

Once Should Be Enough

Gordon Haas

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The year was 1948. I was five years old and sitting on the floor of our kitchen at Grafton Avenue in Islington, MA. I, with a metal fork grasped firmly in my hand, stared intently at a wall socket. I wondered what would happen if I put the fork into that wall socket. My mother, sensing where my curiosity was leading, urged my father to intervene. He was disinclined so to do. He opined that I needed to learn a lesson. Well, learn a lesson I certainly did as electricity pulsed through my hand and further into my body. I convulsed, dropped the fork, and fell over onto my back.

Now, some might think of this as an example of bad parenting. But, I learned not to put a fork into an electrical socket ever again! Being shocked once was sufficient for me to get the point. Sadly, the administrators in lofty positions in the MA Department of Correction (DOC) have yet to learn from their repeated errors in judgement.

The powers that be in the DOC, beginning with Commissioner Carol Mici, have a fascination with implementing rules or procedures, hoping to stem the flow of contraband into prison facilities. Their rationale has rested on the erroneous myth that such illicit behavior is the sole work of prisoners and our family members and friends. Thus, DOC personnel in the Central Office in Milford have set their combined sights on draconian measures which impact not only we prisoners but the public as well.

I have come to believe that many of those in the DOC's upper echelon who conjure up such rules or procedures have rarely, if ever, actually have worked inside a prison. If they had, then they would surely realize how impractical, ineffective, and damaging those rules or procedures can be. In addition, often those rules go far beyond the powers given the DOC by the legislature. And, those same rules and procedures adversely affect our family members, friends and prison reform advocates.

The DOC has a predilection for imposing what are known as Standard Operating Procedures (SOP). These are supposed to be internal guidelines, affecting only employees to give them guidance in performing their duties. For instance, if the DOC decides that all prisoners are to be counted four times in every 24-hour period and describes when and how this is to be accomplished, then that would be a valid SOP.

But, if an SOP goes beyond DOC employees and affects the public-at-large, then that is a regulation not an SOP. The significance is that all regulations proposed by government agencies, including the DOC, must comply with the Administrative Procedures Act (M.G.L. c. 30A) which requires that new regulations must first have a public hearing conducted to allow input from the public, even from prisoners. That seems basic and simple, right?

Well, not for the DOC. In 2018, the MA Appeals Court considered the DOC's SOP allowing dogs trained in detecting drugs to sniff about any person entering an institution as a visitor, guest speaker, volunteer or teacher. In effect, the DOC turned its sight onto the public. Wrong; the Appeals Court ruled and required the DOC to conduct a public hearing in accordance with the Administrative Procedures Act.

Unlike my experience with the fork and the electric socket, the DOC and its battery of lawyers did not learn the lesson. Undaunted by the Appeals Court ruling, the DOC proceeded later in 2018 to implement an SOP providing that all incoming mail to prisoners be photocopied and the original withheld from the prisoner recipients. Why? To stop the possible introduction of drugs on letters, cards and other papers. Once again, the Appeals Court threw out the SOP. While it was obvious to everyone, save the DOC, the SOP affected members of the public who sent mail into their loved ones inside, DOC officials chose to ignore their prior defeat.

One would think that twice burned, the DOC would finally get the point. Wrong again!

In 2019, the DOC implemented an SOP which prohibited prisoners from sending funds from their accounts to any individual regardless of their relationship, purpose, or amount. The reason: that prisoner accounts were allegedly used frequently for illicit purposes such as funding drug smuggling, money laundering and/or operating a business from inside a prison. Disbursements could only be made if a bill or invoice accompanied a request and the DOC sent the funds directly to the business or service.

As an example of a denied request a prisoner tried to send \$25 to his sister to help pay for an airline ticket for the prisoner's mother to fly to Massachusetts for their biannual visit. The DOC's response was that the airline should deduct the \$25 from the ticket price and then the airline was to bill the DOC for the \$25. Expecting a major corporation to bill the DOC for the \$25 after deducting that amount from one person's ticket price was simply nonsensical and impractical.

That prisoner and four others from MCI-Norfolk filed a lawsuit challenging the validity of the SOP. One of the issues they raised was that the SOP obviously affected more than just DOC employees. The SOP prevented prisoners from sending money home to daughters or sons or spouses or friends for birthday or Holiday gifts or to celebrate other important events or just to help with living expenses. The prisoners contended that the SOP violated the Administrative Procedures Act and the SOP should be declared invalid without a public hearing. The DOC disagreed adamantly.

For a third time in five years, the Appeals Court ruled that the DOC had been wrong yet again. The Appeals Court ordered that a public hearing should have been held prior to implementing the SOP because the SOP was in fact a regulation. On January 5, 2024 - five years after the DOC had implemented the SOP - the required public hearing was held. And, on March 15, 2024, the DOC published its regulations, negating much of the restrictions contained in the SOP.

What is unfortunate is that the DOC had not learned its lesson from its first defeat. If the DOC had, then the time and expense spent to bring the DOC through the legal process would have been unnecessary. In addition, for five years prisoners were prohibited from partaking in important family events or costs. That burden fell especially hard on women incarcerated at MCI-Framingham who had been trying to maintain meaningful contact with their children.

What then would have been a better approach for the DOC? First, the DOC should simply follow the laws passed by the legislature and rulings of the courts. Second, the DOC could meet with prisoner representatives in the various prisons to discuss problems and brainstorm possible solutions. Conducting focus groups and asking

questions would not diminish the DOC's authority, even if uncomfortable truths are raised. In addition, the DOC would recognize that prisoners have a stake in the secure running of prisons as well as bringing to the table a perspective that DOC administrators could never have.

Commissioner Carol Mici has retired. Various prison reform activists and leaders of prisoners groups inside MA facilities have proposed to Governor Maura Healey that their input on the appointment of the next Commissioner of Correction be given serious consideration. While that may seem novel, even extreme, to some, it makes good sense. The Governor needs to listen to the voices of those who have to live with and abide by the decisions the new commissioner will be making.

One can only hope that Carol Mici's replacement will usher in a breath of fresh air. For instance, to cease implementing knee jerk policy decisions in reaction to situations which punish all prisoners for the acts of one or two. Or, to insist that DOC lawyers provide actual advice regarding the constitutionality of proposed policies or procedures before they are put in place. Presently, the DOC legal department seems to see its role as merely defending any and all procedures, despite dubious legal footing, which tie up the courts for years. Or, for the DOC to learn that if one sticks a fork into an electrical socket, one should never do it again, let alone repeating the mistake again and again.

Gordon Haas
Chairman
Lifer's Group Inc.
MCI-Norfolk
P.O. Box 43
Norfolk, MA 02056