important because of its impact on the patterns of infractions and on the inmates with which the Committee must deal.

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[176]Any psychotic behavior, self-mutilation, attempted suicide, and generally seriously unreasonable behavior was classified as erratic behavior for purposes of this research, this is not the institution's category label.

[177]See Appendix B, Table 7, *infra.*

[178]See discussion accompanying footnotes 260-264, *infra.*

[179]See Appendix B, Table 7, *infra.*

[180]This is the prison term for alcoholic beverage or home brew made at CIW.

ANALYSIS OF DISCIPLINARY HEARING

INITIAL STEPS.

The staff member writing the 115 must have personally seen what she reports.[181] It is the policy of the institution that the inmate be informed by the staff member that she is going to write a 115.[182] Four copies of the 115 are made, one of which goes to the inmate prior to her appearance before the Disciplinary Committee.[183] The 115 gives the name of the staff member writing the report, the name and number of the inmate, number and description of the violation, the date and the time of the violation and the custody status of the inmate. Later the same 115 is used to report the plea entered by the inmate, the findings of the Disciplinary Committee, the seriousness of the infraction,[184] and the disposition of the case.

When an inmate receives a 115 she may be locked in detention prior to her hearing before the Disciplinary Committee.[185] Current policy is to "lock" only when necessary; it is no longer the standard procedure to lock every inmate receiving a 115.[186] When an inmate is locked she remains in detention until her hearing. The Disciplinary Committee at CIW meets every Mon-

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[181]Within the scope of this research it was not possible to determine how meticulously that policy is carried out.

[182]Disciplinary Procedures, C-1:03.

[183]CIW DISCIPLINARY MEMO, *supra* note 160.

[184]DEPARTMENT OF CORRECTIONS, FORM CDC-115 (Rev. 2-14-69). The seriousness of the infraction is theoretically ranked as follows: Administrative, disturbance (including disburbance potential), major, in fact all 115's reviewed were ranked as administrative. Thus, while infractions are ranked by seriousness, this appears to have no practical meaning at CIW, but see discussion accompanying footnote 78, *supra*, in regard to San Quentin.

[185]As it was not always clear from the face of the 115 whether an inmate had been locked before the hearing, it is not possible to accurately comment on how frequently this occurs or try to find related variables. The variables representing partial credit for prior lock and full credit for prior lock as part of the disposition of the case cannot give the full picture because if the committee did not take the approach (used more in the more recent cases) of giving credit for prior lock as part of the disposition of the case, that information may be unrecorded.

It was indicated, in the data, however, that inmates are frequently locked for "investigation" of an offense, i.e., the charge is "investigation". If the rationale of lock is necessity, this seems questionable under that rubric.

[186]Interview with Superintendent, *supra* note 145.

day, Wednesday, and Friday, so an inmate usually does not have to wait in lock for more than three days.

The Committee consists of the Supervising Nurse, the Correctional Counselor III, and Women's Correctional Supervisor IV, though the procedures allow for more members as needed.[187] Thus, the Committee is composed of top custodial, counseling, and medical staff. The purpose of the Committee at CIW is set out as:

> 1. To ascertain that all facts in the case are presented accurately.
> 2. To review facts and determine disciplinary action in all serious and/or persistent violations of regulations.
> 3. To ascertain that the inmate is permitted to present her case.
> 4. To ascertain emotional status of inmate at time infraction is considered.
> 5. To insure that discipline is so administered as to have a treatment value rather than a punitive emphasis.[188]

When an inmate comes before the Disciplinary Committee, the 115 is read to her and she is asked for her plea.[189] The 115's at CIW indicate that most recorded pleas are guilty. Only seventeen inmates pled not guilty.[190] This data may be slightly askew because any 115 on which an inmate is found to be not guilty is destroyed, leaving no record of either the alleged infraction or the hearing. However, it was not possible to obtain an estimate of how many times an inmate had been found not guilty during this period, though it can fairly be assumed to be an infrequent occurrence.[191]

PLEA.

The very low number of not guilty pleas raises some interest-

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[187]DISCIPLINARY PROCEDURES, C-1:06(A); INMATE CLASSIFICATION MANUAL, DEPARTMENT OF CORRECTIONS, C1-IV-07 (Sept. 30, 1970) (hereinafter cited as CLASSIFICATION MANUAL).

[188]DISCIPLINARY PROCEDURES, C-1:06(B).

[189]Procedure Viewed at CIW; Interviews with Disciplinary Committee members, *supra* note 142; Classification Manual, CL-IV-07 (Aug. 25, 1966).

[190]See Appendix B, Table 5, *infra*.

[191]Interviews with Associate Superintendent, *supra* note 141.

ing insights into the disciplinary system because it suggests that it may be advantageous to plead guilty. There appears to be a correlation in the data between pleading not guilty and receiving the maximum sanction, ten days in detention,[192] that can be imposed. Of those cases in which a not guilty plea was recorded, 35.5% received the maximum sanction while only 10.1% of those pleading guilty received the maximum sanction. Moreover, the plea apparently cuts across the custody classification which otherwise shows that those in close custody face a higher probability of receiving the maximum sanction.[193]

Of course, we must ask whether plea correlates with the infraction. If an inmate commits certain infractions perceived by the staff as more serious and which are therefore more likely to draw a harsher sanction, is she more likely to plead not guilty? There is some correlation in one area. A markedly higher percentage (26%) of inmates involved in the group of infractions involving violence or potential violence between inmates tend to plead not guilty. The seriousness of the infraction cannot wholly account for the distribution of not guilty pleas when the category showing the strongest correlation (violent infractions) involves so many degrees of the seriousness of the infraction.[194]

The correlation between an inmate's plea and her chances of receiving a more severe sanction might be explained by factors which do not appear on the fact of the 115. It is tacitly assumed that she is guilty. As one Committee member explained, there's no point in pleading not guilty, because the guard saw you do it.[195] This view is supported by the requirement that the staff member writing the 115 report the incident in terms of what she saw[196] and the fact that staff does record a concise description

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[192]Ten days detention is the maximum sanction under the revised DIRECTOR'S RULES D4511, *supra* note 46.

[193]See Appendix B, Table 11, *infra*. This trend is verified by the correlation between other frequently imposed sanctions and the inmates plea, indicating that if an inmate pleads not guilty, she has a very low chance of getting a suspended sentence (5.9%) or counseling (17.6%). Yet these sanctions occur almost as frequently as detention in the total sample.

[194]This fact does raise the question as to why there is this correlation between this particular type of infraction and the not guilty plea.

[195]Interview with Disciplinary Committee, *supra* note 142.

[196]Indeed, if a custodial staff member consistently reported events that did not happen, she would probably soon be out of a job.

of the event they are reporting.[197] The obvious response is to believe the guard.[198] In view of this, a stubborn insistence on innocence can hardly prove to be to an inmate's advantage. One would expect this to be especially true in a procedure which seeks to treat not just to punish. An inmate's recalcitrance in refusing to admit what the committee "knows" she did is itself a sign of poor adjustment which is difficult to ignore.[199]

HEARING.

When she has entered her plea, the inmate is given an opportunity to explain her side of the incident. Even though most inmates plead guilty, the 115's indicate that she usually does try to offer some sort of an explanation. She has the right to call witnesses on her behalf, a right which is exercised, though not in every case.

CIW is unique in that it has an inmate ombudsman system and an offender may have an inmate ombudsman present if she chooses,[200] though this has apparently been little used. CIW also has an Advocate system which is more frequently employed. In any 115 case either the inmate or the Committee can request that an Advocate investigate the incident and report the facts to the Committee within four days. She appears "with the inmate".[201] The Advocate is not a member of the Committee but is chosen from staff not involved with the incident. A roster of Advocates is maintained and the task is assigned on a rotation basis.[202] The Advocate talks to those involved and to witnesses.

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[197]Review of 115's. Moreover, staff members writing incident reports are now being encouraged to be even more precise. Interview with Superintendent, *supra* note 145.

[198]This is also supported by the need to lend administrative support to the custodial staff, staff needs to feel that support in order to function in their daily dealings with the inmates. In return they support and carry out administrative policies. See discussion accompanying footnotes 216-219, *infra*.

[199]Though when asked whether the plea did not effect the outcome of the hearing the response of one Committee member was "no", the simple tabulation of pleas compared to sanctions belies this probably unconsciously functioning factor.

[200]This program is apparently limited at present. At the only hearing in the sample which recorded the use of an ombudsman the inmate rejected the use of the ombudsman, though they were called in by staff. Case # 19.

[201]CIW Disciplinary Memo, *supra* note 160, at 2.

[202]*Id.*

She is the fact gatherer for the Committee. She does not enter a judgment based on those facts, which remains the Committee's responsibility.[203] This method seems to be very well received at CIW.

After the facts have been established, the Committee discusses the disposition of the case, both among themselves in the presence of the inmate and with the inmate.[204] Consequently, she knows immediately the outcome of her case and why the Committee decided as it did.[205]

FACTORS INFLUENCING DISPOSITION.

The 115's on their face and the regulations governing the hearings[206] indicate several factors which are important to the disposition of each case. The Committee is very much concerned with the facts surrounding the incident and the explanation offered, frequently going into much detail about what happened and why. This may go to more than the physical incidents by also including the psychological "events" involved.[207] While the degree to which the inmates try to manipulate the Committee by tailoring their explanations of the facts to what they perceive the Committee wants to hear could not be measured by the data available on the 115's, very few explanations were recorded that could be termed negative (i.e., that the alleged act was not wrong, that the rule is trivial, that it was done in knowing disregard of the rules).[208] There appeared to be some indications in the data that those inmates who gave this sort of answer received harsher sanctions.[209]

The attitude of the inmate is important because the Committee

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[203] *Id.;* Interview with Disciplinary Committee members, *supra* note 142.

[204] Compare with San Quentin where this is done in the inmates absence, discussion accompanying footnote 86, *supra.*

[205] In a very small number of cases (2.2%) the whole case is held in abeyance pending the availability of needed information.

[206] See discussion accompanying footnotes 159-162, *supra.*

[207] DISCIPLINARY PROCEDURES, C-1:06(B). The first enumerated responsibility of the Committee is to ascertain the facts. The 115's in the sample show extensive inquiry into the inmate's motivation for the act. See Appendix B, Table 19.

[208] This was reported to have occurred 13 times during the period covered.

[209] The data indicated a greater tendency to apply counseling as a sanction where a positive attitude was recorded and, conversely, a greater tendency to apply the maximum sanction where a negative attitude was recorded. For those showing a positive attitude, there was a much greater frequency of counseling as a

must treat rather than punish her. The counseling which takes place in the hearing as recorded in the 115's usually involved trying to show the inmate why her action was wrong and tried to get her to accept the Committee's reasoning and standards. Naturally, her attitude, her willingness to accept counseling, is significant and is frequently noted on the 115's. Certainly inmate attitude functions as one factor in the results of these hearings.

Another factor is the impact which a particular sanction will have on a particular inmate. The goal is to discipline the inmate in terms of creating internal controls by the application of external controls.[210] The Committee must consider what sanction will have the requisite "impact" to achieve the desired result.[211] Therefore, who that inmate is in terms of her attitude and adjustment is an important factor in determining which sanction will produce the desired result—the development of self-discipline. This may mean that her past history of infractions is not only relevant but also subject to re-examination at the hearing.[212]

Three other factors recorded by the 115's have more definite effects on disposition: custody classification, race, and date of infraction. We will examine these in terms of how they affect the probability that the inmate will receive the maximum sanction, ten days in detention, because this is the penalty most wished to be avoided and because it is applied frequently enough to be a real possibility in any case.

Custody classification has a definite bearing on the outcome of a case. Those with close custody classifications face a greater chance of receiving the maximum sanction.[213] This might be

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sanction (50%); conversely, for those showing a negative attitude there is the highest percentage receiving the maximum sanction (32%). The data also indicates that only 9.1% of those inmates perceived as having negative attitudes were white.

[210]DISCIPLINARY PROCEDURES, C-1:02.

[211]Interview with Disciplinary Committee Members, *supra* note 142.

[212]Disciplinary Hearing viewed at CIW, Corona, California, November 22, 1971 (hereinafter cited as Hearing Viewed at CIW).

[213]Assume that we can expect to find the same proportion of custody classifications receiving the maximum sanction of ten days detention as we find in the inmate population in the 115 disciplinary process as a whole. Thus, since 14.6% of those inmates receiving 115's during this period were classified as Close custody, 61.6% as Medium, 23.8% as Minimum we expect those same percentages to be in detention for ten days. However, what we find is: 33% of those receiving the

explained if those in close custody commit more serious infractions. Comparing types of infractions we find that the one infraction showing a significantly higher percentage of inmates in close custody is homosexual behavior, a non-violent infraction. The infraction group showing the next highest percentage of commissions by inmates in close custody is violence or potentially violent altercations between inmates, but here those in close custody commit only 16.7% of the total infractions while the heaviest concentration of commissions is found among inmates in medium custody.[214] The higher incidence of the imposition of the maximum sanction on close custody inmates may be explained by a predisposition to give those in minimum or even medium custody another chance whereas the close custody classification advertises an inmate's past offenses and that she is hard to control and may thereby predispose the Committee to apply harsher sanctions. On the other hand, since her past record of disciplinary problems is considered in deciding on an appropriate sanction, implying that heavier sanctions are required to gain the desired result, and since discipline problems effect the custody classification, this may be skewing the data in this fashion. If so, the conscious consideration of past offenses is rarely mentioned in the official record of the basis of the sanction. Alternatively, these inmates may simply be engaged in more severe degrees of the same infractions, but if so it does not show on the fact of the 115's.

Race is another factor. Not only do a much higher proportion of Blacks and Chicanos end up before the Disciplinary Committee, but they also tend to pull down the heavier sentences.[215] There appears to be certain infractions more common to a particular race as well as certain sanctions more commonly received by a particular race. Thus Chicano's show greater numbers of escape related infractions, Blacks show greater numbers of violence related infractions, and Whites show greater numbers of disrespect, work related infractions. Is this variance caused

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maximum sanction are in Close Custody, 48% are in Medium custody and 8% are in Minimum custody. The correlation is inverse; 14.6% of the population receive 33% of the sanction, 61.6% receive 48% of the sanction and 23.8% receive 8% of the sanction.

[214]This is based on classification of infractions by type rather than specific incident involved.

[215]See Appendix B, Table 3, 10, 14, 15, 16, 17, 18, 20.

by cultural differences or by the institution? In any case, the data does not warrant the conclusion that the infraction was the only variable influencing the sanction.[216]

In this sample, the date the infraction was committed also has an effect on the data describing the disciplinary procedures at CIW. A new Superintendent took over in July 1971[217] who represents a more liberal attitude towards discipline and this is reflected in the hearings. It is most obvious in the marked decline in the number of hearings and the frequency of the kinds of infractions reported.[218] This also had more subtle effect on the system because of the disruption caused by the change of Superintendents. Not all of the "old regime" staff accepted the changes which came with the new Superintendent and 50% of the staff left with the old Superintendent.[218] It is suspected that staff may be writing fewer 115's now but for the wrong reasons,[220] a stubborn refusal to report incidents. This is a threat not only to the efficient administration of the institution but to the programs and policies sought to be implemented by the Superintendent. This points out the role of custodial staff in affecting the disciplinary system. The cooperation of the custodial staff is essential to the administration because they are the arm of the administration which is in continuous contact with the inmates; they implement the policies and thereby determine the practical impact which these policies have on disiplinary procedures.

SANCTIONS.

The Committee is authorized to use all the sanctions available to the Cottage Team[221] as well as the additional sanctions of loss of permanent privileges, detention for ten days, suspended sentence, special work detail, referral for administrative lock,

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[216]See Appendix B, Table 17, 18, 20.
[217]By statute the Superintendent of CIW must be a woman. CAL. PEN. CODE § 3320 (West 1970).
[218]See Appendix B, Table 2, *infra.*
[219]Interview with Associate Superintendent, supra note 141.
[220]Interview with Superintendent, *supra* note 145.
[221]See note 169, *supra.*

referral to psychiatric or special treatment program, referral to Re-classification Committee for change of job or custody classification change,[222] appropriate recommendation to the Board of Terms and Parole (when an inmate has been given a parole date it is mandatory that the Board be informed of any 115 she subsequently receives).[223]

Detention is the sanction most frequently imposed.[224] 35.9% of the cases during this period received some degree of detention, a total of 424 inmate days were spent in detention during this period. The data shows a definite clumping around the ten day maximum and the one to three or four day group. The ten day sanction has been dealt with in terms of the factors influencing the result of the hearing. The clumping around the very low number of days of detention is explained by the fact that when an inmate has been confined in detention prior to her hearing she will be given that time already spent as part of her sanction. Often this will satisfy the whole sanction.[225] This raises the question whether detention would have been imposed at all in these cases had it not been for the prior lock by the custodial staff. If that is true, while it certainly seems fair to credit the inmate for time spent in detention, this does not meet the usual criteria of this treatment oriented procedure.

The second most often used sanction is counseling.[226] In the process of counseling every effort is made to get the inmate to accept the institution's assessment of the values which should be applied to guide her actions.

The third most often imposed sanction is confinement to quarters.[227] The inmate usually goes to her assigned task during the day but is confied to her room during the evening. Since most privileges take place in the common areas in the evening, she is in fact also precluded from enjoying these, although loss of privileges was never recorded as a sanction.

Suspended sentences are also frequently imposed. They are

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[222]DISCIPLINARY PROCEDURES, C-1:07. The re-classification committee is responsible for providing a daily routine of work, school, and treatment for the inmate. It also establises her custody classification.

[223]Interview with Associate Superintendent, *supra* note 141.

[224]See Appendix B, Table 9, *infra*.

[225]See Appendix B, Table 13, *infra*.

[226]See Appendix B, Table 9, 19, *infra*.

[227]See Appendix B, Table 9, *infra*.

usually relatively severe and are automatically imposed upon the next (similar) infraction.[228]

Most of the other sanctions which are used are tailored to particular situations, for example, a recommendation to the Reclassification Committee[229] is the common sanction imposed in serious work-related cases.[230] Recommendation to the Board of Terms and Parole is mandatory in those cases where the inmate has been given a parole date.[231] Pay is taken only for destruction of state property.[232]

The Committee is also free to create sanctions to fit the situation and the inmate; it does so quite frequently, calling for such things as the writing of essays,[233] apologies to injured parties,[234] drawing maps indicating out of bounds areas,[235] and assignment to psychiatric treatment.[236] This seems to indicate that the treatment-counseling policy really functions in these instances.

Each case is reviewed for the relationship between the disposition and the infraction by the Associate Superintendent, who is in charge of discipline, and by the Superintendent, both of whom must sign each 115.[237]

DUE PROCESS.

The basic requirements of due process, on which most courts agree, are met at CIW.

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[228]This sanction seems really to be of a different nature than the others as it seems to be a direct and continuing control on the subsequent activities of the inmate and thus square almost precisely with the philosophy of the disciplinary system at CIW. Whether it actually has the anticipated effects would be interesting to study.

[229]The reclassification committee is responsible for assigning the inmates to particular jobs and classes on campus.

[230]It appears on the fact of the 115's that this was often precisely what the inmate wanted.

[231]The Committee records this as part of the disposition of the case and informs the inmate that this action will be taken, but it may be hard to distinguish sanction from administrative procedures at this juncture.

[232]DIRECTORS RULE D1210, D4503, *supra* note 46.

[233]Case # 51, 66.

[234]Case , 71, 76.

[235]Case # 37.

[236]Case # 41, 54, 68, 69, 72, 77, 80, 85, 91, 107. Is this overlap with the responsibility of the re-classification committee?

[237]DISCIPLINARY PROCEDURES, C-1:08(A).

There is notice that charges are being brought at the time the incident occurs and the inmate receives a copy of the 115 prior to the hearing. This meets the requirement of prior written notice of the charge as set out by most courts. The court in *Clutchette* v. *Procunier*[238] (a case on prison disciplinary hearings arising in California) suggests the requirement should be seven days notice. However, this was taken directly from the specific requirements generated by a case dealing with termination of welfare benefits and the requisite procedural protections in that context.[239] It goes without saying that a prison and the interests involved present different considerations to be weighed. For one thing the information and people needed to present the inmates case can be gathered much more rapidly at CIW because they are all confined together. Secondly, the cases that come before the Committee are factually simple and difficult cases are referred to an Advocate so there is not the need for extensive preparation time. Moreover, in those instances in which an inmate is locked prior to her hearing a lengthy notice requirement merely extends the time she has to spend in detention.

The method of giving notice at CIW also meets the right to be informed of the nature of the evidence required by some courts. Because the inmate received a copy of the 115 she knows what information the Committee will have. Since she is also present at the hearing, she is well aware of the evidence against her. However, a question is raised as to what notice must be given. First, if an inmate's past record can be freely re-opened and the questioning as to prior infractions renewed, it becomes blurred which infraction she is really being punished for. Secondly, the data indiates that the rules themselves are vague because

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[238]Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971).
[239]Goldberg v. Kelley, 397 U.S. 254 (1970).

a particular infraction may be written as any of several violations.[240] Since the 115 describes the incident the notice problem is met. However it raises the question of whether a vagueness attack on the rules cannot be sustained, an issue not reached by these cases.

The due process problems raised by locking inmates prior to a hearing, as they are posed at CIW, have not been extensively explored by the courts. The time spent in lock before a hearing is very short and the courts recognize the need of the administration to be free to take summary and swift action, provided a hearing is provided in a reasonable time. Therefore, the time spent in lock before a hearing does not pose a due process problem. However, the data raises questions about the sufficiency of the standards for taking the action if imposing prior lock. The frequency of the Committee's releasing an inmate with time already spent in lock as the only sanction raises the question whether they would have found that punishment necessary had it not been imposed by the custodial staff prior to the hearing. Moreover, this blurs the distinction between necessary administrative action and punishment because, however it may be labeled by the administration, to the inmate, being placed in lock is punishment and threatens her interest in the conditions of her confinement. Nonetheless, as the law now stands the procedural requisites of due process appear to be met.

The second main requirement of due process agreed upon by the courts is the right to be heard. Clearly, the inmates at CIW have and exercise this right.

A third main due process requirement is an impartial fact finder. The Committee is an impartial fact finding body because the members of the Committee are not involved in the incident. Though this should be made an explicit requirement, it is apparent on the face of the 115's reviewed that the reporting officer was not a Committee member. Moreover, the fact finding

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[240]For example, inmate behavior was charged when the event was: 1) referable to the D.A., 2) escape, 3) attempted escape, 4) out of bounds, 5) late return from pass, 6) drug use on campus, 7) intoxicated on return from pass. On the other hand, abusive language was written as 1) inmate behavior, 2) obeying orders, 3) respect for staff, 4) investigation, 5) medical observation. The charge "investigation" in itself raises some questions: if there is not enough evidence to report a particular infraction this avoids having to wait to charge her until there is enough evidence and she waits in lock until the hearing.

task in disputed cases is assigned to an Advocate selected for her impartiality. It may be argued that an impartial fact finder is someone completely unassociated with the Department of Corrections (or at least with the particular institution) because any one so associated represents the views and biases of those institutions. Indeed, these biases may affect the whole disciplinary process as is clear from the presumption of guilt and its effect on the inmate's plea and the Committee's perception of her attitude discussed above. However, to require extra-institutional hearing officers is well beyond the requirements of due process as established by the majority of the decided cases. It also raises practical problems. Because CIW is fairly distant from the State's supply of hearing officers and because of the very small number of cases which are now heard on any one day, it would be impractical to have the hearings as often as they now occur. As a result the benefits of swift discipline and short pre-hearing locks would be lost. Moreover, this raises the question whether impartiality means non-involvement or presumption of innocence. It is clear from the cases that the first is what is required and that it is presumed that open mindedness and a fair hearing will follow. Given the characteristics of this disciplinary system, it is questionable whether an extra-institutional hearing officer would entertain a stronger presumption of innocence. Perhaps this resolves itself to an analysis of the strength of the presumption of guilt, a question important to the disciplinary process as it effects the inmates but not a subtlty treated by the courts.

The fourth basic element of due process, implicit in the very requirement of a hearing, is a determination based on the evidence. This has two phases: 1) determination of guilt based on the evidence, 2) determination of the proper sanction in accordance with the findings of guilt. Everything indicates that the first phase is met at CIW. Since the inmate usually pleads guilty the problem of proving her guilt does not arise in most cases; it appears that even those that plead not guilty usually admit their guilt during the hearing. Where there is a disputed factual question an advocate is employed and the decision is based on her report. Again, a question is raised by the apparent pressures to plead guilty.

In terms of the second phase, we must ask whether there is a sufficient nexus between the facts established at the hearing and the sanction imposed. Given the limited range of sanctions

available and the willingness to use less severe sanctions to affect the policy of treatment, the sanctions imposed are within a permissible range, in relation to the facts of any particular case. No court has required a standard table relating particular infractions with particular punishments. Every 115 is reviewed twice to insure a sufficient relationship between infraction and sanction. However, the variables of race, plea, and custody discussed herein raise the question to what degree are these variables or the evidence produced at the hearing controlling the sanction imposed? Again, these are problems but in terms of existing law, CIW on the face of its procedures meets the standards of due process imposed by the courts.

The requirement imposed by some courts of a written record of the proceedings is met at CIW. The bottom portion of the same 115 which brought the inmate to the Committee is used to record the Committee's findings and its disposition of the case.[241]

The right to appeal raises some questions at CIW. Ostensibly an inmate can appeal, but there are no formally promulgated methods and channels of appeal. Two problems arise: 1) since the right to appeal is not made explicit it is questionable that every inmate knows of it. If every inmate is not informed of this opportunity, only the sophisticated can take advantage of it; 2) the extent of review on appeal is unclear, specified appeal procedures would provide consistent standards which do apply. Not every court has required the right to appeal as an essential element of due process within penal institutions, but where it is offered, it should be equally available to all inmates.[242] On the basis of information now available,[243] one might assume that this right would not be frequently used. However, knowledge that some appeal process is available may well change the high incidence of guilty pleas, and the willingness to admit guilt after a not guilty plea has been entered, because there would be another chance for the inmate to win her case. Would that in turn cut into the effectiveness of the Committee as a counseling unit by adding a further adversarial element?

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[241]Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971); Bundy v. Cannon, 328 F. Supp. 165 (D. Md. 1971). Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Ca. 1971).

[242]See discussion accompanying footnotes, 34, 117.

[243]See discussion accompanying footnotes 192-212, *supra*.

The inmates at CIW have the right to call witnesses, a right many courts have been reluctant to require.

The inmates do not have the right to counsel. Given the context at CIW where very mild sanctions are given and non-serious infractions dealt with, counsel is not necessary. Given the nature of these hearings, that would place too great a burden on them. It is true that detention can be imposed and that disciplinary reports effect the parole status of the inmate. While these surely make procedural due process necessary, it does not follow that the particular element, counsel, is required. *Clutchette* v. *Procunier*[244] suggests there may be a need to require counsel in those cases which are referred to the District Attorney to protect the inmate from self-incrimination. A simpler way to protect the inmate would be for the Committee to refrain from discussion with the inmate if the case is referred or might be referred to the District Attorney.[245]

While the majority of the cases have not required counsel, one case which did, *Landman* v. *Royster*,[246] did so on the basis of some inmates' inability to present their own case and to defend themselves before the hearing officer because of their extreme mental incapacity. This does not appear to be a problem at CIW.[247] Were it a problem the existing ombudsman and advocate systems could easily supply the solution. The ombudsman system is not used extensively at this time; at CIW this is a result of inmate attitude and not administrative conservatism. Though the extent to which the advocate represents the inmate is unclear, she does appear with her and is responsble for presenting the facts. Therefore she also meets the need posed in *Landman* v. *Royster*.[248] Could the advocate's role be modified so as to become counsel substitute? She seems to represent the interests of the institution too much to fulfill that function. No court has yet held that counseling is required at every disciplinary pro-

[244]Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971).

[245]Only two were referred to the D.A. via the Disciplinary committee during the period studied.

[246]Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

[247]See Appendix B, Table 1, *infra*. This is not to say that this is the only role an attorney plays in hearing, but it is the important one in this case.

[148]Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

cedure,[249] CIW meets the standard set by the law at this time.

One due process right the inmate does not have at CIW is the ment to incarceration; this may even include a searching for opposing witness, the staff member writing the report, is not called. The right to cross-examine adverse witnesses requires the officer writing the report to appear personally to tell the Committee what happened, her written report is not enough.[250] However, most courts do not find this to be a constitutional requirement in this context, implying that being informed of what the officer reported either by written notice or at the hearing is sufficient. Moreover, the need for requiring cross examination as seen in the San Quentin disciplinary process[251] (finding the real facts) can be met at CIW by the use of the advocate system.

The right to cross-examine witnesses would add an adversarial tone to the proceedings which are now a combination inquisitorial and counseling session. In order to treat the inmate, to teach self-control, both the facts of what happened in terms of why it happened and some sort of admission that the act was wrong are necessary. The Committee tries to explain why the act was delinquent, what acceptable alternatives are available, tries to get the inmate to accept these alternatives. To accomplish this, they inquire into the inmate's attitudes and adjustment to incarceration; this may even include a searching for more information about an ostensibly closed case.[251] What may make sense from the point of view of the present inquisitorial,[252] counseling approach does not make sense from the point of view of the more adversarial-type proceeding which is implied in the

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[149] *Contra*, Jacob and Sharma, *Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process*, 58 KAN. L. REV. 495, 570-574 (1970).

[250] Bundy v. Cannon, 328 F. Supp. 165 (D. Md. 1971); Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971); Sostre v. Rockefeller, 321 F. Supp. 863 (S.D. N.Y. 1970); (overruled by Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971); Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

[251] Hearing viewed at CIW, *supra* note 212, compare San Quentin, discussion accompanying footnotes 108-110, *supra*.

[252] These proceedings apparently are used as intelligence gathering devices re what is happening on the campus, *i.e.* how contraband is coming in. When an inmate explains her side of the story she is conveying information that is helpful to the administration of the institution well beyond its immediate concern with the particular infraction.

right to cross-examine. Concomitantly, to require more of the adversarial elements of due process may well curtail the amount of "inquisiting-counseling" available to the Committee, forcing it to focus more exclusively on the facts of the particular incident involved. In the estimation of the staff at CIW this would be a serious loss.[253]

However, from a legal point of view there are important problems posed by the present system, because the roles of counselor and judge are commingled in the Disciplinary Committee. A counselor has much more freedom of inquiry because he usually does not punish; the Disciplinary Committee remains a hearing board whose purpose is to deal with particular infractions of prison rules and which has the power to punish that infraction. The inmate is before the Committee for a particular offense, because serious sanctions can be and are meted out their imposition should rest on the facts of the particular incident for which the inmate was called before the Committee and for which she is obstensibly being punished. The data, as discussed above, indicated that the dual roles also influence the procedures because in a system of presumptive guilt an inmate's not guilty plea is hardly indicative of a good attitude. Thus, the inmate is caught in a system that tries to apply both treatment and punishment at once; at some point these two disciplinary models imply contradictory criteria. Not only is the inmate involved in a dilemna of pleading guilty and being punished or pleading not guilty and having that reflect on her attitude but it is often difficult to determine just what controls the Committee's determination, fact or attitude.[254] Regardless of whether the goal is to treat or to punish, punishment is punishment.[255] The facts on which an inmate's punishment is based should be obtained in a

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[253]Interviews with Disciplinary Committee members, *supra* note 142.

[254]This is not to imply any lack of good faith on the part of the Committee, almost without question they honestly try to do the best they know how for the inmate. *But* see dissent in Rodriguez v. McGinnis, 9 *Crim. L. Rptr.* 2060 (1971).

[255]An out break of institutional double-speak is epidemic in contemporary prisons. Inmates are "residents", punishment is "treatment", detention facility is a "campus", guards are "custodial staff", discipline is "correction." There would be no complaint if the terms used portrayed the fact of a working rehabilitative agency, but they lull an easy forgetfullness that the one thing our penal institutions do least frequently is rehabilitate.

manner consistent with the fact that punishment follows infraction and accusation, even where the philosophy is rehabilitation. The roles of counselor and judge should be bifurcated in any fact finding hearing. Counseling should not be forgotten, it should be pursued in a more proper place.

In view of the position taken by the majority of cases, especially at the appellate level,[256] as to the essential requirements of due process within a penal institution and of the kind of disciplinary system at CIW, the requirements of due process are now mostly met at CIW.

To apply the underlying balancing of interests dynamic of cases developing the concept of due process in penal institutions to the disciplinary procedures at CIW raises some pertinent questions.

It appears that the interests at stake at CIW are not as important as those in the major cases in this area. Compared to San Quentin detention is less frequently used, therefore the threat to liberty is not so great.[257] There is a great possibility that some lesser sanction will be imposed.[258] The Committee very frequently uses methods that are not sanctions in the traditional sense in an effort to treat the inmate. Applying the balancing test, the lower threat to the interests of the inmate seems to imply that fewer of the traditional elements of procedural due process are required. However, there is now no way to predict before the hearing is completed how severe the sanction will be. It must also be remembered that every 115 regardless of the official sanction can influence the decision of the Board of Terms and Parole as to an inmate's release date and that even though the system tries to treat the inmate, punishment remains a reality.

Moreover, this possibly less pressing interest of the inmates

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[256]Sostre v. McGinnis, 442 F.2d 178 (2nd Cir. 1971). The appellate court has not yet spoken on Clutchette v. Procunier, 328 F. Supp. 767 (N.D. Cal. 1971), which will set the Constitutional standards for the Ninth Circuit. However, new disciplinary rules have recently been promulgated as *per* Judge Zirpoli's order in *Clutchette.*

[257]Ten days of detention is the standard above which minimal protections of due process are required in Landman v. Royster, 333 F. Supp. 521 (E.D. Va. 1971); see Appendix B, Table 20, *infra.*

[258]See Appendix Table 9, *infra.*

is balanced by the fact that CIW does not face the security threats found to weigh so heavily in some of the cases.[259]

A very important question is raised by the suggestion in *Landman* v. *Royster* that were an institution really to function as a rehabilitative agency the requirements of due process in its disciplinary system might be reduced.[260] There are several problems with this argument: 1) the possibility of accomplishing rehabilitation, it is certainly not being accomplished by the existing system and if it isn't accomplished the argument should not apply;[261] 2) in reality the security goals of the institution remain a primary focus, until rehabilitation is the primary aim of the institution the argument should not apply;[262] and 3) whether rehabilitation, this penologically magical word, can be precisely defined – it now oftem implies the imposition of the values and morals of the middle class.[263] Moreover, precedent suggests that rehabilitation as a form of paternalism should not be used to obscure the need of protection of the rights and very real interests of the inmate.[264]

Will increased due process protections in the Disciplinary

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[259]See Appendix Table 7, *infra.*

[260]Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

[261]It is obvious that it is not being accomplished. Only 12.1% of the total males in California's institutions and 26.3% of the total females have no prior commitment record, STATE OF CALIFORNIA HUMAN RELATIONS AGENCY, DEPARTMENT OF CORRECTIONS, *Characteristics of Felon Population in California State Prisons*,(1971).

[262]"D. Discipline is aimed at two objectives:

1) The maintenance of acceptable social order,

2) Helping the individual to develop her own inner discipline and acceptable conduct." CIW DISCIPLINARY MEMO, *supra* note 160; the sorts of infraction written and held to punishment by the Disciplinary Committee indicate the interests sought to be protected by the Disciplinary System maintaining a secure ordered institution.

See also, Appendix B Table 7, 8, 20, *infra.*

[263]Inmates are supposed to develop self-control. But that, by itself, does not establish a standard to which control is directed. The standards imposed are often very middle class: religiosity, heterosexuality, passivity, conformity to the rules. Moreover, middle class values function to provide rewards and benefits in middle class society from which most inmates do not come and to which most cannot go. What function can middle class values serve for people who do not live here? Is the purpose more than to legitimize our approach to crime or enforce conformity and legitimize a particular value system?

[264]*Cf. In Re* Gault, 387 U.S. 1 (1967) holding that juveniles could not be denied their constitutional rights on the rational that the procedures and "treatment" involved were for their own good.

Committee hearing be met with an expansion of the use of the other methods available through channeling only the most severe incidents to the more formal procedure? This question is raised by the role of the Cottage Team, the use of which may be extended to take more cases out of the Disciplinary Committee procedure.[265] An inmate may not be confined in detention and the Parole decision is not directly affected by the Cottage Team's decision,[266] the orientation of the Team is primarily counseling. Though what this means to the inmate as it actually functions needs further exploration in terms of the current case law and the balancing dynamic applied therein, it is difficult to argue that formal procedural protections are required as a matter of law because the sanctions do not pose the serious threats to the interests of the inmate recognized in these cases.[267] This presents a problem if inmates are channeled to this procedure where they do not have the protections of due process because having to provide these protections can be avoided in many cases.[268]

CONCLUSION

There are some striking differences between San Quentin and CIW. San Quentin is an old and foreboding fortress-like structure. The atmosphere generated by this physical plant is one of oppression. In contrast, CIW is a modern, campus-like facility guided by a treatment oriented philosophy. In terms of population San Quentin is approximately four times larger than CIW. There is a much higher incidence of violent infractions at San Quentin than among the women at CIW. These differences are reflected in the disciplinary procedures of the two institutions.

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[265] Interview with Superintendent, *supra* note 145.

[266] Though it is brought to the Boards attention in the summary of the inmate's record prepared for its use.

[267] *Contra*, Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1970) (requesting notice and fair hearing on facts even in these cases.)

[268] Recommending mild informal disciplinary action in lieu of the heavy sanctions and formal proceedings of the disciplinary committee in less severe situations, the KILDGORD REPORT goes on to say: "The accused inmate, however, must always have the right to request a formal report and a disciplinary hearing in lieu of this action." KELDGORD REPORT, *supra* note 62, at 59 n. 18.

The policy on discipline at San Quentin was weighted more towards punishment of the inmate for his rule violation while the policy at CIW was weighted more towards counseling the inmate to create self-discipline. Sanctions used at CIW were more diversified and mild, arguably making punishment fit the crime better than at San Quentin where a heavy reliance was placed on fewer and harsher types of sanctions, especially loss of privilege and detention. The disciplinary process at CIW afforded the inmate more procedural protections than those at San Quentin. For example, at CIW an inmate could be provided with an advocate and wintesses could be called, procedures not available at San Quentin.

However, the Director of the Department of Corrections has issued new rules governing inmate discipline to go into effect April 10, 1972. Important procedural changes have been made "[i]n a continuing effort to improve...[the Department's] processes...to further protect the inmate's basic rights."[269]

While it is too early to determine what this new procedure will mean in practice, in terms of procedural due process as presently articulated by the courts several important changes have been made.[270] For example, the new rules provide for more complete notice: the new 115 forms, copies of which must be given to the inmate, now include an explanation of the hearing procedures (including the right to call witnesses and the reporting officer) and notice of review procedures.[271]

The new rules require that the inmate must be present at the hearing.[272] This will alleviate the questionable practice of hearing cases *in absentia* as is the case with escapees and inmates who do not wish to appear in front of the Disciplinary Committee at San Quentin. The rules establish levels of disciplinary procedures, requiring more procedural protections at the formal disciplinary hearing where the most severe cases are heard. We might ask what happens to the Cottage Team, so important

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[269]STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS, ADMINISTRATIVE BULLETIN NO. 72/5, March 7, 1972. [on file in U.C.D. Law Review Office] [hereinafter ADMIN. BULLETIN NO. 72/5].

[270]For example, a policy that inmates be locked prior to a hearing only when necessary is established but there are no standards that tell us what practical changes, if any, that will entail. DIRECTOR'S RULES D4502, *supra* note 46.

[271]DIRECTOR'S RULES, D4501, *supra* note 46. See Appendix C, *infra.* for changes between the old and new form 115.

[272]DIRECTOR'S RULES, D4505, *supra* note 46.

at CIW, under the new rules.[273] In cases heard by the Disciplinary Committee an Investigating Officer is to act as an unbiased fact finder. His duties are to interview all persons having relevant information to aid in the determination of the true circumstances of the alleged violation. This is the system already in use at CIW. However, his role at the hearing has been extended because the calling of witnesses (already available at CIW) and presence of the reporting officer has been provided for. It is his role to question them. He must ask them any question posed by the inmate. The inmate may not personally examine witnesses. The investigating officer replaces Committee members as examiner and is one step closer to representing the inmate's interests.[274] What this means in practice in terms of the right to confront accusers, cross-examine witnesses, and counsel substitute must be explored after the system is in full operation.

The rules insure an impartial fact-finding making it explicit that the Committee must not include any staff involved in the incident or who may be called to serve as a reviewing officer.[275] The standard of guilt is preponderance of the evidence.[276] While an impartial fact finder is required by the courts, none have gone so far as to require the newly established evententiary standards.

More complete records at all steps of the disciplinary process are now being required by the new Director's Rules. This will help safeguard the inmate's right to an objective fact finding and will also facilitate having a more complete record if the inmate wishes to appeal the hearing determination.[277] The procedures for review of disciplinary decisions have been formalized.[278] This, coupled with awareness that review is available, alleviates the procedural inadequacies present during the period San Quentin was studied.[279]

The new rules provide that if an inmate is to be referred to

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[273]DIRECTOR'S RULES, D4503 - 4505, *supra* note 46.
[274]DIRECTOR'S RULES, D4505, *supra note 46.*
[275]*Id.*
[276]*Id.*
[277]*Id.* D4509.
[278]DIRECTOR'S RULES D4508, *supra* note 46.
[279]The inmate may request review from all levels of the disciplinary process. Is this sufficient to meet the question raised above and in the KELDGORD REPORT, *supra* note 62, at 59 n. 18, that inmates channeled into the less formal means of discipline be left without enforceable procedural protection?

the District Attorney for possible prosecution, the Committee must postpone its action on the case until the District Attorney has made his decision;[280] thus, apparently obviating the inmate's problem of either jeopardizing his case for the court or his opportunity to defend himself before the Committee.

While the new rules provide extensive protections, the non-adversarial nature of the hearings is meticulously maintained.[281] On their face, these rules meet most of the requirements developed by the courts. However, the diversity in interpretation, application, and result found under the present rules make it clear that the inquiry does not end here. However, the new rules do not provide for separate disciplinary plans for each institution but rather for uniform procedures throughout the system.[282]

What the new rules mean in terms of the realities of prison discipline which must be faced by the inmates must await further empirical study; especially in view of the fact that this research makes it clear that, while procedural due process fulfills a much needed function, many of the problems which are found in prison disciplinary procedures will probably not be met by its imposition.

Tamila C. Jensen
Michael H. Wexler

[280] DIRECTOR'S RULES D4506, *supra* note 46.
[281] ADMIN. BULLETIN NO. 72/5, *supra* note 269.
[282] *Id.* DIRECTOR'S RULES, Chapter IV, Article 5.

APPENDIX

Methodology. The following data are based on research done at CIW in November 1971 and at San Quentin in December 1971 and completed with the co-operation of the Department of Corrections and the Administration of these institutions.

The statistical information was recorded from the face of the 115's. At CIW every 115 from May to October 1971 were used. There are a total of 183 recorded cases. At San Quentin, only the 115's that went to the full disciplinary committee were used. Of these, a random sample was taken for July, August, and September and all were used from October through December 20, 1971. There was a total of 254 cases.

In recording and tabulating the data we followed the categories employed on the fact of the 115's.

The infraction is recorded by the number of the rule in the Director's Rules which was broken and the title of that rule; thus—"Inmate Behavior D-1201."

A more detailed description of the event giving rise to the charge is also recorded. A primary classification of these events was taken from the specific details recorded in terms of how it was described by the officer, resulting in a detailed description of the violations taking place at that time. This data was then regrouped into a secondary classification in terms of the type of act involved, resulting in a more general description.

There are degrees of custody classification within the major categories of Maximum (Close at CIW), Medium, Minimum, but only these three basic classifications were used.

The Disciplinary Committee records its findings of fact in terms of how far the information recorded went to mitigate the guilt of the inmate. At CIW the Committee made careful note of the attitude of the inmate. This was not done at San Quentin. An attempt was made to deal with this information characterizing the attitude in terms of how willing the inmate was to accept the role and values of the Disciplinary Committee. It must be noted that this information suffers from serious problems because the researcher had to rely on the recorded subjective descriptions of a number of reporters. It should be taken for what it's worth—an indication of some of the factors that raise serious questions about the disciplinary process and need more detailed investigation.

The disposition of the cases was recorded in terms of the sanctions made available by the Director's Rules and the institution's rules. Because the Committee can and does generate mild innovative sanctions to fit a particular inmate a category "Create" was used to describe these.

APPENDIX A

SAN QUENTIN

TABLE 1

BASIC DATA

Offense for Which Committed	*Percentage*
Homicide	18.6
Robbery	26.5
Assault	7.0
Burglary	11.2
Theft except auto	3.2
Auto theft	1.3
Forgery and checks	2.9
Rape	5.5
Other sex	4.5
Narcotics & dangerous drugs	12.8
Escape	0.5
Habitual criminal	0.1
All other	5.9
Prior Commitment Record	
No prior commitment	9.7
Prior jail or juvenile only	48.8
Prior prison commitment	41.5
One prison	25.7
Two prisons	10.4
Three prisons	3.4
Four or more prisons	2.0
Sentence	
Death	3.3
Life	10.6
Other	86.1

Ethnic Group

White	46.5
Chicano	16.2
Black	35.4
Other	1.9

Education

Illiterate	2.7
Grade 3	1.8
Grade 4	5.7
Grade 5	9.3
Grade 6	10.4
Grade 7	15.5
Grade 8	16.4
Grade 9	15.0
Grade 10-11	19.1
Grade 12 and over	4.1

Information taken from State of CALIFORNIA, HUMAN RELATIONS AGENCY, DEPARTMENT OF CORRECTIONS, "CHARACTERISTICS OF FELON POPULATION IN CALIFORNIA STATE PRISONS BY INSTITUTION." JUNE 30, 1971.

TABLE 2
DATE

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
December	31	12.5
November	58	23.4
October	81	32.7
September	23	9.3
August	21	8.5
July	34	13.7
Not Entered	6	
TOTAL	254	100

TABLE 3
RACE

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percentage)*
Black	81	34.6
White	65	28.2
Chicano	85	36.3
Other	2	0.9
Not Entered	20	
TOTAL	254	100

TABLE 4

CUSTODY STATUS

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
Maximum	73	30.7
Medium	150	63.0
Minimum	15	6.3
Not Entered	16	
TOTAL	254	100

TABLE 5

PLEA

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
Guilty	107	48.0
Not Guilty	81	36.3
No Plea	35	15.7
Not Entered	31	
TOTAL	254	100

TABLE 6

CHARGE

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
Inmate behavior	88	38.9
Contraband	31	13.7
Inmate responsibility	26	11.5
Obeying orders	17	7.5
Use of stimulants or sedatives	14	6.2
Unauthorized areas	11	4.9
Care of state property	8	3.5
Respect towards officials	8	3.5
Work furlough	7	3.1
Inmate work performance	5	2.2
Hours of work	4	1.8
Escape	4	1.8
Conduct which could lead to violence	3	1.3
Not ascertainable	28	
TOTAL	254	100

TABLE 7

INFRACTION

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
Verbal abuse of staff	44	17.3
Disobey orders	28	11.0
Fight	23	9.1
Escape	15	5.9
Intoxicated at San Quentin	14	5.5
Abusive language	14	5.5
Attack	13	5.1
Destruction of State Property	13	5.1
Contraband other than weapons, drugs or alcohol	12	4.7
Erratic behavior	12	4.7
Under influence of drugs at San Quentin	10	3.9
Late for lock up	10	3.9
Failure to return from temporary community release	10	3.9
No return work furlough	9	3.5
Felonies other than escape sent to DA	8	3.1
Contraband weapons	8	3.1
Contraband alcohol	8	3.1
Verbal fight	8	3.1
Unauthorized areas	8	3.1
Out of bounds	7	2.8
Absent from work	7	2.8
Contraband drugs	7	2.8
Immorality	6	2.4
Self mutilation	5	2.0
Asking for special favors	3	1.2
Unexcused absence from school	3	1.2
Work furlough other than no return, late, intoxicated	3	1.2
Intoxicated, work furlough	2	0.8
Absent, work furlough	2	0.8
Late for pass	2	0.8
Inciting a riot	2	0.8
Work performance	2	0.8
Unexcused lock	1	0.4
Late to work	1	0.4
Attempted escape	1	0.4
Late work furlough	1	0.4
Others	8	3.1
TOTAL	330	

Percent figure taken from total of 254 cases, therefore total percent exceeds 100.

TABLE 8

SECONDARY DESCRIPTION OF INFRACTION

When the distinctions described above are ignored and the infractions grouped according to their basic characteristics, the secondary classifications described below result.

Category Label	*Absolute Frequency*
Respect for staff (disobeying orders, verbal abuse of staff)	72
Fight or potential violence between inmates (fight, attack, verbal fight, abusive language)	58
Escape related (escape, attempted escape, out of bounds, late return pass, no return work furlough, late return work furlough, absent work furlough)	47
Alcohol (Intoxicated on return from pass, intoxicated at S.Q., "Hootch" contraband)	22
Drugs (drugs on pass, drugs at S.Q., drug related contraband)	17
Erratic behavior (erratic behavior, self mutilation)	17
Work furlough (absent work furlough, other work furlough, late return work furlough)	17
Immorality (immorality, unauthorized areas)	14
Destruction of State property (same)	13
Contraband other than weapons, drugs, alcohol	12
Work related (absent work, unexcused lock, late for work, work performance)	11
D.A. (same)	8
Other (same)	8
Unexcused absence school (same)	3

TABLE 9

SANCTIONS

Category Label	*Absolute Frequency*	*Relative Frequency (Percent)*
Counselling	27	10.6
Reprimand	20	7.9
30 day loss of privileges	134	52.8
Additional work assignment	2	0.8
Confinement to quarters	3	1.2
Detention	170	66.9
1 day (suspended)	43	16.9
2 days	2	0.8
3 days	8	3.1
4 days	9	3.5
5 days	35	13.8
6 days	3	1.2
7 days	4	1.4
8 days	3	1.2
9 days	1	0.4
10 days	62	24.4
Recommended to adult authority	30	11.8
Referred to D.A. plus additional action	25	9.8
Referred to D.A. action held obeyance	8	3.1
Pay for damage	3	1.2
Custody change	39	15.4
Referred to reclassification committee	54	21.3
Referred to psychiatric care	10	3.9

TABLE 10

A. Racial Breakdown of Selected Dispositions with Similar Attitudes

MINOR ↓ SERIOUS

1. Counselling

Blacks	1 of 24	4.2%
Whites	3 of 17	17.6%
Chicano	2 of 22	9.1%

2. Reprimand

Black	1 of 24	4.2%
White	1 of 17	5.9%
Chicano	1 of 22	4.5%

3. Detention

	0 days	*5 days*	*10 days*
Black	7 29.2%	2 8.3%	3 12.5%
White	5 29.4%	1 5.9%	2 11.8%
Chicano	4 18.2%	7 3.1%	5 22.7%

B. Racial Breakdown of Selected Total Dispositions

MINOR ↓ SERIOUS

1. Suspended

Black	17 of 81	21.0%
White	18 of 66	27.3%
Chicano	9 of 85	10.6%

2. Reclassification

Black	22 of 81	27.2%
White	12 of 66	18.2%
Chicano	15 of 85	17.6%

3. Custody Change

Black	12 of 81	14.8%
White	6 of 66	9.1%
Chicano	17 of 85	20.0%

APPENDIX B
CALIFORNIA INSTITUTE FOR WOMEN

TABLE 1

BASIC DATA

Offense for Which Committed	*Percentage*
Narcotics and Dangerous Drugs	28.3
Forgery and Checks	21.1
Homicide	15.3
Theft (except auto)	9.1

Prior Commitment Record	*Percentage*
Prior Jail or Juvenile only	51.6
No Prior Commitment	26.3
Prior Prison Commitment	22.1

Sentence	*Percentage*
Life	5.4
Death	93.8

Ethnic Group	*Percentage*
White	55.7
Black	31.9
Chicano	7.7
Other	4.7

Education	*Percentage*
Illiterate	0.9
Grade 3	0.2
Grade 4	2.2
Grade 5	5.2
Grade 6	12.2
Grade 7	15.9
Grade 8	17.2
Grade 9	16.5
Grades 10-11	21.5
Grade 12 and over	8.2
Median grade	8.3

Information taken from STATE OF CALIFORNIA, HUMAN RELATIONS AGENCY, DEPARTMENT OF CORRECTIONS, "CHARACTERISTICS OF FELON POPULATION IN CALIFORNIA STATE PRISONS BY INSTITUTION." JUNE 30, 1971.

TABLE 2

DATE

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
October	*14*	7.7
September	*18*	9.8
August	*31*	16.9
July	*33*	18.0
June	*47*	25.7
May	*40*	21.9
TOTAL	*183*	100.0

TABLE

RACE

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
Black	57	44.2
White	22	17.1
Chicano	49	38.0
Other	1	0.8
Not Entered	54	Missing
Total	183	100.0

TABLE 4

CUSTODY CLASSIFICATION

Cagetory Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
Maximum	24	14.6
Medium	101	61.6
Minimum	39	23.8
Not Entered	19	Missing
Total	183	100.0

TABLE 5
PLEA

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
Guilty	79	82.3
Not Guilty	17	17.7
Not Entered	87	Missing
Total	183	100.0

TABLE 6
CHARGE

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)*
Inmate Behavior	80	44.0
Disobeying Orders	15	8.2
Investigation	14	7.7
Use of Stimulants or Sedatives		7.1
Respect for Officials	10	5.5
Contraband	10	5.5
Poor Work Performance	8	4.4
Immorality	6	3.3
Attempted Escape	6	3.3
Unauthorized Areas	4	2.2
Work Furlough Related Infraction	4	2.2
Other	4	2.2
Care of State Property	3	
Medical Observation	2	0.5
Hours of Work	1	0.5
Escape	1	0.5

TABLE 7

INFRACTION

Category Label	*Absolute Frequency*	*Relative Frequency (Percent)*
Late Return From Pass	21	11.5
Disobeying Orders	20	10.9
Erratic Behavior	16	8.7
Fight	16	8.7
Contraband	15	8.2
Absent from work	14	7.7
Verbal Fight	14	7.7
Attack	13	7.1
Abusive language	12	6.6
Use of drugs on campus	10	5.5
Attempted escape	9	4.9
Verbal Abuse of Staff	9	4.9
Unauthorized Areas	9	4.9
Other	9	4.9
Immorality	8	4.5
Unexcused "Lock"	8	4.4
Out of Bounds	6	3.3
Intoxicated on Campus	6	3.3
Other Work Furlough Related Infractions	6	3.3
Refer to D.A.	5	2.7
On Drugs Upon Return From Pass	5	2.7
Destruction of State Property	5	2.7
Escape	4	2.2
Absent from Work Furlough	3	1.6
Intoxicated on Return from Pass	3	1.6
Failure to Return from Work Furlough	2	1.1
Late Return Work Furlough	2	1.1
Work Performance	2	1.1
Late for Work	1	0.5
Unexcused Absence from School	1	0.5

Most of the categories are self-explanatory. "Erratic Behavior" is the classification generated to include any sort of behavior indicating emotional disturbance such as attempted suicide, attempts by an inmate to burn her room while she is in it, other such non-rational behavior. "Immorality" is homosexual behavior. "Other" includes those incidents which do not fit easily into any other category such as commandering gurnies. The various distinctions indicated above (i.e., whether drugs were used on or off campus, actual or attempted escape, infractions committed while on work furlough) were retained because these distinctions were made by the people using this disciplinary system. If the description of an event included more than one infraction (i.e., late return from pass and drug use on pass) both were recorded, thus the total number of infractions described above is greater than the total number of cases.

TABLE 8

SECONDARY DESCRIPTION OF INFRACTION

When the distinctions described above are ignored and the infractions grouped according to their basic characteristics, the secondary classifications described below result:

Category Label	*Absolute Frequency*	*Relative Frequency (Percent)*
Fight or potential violence between inmates (fight, attack, verbal fight, abusive language)	55	30.1
Escape related. (escape, attempted escape, out of bounds, late return pass, no return work furlough, late return work furlough, absent work furlough)	47	25.7
Respect for staff (disobeying orders, verbal abuse of staff)	29	15.8
Work related (absent work, unexcused lock, late for work, work performance)	25	13.2
Immorality (immorality, unauthorized areas)	17	9.3
Drugs (drugs on pass, drugs on campus, drugs related contraband)	17	9.3
Erratic Behavior (same)	16	8.7
Alcohol (intoxicated on return from pass, intoxicated on campus, "Hootch" contraband)	12	6.5
Work Furlough (absent work furlough, other work furlough, late return work furlough)	11	6.0
Other (same)	9	4.9
Destruction of State Property (same)	5	2.7
D.A. (same)	5	2.7
Unexcused Absence School (same)	1	0.5

TABLE 9

SANCTIONS

Category Label	*Absolute Frequency*	*Adjusted Frequency (Percent)**	*Relative Frequency (Percent)*
Detention	66		35.9
One Day	5	7.6	
Two Days	9	13.6	
Three Days	1	1.5	
Four Days	10	15.2	
Five Days	5	7.6	
Six Days	3	4.5	
Seven Days	5	7.6	
Eight Days	28	42.4	
Partial Credit for Pre-Hearing Lock Against Sanction	22		12.0
Full Credit for Pre-Hearing Lock Against Sanction	17		9.3
Counseling	56		30.6
Confinement to Quarters	36		19.6
One Day	3	8.3	
Two Days	11	30.6	
Three Days	12	33.3	
Four Days	1	2.8	
Five Days	4	11.1	
Seven Days	3	8.3	
Ten Days	2	5.6	
Referred to Reclassification Committee	22		12.0
Suspended Sentence	20		10.9
Additional Work Assignment	14		7.7
Change in Custody Classification	13		7.1
Reprimand	9		4.9
Recommended to Board of Terms and Paroles	4		2.2
Abeyance (pending receipt of information)	4		2.2
Pay Taken	3		1.6
Privileges Temporarily Suspended	1		0.5
Referred to D.A. (plus institutional disciplinary action)	1		0.5

*Percentage of those receiving that sanction who receive that number of days.

TABLE 10
RACE / DETENTION

RACE		COUNT / ROW % / COL % / TOT %	DETENTION								ROW TOTAL
			NO DAYS	ONE DAY	TWO DAYS	FOUR DAYS	FIVE DAYS	SIX DAYS	SEVEN DAYS	TEN DAYS	
BLACK	1		34	2	1	5	1	1	4	9	57
			59.6	3.5	1.8	8.8	1.8	1.8	7.0	15.8	44.2
			42.5	50.0	25.0	62.5	50.0	33.3	80.0	39.1	
			26.4	1.6	0.8	3.9	0.8	0.8	3.1	7.0	
WHITE	2		12	0	1	2	0	1	1	5	22
			54.5	0.0	4.5	9.1	0.0	4.5	4.5	22.7	17.1
			15.0	0.0	25.0	25.0	0.0	33.3	20.0	21.7	
			9.3	0.0	0.8	1.6	0.0	0.8	0.8	3.9	
CHICANO	3		33	2	2	1	1	1	0	9	49
			67.3	4.1	4.1	2.0	2.0	2.0	0.0	18.4	38.0
			41.3	50.0	50.0	12.5	50.0	33.3	0.0	39.1	
			25.6	1.6	1.6	0.8	0.8	0.8	0.0	7.0	
OTHER	4		1	0	0	0	0	0	0	0	1
			100.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.8
			1.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
			0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
		Column Total	80	4	4	8	2	3	5	23	129
			62.0	3.1	3.1	6.2	1.6	2.3	3.9	17.8	100.0

TABLE 11
PLEA / DETENTION

COUNT / *ROW %* / *COL %* / *TOT %*		*DETENTION*									
		NO DAYS	*ONE DAY*	*TWO DAYS*	*THREE DAYS*	*FOUR DAYS*	*FIVE DAYS*	*SIX DAYS*	*SEVEN DAYS*	*TEN DAYS*	*ROW TOTAL*
GUILTY	1	56	0	2	1	6	3	2	1	8	
		70.9	0.0	2.5	1.3	7.6	3.8	2.5	1.3	10.1	79
		91.8	0.0	50.0	100.0	85.7	75.0	100.0	100.0	57.1	82.3
		58.3	0.0	2.1	1.0	6.3	3.1	2.1	1.0	8.3	
NOT GUILTY	2	5	2	2	0	1	1	0	0	6	
		29.4	11.8	11.8	0.0	5.9	5.9	0.0	0.0	35.3	17
		8.2	100.0	50.0	0.0	14.3	25.0	0.0	0.0	42.9	17.7
		5.2	2.1	2.1	0.0	1.0	1.0	0.0	0.0	6.3	
Column Total		61	2	4	1	7	4	2	1	14	96
		63.5	2.1	4.2	1.0	7.3	4.2	2.1	1.0	14.6	100.0

TABLE 12
CUSTODY / DETENTION

CUST	COUNT % ROW % COL % TOT %	DETENTION									
		NO DAYS	*ONE DAY*	*TWO DAYS*	*THREE DAYS*	*FOUR DAYS*	*FIVE DAYS*	*SIX DAYS*	*SEVEN DAYS*	*TEN DAYS*	*ROW TOTAL*
MAXIMUM	1	10 41.7 9.6 6.1	1 4.2 25.0 0.6	0 0.0 0.0 0.0	0 0.0 0.0 0.0	4 16.7 40.0 2.4	0 0.0 0.0 0.0	0 0.0 0.0 0.0	0 0.0 0.0 0.0	9 37.5 33.3 5.5	24 14.6
MEDIUM	2	71 70.3 68.3 43.3	1 1.0 25.0 0.6	3 3.0 42.9 1.8	1 1.0 100.0 0.6	4 4.0 40.0 2.4	3 3.0 100.0 1.8	3 3.0 100.0 1.8	2 2.0 40.0 1.2	13 12.9 48.1 7.9	101 61.6
MINIMUM	3	23 59.0 22.1 14.0	2 5.1 50.0 1.2	4 10.3 57.1 2.4	0 0.0 0.0 0.0	2 5.1 20.0 1.2	0 0.0 0.0 0.0	0 0.0 0.0 0.0	3 7.7 60.0 1.8	5 12.8 18.5 3.0	39 23.8
	Column Total	104 63.4	4 2.4	7 4.3	1 0.6	10 6.1	3 1.8	3 1.8	5 3.0	27 16.5	164 100.0

TABLE 13

Where detention served before a hearing was considered sufficient sanction.

COUNT *ROW %* *COL %* *TOT %*		*CREDAL* 0	*CREDAL* 1	*ROW TOTAL*
Detention				
No Days	0	115 98.3 69.3 62.8	2 1.7 11.8 1.1	117 63.9
One Day	1	0 0.0 0.0 0.0	5 100.0 29.4 2.7	5 2.7
Two Days	2	2 22.2 1.2 1.1	7 77.8 41.2 3.8	9 4.9
Three Days	3	1 100.0 0.6 0.5	0 0.0 0.0 0.0	1 0.5
	4	8 80.0 4.8 4.4	2 20.0 11.8 1.1	10 5.5
Five Days	5	5 100.0 3.0 2.7	0 0.0 0.0 0.0	5 2.7
Six Days	6	3 100.0 1.8 1.6	0 0.0 0.0 0.0	3 1.6
Seven Days	7	5 100.0 3.0 2.7	0 0.0 0.0 0.0	5 2.7
Ten Days	9	27 96.4 16.3 14.8	1 3.6 5.9 0.5	28 15.3
	Column Total	166 90.7	17 9.3	183 100.0

TABLE 14

The following is summary information describing the inmate who received *any* degree of detention (one-ten days) in terms of race, custody, plea, and most frequent infraction. The imposition of the sanction to a particular infraction is also analyzed in terms of the main control variables; race, custody, plea. One-ten days of detention is described by the word "hold."

14a. HOLD / RACE

COUNT / *ROW %* / *COL %* / *TOT %*		0	1	ROW TOTAL
RACE				
BLACK	1	34 59.6 42.5 26.4	23 40.4 46.9 17.8	57 44.2
WHITE	2	12 54.5 15.0 9.3	10 45.5 20.4 7.8	22 17.1
CHICANO	3	33 67.3 41.3 25.6	16 32.7 32.7 12.4	49 38.0
OTHER	4	1 100.0 1.3 0.8	0 0.0 0.0 0.0	1 0.8
Column Total		80 62.0	49 38.0	129 100.0

14b. HOLD / PLEA

COUNT / *ROW %* / *COL %* / *TOT %*		*HOLD* 0	1	ROW TOTAL
PLEA				
GUILTY	1	56 70.9 91.8 58.3	23 29.1 65.7 24.0	79 82.3
NOT GUILTY	2	5 29.4 8.2 5.2	12 70.6 34.3 12.5	17 17.7
Column Total		61 63.5	35 36.5	96 100.0

14c. HOLD / CUSTODY

COUNT / ROW % / COL % / TOT %	HOLD 0	HOLD 1	ROW TOTAL
CUST 1 MAXIMUM	10 41.7 9.6 6.1	14 58.3 23.3 8.5	24 14.6
2 MEDIUM	71 70.3 68.3 43.3	30 29.7 50.0 18.3	101 61.6
3 MINIMUM	23 59.0 22.1 14.0	16 41.0 26.7 9.8	39 23.8
Column Total	104 63.4	60 36.6	164 100.0

14d. HOLD / STAF (SEE TABLE 7) / RACE, PLEA, CUSTODY

COUNT / ROW % / COL % / TOT %	RACE BLACK 1	RACE CHICANO 3	ROW TOTAL
STAF 1	3 75.0 100.0 75.0	1 25.0 100.0 25.0	4 100.0
Column Total	3 75.0	1 25.0	4 100.0

COUNT / ROW % / COL % / TOT %	PLEA GUILTY 1	PLEA NOT GUILTY 2	ROW TOTAL
1	4 80.0 100.0 80.0	1 20.0 100.0 20.0	5 100.0
Column Total	4 80.0	1 20.0	5 100.0

COUNT / ROW % / COL % / TOT %	CUST MEDIUM 2	CUST MINIMUM 3	ROW TOTAL
1	4 80.0 100.0 30.0	1 20.0 100.0 20.0	5 100.0
Column Total	4 80.0	1 20.0	5 100.0

14e. HOLD / FITE (SEE TABLE 7) / RACE, PLEA, CUSTODY

COUNT / ROW % / COL % / TOT %	RACE: BLACK (1)	WHITE (2)	CHICANO (3)	ROW TOTAL
FITE — 1	7 70.0 100.0 70.0	1 10.0 100.0 10.0	2 20.0 100.0 20.0	10 100.0
Column Total	7 70.0	1 10.0	2 20.0	10 100.0

COUNT / ROW % / COL % / TOT %	PLEA: GUILTY (1)	NOT GUILTY (2)	ROW TOTAL
FITE — 1	2 50.0 100.0 50.0	2 50.0 100.0 50.0	4 100.0
Column Total	2 50.0	2 50.0	4 100.0

COUNT / ROW % / COL % / TOT %	CUST: MAXIMUM (1)	MEDIUM (2)	MINIMUM (3)	ROW TOTAL
FITE — 1	2 16.7 100.0 16.7	8 66.7 100.0 66.7	2 16.7 100.0 16.7	12 100.0
Column Total	2 6.7	8 66.7	2 6.7	12 100.0

14f. HOLD / LEAV (SEE TABLE 7) RACE, PLEA, CUSTODY

COUNT / ROW % / COL % / TOT %	RACE: Black (1)	Chicano (3)	ROW TOTAL
LEAV — 1	2 18.2 100.0 18.2	9 81.8 100.0 81.8	11 100.0
Column Total	2 18.2	9 81.	11 100.0

14f. CON'T.

COUNT / ROW % / COL % / TOT %	PLEA: GUILTY (1)	PLEA: NOT GUILTY (2)	ROW TOTAL
LEAV 1	6 75.0 100.0 75.0	2 25.0 100.0 25.0	8 100.0
Column Total	6 75.0	2 25.0	8 100.0

COUNT / ROW % / COL % / TOT %	CUST: MAXIMUM (1)	MEDIUM (2)	MINIMUM (3)	ROW TOTAL
LEAV 1	3 25.0 100.0 25.0	4 33.3 100.0 33.3	5 41.7 100.0 41.7	12 100.0
Column Total	3 25.0	4 33.3	5 41.7	12 100.0

14g. HOLD / NARCOTICS (SEE TABLE 7) / RACE, PLEA, CUSTODY

COUNT / ROW % / COL % / TOT %	RACE: BLACK (1)	WHITE (2)	CHICANO (3)	ROW TOTAL
NARC 1	3 42.9 100.0 42.9	3 42.9 100.0 42.9	1 14.3 100.0 14.3	7 100.0
Column Total	3 42.9	3 42.9	1 14.3	7 100.0

COUNT / ROW % / COL % / TOT %	PLEA: GUILTY (1)	PLEA: NOT GUILTY (2)	ROW TOTAL
NARC 1	2 40.0 100.0 40.0	3 60.0 100.0 60.0	5 100.0
Column Total	2 40.0	3 60.0	5 100.0

COUNT / ROW % / COL % / TOT %	CUST: MAXIMUM (1)	MEDIUM (2)	MINIMUM (3)	ROW TOTAL
NARC 1	1 11.1 100.0 11.1	4 44.4 100.0 44.4	4 44.4 100.0 44.4	9 100.0
Column Total	1 11.1	4 44.4	4 44.4	9 100.0

TABLE 15
RACE / PLEA

RACE	COUNT / ROW % / COL % / TOT %	PLEA: GUILTY (1)	PLEA: NOT GUILTY (2)	ROW TOTAL
BLACK	1	18 85.7 33.3 27.7	3 14.3 27.3 4.6	21 32.3
WHITE	2	10 71.4 18.5 15.4	4 28.6 36.4 6.2	14 21.5
CHICANO	3	26 86.7 48.1 40.0	4 13.3 36.4 6.2	30 46.2
	Column Total	54 83.1	11 16.9	65 100.0

TABLE 16
RACE / CUST

RACE	COUNT / ROW % / COL % / TOT %	CUST: MAXIMUM (1)	CUST: MEDIUM (2)	CUST: MINIMUM (3)	ROW TOTAL
BLACK	1	3 5.6 18.8 2.5	35 64.8 44.3 28.9	16 29.6 61.5 13.2	54 44.6
WHITE	2	5 25.0 31.3 4.1	11 55.0 13.9 9.1	4 20.0 15.4 3.3	20 16.5
CHICANO	3	8 17.4 50.0 6.6	33 71.7 41.8 27.3	5 10.9 19.2 4.1	46 38.0
	4	0 0.0 0.0 0.0	0 0.0 0.0 0.0	1 100.0 3.8 0.8	1 0.8
	Column Total	16 13.2	79 65.3	26 21.5	121 100.0

TABLE 17

RACE / FREQUENTLY IMPOSED SANCTIONS

COUNT / *ROW %* / *COL %* / *TOT %*	CONSLG* 1	WORK 1	QTRS ONE DAY	TWO DAYS	THREE DAYS	FIVE DAYS	SEVEN DAYS	TEN DAYS	HOLD
RACE									
BLACK 1	18	1	1	3	7	3	0	1	23
	31.6	1.8	1.8	5.3	12.3	5.3	0.0	1.8	40.4
	39.1	7.7	33.3	37.5	77.8	75.0	0.0	50.0	46.9
	14.0	0.8	0.8	2.3	5.4	2.3	0.0	0.8	17.8
WHITE 2	10	2	0	1	0	0	0	1	10
	45.5	9.1	0.0	4.5	0.0	0.0	0.0	4.5	45.5
	21.7	15.4	0.0	12.5	0.0	0.0	0.0	50.0	20.4
	7.8	1.6	0.0	0.8	0.0	0.0	0.0	0.8	7.8
CHICANO 3	17	10	2	4	2	1	1	0	16
	34.7	20.4	4.1	8.2	4.1	2.0	2.0	0.0	32.7
	37.0	76.9	66.7	50.0	22.2	25.0	100.0	0.0	32.7
	13.2	7.8	1.6	3.1	1.6	0.8	0.8	0.0	12.4
OTHER 4	1	0	0	0	0	0	0	0	0
	00.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	2.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
	0.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Column Total	46	13	3	8	9	4	1	2	49
	35.7	10.1	2.3	6.2	7.0	3.1	0.8	1.6	38.0

cont'd.

COUNT / *ROW %* / COL % / TOT %	CREDAL 1	CREDIT 1	SUSPND 1	CUSTCG 1	RECLAS 1	CREATE 1	RACE TOTAL
RACE							
BLACK 1	4	8	7	2	6	17	57
	7.0	14.0	12.3	3.5	10.5	29.8	44.2
	33.3	44.4	50.0	25.0	40.0	48.6	
	3.1	6.2	5.4	1.6	4.7	13.2	
WHITE 2	1	4	4	2	1	10	22
	4.5	18.2	18.2	9.1	4.5	45.5	17.1
	8.3	22.2	28.6	25.0	6.7	28.6	
	0.8	3.1	3.1	1.6	0.8	7.8	
CHICANO 3	7	6	3	4	8	7	49
	14.3	12.2	6.1	8.2	16.3	14.3	38.0
	58.3	33.3	21.4	50.0	53.3	20.0	
	5.4	4.7	2.3	3.1	6.2	5.4	
OTHER 4	0	0	0	0	0	1	1
	0.0	0.0	0.0	0.0	0.0	100.0	0.8
	0.0	0.0	0.0	0.0	0.0	2.9	
	0.0	0.0	0.0	0.0	0.0	0.8	
Column Total	12	18	14	8	15	35	129
	9.3	14.0	10.9	6.2	11.6	27.1	100.0

*Conslg=counseling; Work=additional work assignment; Qtrs=confinement to quarters; Hold=any days of detention (one-ten); Credal=full credit for pre-hearing lock; Credit=partial credit for prehearing lock; Suspnd=suspended sentence; Custeg=custody change; Reclas=recommendation to reclassification committee; Create=sanction tailored for the particular case.

TABLE 18
RACE / MOST FREQUENTLY OCCURRING INFRACTIONS

COUNT / ROW % / COL % / TOT % — RACE		ATTPD* 1	LATPAS 1	DRUGC 1	FIGHT 1	ATTACK 1	VERBFT 1	ABLANG 1	ERATIC 1	VERBSF 1	OBORD 1	ABSTWK 1	UNXLOK 1	RACE TOTAL
BLACK	1	0 0.0 0.0 0.0	11 19.3 73.3 8.5	3 5.3 33.3 2.3	11 19.3 91.7. 8.5	5 8.8 55.6 3.9	8 14.0 61.5 6.2	5 8.8 55.6 3.9	4 7.0 57.1 3.1	5 8.8 71.4 3.9	3 5.3 21.4 2.3	2 3.5 20.0 1.6	2 3.5 28.6 1.6	57 44.2
WHITE	2	1 4.5 14.3 0.8	0 0.0 0.0 0.0	3 13.6 33.3 2.3	0 0.0 0.0 0.0	1 4.5 11.1 0.8	1 4.5 7.7 0.8	1 4.5 11.1 0.8	0 0.0 0.0 0.0	1 4.5 14.3 0.8	4 18.2 28.6 3.1	0 0.0 0.0 0.0	1 4.5 14.3 0.8	22 17.1
CHICANO	3	6 12.2 85.7 4.7	4 8.2 26.7 3.1	3 6.1 33.3 2.3	1 2.0 8.3 0.8	3 6.1 33.3 2.3	3 6.1 23.1 2.3	2 4.1 22.2 1.6	3 6.1 42.9 2.3	1 2.0 14.3 0.8	7 14.3 50.0 5.4	8 16.3 80.0 6.2	4 8.2 57.1 3.1	49 38.0
OTHER	4	0 0.0 0.0 0.0	0 0.0 0.0 0.0	0 0.0 0.0 0.0	0 0.0 0.0 0.0	0 0.0 0.0 0.0	1 100.0 7.7 0.8	1 100.0 11.1 0.8	0 0.0 0.0 0.0	0 0.0 0.0 0.0	0 0.0 0.0 0.0	0 0.0 0.0 0.0	0 0.0 0.0 0.0	1 0.8
	Column Total	7 5.4	15 11.6	9 7.0	12 9.3	9 7.0	13 10.1	9 7.0	7 5.4	7 5.4	14 10.9	10 7.8	7 5.4	129 100.0

*Attpd=attempted escape; Latpas=late return from pass; Drugs=drug use on campus; Fight=fights; Attack=one inmate attacked by another; Verbft=verbal altercation; Ablang=use of abusive language; Eratic=erratic behavior; Verbsf=verbal abuse of staff; Obord=disobeying orders; Abstwk=absent from work; Unxlk=unexcused lock.

TABLE 19

Counseling and suspended sentence (frequently applied but less harsh sanctions) analyzed in terms of custody status, plea. race.

COUNT / *ROW %* / *COL %* / *TOT %*	CONSLG 0	CONSLG 1	ROW TOTAL
CUST			
MAXIMUM 1	17 70.8 14.7 10.4	7 29.2 14.6 4.3	24 14.6
MEDIUM 2	72 71.3 62.1 43.9	29 28.7 60.4 17.7	101 61.6
MINIMUM 3	27 69.2 23.3 16.5	12 30.8 25.0 7.3	39 23.8
Column Total	116 70.7	48 29.3	164 100.0

COUNT / *ROW %* / *COL %* / *TOT %*	CONSLG 0	CONSLG 1	ROW TOTAL
PLEA			
GUILTY 1	45 57.0 76.3 46.9	34 43.0 91.9 35.4	79 82.3
NOT GUILTY 2	14 82.4 23.7 14.6	3 17.6 8.1 3.1	17 17.7
	59 61.5	37 38.5	96 100.0

TABLE 19 CONT'D

RACE		0	1	ROW TOTAL
		COUNT		
		ROW %		
		COL %		
		TOT %		
BLACK	1	39	18	57
		68.4	31.6	44.2
		47.0	39.1	
		30.2	14.0	
WHITE	2	12	10	22
			45.5	17.1
		14.5	21.7	
		9.3	7.8	
CHICANO	3	32	17	49
		65.3	34.7	38.0
		38.6	37.0	
		24.8	13.2	
OTHER	4	0	1	1
		0.0	100.0	0.8
		0.0	2.2	
		0.0	0.8	
Column Total		83	46	129
		64.3	35.7	100.0

CUST		0	1	ROW TOTAL
		COUNT		
		ROW %		
		COL %		
		TOT %		
MAXIMUM	1	20	4	24
		83.3	16.7	14.6
		13.9	20.0	
		12.2	2.4	
MEDIUM	2	92	9	101
		91.1	8.9	61.6
		63.9	45.0	
		56.1	5.5	
MINIMUM	3	32	7	39
		82.1	17.9	23.8
		22.2	35.0	
		19.5	4.3	
Column Total		144	20	164
		87.8	12.2	100.0

TABLE 19 CONT'D

PLEA	SUSPND 0	SUSPND 1	ROW TOTAL
1 GUILTY	66 83.5 80.5 68.8	13 16.5 92.9 13.5	79 82.3
2 NOT GUILTY	16 94.1 19.5 16.7	1 5.9 7.1 1.0	17 17.7
Column Total	82 85.4	14 14.6	96 100.0

COUNT / ROW % / COL % / TOT %

RACE	SUSPND 0	SUSPND 1	ROW TOTAL
1 BLACK	50 87.7 43.5 38.8	7 12.3 50.0 5.4	57 44.2
2 WHITE	18 81.8 15.7 14.0	4 18.2 28.6 3.1	22 17.1
3 CHICANO	46 93.9 40.0 35.7	3 6.1 21.4 2.3	49 38.0
4 OTHER	1 100.0 0.9 0.8	0 0.0 0.0 0.0	1 0.8
Column Total	115 89.1	14 10.9	129 100.0

COUNT / ROW % / COL % / TOT %

TABLE 20
INFRACTION BY SANCTION

*Infraction	Sanction Counseling	Repri-mand	Work	**Confinement to Quarters		Confinement to Detention		****Credit for Prior Lock	Full Credit for Lock	Recommend to Parole Board	D.A. Plus Internal Sanction	Pay Taken	Suspend Sntence	Held in Abeyance	Change Custody	Recommend Reclassification	Create
Referable to D.A.	1 20.0 1.8 0.5									1 20.0 25.0 0.5				2 40.0 50.0 1.1	2 40.0 15.4 1.1	1 20.0 4.5 0.5	
Escape														2 50.0 50.0 1.1	1 25.0 7.5 0.5	1 25.0 4.5 0.5	
Attempted Escape	1 11.1 1.8 0.5					10/8 88.9 28.6 4.4		5 55.6 22.7 2.7	1 11.1 5.9 0.5				1 11.1 5.0 0.5		1 11.1 7.7 0.5	2 22.2 9.1 1.1	2 22.2 3.9 1.1
Out of Bounds	2 33.3 3.6 1.1		1 16.7 7.1 0.5	3/1 16.7 8.3 0.5		2/1 16.7 1.1 0.5	5/1 16.7 20.0 0.5		1 16.7 5.9 0.5							2 33.3 9.1 1.1	1 16.7 2.0 0.5
Late Return From Pass	6 28.6 10.7 3.3	1 4.8 11.1 0.5	1 4.8 7.1 0.5	1/1 4.8 33.3 10.5 3/5 23.8 41.7 2.7	2/1 4.8 9.1 0.5	1/1 4.8 20.0 0.5 4/1 4.8 10.0 0.5	2/2 9.5 22.2 1.1 10/1 4.8 3.6 0.5		4 19.0 23.5 2.2	2 9.5 50.0 1.1					2 9.5 15.4 1.1	1 4.8 4.5 0.5	6 28.6 11.8 3.3

TABLE 20
INFRACTION BY SANCTION

*Infraction	Sanction Counseling	Repri-mand	Work	**Confinement to Quarters	Confinement to Detention	***Credit for Prior Lock	Full Credit for Lock	Recommend to Parole Board	D.A. Plus Internal Sanction	Pay Taken	Suspend Sntence	Held in Abeyance	Change Custody	Recommend Reclassification	Create
No Return	1													1	1
Work Furlough	50.0													50.0	50.0
	1.8													4.5	2.0
	0.5													0.5	0.5
Late Work	1								1				1		2
Furlough	50.0								50.0				50.0		50.0
	1.8								100.0				7.7		3.9
	0.5								0.5				0.5		0.5
Absent	1											1	1		2
Work Furlough	33.3											33.3	33.3		66.7
	1.8											25.0	7.7		3.9
	0.5											0.5	0.5		1.1
Drugs	5	1						1	1						2
Use on Pass	100.0	20.0						20.0	20.0						40.0
	8.9	11.1						25.0	100.0						3.9
	2.7	0.5						0.5	0.5						1.1
Drug Use On	1				6/2	7/2	5						4	1	4
Campus	10.0				20.0	20.0	50.0						40.0	10.0	40.0
	1.8				66.7	40.0	22.7						30.8	4.5	7.8
	0.5				1.1	1.1	2.7						2.2	0.5	2.2
					10/3										
					30.0										
					10.7										
					1.6										

TABLE 20
INFRACTION BY SANCTION

**Infraction*	*Sanction Counseling*	*Reprimand*	*Work*	***Confinement to Quarters*	*Confinement to Detention*		*****Credit for Prior Lock*	*Full Credit for Lock*	*Recommend to Parole Board*	*D.A. Plus Internal Sanction*	*Pay Taken*	*Suspend Sntence*	*Held in Abeyance*	*Change Custody*	*Recommend Reclassification*	*Create*
Intoxicated	2				2/2			2	1			1				2
On Pass	66.7				66.7			66.7	33.3			33.3				66.7
	3.6				22.2			11.8	25.0			5.0				3.9
	1.1				1.1			1.1	0.5			0.5				1.1
Intoxicated	2			10/1	2/1	4/1	1	1							1	3
On Campus	33.3			16.7	16.6	16.6	16.2	16.7							16.7	50.0
	3.6			50.0	11.1	10.0	4.5	5.9							4.5	5.9
	1.1			0.5	0.5	0.5	0.5	0.5							0.5	1.6
					10/1											
					16.6											
					3.6											
					0.5											
Contraband:																
Weapons					7/1							1				
					100.0							100.0				
					20.0							5.0				
					0.5							0.5				
Drugs					2/2	4/1		3								2
					40.0	20.0		60.0								40.0
					40.0	20.0		17.8								3.9
					22.2	10.0		1.6								
					1.1	8.5										
					10/1											
					20.0											
					3.6											
					0.5											

TABLE 20
INFRACTION BY SANCTION

**Infraction*	*Sanction Counseling*	*Repri-mand*	*Work*	***Confinement to Quarters*		*Confinement to Detention*		*****Credit for Prior Lock*	*Full Credit for Lock*	*Recommend to Parole Board*	*D.A. Plus Internal Sanction*	*Pay Taken*	*Suspend Sntence*	*Held in Abeyance*	*Change Custody*	*Recommend Reclassification*	*Create*
Liquor						2/1										1	1
						50.0										50.0	50.0
						11.1										4.5	2.0
						0.5										0.5	0.5
Other	1	1	3	3/1	5/1	4/1						1	2			1	2
	14.2	14.2	42.8	14.2	14.2	14.2						14.2	28.5			14.2	28.5
	1.8	11.1	21.4	8.3	20.0	8.3						33.3	10.0			4.5	3.9
	0.5	0.5	1.6	0.5	0.5	0.5						0.5	1.1			0.5	1.1
Other Work Furlough	1					1/1			1				2	1	1	1	2
	16.7					16.7			16.7				33.3	16.7	16.7	16.7	33.3
	1.8					20.0			5.9				10.0	25.0	7.7	4.5	3.9
	0.5					0.5			0.5				1.1	0.5	0.5	0.5	1.1
Fight	4			1/1	2/3	1/1	5/1	3	2							1	4
	25.0			6.3	18.8	6.3	6.3	18.8	12.5							6.3	25.0
	7.1			33.3	27.3	20.0	20.0	13.6	11.8							4.5	7.8
	2.2			0.5	1.6	0.5	0.5	1.6	1.1							0.5	2.2
				10/4		10/4											
				6.3		25.0											
				50.0		14.3											
				0.5		2.2											

TABLE 20
INFRACTION BY SANCTION

*Infraction	Sanction Counseling	Repri-mand	Work	**Confinement to Quarters		Confinement to Detention		****Credit for Prior Lock	Full Credit for Lock	Recommend to Parole Board	D.A. Plus Internal Sanction	Pay Taken	Suspend Sntence	Held in Abeyance	Change Custody	Recommend Reclassification	Create
Attack	6	2		1/1	2/1	5/2	10/2	2	1				3			1	5
	46.2	15.4		7.7	7.7	15.4	15.4	15.4	7.7				23.1			7.7	38.5
	10.7	22.2		33.3	9.1	40.0	7.1	9.1	5.9				15.0			4.5	9.8
	3.3	1.1		0.5	0.5	1.1	1.1	1.1	0.5				1.6			0.5	2.7
				3/3													
				23.1													
				25.0													
				1.6													
Verbal Fight	6	1		2/2	3/3	2/1	5/1	1	2				3				2
	42.9	7.1		14.3	21.4	14.3	7.1	7.1	14.3				21.4				14.3
	10.7	11.1		18.2	25.0	40.0	20.0	4.5	11.8				15.0				3.9
	3.3	0.5		1.1	1.6	1.1	0.5	0.5	1.1				1.6				1.1
						7/2	10/1										
						14.3	7.1										
						40.0	3.6										
						1.1	0.5										
Abusive Language	4	1		2/5		1/1	6/1	1	1				2			1	2
	33.3	8.3		41.7		8.3	8.3	8.3	8.3				16.7			8.3	16.7
	7.1	11.1		45.5		20.0	33.3	4.5	5.9				10.0			4.5	3.9
	2.2	0.5		2.7		0.5	0.5	0.5	0.5				1.1			0.5	1.1

TABLE 20
INFRACTION BY SANCTION

*Infraction	Sanction Counseling	Repri-mand	Work	**Confinement to Quarters		Confinement to Detention		****Credit for Prior Lock	Full Credit for Lock	Recommend to Parole Board	D.A. Plus Internal Sanction	Pay Taken	Suspend Sentence	Held in Abeyance	Change Custody	Recommend Reclassification	Create
Erratic Behavior	2		1	3/1	7/1	1/1	10/2	1				1					8
	12.5		6.3	6.3	6.3	6.3	12.5	6.3				6.3					50.0
	3.6		7.1	8.3	3.33	11.1	7.1	4.5				33.3					13.7
	1.1		0.5	0.5	0.5	0.5	1 1	0.5				0.5					4.4
Verbal Abuse of Staff	4		1	3/3	5/2	2/1	10/1	1	1			1	4		1	2	3
	44.4		11.1	33.3	22.2	11.1	11.1	11.1	11.1			11.1	44.4		11.1	22.2	33.3
	7.1		7.1	25.0	50.0	11.1	3.6	4.5	5.9			33.3	20.0		7.7	9.1	5.9
	2.2		0.5	1.6	1.1	0.5	0.5	0.5	0.5			0.5	2.2		0.5	1.1	1.6
				7/1													
				11.1													
				33.3													
				0.8													
																	3
Disobeying Orders	9	2	5	2/2	3/3	1/1	3/1		1				3				15.0
	45.0	10.0	25.0	10.0	15.0	5.0	5.0		5.0				15.0				5.9
	16.1	22.0	35.7	18.2	25.0	20.0	100.0		5.9				15.0				1.6
	4.9	1.1	2.7	1.6	1.6	0.5	0.5		0.5				1.6				
				5/2	10/1	4/1	5/2										
				10.0	5.0	5.0	10.0										
				50.0	50.0	10.0	40.0										
				1.1	0.5	0.5	1.1										
Areas	2			2/2		10/4		2							3	4	2
	22.2			22.2		44.4		22.2							33.3	44.4	22.2
	3.6			18.2		14.3		9.1							23.1	18.2	3.9
	1.1			1.1		2.2		1.1							1.6	2.2	1.1

TABLE 20
INFRACTION BY SANCTION

*Infraction	Sanction Counseling	Repri-mand	Work	**Confinement to Quarters		Confinement to Detention		***Credit for Prior Lock	Full Credit for Lock	Recommend to Parole Board	D.A. Plus Internal Sanction	Pay Taken	Suspend Sntence	Held in Abeyance	Change Custody	Recommend Reclassification	Create
Immorality	3			4/1	7/1	4/4	5/2	1					4				2
	37.5			12.5	12.5	50.0	25.0	12.5					50.0				25.0
	5.4			100.0	33.3	40.0	40.0	4.5					20.0				3.9
	1.6			0.2	0.5	2.2	1.1	0.5					2.2				1.1
State Property Destruction				2/1		4/1	10/1	1				2					3
				20.0		20.0	20.0	20.0				40.0					60.0
				9.1		10.0	3.6	4.5				66.7					5.9
				0.5		0.5	0.5	0.5				1.1					1.6
Absent Work	5	2	6	1/1		3/1	4/1									3	1
	35.7	14.3	42.9	17.1		7.1	7.1									21.4	7.1
	8.9	22.2	42.9	8.3		100.0	10.0									13.6	2.0
	2.7	1.1	3.3	0.5		0.5	0.5									1.6	0.5
Unexcused Lock	4	1	3			4/1										2	1
	50.0	12.5	37.5			12.5										25.0	12.5
	7.1	11.1	21.4			10.0										9.1	2.0
	2.2	0.5	1.6			0.5										1.1	0.5
Late Work				2/1												1	
				100.0												100.0	
				9.1												4.5	
				0.5												0.5	

TABLE 20
INFRACTION BY SANCTION

*Infraction	Sanction Counseling	Repri-mand	Work	**Confinement to Quarters		Confinement to Detention		***Credit for Prior Lock	Full Credit for Lock	Recommend to Parole Board	D.A. Plus Internal Sanction	Pay Taken	Suspend Sntence	Held in Abeyance	Change Custody	Recommend Reclassification	Create
Poor Work Performance	1 50.0 1.8 0.5					2/1 50.0 11.1 0.5			1 50.0 6.9 0.5							1 50.0 4.5 0.5	
Unexcused Absence School	1 100.0 1.8 0.5		1 100.0 7.1 0.5														
Other	4 44.4 7.1 2.2		1 11.1 7.1 0.5	7/1 11.1 33.3 0.5	10/1 11.1 50.0 0.5	10/3 33.3 10.7 1.6		2 22.2 9.1 1.1					1 11.1 5.0 0.5	1 11.1 25.0 0.5		2 22.2 9.1 1.1	4 44.4 7.8 2.2
TOTAL****	80 31.4	12 4.7	24 9.4	1/4 1.5	2/18 7.0	1/6 2.3	2/12 4.7	26 10.2	22 8.6	5 1.9	2 0.8	5 1.9	27 10.6	7 2.7	17 6.6	31 12.2	72 28.3
				3/20 7.8	4/1 0.3	3/2 0.7	4/12 4.7										
				5/5 1.9	7/4 1.5	5/9 3.5	6/3 1.1										
				10/7 2.7		7/5 1.9	10/32 12.6										

TABLE 20
INFRACTION BY SANCTION

* Any one case often represents more than one type of infraction and more than one sanction was often imposed. Therefore the total number of infractions and the tital number of sanctions represented by this table is more than the total of cases, 183. To help interpret this information the frequency has been given first. The second number is the percentage of that particular infraction receiving that sanction. (Thus, if a single incident of an infraction receives two sanctions 100% will appear twice.) The third number is the percentage of the total times that sanction was imposed represented by that infraction. (Thus, of all counseling given, a particular infraction may account for 100-0% of it. If one case represents more than one infraction that will appear here.) The fourth number is the percentage of that infraction sanction to total sanction to total sanctions.

** For quarters and detention the first number represents the number of days given, the number following the slash represents the number of times if occurred Thus, 1/2 means one day was given twice.

*** When an inmate is placed in detention to await her hearing she may be given full or partial credit for time so served towards the sanction imposed.

**** This percentage was determined using the total number of infractions, not the total number of cases.

APPENDIX C
(OLD 115)
DEPARTMENT OF CORRECTIONS
REPORT OF VIOLATION OF INSTITUTION RULES

_____
(INSTITUTION)

To the Warden/Superintendent

I, _____, hereby charge _____
(NAME) (NUMBER)
with violation of institution rules and regulations _____
(TITLE)
A.M.
P.M.

_____ on or about _____, the circumstances
(NUMBER) (DAY) (DATE) TIME
are as follows:

_____
(REPORTING EMPLOYEE)

Custody _____ Post _____

PLEA, FINDINGS AND DISPOSITION

Plea: Guilty __ Not Guilty __ Prior Violations ____ Conditions of Health ____

Findings:

Disposition:

Approved: Action Taken By: _____

_____ Date: _____
(WARDEN-SUPERINTENDENT)

Offense: A__ D__ M__ Photos Injuries: Inmate __ Employee __

Estimates Cost of Damage ___ Estimated Cost of Control _____

CDC – 115 (Rev. 2-14-69)

RULES VIOLATION REPORT
(NEW 115)

VIOLATION CHARGES:

Inmate/Resident_____, Number_____
(Full Name)

violated Rule _____, _____

violated Rule _____, _____

on or about _____, at approximately _____ by the specific

act of _____

The circumstances of the incident are:

Reporting employee_____ Assignment _____

DISCIPLINARY ACTION:

Inmate's response:

☐ Admits charges as written
☐ Admits charges with modifications
☐ Denies charges

Findings

Disposition

Investigating Officer (_____) Report:

Approved: _____ Action taken by _____

Date _____

ACTION ON REVIEW:

First Level: Date requested by inmate_____.
Review decision; ☐ Sustained ☐ Changed
Reason for decision _____
Action taken by _____ Date _____
Second Level: Date requested by inmate_____.
Review decision; ☐ Sustained ☐ Changed
Reason for decision _____
Action taken by _____ Date_____

_____
(Institution)

Department of Corrections
CDC 115 (Rev. 3/72)

RULES VIOLATION REPORT

(2d Page of New 115)

You have been charged with a violation of institutional rules. You should know the following facts about the disciplinary process:

The purpose of inmate discipline is to develop in each inmate self-reliance, self-control, self-respect, and self-discipline; not merely the ability to conform to the rules, but the understanding and acceptance of standards for individual and community life in a free society.

You will receive a hearing before a Disciplinary Officer, a Disciplinary Subcommittee, or the Disciplinary Committee. You must be present at the hearing, and are entitled to tell your version of the incident which led to the charges. If you are to be heard before a committee, the Chief Disciplinary Officer has appointed an Investigating Officer to conduct an independent investigation of all available facts relating to the incident and charges. If you have evidence or witnesses now in the institution with facts directly related to the incident, the Investigating Officer will check them out and report his findings to the committee. You may be allowed to request witnesses at the hearing, including the employee who wrote the charges, if both the Investigating Officer and the Committee chairman feel that the personal testimony is necessary in reaching a fair conclusion and disposition of the charges.

If you are charged with an offense which is a statutory crime referred to the county district attorney, no disciplinary hearing will be held until he decides whether or not to prosecute. If your regular custody status or program are to be changed until the court proceedings are completed, it will be done by a Classification Committee. You need not appear before the committee if you fear making statements which could be held against you. If you have been placed in restricted housing, your status will be reviewed by the committee at least monthly, or sooner if good reason arises. If the district attorney decides not to prosecute, you will be heard by the Disciplinary Committee.

Whether heard by a Disciplinary Officer or a Disciplinary Committee, you will be given a copy of the final findings and disposition. If heard by a Disciplinary Officer or a Disciplinary Subcommittee, you may request review of the decision by the Chief Disciplinary Officer. You may request review of his decision by the institution head. If heard by the Disciplinary Committee, you may request review of the committee decision by the Director.