

III. Briefs

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| File and serve brief | Within 30 days of service | 343(c) |
| Motion to dismiss for failure to file brief | If appellant fails to file brief within 50 days | 343(c) |

IV. Appendix

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| Designate parts to be included | Within 10 days after receipt of appellant's designation | 344.1(b) |
| Deferred Appendix: Designate parts to be included | When brief is filed | 344.1(c) |

REVOLUTION IN CORRECTIONS

Hon. Leo Oxberger†

I. INTRODUCTION

A revolution in the prison system has occurred in Polk County, Iowa. Prisoners play sports in regular municipal leagues. They telephone their wives, mothers, friends or anyone else anytime they want to without any monitoring of the call. The prisoners have their own private rooms. There are no guards, no iron cells in this prison.

Plans are nearing completion to develop similar prisons in seven other communities in Iowa. The trend in the rest of the nation is toward this type of prison.

The purpose of this article is to inform the practicing lawyer of the reasons underlying the change and to explain in some detail the mechanics of its operation. Hopefully the lawyer will then be able to make maximum use of the programs for the benefit of his client. The single most important point to be emphasized is that buildings should be de-emphasized and individual programming should be emphasized.

II. THE NEED FOR CHANGE

The President in his remarks to the National Conference on the Judiciary has stated that "the time has come to repudiate once and for all the idea that prisons are warehouses for human rubbish; our correctional systems must be changed to make them places that will correct and educate"¹ And in his message to the First National Corrections Conference the President stated, "At long last, this nation is coming to realize that the process of justice cannot end with the slamming shut of prison gates . . . the protection of society depends largely on the correction of the criminal . . . 98 out of every hundred criminals who are sent to prison come back out into society"²

The tragedy, however, is that our correctional system is failing; it is time to re-examine our approach to correctional systems and prisons. "Unacceptable conditions mark every aspect of the correctional effort: in pretrial detention, in sentencing procedures, in probationary supervision, in jails and prisons,

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¹ Address by President Richard M. Nixon, The National Conference on the Judiciary, Mar. 11, 1971.

² Address by President Richard M. Nixon, The National Conference on Corrections, Dec., 1971.

and in parole."³ The system of locking up and ignoring law violators has resulted in centuries of neglect. Alternatives must be found to the traditional approach to corrections. It is time to recognize that society has a responsibility to itself as well as its criminals, and the attitude that we are soft on crime if we do not just lock up criminals must give way to the rehabilitative approach. This "rehabilitative effort should be maximized in every aspect of the correctional apparatus, while the loss of personal freedom should be used as a deterrent only under constructive conditions emphasizing ordinary human decency and avoiding punitive degradation."⁴

Chief Justice Burger has outlined the urgent needs as follows:

1. Institutions that provide decent living conditions, in terms of an environment in which hope can be kept alive.
2. Personnel at every level who are carefully selected, properly trained, with an attitude of understanding and motivation such as we seek in teachers; and with compensation related to the high responsibility.
3. Improved classification procedures to insure separation of incorrigibles from others.
4. A balanced program of productive work, intensive basic education, vocational education, and recreation.
5. Communications with inmates.
6. A system of justice in which judges, prosecutors and defense counsel recognize that prompt disposition of cases is imperative to any hope of success in the improvement of those convicted.⁵

Most persons who commit crimes are under-educated, under-employed and under-motivated; it makes sense to treat that problem if correctional systems are to restore our criminals to society as productive individuals. What is needed is a humane approach that recognizes that the law violator is still a human being—a human being that can be reached not through custodial restraints that breed resentment but through a rehabilitative effort concerned with his individual needs.

Our present prison system is in a deplorable condition. Chief Justice Burger says: "Many of our problems flow from having institutions that are too large, are overcrowded, that are poorly located and inaccessible to the family of the inmates, too far away from facilities for work release programs, and located in areas that do not provide adequate housing for personnel of the institution."⁶

There is an "immediate necessity to replace obsolete prisons oppressively managed with decent facilities where opportunities for education, training, and

³ COMMITTEE FOR ECONOMIC DEVELOPMENT, *REDUCING CRIME AND ASSURING JUSTICE*, 40 (1972).

⁴ *Id.*

⁵ Address by Chief Justice Warren E. Burger, The National Conference on Corrections, Dec. 7, 1971.

⁶ *Id.*

personal development are available under the guidance of qualified and sensitive staffs."⁷ Since the ultimate aim of a rehabilitation effort is to return the law violator back to a productive life within the law, it should be recognized that "prolonged removal of an offender in an institution, serving vast numbers, in no way completely prepares him for living in society. Since the offender has demonstrated a disability in community life the modification of behavior should be similarly situated. This naturally would exclude those persons determined to be dangerous to themselves or others."⁸

This would, of course, require a great deal of effort but a community correction concept is an enlightened step in making detention more than simply punishment of wrongdoers. A community has the resources available to make rehabilitative efforts meaningful in a social environment. This approach of treating a law violator as an individual with his own individual needs is the key to rehabilitation. That concept coupled with community treatment can extend throughout the criminal justice system.

Constitutionally, persons charged with crime are presumed innocent until tried and found guilty. One of the problems of our criminal justice system, however, is the period of time between arrest and final disposition by the courts. Although prompt disposition of cases is a vital goal in the administration of justice, the opposite is generally the rule. Chief Justice Burger has set a national goal of disposing of criminal cases in sixty days from the date of arrest to the date of trial. The ever-increasing criminal case dockets render this goal a practical necessity in order to not only improve the criminal justice system but also to keep it from essentially breaking down because of undue delay and congestion. Consider the effect of delay on the accused who languishes in jail, before trial. The more affluent can be released on bond and thus are better able to maintain job, family and income. It is often the poor who bear the burden, and it is small consolation to those that their constitutional presumption of innocence has been maintained with them in their jail while they await trial.

The system of bail should be thoroughly reviewed. Where the accused may reasonably be expected to appear for court appearance, he should be released. An accused with satisfactory roots and ties in the community should be allowed release on his own recognizance. Beyond this, however, the community can become involved by instituting a supervised bail for those who although unqualified for the pre-trial release could benefit from help rather than waste "dead time" languishing in jail. The program might include obtaining employment, family counseling, supervision—whatever is indicated as the need in each case.

Such programs as pre-trial release and supervised bail, if the community is involved and with the confidence of the court, can be of benefit to the ac-

⁷ RIVERVIEW RELEASE CENTER, WHY—AREA CORRECTIONAL INSTITUTION (1971).

⁸ COMMITTEE FOR ECONOMIC DEVELOPMENT, REDUCING CRIME AND ASSURING JUSTICE, 13 (1972).

cused beyond the "dead time" between accusation and trial. Such programs can furnish the court with information to realistically deal with the accused not as a statistic but as a human being who can demonstrate the potential of improvement. Without a pre-trial release program where the court can get a diagnosis of who the accused is and what his problems are, there is danger of treating him like a statistic because that is all there is—the cold bare facts of his life. What the accused probably needs is an education or somebody who cares in order to change him.

That in essence is what is needed in corrections and rehabilitation—a change in direction away from the impersonal, mass approach which treats the law breaker as a statistic who has to be sent to prison to be punished to the personal, humane approach. The key to reform is the recognition that rehabilitation should be extended by a community that cares about the individual's personal needs.

Two words are used often in this article. They are humane and rehabilitate. A brief definition of these words seems necessary. Humane is not a "hearts and flowers" approach. It is not a lady bountiful way of doing things which says "Here! Let me do that for you. Let me solve your problem for you." The fact is that a true humanitarian treats people with respect for their dignity and this approach sometimes seems harsh and offends the hearts and flowers humanitarians. In our efforts to rehabilitate we must not degrade people. We must enhance their sense of their own dignity.

Humane is more than nice people doing nice things. It is nice people assisting others to do for themselves, helping others to feel a sense of achievement, making humans feel like humans.

III. MECHANICS OF NEW CORRECTIONS

The Polk County Department of Court Services was created in 1971 to serve as an administrative framework for the coordination, integration, and development of several projects involved in providing alternatives to the traditional institutions of the criminal justice system. As the coordinator of four functional units, the Department of Court Services provides a comprehensive community-based correctional program for Polk County, Iowa. The units are Pre-Trial Release, Community Corrections, Pre-Sentence and Probation, and Fort Des Moines Correctional Facility.

The Department in developing and implementing alternative corrections programs has recruited staff from a very wide range of categories, in terms of personalities and social groups, experience and educational background. The staff is made up of a considerable number of non-professionals, para-professionals, ex-convicts and individuals with considerable "street knowledge." However, the staff has a good balance of college degree people, too. The following pages are a descriptive narrative of the services and procedures of the four operating units.

A. Pre-Trial Release Unit

When an individual is arrested and charged with a crime he is taken before a magistrate for arraignment. The magistrate informs him of the crime he has been charged with and sets bail. The purpose of bail is to assure the defendant will appear for trial. Bail traditionally has been thought of in terms of money. It is assumed a person who puts up money for his release will not run because he then would lose his money. The problem with money bail is that people without money are placed in jail without any consideration of whether or not they will appear for trial.

The purpose of the pre-trial release program is to determine whether or not the individual, if released without money bail, would appear at trial. Thousands of people have been released without money bail since the program started in 1964 and only 2% have failed to appear for trial. This is a better record than the money bail system.

A very important element in establishing the pre-trial release program was locating its offices in the Municipal Court Building. The close contact of the staff with the police, jail, and courts enables the staff to keep current on new information about the defendant. It also gives a mantle of authority appearing to be a branch of the court.

Part-time interviewers interview the accused immediately after arrest. They have a standardized interview form. The only persons not interviewed for potential release through the program are those charged with intoxication, failure to appear, federal offense, and juvenile offenders, or persons on whom "holds" have been placed. The questions on the interview form relate to the accused's present and past employment, length of residence in the community, prior criminal record, family ties and obligations, and names of close friends, relatives or working associates. The point system is as follows:

To be recommended for release on his own bond, a defendant needs a Polk County address where he can be reached and a total of five points from the following categories:⁹

- 3 points for one year or more at present residence
- 2 points for six months at present residence
- 1 point for four months at present residence
- 3 points if defendant lives with wife and had contact with other family members
- 2 points if defendant lives with wife or parents
- 1 point if defendant lives with family person whom he gives as reference
- 1 point if defendant has lived ten years or more in Des Moines
- 4 points if at present job one year or more

⁹ A DESCRIPTION OF THE FUNCTIONS AND PROCEDURES OF THE POLK COUNTY DEPARTMENT OF COURT SERVICES. For more detailed information write Bernard Vogelgesang, Director, 1546 Sixth Avenue, Des Moines, Iowa. All quotations cited hereafter in this article are from the above manual.

- 3 points if at present job four months
- 2 points if at present job one month
- 1 point if defendant has a current job, or was unemployed three months or less with nine months or more on prior job, or receiving employment compensation or welfare, or supported by family
- 2 points if defendant has no criminal convictions
- 1 point if defendant has no criminal convictions within the past year
- 0 points if felony conviction or misdemeanor conviction within the past year
- 1 point if two or more felony convictions

The names of persons well acquainted with the defendant are obtained in order that the information provided by the accused can be verified. Usually one or two of the persons given as verifiers are contacted by telephone by the staff interviewer. Records of prior arrests and convictions and present "holds" or bench warrants are obtained from the State Bureau of Criminal Investigation and the Des Moines Police Department on all persons interviewed.

If the defendant scores 5 or more points the "project" recommends to the judge that the defendant be released to the project without surety bond. If the defendant is released to the project he is required to call the office every Wednesday to inform them of any change in residence or employment status. If the defendant fails to appear for his scheduled court appearance the staff attempts to locate him. If his failure to appear was intentional his release is revoked. If unintentional, as is usually the case, the judge may continue the bond. If the defendant is arrested for a new offense committed after release his project bond is revoked and he is not eligible for pre-trial release.

The Pre-Trial Release Unit has a program of nighttime investigation and release. In this phase of the program, the pre-trial staff interviewers are permitted to release only those persons confined in the jail who are accused of misdemeanors. If, after the standard interview is completed, the accused misdemeanant qualifies for release, the defendant signs the non-surety bond. The bond is taken to the jailor and the accused is released without obtaining the approval of a judge on the night of his arrest. The accused misdemeanant is required to appear before the judge the following morning.

If the defendant is not released on some bail procedure Iowa law requires a bail review hearing within 24 hours.¹⁰ The judge must by specific findings show why the defendant should not be released pending trial. If the defendant remains incarcerated all the information and records obtained on the defendant during the pre-trial release interview process are given to the Community Correction staff.

The Pre-Trial Release Unit offers no treatment for the accused. Its sole purpose is to obtain and verify information to assist the court in its discretionary decision of whether or not the accused should be released on his own recognizance.

¹⁰ IOWA CODE § 763.17(4) (1971).

B. *Community Corrections Unit*

The Pre-Trial Release Program was modeled after New York's Vera Manhattan program. The Community Corrections program is a totally new program, a pioneer in the nation. It is a release with supervision bail project.

The Pre-Trial Release Program demonstrated that solid family and community ties and steady employment were sufficient indicators that an accused would appear for trial without the traditional cash bonding system. However, indigent defendants lacking family and community ties and steady employment remained at the mercy of the professional bonding system. This group was unlikely to be able to raise the money required for a cash bond or for the professional bondsmen's fee and continued to be incarcerated in the period prior to trial. Therefore, the Community Corrections project was created to demonstrate two points. One, that people who were not eligible for release on recognizance could be released safely on a supervised release. Two, that community treatment could be used more often and with safety to the community. Thus the project seeks on the one hand to improve the bail procedure by providing an additional method to safely release indigents prior to trial while on the other it seeks to improve the correction effort after conviction by starting the treatment program immediately following arrest. The period of time following arrest and before trial is the time the accused is most willing to make a change of behavior. By the time of conviction the embarrassment of the situation has worn off and the opportunity to make maximum treatment impact is gone. However, there is a cardinal principle religiously adhered to by the staff—the defendant is presumed innocent and they should in no way involve themselves in the issue of guilt.

The Pre-Trial Release Unit makes its recommendations to the court based on objective findings. Community Corrections makes its recommendations based on subjective standards. In other words, it is the staff's judgment that the accused will appear for trial.

Continuation of the Community Corrections bond is dependent upon a level of positive performance achieved and maintained by the client throughout the pre-trial period. The intensive supervision by the staff not only increases the probability of the appearance of the client at court but also serves several other positive functions. Supervision attempts to re-integrate the defendant into the community, his family ties and friendships, his employment ties, and other positive community ties.

In making the decision to sentence the defendant to the penitentiary or to Community Corrections such as the county jail, work release or probation, the judge looks closely to the existence of the defendant's "roots" in the community and his progress pending trial in correcting himself. Of course, if he is in jail he cannot demonstrate any behavioral change. Through release under supervision, an attempt at a program of behavior modification can begin. This may be obtained through the exploration and utilization of community roots through

employment, family psychiatrist, drug and/or other types of counseling programs.

The selection of the right case work supervisor is most important. For example, an accused with psychological problems is assigned to a counselor with experience in this field. A small caseload is also important. The treatment program is tailor-made for each individual in the program. It is based on information gathered from the initial interview, psychological tests and the psychiatric consultant's interview and evaluation. Often the accused's behavioral problem is related to employment. The counselor seeks to identify the factors involved such as absenteeism, problems with supervisors, ineffective job performance, et cetera.

The counselor's prospective success is measured in degrees and is summed up by this thought: "I have altered the defendant's behavior in some way so that he can see himself and others better and is thus able to cope with his problems."

After the counselor and client (defendant) identify the problem areas through one-to-one counseling and community resources, the problem areas are addressed. Some problem areas and resources are drug counseling, therapeutic alcohol counseling and treatment, job training and vocational rehabilitation, employment, psychiatric counseling, family and marital counseling, financial counseling, educational programs and medical treatment.

The project has a program of night activities. The major premise for development of the night program was to provide closer contact between the project and the client and to provide closer supervision of clients during the evenings. Educational service to clients was envisaged as a possible role of the night program. Instruction in such areas as health, family planning, and legal services was intended to be a primary focus of the program. The night programs have not been outstandingly successful. Community participation has been limited. However, efforts are continuing to improve this phase of the program.

At the conclusion of the project's supervision of a client and immediately prior to sentencing, the client's counselor makes a recommendation to the court. In the final recommendation, the counselor outlines the significant developments in the course of the client's release to the Community Corrections Unit. The Unit proposes that the court be cognizant of the positive community, family and employment "roots" which have been formed or strengthened in the period of supervised release. The recognition of positive community ties facilitates the court in arriving at a sentence which will most benefit the continued rehabilitation of the client in the community setting. If considerable progress has been demonstrated by the client the project counselor recommends a deferred or suspended sentence. If the court follows the Unit's recommendation, the client is transferred to the probation unit of the Department of Court Services. A smooth transition from pre-trial to post-sentencing super-

vision is thus accomplished. Furthermore, information on clients can be swiftly and completely forwarded to the client's probation officer. The community "roots" developed in the pre-trial period are undisturbed with such a transfer.

As in the Pre-Trial Release Unit, a client's Community Corrections bond is like the Pre-Trial bond, conditional upon the observance of the conditions of the contract signed by the client upon release to the project. Further, if no identifiable progress of the client in the program is made, the project may recommend his return to jail. This, indeed, is an unusual circumstance, but does occasionally occur. Unlike the Pre-Trial Release Unit, the Community Corrections Unit primarily emphasizes treatment although it also functions as an alternative to the traditional cash bail bonding system.

C. *Pre-Sentence Investigation Unit*

Traditionally in Iowa, the pre-sentence reports have been provided for the sentencing judge by the Iowa State Bureau of Adult Corrections. In order to facilitate the smooth and orderly transition of defendants from pre-trial supervised (Community Corrections Unit) to post-sentence supervision (Probation) or incarceration within the Department of Court Services Fort Des Moines Correctional Facility, the Pre-Sentence Investigation Unit was added to the Probation Department. Officially the employees of this Unit remain on the state payroll but work in the County's Probation Department offices. Thus what has been learned about the defendant in the Community Corrections Unit can be utilized in the preparation of the pre-sentence report. Although the Community Corrections Unit recommends a certain course of action to the court on behalf of the defendant, the systematic investigation of the defendant's social history and present condition outside of supervision provides a complementary service to the court. The recommendations offered to the court for the sentence of the defendant are formulated without consultation between the two Units. The objectives of the reports are similar to those stated in the federal pre-sentence manual:

It is to focus light on character and personality of the defendant, to offer insight into his problems and needs, to help understand the world in which he lives, to learn about his relationships with people, and to discover those salient factors that underlie his specific offense and his conduct in general. It is not the purpose of the report to demonstrate the guilt or the innocence of the defendant.

The report is designed not only to aid in determining the appropriate system but also to aid the correctional people in their classification and treatment programs and in their release planning.

D. *Probation Department*

County probation departments have usually served a limited purpose in Iowa. It should be noted probation is granted by the court while parole is

granted by the parole board. Most probation cases have usually been assigned to the Iowa State Bureau of Adult Corrections. In formulating the plans for the new county Department of Court Services maximum cooperation was received from the Iowa State Bureau of Adult Corrections. The new County Probation Department assumed all the new probation cases.

When the probationer is sentenced to probation he is instructed by written order contained in the sentence to appear immediately at the probation office to be placed under supervision. The first step when he arrives at the office is to complete a "probationer's statement" dealing with his social history, prior offense record, and a brief summary of his version of the offense. The probationer is then briefly interviewed by a staff member. The initial intake is undertaken by all staff members before the staffing of the probationer. The initial intake is designed to investigate basic information about the probationer and to determine the attitudes of the probationer. Utilizing this random staff intake process, all staff members are acquainted somewhat with the probationers under the office's supervision. The probationer is, in the initial intake, acquainted with the conditions of probation, which apply to the probationer until assignment of a probation officer. The probationer indicates that he understands and accepts the conditions of probation by signing the initial intake form.

An appointment date for the first probationer-probation officer interview is arranged by the staff secretary. At the arranged date the probationer is interviewed by the assigned probation officer and the conditions of probation are re-examined and altered if necessary. A probation contract is signed at this time by the probationer.

The contact between the probationer and the probation officer, a condition of the probation contract, depends largely upon the status of the probationer and upon which probation officer has the case. If the probationer is unemployed, contact will be required once or twice per week. An employed probationer is required to contact the probation officer usually twice a month, one telephone contact and one personal contact. Some probation officers may require unemployed probationers to contact the officer every day until he finds employment.

Probation officers have an average caseload of 70-80 probationers. With such a caseload, a structured supervision program is impossible to develop. The primary emphasis in the program of supervision is the placement of probationers in jobs, vocational training programs and educational programs in the community. Hopes for the future are to reach the recommended level of 35 probationers per counselor.

Employment or enrollment in community programs is of utmost importance in keeping the client out of criminal activity. It is a benefit to the client in another important aspect since the client is more likely to be discharged from probation by the court if he is employed or enrolled in community educa-

tional or vocational training programs. For these reasons, a probationer is very actively encouraged to find employment or enroll in rehabilitative programs.

When the probationer has violated a condition of probation the probation officer notifies the sentencing judge within 24 hours. Within 48 hours a report is made to the sentencing judge by the probation officer recommending a certain course of action concerning the probationer. A decision on change in probationary status or revocation of probation is made by the court, but most often the court follows the probation officer's recommendation.

The defendant, receiving a suspended sentence, is placed on probation for a period of one to three years. Near the conclusion of the probation period or when the probation officer feels the probationer is ready for release, the probation officer sends a review-for-discharge petition to the court. If the conditions of probation have been fulfilled, the sentencing judge files a discharge order with the probation department, clerk of court, and the county attorney. A letter of closure is given to the probationer by the court and all files are officially closed and the probationer is released from probationary supervision. In a deferred sentence probation, the procedure is much the same except when the probation supervision ends. At that time the defendant is allowed to withdraw his plea of guilt, and the court dismisses the defendant's case with prejudice. All records may be destroyed upon order of the court.

E. *Fort Des Moines Residential Corrections Facility*

The Fort Des Moines Residential Corrections Facility is a pilot program offering an alternative to the traditional maximum security county jails. Instead of letting a man vegetate in an iron cell, the new facility seeks to instill hope in the offender. Hope is nourished best by recognizing each offender's disabilities and helping him, specifically him, in handling them. That sounds simple and perhaps is too simple but it is the guiding principle of the facility.

The statutory authority for the "revolutionary" jail is Chapter 204 of the *Iowa Code*. The Fort Des Moines facility is located in an abandoned two-story Army barracks. The physical design of the institution allows for only a limited number of offenders. Sleeping quarters, located on the second floor of the building, consist of only 36 private bedrooms and three small dormitories capable of housing 14 offenders. Although the private bedrooms are small, room enough only for a bed, dresser and foot locker, they do allow for a considerable degree of privacy, particularly since each client has keys for his respective bedroom door and foot locker.

The first floor consists of staff offices and two large rooms of equal size for community living. In one half of the community living area the clients are provided with equipment for playing such games as cards, checkers, chess, pool, and table tennis. A juke box has also been provided for the clients' entertain-

ment. The other half of the community living area contains a color television set, sofas and easy chairs. Vending machines located in the community living area enable clients to obtain cigarettes, soft drinks, candy, and coffee. Also located on the first floor are pay telephones for the use of the clients. This is probably the only correctional institution in which inmates can call their wives, mothers, friends or anyone else any time they want to without any monitoring of the call. This permits maintenance of close family and community ties. The phones have been abused on occasions when girlfriends have been called to pick up escapees. But the clients are not considered dangerous and all escapees have been captured.

Prior estimates of the costs to build a new county jail ranged up to \$4 million. The Fort Des Moines facility demonstrates it is not the building that counts but the programs and people that make the determining factor. The renovation plan of the Army barracks was designed to provide a number of positive features for the institution as a rehabilitation center. The private bedrooms with locking doors were included to provide clients with a place of their own in an effort to reduce the dehumanization usually associated with correctional institutions. This plan also allowed the facility to place a reasonable limit to the number of clients accepted into the program. The relative "openness" of the institution, aside from the private sleeping quarters, was designed to make it quite difficult for clients to hide from either the staff or their peers. As mentioned previously, the renovation plan provided for access between clients and counselors, a very positive element for institutional correction.

The facility, on the other hand, was not designed for activities such as recreation, education, or vocational training. The staff was therefore forced to make maximum use of resources already existing in the community. The goal was to demonstrate that correctional facilities located in or adjacent to cities need not make huge capital investments in classrooms, shops, gymnasiums and infirmaries. Thus the Fort Des Moines facility operates as a residential institution, highly dependent upon community resources and services.

Community resources for recreational purposes are heavily utilized. A volunteer program has been implemented to develop daytime activities such as arts, crafts, lectures, and daytime trips. A mobile library calls at the institution every Saturday. Recently, a citizens advisory committee composed of five business leaders and five labor leaders was organized. The committee will assist with job placement, program development, and the development of cost effectiveness techniques.

It should be emphasized that the only staff members who had had experience in correctional institutions are former offenders who have served time. This lack of experience creates some problems, but it is the opinion of the Department that there have been many positive results. The inexperienced staff, as a group, tend to be more oriented toward serving people (problem solving)

and less oriented toward system preservation. There also tends to be a freshness of approach in the input of program development. As a result the inexperienced staff tends to propose, develop and implement programs which more experienced staff are generally less willing to embrace. It is this willingness to experiment, to develop new concepts, and to innovate without hesitation that truly delineates between the traditional correction approach and the "alternative" concept of corrections employed by the Department of Court Services.

The Fort Des Moines facility does not totally replace the traditional maximum security jail. The alternative to transfer to the jail serves as a positive instrument for behavior modification. If a criminal offender is not making progress in the Fort Des Moines facility, he is transferred to the county jail to complete his sentence. He is, however, periodically interviewed to determine if he has had a change of mind.

1. *Process and Procedure*

The Fort Des Moines facility first comes into contact with a criminal offender when the director of the facility is notified by the court that a male felon will be sentenced to the Fort Des Moines facility. The director is also periodically requested by attorneys and other interested parties to interview defendants and possibly suggest to the court that they be placed in the Fort Des Moines program. Names of potential clients are referred to the intake officer who, having received the information, conducts the interview.

The primary interview format is a series of questions which are designed to indicate the basic thought processes of the client and the capabilities which the client has to utilize in a correctional program. In addition, basic demographic data concerning the potential client is collected and recorded on the fact sheet information form. A recommendation concerning the suitability of the defendant in the correctional program is forwarded to the judge.

If the Fort Des Moines facility is at capacity the client is placed on a waiting list and remains in the county jail. However, if the facility is at less than capacity and the court has decided that the offender will be placed in the Fort Des Moines Program, the intake officer obtains the court order and certification of release from the clerk of court's office and presents these to the jailor. The offender is then released from jail to the intake officer's custody.

The first week of the client's stay in the Fort Des Moines facility consists of intake workup and orientation. The client is not allowed to look for employment or participate in outside activities for at least the duration of the first week. The intake officer utilizes this period for client behavior observation and evaluation. A contract is signed immediately by the client specifying certain restrictions prior to the client's placement in an appropriate treatment team.

During the first week, the client is required to complete an employment application (supplying essential data to the project about the client's educational and employment history), to write a short autobiography, to develop an original treatment program, and to give reasons why he believes such a program would benefit him. The counselor-intake officer collects from the probation office the pre-sentence report concerning the client if one has been conducted. If a pre-sentence report has not been made, the counselor-intake officer undertakes an investigation, although quite limited, to determine essential information about the client. All the above information is placed in the client's file.

The intake officer and the case work supervisor evaluate the information collected concerning the client and decide which "team" presents the most positive program for the client's rehabilitation. Their assessment is based upon the client's record of prior arrest, his general social history, the impressions obtained by the intake officer in the initial interview conducted in the jail, the client's autobiography, and treatment program, and the observed behavior of the client during the first week at the facility. When the client is assigned to an appropriate team and counselor, all information and records are placed in a file and given to the counselor assigned to the client.

Clients are introduced to Fort Des Moines staff in the orientation group. The client is acquainted with requirements, procedures, and program format of the Fort Des Moines Correctional program in the first-week orientation group.

2. Program Development: "Team" Approach to Treatment

Although any treatment program must be individually meaningful, basic problem areas or personality types must be sorted out and dealt with as treatable groups, if for no other reason than for lack of sufficient staff. In order to deal with the most frequent client problem areas a team program was established early in the development of the facility. This "team" concept is borrowed from the program of the Riverview Work Release Center in Newton, Iowa, and the Concentrated Employment Program in Des Moines. As the Fort Des Moines Program has developed, the team has become even a more important treatment concept.

The teams have been composed of roughly a two-to-one client-counselor ratio. Clients are divided into three primary groups: drug, mature and immature. Although these specialized teams cannot hope to accurately describe all the divisions of the Fort Des Moines clientele, general types can be identified and more appropriate treatment methods developed.

Following intake, orientation, evaluation, and placement, and within the first two to three weeks, the clients are interviewed by the part-time psychiatric consultant. The psychiatric consultant conducts interviews with new clients on Thursday of each week. The psychiatric evaluation is utilized primarily to

aid the counselor in the one-to-one counseling rather than in treatment in the respective teams.

During this one to three week period a part-time vocational rehabilitation counselor interviews the new clients in order to define possible goals and programs outside the institution. In this interview, he attempts to define what types of programs might be most beneficial for the client: vocational training programs, educational programs or employment.

The services of the vocational rehabilitation counselor are crucial in the placement of clients in the community programs when they are ready and able to handle work in educational release. The Fort Des Moines Program has in the last months begun to de-emphasize the immediate participation of clients in programs outside the institution. The staff has observed that in the past clients have been pushed into programs in the community before they have developed the capability to function outside the institution. This premature release into outside programs led to at least two negative results: one, some clients had additional difficulties in the treatment program within the institution. Since the clients were unable to perform satisfactorily in these programs outside the facility, little positive use of these ties could be made in the rehabilitation program. Two, the poor performance of clients in employment in the community tended to discourage employers from accepting clients from the facility. That is, the premature placement of clients in jobs in which they could not perform tended to "dry up" employment resources. When employment resources are as scarce as they are currently, such a situation could only be damaging for the Fort Des Moines Program.

Clients continue in the Fort Des Moines Program until the staff feels that the client has progressed in the program as far as he is able. It is hoped that the clients will at this point be able to adjust to the outside world. If the client is deemed ready to be released, a request is sent to the sentencing judge for the placement of the client on probationary supervision.

If, however, the client has not performed well in the program, or has broken the agreement of his contract, he may, if judged advisable, be returned to the county jail. In that event, a hearing is conducted by the court to have the facility show cause to the judge, the defense attorney, and the client why the client should be returned to jail.

A third possible recourse in the termination of the client's stay at Fort Des Moines is the transfer of the client to another facility, if it is deemed that another facility has a program which may benefit the client's rehabilitation. Several drug clients have recently been transferred into the drug treatment program at Clarinda State Hospital. Other clients may be transferred to other facilities which have treatment programs the facility lacks, such as programs in alcoholism treatment and psychiatric treatment. In each case the judge makes the decision concerning the transfer or release of a client.

IV. CONCLUSION

The foregoing detailed information about the Polk County Department of Court Services is not proposed as a panacean model which is inherently replicable in areas outside of Polk County. If it has demonstrated anything, the development of the Polk County program has shown that flexibility is a necessary ingredient in the process of implementing new correctional programs to meet the needs of specific communities. Thus the information contained herein is only intended as a guide and not necessarily as a sort of "magic cure-all" model for universal duplication.

SPEEDY JUSTICE

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I. INTRODUCTION

The Supreme Court of the United States in *Barker v. Wingo*¹ recently invalidated on sixth amendment grounds the demand-waiver doctrine (i.e., automatic waiver of defendant's speedy trial rights if same not demanded) as applied by a majority of the states, including Iowa. Our purpose in this article is to examine the apparent status of the law of speedy trial in the Iowa criminal trial process in light of *Barker v. Wingo* and other recent judicial developments.

The sixth amendment right to speedy trial² is one of the "fundamental" rights imposed on the states by the Due Process Clause of the fourteenth amendment,³ thus requiring applicable state rules of criminal procedure to comport with the federal courts' interpretation of the minimal requirements of the sixth amendment. There also is a speedy trial guaranty in the Iowa Constitution,⁴ which is implemented in Chapter 795 of the *Iowa Code*. Section 795.1 requires indictment within thirty days after a person is held to answer for a public offense.⁵ Once an accused is indicted, section 795.2 requires the State to bring the cause to trial within sixty days unless trial has been postponed on his own application.⁶ Both statutes have been construed to require a demand to enforce their respective rights of speedy indictment and speedy trial.⁷ The absence of such a demand has resulted in waiver of these rights.

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Nothing herein is to be construed as an official opinion or expression of policy of the Attorney General.—Ed.

¹ 407 U.S. 514 (1972).

² "In all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial . . ." U.S. CONST. amend. VI.

³ "We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment." *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967).

⁴ IOWA CONST. Art. 1, § 10.

⁵ IOWA CODE § 795.1 (1971) reads, in pertinent part: "When a person is held to answer for a public offense, if an indictment be not found against him within thirty days, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown."

⁶ IOWA CODE § 795.2 (1971) reads, in pertinent part: "If a defendant indicted for a public offense, whose trial has not been postponed upon his application, be not brought to trial within sixty days after the indictment is found, the court must order it to be dismissed, unless good cause to the contrary be shown."

⁷ See text accompanying note 109 *infra*, as to interpretation of the demand-waiver exceptions clause in Code sections 795.1 and 795.2: "An accused not admitted to bail and unrepresented by legal counsel, shall not be deemed to have waived his privilege of