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Post Conviction Legal Aid in County Jails: A Model Law Student Counseling Program

Peter Van Name Esser

POST CONVICTION LEGAL AID IN COUNTY JAILS: A MODEL LAW STUDENT COUNSELING PROGRAM

Peter Van Name Esser, Editor
John F. Barg
Michael S. Brooks
Alfred H. Buchta Jr.
Peter Goodman
David A. Light

THE SAN FRANCISCO COUNTY JAIL LAW STUDENT COUNSELING PROJECT

Introduction

County jail systems throughout the United States contain large numbers of inmates in need of effective legal assistance. While court-appointed attorneys provide the necessary counsel for indigent defendants at trial, post-conviction legal aid for indigent prisoners is virtually nonexistent. The San Francisco County Jail system has done much to alleviate this problem by conducting a volunteer law student project on a continuing basis within its walls. Composed of inmate interviews and procedural followup by law students through local law enforcement agencies and courts, the project has produced substantial benefits to the jail population while providing an ideal training experience for law students from San Francisco law schools.

The initial organization of a law student jail counseling program involves considerable detail. Establishing co-operation between law schools and the county jail personnel demands careful pre-planning with an awareness of law enforcement priorities. The diverse inmate problems necessitate an extensive orientation and training of the students before their initial inmate interview. Sophisticated filing systems must be designed to facilitate co-ordination of interviewing

schedules, inmate-student assignment, and responsible followup. Procedural forms, directed at frequently encountered problems such as pre-trial detention credit, speedy trial request, and sentence modification eligibility, must be created and stocked in the jail counseling center. Jail rules and security policies for law student visitation must be carefully planned and explained to student legal workers and jail personnel.

This report represents the cumulative experiences of some one hundred San Francisco law students operating a legal counseling project in the San Francisco County Jail from September 1972 to September 1973. This article will attempt to outline the various procedures developed in interviews and followup of real problems in post-conviction legal aid during that period.

After a detailed introduction, explaining interviewing schedules, the San Francisco Jail facilities, and various law student accomplishments for inmate-clients during a year of jail counseling, six major problems will be discussed in order of their frequency of appearance in case files of interviews with jail inmates. They are:

(1) Security Holds; Indications of Further Charges,
(2) Credit-for-Time-Served (pre-trial detention credit),
(3) Speedy Trial; Defendants Already Incarcerated for Prior Crimes,
(4) Good Time and Work Time,
(5) Release Prior to Sentence Expiration,
(6) County Jail Disciplinary Review Boards.

Following these six essays, there is a report dealing with a carefully prepared eight page jail questionnaire. This questionnaire was submitted to jail officials in ten Northern California county jails, and supplemented by personal interviews with deputy sheriffs whenever possible. The questionnaire is presented in full, along with a brief discussion of the cumulative responses, so that it may serve as a beginning investigative tool for law schools planning to enter the jail counseling field. The various opinions expressed by jail officials in this report represent the viewpoints of jail authorities in ten different county jail systems, and as such, should be compared with the perspective of the student legal worker as expressed in the preceding essays.

The San Francisco County Jail counseling procedures outlined in this report will not be applicable to every jail system in the United

States. The county jail questionnaire study indicated that, even in the localized Northern California area, there are numerous dissimillarties in jail procedures. No two counseling programs will face precisely the same problems. The writers submit, however, that the general nature and scope of jail problems are substantially the same everywhere. Such problems as parole eligibility, jail disciplinary review and pre-trial detainment credit produce inmate complaints in all county correctional facilities. By explaining the procedures developed in one successful program, the San Francisco County Jail Law student Counseling Project, the writers hope to provide suggestion, insight, inspiration and encouragement to similar programs in other county jail systems throughout the United States.

Initial Organization and Structure

In August, 1972, an analysis of interrogatories completed by 600 San Francisco County Jail inmates indicated a great need for post-conviction legal aid of a nature appropriate to law student assistance.[1] When classes commenced at Golden Gate University School of Law in September, 1972, a program was initiated with thirty students chosen from the fall semester Prisoners' Rights seminar. Professor Carol Ruth Silver[2] interviewed students and selected individuals interested in committing a significant block of time to a prospective "legal clinic" in the San Francisco County Jails. Ms. Silver contacted Professor John Gray at the University of San Francisco School of Law, who supplied thirty additional law students from his Law of Corrections class.

The first significant contact with a law enforcement official was made with San Francisco Sheriff Richard D. Hongisto.[3] Project

1. The interrogatories were designed and distributed by a Golden Gate University School of Law student, Alfred Buchta, for a Prisoners' Rights seminar in August, 1972.

2. In her dual role as Professor of Law at Golden Gate University and Legal Officer for the San Francisco Sheriff's Department, Ms. Carol Ruth Silver was responsible for the initiation of the San Francisco Law Student Jail Counseling Project. Her extensive training and expertise in prison law provided the foundation for many of the counseling techniques eventually used in the jail interviews. The participating members of the San Francisco Counseling Project are much in her debt for advice, encouragement and guidance.

3. Sheriff Richard D. Hongisto's co-operation and continued trust in allowing a large number of law students within jail security areas was an important prerequisite to operation of the Jail Counseling Project. In almost every area, the personnel of the San Francisco Sheriff's Department were courteous and helpful to the law student workers. Post-conviction legal aid continues to play an important part in Sheriff Hongisto's plans for a peaceful, humanitarian county jail.

organizational -meetings were held with jail deputy sheriffs, the Sheriff's Attorney, and the personnel of the County Jail Rehabilitation Office. Sheriff Hongisto assisted in setting up identification systems involving record check and photo-identification cards, which provided security clearances for law students entering the four San Francisco County Jails, the City Prison (the San Francisco Police Department holding facility), and various agencies at San Francisco's Hall of Justice.

Seminars incorporating such diverse speakers as author Jessica Mitford, Warden James Parks of San Quentin State Correctional Facility, representatives from the Prisoners' Union of San Francisco, and selected "halfway house" personnel, were conducted at the law schools. Law school Curriculum committees were approached with unit-credit plans,[4] and the Student Bar Association at Golden Gate University donated funds for duplication and telephone costs.

After six weeks of student orientation and project organization, the program began with interviews between law students and inmates at the San Bruno facility of the San Francisco County Jail. Shortly thereafter the multifarious followup procedures commenced involving student interaction with the various law enforcement agencies at San Francisco's Hall of Justice.

The Student-Inmate Interview

The inmate population in the San Francisco County Jail is distributed among six separate holding facilities:

1) CITY PRISON. The San Francisco Police Department holding cells take up the sixth floor of the Hall of Justice building in downtown San Francisco. It has a capacity of about two hundred pre-indictment arrestees whose average length of stay is about ten days.
2) COUNTY #1. Following indictment, male accuseds are taken to the county pre-trial detention facility on the seventh floor of the Hall of Justice building. Here, an average of 350 male detainees await trial (or bail), staying between ten to one hundred days.
3) COUNTY #3. The female accused pre-trial detention facility is right next to County #1, holding about 50 women awaiting trial or bail dates.

4. Students received two units of law school credit for the first semester's work, and one additional unit if they chose to remain in the project through another semester.

4) COUNTY #2. This is the main jail facility for male inmates at San Bruno, about thirty miles from the Hall of Justice south of San Francisco. It holds an average of 700 men with sentences averaging 180 days. Although inmates with consecutive commitments sometimes stay longer, the administrative maximum is one year.

5) COUNTY #4. In a separate building at the San Bruno location, an average of fifty female inmates are housed with an average commitment of 90 days.

6) COUNTY #5. This is the Work Furlough Facility.

Arrestees enter custody by being placed in holding cells in City Prison. Once an indictment is returned, accuseds are moved "upstairs" to County Number One (or Three, for women) to be held for trial. After trial, if the individual is sentenced to county jail time, he is transferred to the remote San Bruno county jail facilities (Number Two and Number Four) by way of the Sheriff's van. It is here that inmates may initially take advantage of law student assistance.[5]

Interviews were conducted between 4:00 p.m. and 9:00 p.m., Monday through Thursday night at the San Bruno Jails. In the men's facility, prisoners were seen in a small glassed-in office on the second tier. In the women's jail the interviews were held in the visiting quarters.[6] Inmates wishing to see a law student obtained request forms from the Jail Rehabilitation Office, and inmate trustees supervised the movement of inmates from their cells to the interviewing rooms.

The basic caseload was maintained at four to six inmates per student at any one time in order to maximize the chances of expedient completion while serving the needs of the greatest number of inmates. Weekly report forms helped to avoid multiple law student assistance for any one inmate.

Following each interview session, the information obtained from the inmate was verified and checked for accuracy against the

5. Law student counseling was not extended to pre-trial detainees, since these inmates were represented by court-appointed attorneys and private lawyers. The interviews were restricted to post-conviction legal aid.

6. Female inmates were interviewed by female law students and male students interviewed male inmates. This arrangement was requested by Sheriff Richard Hongisto for security reasons.

inmate's jail records. This was done by consulting jail "custody cards" at the Jail Records Desk, where every jail inmate has a complete conviction and commitment record. The Records Desk Officer was instrumental in computing release dates, determining good time and work time applications, and explaining jail notation systems and abbreviations on the custody card.

Post-Interview Followup

The great majority of cases involved San Francisco law enforcement agencies which are situated beneath the City Prison and County Number One and County Number Three facilities in the Hall of Justice building in San Francisco. Students frequently consulted the Municipal and Superior court records kept by the court clerks on the second and third floors, and the files of the Central Warrants Bureau on the fourth floor. Two other important contacts, the San Francisco District Attorney's Office and the Office of the Public Defender, are also in this building.

After approaching the appropriate law enforcement agency and dealing with the particular inmate complaint, the law student scheduled a second interview with the inmate and discussed a possible solution to the problem. Each inmate investigation was the subject of a complete file and was referenced on a weekly progress report until the student completed the case. Final reports were filed at the project headquarters at the law school for later cross-checking and statistical analysis.

The Student Manual

Organization is a continuous process in a jail counseling project. A flexible, periodically updated statement of project by-laws was designed to facilitate a continuous review of project procedures. The Student Manual, composed of by-laws, substantive memoranda and procedural forms, grew steadily in size and complexity as the project progressed. This law review article includes various materials from this Manual expanded to essay length, represnting observations and developments from one year of law student counseling in the San Francisco County Jail.

In considering the information gathered in the Student Manual by counseling personnel, it is important to understand the unique role of the law student in the post-conviction legal aid process. A major difficulty encountered by the student legal workers in the jail

was that the bulk of the inmate's problems were of such low visibility in the criminal justice system that attorneys had little idea of how to deal with them. Statutory entitlements such as pre-trial detention credit ("credit-for-time-served"), or access to discretionary programs such as Work Furlough, rarely graduate to the level of importance, in an individual case, to justify the attention of an appellate court.[7] This paralegal vacuum provides an ideal working ground for innovative law student assistance. The relative lack of procedural precedent in these matters allows the law student interviewer a wide responsibility in devising his own unique methodologies. As student legal workers encountered different inmate problems in the San Francisco counseling project, topical memoranda were prepared and integrated into the burgeoning Student Manual. In like fashion, uniform procedural forms and affidavits were designed by the interviewers and made available to the other students in the project. Besides serving as an informative interaction between current law student interviewers, the Manual provided a superlative orientation tool for new students, and an ideal project compendium for use in outlining the project to other schools.

Distribution of Problems

Inmate interrogatories conducted prior to the initiation of the San Francisco Jail Counseling Project indicated a great number of prisoners interested in dealing with domestic problems such as family support, unpaid bills, welfare and eviction.[8] In practice, the student counselors provided primarily criminal legal assistance involving the various factors affecting the inmate's time behind bars. From the statistics listed below, taken from the case files of inmates interviewed in the San Francisco County Jail, it seems that the needs of post-conviction legal aid are mostly concerned with problems ancillary to the original court commitment to the jail facility.

Problem for which help was sought:	Cases	Percentage of total caseload
Holds (Detainers)*	161	28%
Credit-for-Time-Served*	101	19
Request for Speedy Trial*	64	11
Good Time/Work Time*	53	9

7. This discussion is confined to county jail inmates. The longer sentences involved in state prison commitments elevate many of these same problems into the area of active appellate concern.

8. See note 1, *supra.*

Sentence Modification*	35	6.5
Information on Outstanding Charges	32	6
Sheriff's Parole*	18	3
Work Furlough*	18	3
Medical Assistance	18	3
Personal Property	18	3
Rent, Eviction, Welfare Unpaid bills etc.	18	3
Weekend Passes*	12	2
Disciplinary Review Board*	10	1.5
Reopen Case, New Facts	6	1
TOTALS	574 cases	100%

* Memorandum on this subject, infra.

Accomplishments

It is very difficult to statistically explain the accomplishments of a jail counseling project. One of the most significant benefits to inmates, simply having their grievances listened to by an understanding ear, does not lend itself to quantitative report. Many of the benefits afforded inmates involve the easing of re-entry into society (e.g. job interviews, family contacts, training programs) and co-ordinated and expedient entry into already existing priviliges in the jail system. The most dramatic way of helping an incarcerated person is, of course, to secure his immediate release from jail custody. Progress towards this objective is equally difficult to ascertain in a numerical way, since so many factors, such as bail, good behavior, parole, speedy trial on pending charges etc., go into the computation of a final release date. The following paragraphs will attempt to state, in general terms, the accomplishments of the San Francisco Jail Counseling Project during one year of interviewing in the San Francisco County Jail.

Law students straightened out good time/work time errors, and accomplished judicial sentence modifications. They filed over fifty successful speedy trial requests, and arbitrated credit-for-time-served disputes for one hundred inmates. They worked with the Work Furlough Project, secured weekend passes and removed some seventy-five days from inmate commitments by winning Sheriff's Parole for deserving prisoners. Students also represented inmates

at jail disciplinary hearings, eliminated scores of traffic violation holds, contacted family physicians, secured job interviews, and corrected large numbers of procedural errors in court records.

In securing such inmate benefits, law student counselors worked with court clerks, judges, bailiffs, deputy sheriffs, police officers, inmate trustees, rehabilitation officers, traffic clerks, narcotics investigators and probation officers. Post-interview followup necessitated personal interaction with the District Attorney's Office, the Public Defender's Office, the Jail Disciplinary Review Board, the Sheriff's Parole Board, the California Youth Authority, the San Francisco Central Warrants Bureau, and numerous other law enforcement agencies statewide.

As the counseling project continued, the administrative procedures and expertise were developed and improved by building upon lessons learned and methods utilized by students in prior interviews. Orientation meetings for new students, involving past participants and jail personnel, as well as a progressively more sophisticated Student Manual, began to produce a smooth, effective and educationally meaningful project. Thus, the percentage of successful cases jumped markedly, from 20-30% in, the early months, to over 60% at the end of the first year of the interviewing operation. In addition to perfecting problem solving techniques, law students were able to participate in new areas such as the Disciplinary Review Board and the County Parole Project.

Besides providing obvious benefits to a large segment of the San Francisco County Jail population,[9] the interviewing experience provided participating students with an acute awareness of jail conditions and a working knowledge of the criminal justice process. They were exposed to the harsh realities of jail food, jail clothing, jail personnel and jail inhabitants. Individual students reacted by writing state senators, United States Congressmen, and members of the San Francisco Board of Supervisors. Others spoke at commu-

9. In a letter to the director of the Counseling Project dated May 28, 1973, San Francisco Sheriff Richard Hongisto addressed himself to the accomplishments of the San Francisco Law Student Counseling Project: "Although it is always difficult to measure the results of a social program which attempts to aid individual inmates with individual problems, I am fully convinced that, by reducing the number of days spent by inmates in our County Jail facilities which are not authorized or justified by legal conviction, through the removal of holds and the pressing of petitions for sentence modification, credit-for-time-served, etc., the general level of tension and resentment of inmates has been substantially lowered. This has not only resulted in a savings to the taxpayer for the marginal cost of the additional days spent in the jail, but in terms of reduced levels of tension and reduced possibility of unpleasant incidents."

nity meetings involving jail priorities in the Federal Revenue Sharing Program commencing in 1973.

The potential extentions of such a counseling project are unlimited. Future plans for fulltime law school faculty assistance, and co-ordination with such outside agencies as VISTA, San Francisco Neighborhood Legal Assistance Foundation, Synanon, and San Francisco Prisoners' Union, and various jail volunteer organizations[10] promise an even larger community involvement in solving the post-conviction problems of inmates in the County Jail. Opportunities for law student counseling help to augment theoretical legal perspectives gleaned from textbooks, and introduce students to the complex records and filing procedures, interviewing techniques, law enforcement interaction and other everyday practical matters so necessary to eventual success as a practicing attorney. It is hoped that discussion in this article of the ideas, convictions and impressions of a successfully functioning counseling project will encourage law schools and county jails across the United States to take advantage of this unique opportunity for law student participation in post-conviction legal aid.

SECURITY HOLDS; INDICATIONS OF FURTHER CHARGES

The identification and correction of invalid security holds constitute the single most prevalent problem encountered by law student counselors in the San Francisco County Jail. A "hold" is an administrative notation on an inmate's custody card indicating outstanding charges against the inmate. The hold notation signifies that the inmate is to be turned over to some other law enforcement agency, or retained for further trial in the same jurisdiction, after his release from his present term of incarceration. Inmates with holds are treated as increased security risks in the county jail, and are usually considered ineligible for such prior release programs as the Work Furlough Project and county parole.

Law student interviewers are asked by inmates to investigate the character and validity of hold charges. Consider the following hypothetical situations:

Example #1: Larry L. is arrested and charged with burglary. He negotiates a plea of guilty to the lesser charge of

10. Sheriff Hongisto's Volunteer Coordinator, Ms. Joan M. Mills, was instrumental in establishing an effective liaison between the law schools and the San Francisco Sheriff's Department. Her efforts set the stage for a large scale utilization of law student volunteers in the San Francisco County Jails.

receiving stolen property, which carries a county jail sentence of six months, in exchange for a dismissal of the burglary charge. When the court bailiff prepares the commitment order, he indicates sentencing on the stolen property charge but neglects to show dismissal of the burglary charge. Since it appears to the City Police that Larry was never brought to trial on the burglary charge, they place a hold on him so that they may bring the apparent burglary charge as soon as he completes his present sentence. No valid arrest warrant against Larry presently exists.

Example #2: Harry H. is released on bail awaiting trial for burglary. He fails to appear at trial. Two years later he is picked up on a vagrancy charge, and when he arrives at City Prison, a warrant check reveals the open burglary charge still outstanding. The district attorney proceeds against the old felony charge in the Superior Court, and Harry is sentenced to six months in the county jail. The vagrancy charge, a misdemeanor, is never disposed of in the burglary precedings, and it goes down in the City Police files, and on the county jail custody card, as an outstanding charge: a hold.

Both of the holds described above operate the same at the county jail, as far as their restrictive effects on the particular inmates. It should be apparent, however that only one of them, Example #2, is a valid, continuing charge. Example #1 represents an administrative error, something that could happen to any inmate participating in the plea-bargaining process. It can easily be corrected by reviewing the court records, where the dismissal of the original charge (in Larry L.'s case, burglary) is indicated, and exhibiting the necessary proof of such dismissal to the county jail records clerk. But the error is often not corrected until the inmate has served more time in custody than his present sentence required. And, while serving his sentence, the presence of the hold on his file denied him jail privileges and opportunities which the other prisoners enjoyed.

The Hold Procedure

A hold requires that an inmate be retained in custody at the expiration of his current sentence, until arrangements are made to:

(1) Transfer him to the charging jurisdiction, if a valid hold was placed on him by any out-of-country agency;
(2) Formally charge him with the alleged offense if the hold was issued by the city or county of his present incarceration, or;
(3) Release him, following a comprehensive records check, because the hold was found to be an error.

The last arrrangement is the primary concern of the law student counselor who must identify those holds which are incorrect and have them expunged from the custody card before the inmate's sentence expires. In a two-jail system like that in San Francisco, where pre-trial detainees are held in a facility adjacent to the courthouse and convicted prisoners are maintained at a remote county jail, inmates with holds must be transfered to the courthouse jail for the record check and pre-trial detention subsequent to trial on the pending charge. California Penal Code section 821 provides for the detention of just-released inmates for five days in order to investigate the source of holds present on their jail records. The time required for transfer, the records check, and the final release procedures (if the hold is determined invalid) add four to five days of jail custody onto the inmate's previous jail commitment. This delay in timely release, coupled with ineligibility for parole, sentence modification or work furlough while serving the original sentence in the jail, punctuates the importance of expunging invalid holds from the inmate's record.

Law Student Hold Investigation

Holds are usually manifested in San Francisco by "police letters." These police letters are transmittals from police agencies to the San Francisco County Jail authorities, directing hold placement on various individual inmates found to be in custody in the San Francisco County Jail. When the letters arrive in San Francisco, they are assigned sequential numbers and filed under name and number in the City Prison Offices. Notations are placed on the inmate's custody card out at the jail (i.e. "Hold P.L. #638"), utilizing the number of the police letter for reference to the warrant file in the City Prison. Holds may also be noted without reference to a police letter, as an "en route" designation (i.e. "Hold E/R Immigrat.") indicating the law enforcement agency (in this case the U. S. Immigration Department) wanting the custody of the inmate after his release.

In the San Francisco Jail Counseling Project, law students usually confronted hold problems with inmates attempting to be rendered eligible for one of the jail's prior release programs. Such programs as county parole, sentence modification and work furlough require that inmate applicants have no holds on their jail records. After being informed of the hold problem by the inmate in a jail interview, the law student obtained the following information from the inmate's custody card at the county jail records desk:

(1) Name and possible alias (AKAs),
(2) Date of Birth,
(3) Action Numbers of the inmates court appearance and conviction,
(4) Sentencing Court and Sentencing Judge,
(5) Charges for which the inmate is serving time,
(6) Length of present sentence,
(7) Information from HOLD line: Police letter number or en route designation.

The law student then visited the City Prison Offices at the San Francisco Police Department in downtown San Francisco and checked the information contained on the police letters kept there. If no police numbers were on the custody card, a check of the inmate's last name in the alphabetical police letter file often yielded results. The name of the charging agency, the specific charges, and any warrant numbers were then obtained from the police letter. If the outstanding charges were the same or similar to those for which the inmate was sentenced, there was an excellent chance that the charges had been dropped by the district attorney as part of a negotiated plea. To confirm this possibility, the student consulted the case records in the court clerk's office of the sentencing court. If the court file showed a dismissal of the charges represented by the hold, a minute order verifying this fact was taken to the desk officers in the City Prison Office. This action resulted in removal of the hold from the City Prison police letter files and the county jail custody card.

If the court records failed to indicate a dismissal of the hold charges, the student worker then contacted the Central Warrants Bureau located in the same building as the San Francisco Police Department. The inmate's name and date of birth were necessary to obtain a computer readout of all outstanding warrants from the

Police Information Network (PIN). If the PIN readout failed to indicate outstanding warrants on the inmate, the Warrants Desk Officer would prepare a release which, like the court dismissal varification, would operate to remove the hold from the City Police files and the custody card at the County Jail. If the PIN readout substantiated the charges indicated on the County Jail hold notation, and the court records carried no indication of dismissal or other dispensation, then the inmate's hold was considered a valid charge.

In cases where the hold was noted by an "en route" designation, law students had difficulty in investigating the validity of the hold because of the inability of the student to personally contact the originating agency. Nevertheless, the legal worker usually obtained the pertinent facts from the custody card and contacted, by telephone or mail, the appropriate agency to request information about the charge. In a number of such cases, despite the obvious communication problems, favorable results were obtained.

Students encountering "valid" holds were, of course, powerless to have the notation removed from the custody card. However, assistance was often rendered by securing detailed information on the charges outstanding from law enforcement officers and students often helped pursue expedient dispensation of the charges by filing for speedy trial pursuant to California Penal Code section 1381.

CREDIT-FOR-TIME-SERVED

Most prisoners in the San Francisco County Jail have spent time in custody prior to their trial and commencement of sentence. Historically, this pre-trial detention was credited to an inmate's sentence at the discretion of the trial judge. Credit-for-time-served (CTS), like probation, alternative fine or concurrent sentence, represented an exercise of judicial benevolence; a way of tailoring the punishment to the particular defendant in the criminal justice system. Significant blocks of pre-trial custody, especially in felony cases, constitute an arbitrary, additional confinement the length of which is totally dependent on the speed and efficiency of the courts. In the past, this inequity was only partially mitigated by the infrequent grant of CTS by conscientious judges.

In 1971, with the enactment of California Penal Code sections 2900.5 and 2900.6, California made the recognition and computation of pre-trial custody mandatory in all felony and misdemeanor convictions. Requiring only that "the custody to be credited [be]

attributable to charges arising from the same criminal act or acts for which the defendant has been convicted,"[11] the statutes also made provision for twenty dollars per day credits against court imposed fines.

Prior to and during the trial appearance of an inmate, the obtaining of CTS is the responsibility of the inmate's private or court-appointed counsel. However, because CTS allocation was so often mismanaged or neglected at trial, it became a major subject of post-conviction legal aid in the San Francisco Law Student Jail Counseling Project. Because of many limitations imposed by statutory interpretation and policy on the granting of CTS by the judiciary, CTS appeared on only a fraction of the commitment records of inmates in the San Francisco County Jail. The absence of case law, the varying interpretation and application of the CTS statutes by local judges, and the bewildering complications of the pre-trial "plea-bargaining session" often confuse a jail legal worker with contradictions and inconsistencies. The result was that CTS disputes were among the most difficult problems encountered by law students working in the San Francisco County Jail.

The best way to review CTS problems is to consider the various ways by which the sentencing judge may avoid the statutory CTS mandate. Through the judge's original sentence discretion, by "retained jurisdiction" determination, or under plea bargaining effects the inmate with pre-trial detention time can lose his "right" to CTS.

Avoiding Mandatory CTS; the Judge's Original Sentence Discretion

Once the judge has determined the particular jail sentence for the convicted inmate, the CTS statutes seemingly compel him to credit any pretrial time against this sentence. But since this preliminary sentence determination is completely discretionary, within the statutory guidelines, the mandatory CTS command can be avoided by simply sentencing the inmate to additional time equal to the CTS grant.

Example #1: Ron. R. serves three months in custody before trial. At trial, he is convicted and the judge is confronted with a discretionary sentence selection (set by statute) of six months to three years. The judge wants Ron to serve one year in county jail for

11. Cal. Pen. Code §§ 2900.5, 2900.6, (West Supp. 1974).

the crime, without CTS. He simply sentences Ron to one year and three months, and allows CTS. Ron serves one year in the county jail.

Following this reasoning, there are only two situations that would guarantee an inmate a grant of CTS equitably compensating for his pre-trial time:

Example #2: Bob B. is convicted and sentenced to a one year county jail term, suspended, and a three year probation. Bob violates probation and is brought into custody. One month later, he is before the same judge, who imposes the formerly suspended one year county jail sentence. There seems to be no way here for the judge to avoid the automatic grant of CTS to the already-set sentence.

Example #3: Susan S. is convicted, after serving four months awaiting trial, and the judge would like to give her the maximum sentence (set by statute) of three years, without CTS. It doesn't appear possible here. The judge is seemingly compelled to apply the statute.

Avoiding Mandatory CTS; the Effects of "Retained Jurisdiction"

In San Francisco, Municipal and Superior Court judges apply the Credit-for-time-served statutes only in cases involving "straight sentences," i. e. those without probation or other continuing out-of-jail court control. This determination results from the *Petersen v. Dunbar* reasoning that, whenever probation accompanies a county jail sentence, the jail time "is not regarded as punishment; it is regarded as part and parcel of the supervised effort toward rehabilitation which probation constitutes."[12] Thus, the jail time is not a "sentence" within the meaning of the CTS statutes, and the Code cannot be invoked to guarantee pre-trial detention credit. Whenever the trial judge, by adding probation to the inmate's sentence, "retains jurisdiction" over the inmate for rehabilitative reasons, the CTS mandate is avoided. Because of the substantial percentage of "retained jurisdiction" sentences in the average San Francisco County Jail population, this factor is the most significant single reason for the denial of CTS. Although the sentencing judge may still grant CTS on a "rehabilitative sentence," he is not statutorily compelled to do so.

12. Petersen v. Dunbar, 355 F.2d 800, 803, (9th Cir. 1966).

Avoiding Mandatory CTS; the Effects of the Plea-bargaining session

Large numbers of criminal defendants decide the outcome of their pre-trial detention credit in the plea-bargaining session between the accused's counsel and the district attorney. Although the accused is often not even present at these sessions, his time spent awaiting appearance before the judge is one of the bargaining levers utilized by his attorney. Various factors e. g., the amount of incriminating evidence against the accused, the crowded condition of the court calendar, the number and seriousness of the charges, and CTS, go into a negotiation that eventually produces a guilty plea to a lesser charge, a shorter sentence recommendation, probation, and no CTs. The arrangement involves a package deal, and no mention of CTS is made at the defendant's final appearance before the judge.

> *Example #4: Sam S. is charged with burglary. He negotiates a plea of guilty to the lesser, "included" crime of receiving stolen property, which carries a county jail sentence of six months. As part of the arrangement, Sam offers to waive any request for credit from his two months spent awaiting trial.*

Another example of plea-bargaining with CTS involves multiple charges:

> *Example #7: Kim K. is charged with three violations of the California Health & Safety Code involving drugs —possession, sales, and driving a motor vehicle under the influence. The D.A. offers to drop the latter two charges on condition Kim plead guilty to the first. A sentence of "medium severity" of one year (statutory spread: 6 mos. to 3 years) is suggested by the D.A. to the judge, and Kim's six months of pre-trial custody is ignored. The judge follows the suggestions, and Kim serves one additional year in the county jail.*

Once an inmate commences his sentence after the negotiated plea, he may approach a law student interviewer and complain that he has been unjustly denied CTS. The law student is left in a procedural quandary. Not only is the depth of the inmate's understanding of his plea bargaining difficult to assess, it is also virtually impossible to verify the various factors discussed by the attorneys

in the plea bargaining session. In most cases where an inmate has negotiated his plea and received no credit-for-time-served on his final commitment order, subsequent requests for CTS will be denied by the sentencing judge.

Law Student Counseling Procedures; CTS Disputes

I. *The Interview at the Jail*

At the interview, the inmate contends that he has not received CTS. The law student should obtain the inmate's recollection of the following facts:

(1) Inmate's arrest date
(2) Inmate's sentencing date
(3) Length of sentence
(4) Was there a negotiated plea?
(5) Was the inmate released on bail or "O.R." before trial?
(6) Inmate's release date
(7) Trial Action Numbers
(8) Court, trial judge

The student can compute the apparent CTS by subtracting the arrest date from the sentencing date. Unless bail or O. R. have intervened, the time between arrest and sentencing is the CTS time block. If the inmate has made some personal miscalculation, the law student can point out the apparent release date computed by subtracting the CTS from the original sentence length prescribed at trial.

II. *The Inmate Jail Custody Card*

Information obtained from the inmate often contains intentional distortions or inadvertent factual mistakes. Once the student has determined that the problem cannot be solved in the computation outlined above, he should proceed to the Jail Records Desk and consult the inmate's jail custody card. In the San Francisco County Jail, CTS, if recorded on the card, is noted in the block indicated "sentence." If there was no bail or O.R. before trial, then a date will follow the letters "CTS," which is the date of arrest. The Records Officer computes CTS by comparing this date with the date of sentencing in the block above. If bail or O.R. has intervened, then the CTS notation will be followed by a number of days; i. e. "CTS 16 Days."

If the CTS requested by the inmate appears on the card, he should be so informed and the CTS dispute is resolved. If no CTS is noted on the card, the next step is to compare the custody card with the court records. In San Francisco the court records are maintained at the Hall of Justice, downtown.

III. *Court Records*

The law student should approach the appropriate court clerk's office and request perusal of the trial record book. The court number is ascertained from the inmate interview as verified by the "court" block on the inmate jail custody card. The date of the commitment order (conviction and sentencing of the inmate) is the same as that of "date of sentencing" referred to earlier. If the record of the trial indicates CTS allowance, a certified minute order should be obtained verifying this fact and hand carried to the Records Deputy at the County Jail. He will transfer the notation to the custody card and alter the inmate's release date accordingly.

If the court records show no mention of CTS, the case must be presented, with pertinent arrest and sentencing information, before the judge who sentenced the prisoner.[13] The law student must remember to investigate the possiblity of bail or O. R. occurrance in the case. He should appear before the judge with a working knowledge of the applicability of the CTS statutes to the particular sentence of the inmate. The character of the inmate's sentence, as previously discussed, will determine whether the judge is statutorily required to apply CTS, or left to his discretion by the "rehabilitational" nature of the commitment.

If a negotiated plea was involved in the inmate's sentencing, the inmate's counsel representing him at the plea bargaining session should be contacted. Once a judge is aware that the inmate participated in a negotiated plea, he usually will not alter the CTS disposition without consulting the trial attorney. This pre-trial attorney may have bargained for the inmate's CTS and forgotten to press for it at trial, in which case he himself may take the subsequent CTS request to the sentencing judge. If the defense attorney indictates that CTS was waived or reduced in return for a shorter sentence or other-charge dismissal, the law student may be unable to

13. The extent to which law students are allowed to appear in judicial and quasi-judicial proceeding varies from state to state. A jail counseling project should be aware of the local rules governing the unauthorized practice of law, possible law student certification provisions, and the characterization by local authorities of the various hearings affecting inmate rights and privileges.

secure CTS unless he can carefully prove the inmate's misunderstanding of the negotiated plea arrangement to the judge.

SPEEDY TRIAL; DEFENDANTS ALREADY INCARCERATED FOR PRIOR CRIMES

In 1969 in *Smith v. Hooey*[14], the United States Supreme Court dealt with the Constitutional right to a speedy trial as applied to an inmate already serving time on a previous charge. In the past, the main consideration advanced by the courts for invoking the Sixth Amendment right[15] was the inconsistency inherent in the pre-trial detention of defendants who are presumed innocent. It was not deemed proper for persons serving time for prior convictions and awaiting further trial appearances for other charges, to object to unreasonable delay of their new trial dates. In *Smith v. Hooey* the Supreme Court dispelled these misapprehensions while comprehensively outlining the various other factors involved in the right to a speedy trial. The Court applied these factors to defendants already incarcerated for prior crimes:

> "At first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from 'undue and oppressive incarceration prior to trial.' But the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge.
>
> "First, the possiblity that the defendant already in prison might receive a sentence at least partially concurrent with the one he is serving may be forever lost if trial of the pending charges is postponed.
>
> "Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pendency of another criminal charge outstanding against him.
>
> "And while it might be argued that a person already in prison would be less likely than

14. 393 U.S. 374, (1969).

15. U.S. Const. amend. VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ."

> others to be affected by 'anxiety and concern accompanying public accusation,' there is reason to believe that an outstanding untried charge can have fully as depressive an effect upon a prisoner as upon a person who is at large."[16]. .

After *Smith v. Hooey*, various state legislatures designed speedy trial statutes applying to inmates incarcerated under local criminal justice systems. In California, a 1971 statute, California Penal Code section 1381, established definate procedures for uniform petitioning of appropriate district attorney's offices in securing the right. The statute provides that an inmate confined within a California county jail or state prison who is aware of an outstanding charge pending against him in another jurisdiction may demand that the district attorney of that jurisdiction bring him to trial. If the inmate is not brought to trial within ninety days after the demand is received by the district attorney, the charge must be dismissed.

Trial Delay; its Effect on the Inmate

Students in the San Francisco County Jail Counseling Project frequently encountered speedy trial requests. Although many inmates seemed aware of the California Penal Code provisions and filed section 1381 petitions independently without legal advice, many others were either unfamiliar with the law, or insufficiently informed as to the exact procedures. Many of the problems associated with trial delay discussed in *Smith v. Hooey* were found to exist in the San Francisco County Jail inmate files:

(1) *Concurrent sentence*: Inmates whose trials were delayed until after their release from the previous sentence were ineligible for concurrent sentencing when finally sentenced on the later charges. Concurrent sentences must be granted from the date of commitment, i. e., they must represent future parallel sentences served alongside previous commitments in the county jail. An inmate may not, after his present release date, obtain a concurrent sentence and receive "credit" from a previously served jail sentence. In order to be eligible for the benefit of concurrent sentencing, the inmate has to go to trial on pending charges while he is still being held for previous convictions.

(2) *Infringement of jail priviliges*: Inmates with continuing holds on the jail records, representing pending charges, were

16. Smith v. Hooey, 393 U.S. 374, 378-80, (1969).

treated as increased security risks. They could not work in certain preferred areas of the jail and they were not considered eligible for such prior release programs as county parole, sentence modification or work furlough. Dispensation of the charges, whether resulting in further jail time or dismissal, removed the hold notation from the inmate's jail records.

(3) *Additional time*: Inmates with pending charges on jail records at the time of their release, were transferred to the pretrial detention facilities to await their new trial date. Even if these outstanding charges resulted in dismissal, the inmate spent an average of two to eight weeks in additional jail custody awaiting action on his case. In those cases involving petty misdemeanors outstanding against an inmate serving felony time in the jail, a speedy trial and dismissal allowed the individual to be released from jail custody on his original release date.

(4) *Personal uncertainty*: Those inmates in the San Francisco County Jail faced with pending charges exhibited the usual personal anguish accompanying continued open indictment. Unable to make future plans involving employment or education, and unable to contact counsel or investigate the nature of the charges against them, prisoners with holds on their jail records found themselves in disconcerting circumstances.

(5) *Prejudicial effect on defense preparation*: As discussed in *Smith v. Hooey*, extensively delayed trial dates prejudice the preparation of a defense by an accused. In terms of fading witness memory and loss of perspective, the inmates in the jail suffered the same problems as persons released on bail or accuseds held in pretrial detention. Investigation and personal recollection of past events become increasingly difficult with the passage of time.[17]

Speedy Trial Petitions; the Law Student Role

The legal worker has a dual role to play in securing speedy trial consideration for an inmate; first, obtaining verified information of the inmates sentence, pending charge etc., and filing a petition containing such information with the appropriate law enforcement agency; second, following up to assure prosecutorial response to the speedy trial requested and proceeding in favor of dismissal of the

17. This "fading effect" on witness memory affected the prosecution's investigation as well. Despite the hold restrictions ancillary to a continuing indictment, an inmate with a pending charge sometimes wished to avoid a speedy trial until the case "cooled down."

charges in the event no action is taken by the district attorney within the statutory 90 day period.

Students in the San Francisco Counseling Project usually encountered section 1381 situations after investigation of security holds on inmate custody cards. As indicated previously, valid hold notations on jail records represent continuing indictments awaiting trial upon the inmate's release from the present confinement. Because of the numerous benefits gained by pursuing speedy trial rights, coupled with the relative lack of negative effects,[18] section 1381 speedy trial petitions were considered a standard operating procedure following substantiation of valid holds in the San Francisco County Jail.

When confronted with a section 1381 speedy trial request, student workers secured a speedy trial petition from the county jail Rehabilitation Office and obtained the following information from an interview with the inmate, the inmate's custody card, and the court records:

(1) Name of inmate.
(2) Date of birth.
(3) Date of sentencing.
(4) Convicted charges.
(5) Length of present sentence.
(6) Charges pending.
(7) Charging law enforcement agency.
(8) Days remaining in sentence.

The statute requires a 90 day minimum commitment in the County Jail for section 1381 speedy trial eligibility. Whether that minimum refers to total jail time, or the number of days remaining in the inmate's sentence at the time of filing is not clear from the wording of the statute. San Francisco has developed a 90-days-remaining prerequisite to section 1381 petition acceptance. The San Francisco District Attorney's Office suggests that this amount of time is necessary to initiate proceedings and place the action on the court calendar. The San Francisco Traffic Division, which places holds on jail inmates for current traffic violations involving outstanding fines or failure-to-appear, has set its minimum at 45

18. Legal workers confronted situations where tactical or personal reasons favored a postponement of the defendant's trial date. The inmate occasionally desired time to prepare an adequate defense, or was physically or financially unable to deal with the charges at that time.

days remaining in the sentence. This shorter period reflects the faster turnover on the traffic court calendar. In any jurisdiction, the pertinent law enforcement agency is likely to establish days-remaining requirements in relation to the time necessary to achieve pre-release-date disposition of charges. Because of these requirements it is important to process an inmate's section 1381 application as quickly as possible after he commences his present sentence. In computing days-remaining students should request the verifying deputy sheriff, who's signature next to the days-remaining information on the petition is mandatory, to disregard good time/work time or possible sentence modification, parole, or work furlough. It is important to note that days remaining are determined from the day the petition is received by the appropriate agency.

Students moving for dismissal after the 90 day waiting period established by the filing of the section 1381 petition need positive proof of valid, timely filing.[19] In the San Francico Jail Project, special procedures were established to meet this evidentiary requirement. First, all San Francisco County 1381 petitions, addressed to local law enforcement agencies, were hand carried to the propriate office and stamped "received/date:————" by office personnel. Second, in other-county and other-state speedy trial petitions, dispatch affidavits were prepared before the petition was placed in the mail. Telephone calls were made to the receiving office to determine:

(1) precise address and attention,
(2) presence of days remaining requirements,
(3) necessary authentication of information by jail officials,
(4) pertinent statutes wherein the speedy trial right is codified.

The affidavits of dispatch were much like those utilized by attorneys in the transfer of legal briefs to opposing parties. They were cosigned by a disinterested third party, and designated a certified mailing to particular persons attentioned on the envelope (persons ascertained to be responsible by the phone call to the receiving office).

The speedy trial right for already incarcerated defendants discussed in *Smith v. Hooey* serves as a prime example of legal

19. Although misdemeanors dismissed for failure to bring charges within the 90 day period are final, felonies may be recharged by the district attorney pursuant to California Penal Code § 1387, (West 1970).

remedies unavailable to inmates because of misinformation and lack of post-conviction legal advice. While an indigent pre-trial detainee enjoys protection of his Sixth Amendment rights by court appointed attorneys, a jailed defendant must either pursue the right on his own initiative or do without. The law student in post-conviction legal aid can provide significant advantages to inmate clients by serving as a petitioner for speedy trial rights for inmates with pending charges.

GOOD TIME AND WORK TIME

County jail systems in California, like prisons everywhere, have sentence reduction incentives for good behavior and jailhouse work. For this reason few inmates in county jails serve the full period to which they have been sentenced. California Penal Code section 4019 provides for "good behavior time credits" of five days per month if a prisoner has "satisfactorily complied with the reasonable rules and regulations" of the institution. California Penal Code section 4018.1 provides for "work performance time credits" of five days per month when a prisoner has "satisfactorily performed labor as assigned."

Student legal workers in the San Francisco County Jail Counseling Project encountered two major categories of good time and work time complaints. The most frequent complaint was that release dates had been incorrectly calculated under the existing San Francisco County Jail good time and work time regulations. Other inmates, however, although satisfied that their sentence reductions accurately reflected the San Francisco regulations, addressed complaints to the local sentence reduction system itself. They maintained that other county jail facilities, because of different methods of good time and work time computation, allowed larger sentence reductions for identical sentence commitments in their jails.

In order to deal with either of the above complaints, a student worker must be thoroughly familiar with the California Penal Code sections dealing with good time and work time, their various possible interpretations, and the precise time computation system in use by the local county jail. The correct computation of release dates, utilizing the rules of the existing local system, is a simple chore for the law student, once he understands the nature of the appropriate regulations. Detailed pre-interview investigation of jail procedures, like those suggested in the County Jail Counseling Questionnaire attached to this report, are especially helpful in this regard.

Time Incentive Computation; "Time-Committed" vs. "Time-Confined"

The most significant variation in interpretation of the California good time and work time statutes is whether time credits are to be awarded in *anticipation* of the total time to be served (for "Time-Committed") or applied as *earned* (for "Time-Confined"). This difference is best explained by examples:

Example #1: Tom T. is sentenced for 30 days in county jail B, which utilizes a Time-Confined system. He serves 30 days with good behavior and makes himself available at all times for assigned work. After 30 days, he has earned 10 days of good time and work credits, but his sentence is already complete, so he is simply released. Tom serves 30 days.

Example #2: Bob B. is sentenced for 40 days in county jail B, which utilizes a Time-Confined system. He serves 30 days with good behavior etc., and after 30 days he has earned 10 days of good time and work time credits. When these are subtracted from his remaining sentence, he is released. Bob serves 30 days.

Example #3: Joan J. is sentenced for 30 days in county jail A. which utilizes a Time-Committed system. Her sentence reductions are computed when she enters the jail, and she receives 10 days off for anticipated good time and work time credits. Joan serves 20 days in jail.

The good time and work time in these examples are computed on the assumption that sentence reduction credits are only determinable on a "5 days per month" basis, which is the time increment suggested in the California Penal Code sections (4018.1 and 4019, supra). In such a system, no credits are allowed for periods of less than thirty days. As can be seen in the examples, in county jail B, the Time-Confined jail, both Tom and Bob serve the same amount of time, despite the fact that they were originally sentenced for different commitments. If John J. had received an original sentence of 40 days, like Bob B., and served it in county jail A, the Time-Committed jail, he would have served the same amount of time as Bob B. Thus, the inequities separating jail B from jail A occur only with certain, arbitrary sentence lengths. Persons serv-

ing 40 day sentences receive the same credits in each jail, but other sentences such as 30 days, 60 days, and 90 days, produce disparate results between the two jails.

The Time-Confined computation is periodically reviewed and updated as the inmate serves out his time and earns, by 30 day blocks, the 10 day credits for good time and work time as against the next month's sentence. The Time-Committed system provides one pre-sentence computation of anticipated deductions, with the qualifying provision that these credits can be removed at any time before release if the inmate is subject to disciplinary action or refuses to work.

The wording of the California Penal Code good time and work work time sections is ambiguius as to the Time-Confined/Time Committed differentiation.[20] The statutes provide for five days off for each month in which a prisoner is "confined or committed." The good time and work time systems in Alameda, Contra Costa and Marin counties focus on the word "confined," and award time credits only as they acrue on time served in the county jails. In San Francisco[21] and Los Angeles counties, the statutes are viewed as applying to time "committed," and the computations are made immediately after the inmate's entrance into the jail.

One further difference between the Time-Confined and Time-Committed systems involves the "time block" utilized in computation of incentive credits. Because of the continual review necessary in Time-Confined systems to periodically update sentence reductions, it is impracticable to allow credit for any periods shorter than 30 days. Of the three California counties mentioned using the Time-Confined system, all provide solely for 10 day earned credits on 30 day prior confinements. In contrast, San Francisco and Los Angeles counties, applying Time-Committed systems, allow good time and work time at the rate of one day each deducted from each six days committed jail time. Therefore, by ignoring the 30 day block deduction suggested by the statutes, an inmate sentenced for 40 days serves only 28 days in jail. The total number of sentence reduction credits are computed by first dividing the inmate's

20. Cal. Pen. Code §§ 4019, 4018.1, (West Supp. 1974).

21. In August, 1973, the San Francisco County Sheriff's Department changed from a Time-Confined to a Time-Committed system of sentence reduction computation. David Light, a Golden Gate University law student participating in the San Francisco Jail Law Student Counseling Project, was instrumental in investigating the good time and work time regulations of several other counties in California, and participated in the drafting of the new San Francisco sentence reduction regulations.

sentence, in days, by six. The whole number yielded (fractions are disregarded) is then multiplied by two, the number of deductible incentive days, which produces the total number of good time and work time credits against the inmate's commitment. By subtracting these sentence reduction days from the inmate's original county jail sentence, the final period of confinement in the county jail results. The following chart indicates the differences between good time and work time computations in two counties: one utilizing a Time-Committed, six day block system, and the other using the Time-Confined, 30 day block computation.

GOOD TIME AND WORK CREDITS

Sentence Length in Days	30	40	50	60	80	180	360
Time served under:							
TIME-COMMITTED SYSTEM Two days off for every six days committed.	20	28	34	40	54	120	240
TIME-CONFINED SYSTEM Ten days earned for every thirty days confined.	30	30	40	50	60	140	270

Problems Specific to Work Time Allocation

In addition to the problems and diverse procedures applicable to both good time and work time allocation, there are additional variations in interpretation of work time computation in the California county jails. The problems occur as a result of the language in California Penal Code section 4018.1 which allows for "work performance credits" when a prisoner has "satisfactorily performed labor *as assigned*." (emphasis added) There are often situations, especially in jails which are primarily holding facilities adjacent to a courthouse, where there is insufficient work to maintain all the inmates in continuous jail employment. Other factors, over which neither the inmate nor the jail has any control (e. g. ill health or disability of the inmate) may also result in the unemployability of certain inmates. Furthermore, an inmate, despite the lack of specific infraction of a jail rule, might be adjudged dangerous to, or endangered by, other inmates, thus making a work assignment impracticable for security reasons. In San Francisco County such an inmate is condiered working "as assigned," although in reality he may not have been assigned to any work. Any specific infractions of the disciplinary rules will, of course, abrogate this privilege, and result in no allocation of work time deductions.

In contrast to San Francisco County, some counties in California allow work time deductions only for time actually worked. Under the Los Angeles Time-Committed system, one day of work time is taken back from the inmate for each six days or fraction thereof which he did not work, regardless of the factors causing his unemployability. Work time days are taken away in San Francisco only when an inmate refuses to work or has, by violating a jail rule, made it impracticable or dangerous to allow him to work.

Sentence Reduction Incentive Credits; Law Student Reform

It has been demonstrated that the Time-Committed interpretation of the California Penal Code good time and work time statutes will result in significantly larger sentence reductions for inmates, when compared with the Time-Confined incentive credit system. Law student counselors wishing to modify their local county jail good time and work time regulations might approach the local Sheriff's Department with some of the following arguments in favor of the Time-Committed system:

(1) The more liberal interpretation saves the taxpayer money by reducing the number of inmate days in the county jail.

(2) An increased good time and work time allocation will provide increased incentives for good behavior and conscientious work in the jail.

(3) The Time-Committed system avoids the phenomenon of inmates with different sentence lengths being released on the same day because of the effect of arbitrary commitment rates on the 30 day, Time-Confined system.

(4) The "one time computation" necessary in the Time-Committed system when the inmate enters the jail, saves many deputy sheriff hours by eliminating the periodical "update review" required by the Time-Confined system.

(6) The Time-Committed system allows a shorter "time block" crediting and thus allows a more equitable percentage credit against varying sentence lengths. The six day increment utilized by most Time-Committed systems in California permits a close tailoring of incentive credits to the specific inmate sentence.

Another possible reform in the area of incentive sentence reductions is the application of good time and work time to significant blocks of pre-trial detention time. In most California county jails, when an inmate receives "credit-for-time-served" on his sen-

tence, the pre-trial term is subtracted from the court-prescribed jail schemes. Although the inmate participates in good time and work time allocations affecting his remaining term in the jail, the pre-trial portion of his sentence has been served in its entirety. Of the five California county jails discussed previously (Marin, Alameda, Contra Costa, Los Angeles and San Francisco) only one jail, the Marin County Jail, gives good time credits for the credit-for-time-served term. This separate treatment of pre-trial confinement (with the exception of Marin County) probably results from the language of the California Penal Code good time and work time sections, which refers to credits for time in which a prioner is "confined or committed under a judgment of imprisonment."[22] Although this wording would probably exclude any pre-trial detention that was not credited against the inmate's sentence (i. e. where credit-for-time-served (CTS) is denied), it seems that the court's granting of CTS would bring the pre-trial time within the ambit of the test "under a judgment of imprisonment."

Ideally, a sentence reduction incentive program should be available to all deserving inmates, regardless of their particular sentence length or the percentage of their sentence served in pre-trial custody. By investigating other good time and work time systems statewide, law students may influence their local county jails to maximize inmate benefits under California Penal Code sections 4018.1 and 4019.

RELEASE PRIOR TO SENTENCE EXPIRATION

Occasionally a law student is able to assist an inmate in obtaining a release from jail before his sentence has expired. The inmate may be paroled by the Sheriff's Parole Board, or allowed out of jail during work hours to continue employment or education. If he is serving his sentence as a condition of probation, significant changes in his family situation, and the possession of a job, may qualify him for a judicial sentence modification. An inmate soon to be released may obtain a 72-hour pass to interview for work commencing after his release date. Each of these release procedures reduces an inmate's county jail commitment significantly.

County Parole

Every California county has a board of parole commissioners composed of the sheriff, head probation officer, and a citizen ap-

22. Cal. Pen. Code §§ 4019, 4018.1, (West Supp. 1974).

pointed from the public by the presiding judge of the superior court.[23] The sheriff and probation officer may designate deputies from their offices to serve as temporary commissioners when they are unable to serve.[24]

In San Francisco the County Parole Board consists of the Undersheriff, the head of the Adult Probation Department, and an appointed citizen who serves for one year.[25] The board has total discretion in establishing and applying rules for parole eligibility,[26] and in setting conditions for parole.[27] The only statutorily imposed parole eligibility is that the inmate be serving a sentence on a misdemeanor conviction.[28] The San Francisco Parole Board imposes the additional requirements that an inmate must have served at least one-half of his sentence, have no holds,[29] and be willing to abide by any conditions of the parole imposed by the board.[30] Because of such local requirements, frequently unique to a particular county, it is incumbent upon a student worker to determine the eligibility requirements established by the parole board for the area in which he is working and advise inmates accordingly.

If eligibility requirements are met by the inmate, the board then considers the individual merits of the case. Factors taken into consideration include proposed employment upon release, proposed place of residence, possible compelling medical or family problems and the nature of the conviction for which the inmate was sentenced to the county jail. Sometimes paroles will be conditioned on enrollment in a half-way house or other rehabilitation agency, or upon the inmate leaving the county or state. However, if a paroled in-

23. Cal. Pen. Code § 3075, (West 1970).

24. Cal. Pen. Code § 3077, (West 1970).

25. Cal. Pen. Code § 3075, (West 1970).

26. Cal. Pen. Code § 3076, (West 1970), which states: "The board shall . . . make and establish rules and regulations in writing stating the reasons therefore under which any prisoner . . . may be allowed to go on parole. . . ." See also Cal. Pen. Code § 3078, (West 1970), which states: "Each county board may make, establish and enforce rules and regulations adopted under this article, and may retake and imprison any prisoner upon parole granted under the provisions of this article."

27. Cal. Pen. Code § 3076, (West 1970), which states: "Each county board may release any prisoner on parole for a term not to exceed two years upon such conditions and under such rules and regulations as may seem fit and proper for his rehabilitation, ..."

28. Cal. Pen. Code § 3076, (West 1970).

29. See text at pp. 106-110, *supra.*

30. San Francisco Sheriff's Department, *Information and Rules for Inmates,* mimeo distributed to inmates in the San Francisco County Jail, October 5, 1972, p. 3.

mate leaves the county of his imprisonment without permission from the board, he is subject to arrest as an escaped prisoner.[31]

County parole is also a valuable means of assisting aliens, imprisoned in county facilities, who wish to return to their native countries. The parole board has the authority to release, without condition, any alien prisoner who voluntarily consents to return to his native land. The expenses of transportation for the inmate and his family may be paid by the county if approved by the board of supervisors.[32] If the inmate is in the United States illegally, the U. S. Department of Immigration has probably placed a hold on him directing his deportation upon release from jail. Since no inmate with a hold on his record is eligible for county parole, the immigration hold would bar the release of an alien inmate under California Penal Code section 3082. Therefore, the student worker must contact the local office of the Immigration Department and request that the hold be dropped so that the inmate may be considered for parole. It is possible that the immigration authorities may respond negatively, wishing the alien inmate to first "pay his debt to society" before being deported to his native land. When such opposition is encountered, and the immigration authorities refuse to remove the hold, the student worker might compose a written plea to the parole board outlining the inmate's situation, and the attendant expenditure of county funds to house, feed and guard the citizen of another country. As previously stated, the parole board possesses considerable discretion and may simply parole the inmate with the condition that he be transported in custody to the Immigration Department for deportation, or that he be transported directly to his native land.

Work Furlough

Most California counties operate a program whereby an inmate serving a sentence for a misdemeanor is allowed to secure or continue regular employment or education during the normal hours of work or school.[33] According to California Penal Code section 1208, the board of supervisors of each county determines the feasibility of the program and may either implement work furlough, or decline to establish the program. Where the program exists, the

31. Cal. Pen. Code § 3080, (West 1970).

32. Cal. Pen. Code § 3082, (West 1970).

33. "The Cobey Work Furlough Law," Cal. Pen. Code § 1208, (West 1970).

board of supervisors determines whether the sheriff, probation officer or superintendent of the county industrial farm or work camp will perform the duties of the work furlough administrator. In San Francisco, the Adult Probation Department administers the program and makes all decisions about the fitness of individual inmates for the program, including eligibility requirements, and the rules for confinement when the inmate is not at his place of employment or education.[34]

Work Furlough will not be granted in San Francisco if an inmate has any holds, and "while each case is reviewed individually, [inmates] are probably not eligible if [they] have a serious drug record."[35] However, the pertinent statute[36] says:

> "When a person is . . . committed under the terms of section 6404 or 6406 of the Welfare and Institutions Code as a habit-forming drug addict, the work furlough administrator may, if he concludes that such person is a fit subject therefor, direct that such person be permitted to continue his regular employment, . . . or may authorize the person to secure employment for himself. . . ."

Since the statute also allows for education in place of employment, the student worker should attempt to obtain work furlough for inmates notwithstanding the bias of the administrator against drug addicts, especially in view of the Legislature's broadened definition of "education" to include not only educational and vocational training and counseling, but also psychological, drug abuse, alcoholic, and other rehabilitative counseling.[37]

Inmates must be advised that their earnings are subject to collection by the work furlough administrator for payment of the inmate's personal expenses, support for dependents, and program administration costs. The surplus will be retained by the administrator and given to the inmate upon release.[38]

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34. Cal. Pen. Code § 1208 (West 1970) limits the discretion of the Adult Probation Department by disqualifying any inmates specified ineligible for Work Furlough by the sentencing judge.

35. San Francisco Sheriff's Department, *Information and Rules for Inmates, supra* note 30.

36. Cal. Pen. Code § 1208(b), (West 1970).

37. Cal. Pen. Code § 1208(i), (West 1970).

38. Cal. Pen. Code § 1208(e), (West 1970).

If the inmate violates any conditions imposed by the program administrator, the administrator may order the prisoner returned to confinement for the balance of his sentence. Failure of an inmate to return to any designated place of confinement following the normal hours of employment or education makes the inmate subject to arrest as an escapee under California Penal Code section 4532.[39]

Sentence Modification

The term "sentence modification," although commonly used, is a misnomer. Once a "straight sentence" (i. e. a sentence without accompanying probation or other judicially retained jurisdiction) is prescribed by a judge, it is not subject to judicial alteration.[40] Alterations of straight sentences are considered by the Sheriff's parole Board. The prior release procedure known as "sentence modification" is actually modification of a probationary or rehabilitative commitment scheme.[41] Under California law, an inmate must be serving a period of confinement in a county jail as a condition of probation in order to be eligible for sentence modification.[42]

In San Francisco, an inmate serving time as a condition of probation may apply for modification to the court which issued the probation order. The judge exercises total discretion in determining the merits of each case and will generally modify the probation order only under compelling circumstances. In order to decide whether or not a particular inmate's circumstances necessitate modification, the judge will consider, among other things, the inmate's proposed place of residence and employment, and whether any medical or family emergencies have intervened since the date of original commitment. The judge will also consider the inmate's prior record and the nature of the crime for which he was sentenced. The reasons for the requested sentence modification must reflect a significant

39. Cal. Pen. Code § 1208(h), (West 1970).

40. In re Bost, 214 Cal. 159, 4 P.2d 534 (1931); People v. Nevarez, 211 Cal. App. 2d 347, 27 Cal. Rptr. 287 (1962).

41. Confinement in a county jail facility as a condition of probation does not constitute a jail sentence. "Detention may be ordered as a condition of probation and when so ordered it is not regarded as punishment; it is regarded as part and parcel of the supervised effort toward rehabilitation which probation constitutes." Petersen v. Dunbar, 355 F.2d 800, 803 (9th Cir. 1966).

42. Besides the usual probationary sentence, "suspended sentence combinations," which include suspended state prison term and county jail conditional detentions, are also considered rehabilitational commitments to the county jail. A suspended sentence is an "informal" grant of probation equivalent to a formal order of probation, and is subject to judicial modification. Oster v. Municipal Court, 45 Cal. 2d 134, 287 P.2d 755 (1955).

change in the inmate's circumstances since the time of his trial which would be better served by an early release from confinement. If the early release is granted, the court will retain jurisdiction over the individual through a period of extended probation.

As a matter of procedure, the inmate must initially complete an application for sentence modification (see Appendix for sample form). The student worker must then take the completed form to the judge who sentenced the inmate originally, and discuss with him the merits of the request. If the judge is not amenable to informal contact, the student may file a petition with the court asking for modification. A hearing date will be set and the student may appear and argue the merits of the application before the judge. Again, whether informally or formally approached, a judge will only respond favorably if substantial compelling reasons for a sentence modification exist.[43]

Passes

California Penal Code section 1203.1(a)[44] allows a county probation officer to authorize the issuance of a pass to an inmate of a county facility for a period of no more than three days if (1) the inmate is confined as a condition of probation and (2) the inmate is within thirty days of his release date. The purpose of this temporary release is ostensibly to prepare the inmate for his return to the community. Thus, a pass may be issued to enable an inmate to look for employment, interview for a job, register for school, or attend to pressing family problems. The Adult Probation Department has total discretion in determining whether an inmate deserves a pass and invariably requires a valid reason for the pass, as well as a favorable assessment by the jail staff of the inmate's prior conduct. The San Francisco Adult Probation Department imposes the additional requirement that an inmate have no holds on his custody card.[45]

A pass is an extremely effective tool for helping an inmate make a successful return to society. However, the inmate should be advised that the probation department may require partial or total reimbursement for the expenses incurred in connection with

43. See note 13, *supra.*

44. Cal. Pen. Code § 1203.1a, (West Supp. 1974).

45. San Francisco Sheriff's Department, *Information and Rules for Inmates, supra* note 30.

the pass.[46]

Prior Release; A Final Note

Law students seeking prior releases for inmates should, as much as possible, determine the legitimacy of the inmate's request before pursuing a remedy in the courts, before the parole board, or in the Work Furlough project. Large numbers of frivolous sentence modification petitions or irresponsible parole candidates will do much to prejudice meritorious cases in the future. The law student participants in a jail counseling project have a collective responsibility to establish credibility in their recommendations for prior release. Law students representing inmates should carefully familiarize themselves with particular details concerning employment, family connections, residence, prior offenses, and the seriousness of the crime for which the inmate is serving time. The law student role in securing sentence modifications, parole, passes or Work Furlough for an inmate constitutes a complex and often unsuccessful operation. However, the few law students in the San Francisco Jail Counseling Project who have accomplished the release of their inmate client before sentence expiration have considered this their most satisfying and significant contribution while working in the jail.

SAN FRANCISCO COUNTY JAIL DISCIPLINARY REVIEW BOARD

A select number of law students in the San Francisco Jail Counseling Project have represented inmates before the San Francisco County Jail Disciplinary Review Board. Formed by the County Sheriff's Department in January 1973, in response to a Federal court decision[47] and a growing use of disciplinary hearings in county jails nationwide, the Disciplinary Review Board (DRB) presents a challenging opportunity for the legal worker to participate in adversarial administrative proceedings in the San Francisco County Jail.

The San Francisco County Jail DRB is composed of three officers, (1) a representative of the Sheriff's Department, (2) one of the jail commanders,[48] and (3) a Jail Rehabilitation Officer.

46. Cal. Pen. Code § 1203.1a, (West Supp. 1974).

47. Clutchette v. Procunier, 328 F. Supp. 767, (N.D. Cal. 1971).

48. There are two jails and two jail commanders in the San Francisco County Jail system. The jail commander serving at the jail where the dispute takes place

The Board's jurisdiction is limited to those infractions necessitating punishment beyond certain minimum levels established by *Clutchette v. Procunier* (supra, footnote 47). Inmates are entitled to an impartial hearing before the DRB whenever they are:

(1) subjected to any loss of jail good time or work time, or

(2) placed in solitary confinement or lock-up

(a) for more than 10 days in any 30 days period, or

(b) for more than 20 days in any 30 day period.[49]

In San Francisco a case reaches the DRB in the following sequence:

(1) A deputy sheriff finds that an inmate has violated one of the County Jail Rules and reports this infraction to his immediate superior.

(2) The superior investigates and concludes that the charge is substantiated and orders punishment in the range prescribed in the Jail Information and Rules.[50]

(3) The punishment exceeds the DRB minimum as specified above.

(4) The inmate chooses not to waive a hearing on the matter, and requests a hearing before the Disciplinary Review Board.

It was originally thought that it would be necessary for the three-member Board to meet every week at the two San Francisco Jail locations to dispose of charges filed during the previous week. As it developed, however, the number of punishments exceeding the minimum solitary confinement period requiring DRB review diminished markedly. Consequently the Board found an inadequate number of cases to fill its weekly calendar. This undoubtedly resulted from the fact that deputy sheriffs requesting severe punishments were subject to appearance with the charged inmate

sits on the DRB called for that dispute. San Francisco Sheriff's Department, *A Disciplinary Review Board Memorandum*, mimeo distributed to inmates in the San Francisco County Jail, March 10, 1973, p. 3.

49. San Francisco Sheriff's Department, *A Disciplinary Review Board Memorandum, supra* note 48, p. 2.

50. San Francisco Sheriff's Department, *Information and Rules for Inmates, supra* note 30, p. 4.

before the DRB, with its potentially hostile witnesses and embarrassing cross-examination. Nine day lock-up or solitary confinement for inmates became a frequent phenomena in the San Francisco County Jails.[51] The DRB now convenes only as a result of a specific incident, usually one which the officers staffing the jail consider fairly serious.[52] The complaining officer, by ordering more severe punishment (greater than nine days, or good time work time deduction) places the case within the jurisdiction of the Disciplinary Review Board.[53] It is then incumbent upon the charged inmate to seek a timely hearing.

An inmate contesting a disciplinary action before the DRB has the right to call either inmates, deputy sheriffs, or other jail personnel as witnesses. In order to eliminate repetitive testimony, the Board retains the discretion to limit the number of these witnesses. The inmate may also confront and cross-examine the deputy sheriff who charged him. The inmate is permitted by the DRB Rules to represent himself before the Board, or to be represented by another inmate, a deputy sheriff, a Rehabilitation Officer, private counsel, or a law student from the San Francisco Jail Counseling Project.

All relevant evidence is admissible in the hearings, and any Board member may question at any time the parties or witnesses. If the DRB finds by a preponderance of the evidence that the charges against the inmate are substantiated, it may impose any punishment permitted for the offense by the *Information and Rules for Inmates*,[54] regardless of any previously ordered punishment. The decision of the Disciplinary Review Board is final.

It should be noted that DRB hearings are only concerned with disciplinary procedures *within* the San Francisco County Jails. They do not determine civil or criminal liability, although the evi-

51. The inmate is allowed seven days to prepare his case. He will be granted a continuance if the DRB has convened, for any other reason, before the expiration of that time. San Francisco Sheriff's Department, *A Disciplinary Review Board Memorandum, supra* note 48, p. 4.

52. If the inmate was adjudged sufficiently dangerous to necessitate his placement in lock-up or solitary prior to his DRB hearing, and the continuance specified in note 51 supra will result in his serving more than ten days in solitary confinement before his later hearing, the DRB must convene *prior* to the inmate's scheduled hearing and determine whether this pre-hearing confinement is justified. The standard for confinement-pending-hearing is probable cause to believe the inmate dangerous to himself or others. San Francisco Sheriff's Department, *A Disciplinary Review Board Memorandum, supra* note 48, p. 5.

53. Id.

54. San Francisco Sheriff's Department, *Information and Rules for Inmates, supra* note 30.

dence adduced at the hearings might possibly be used at a later trial involving the same incident. If civil or criminal charges are initiated prior to the DRB hearing, the inmate should be represented before the Board by an attorney. A law student's role in the DRB hearings should be restricted to intra-jail punishment and discipline. The post-conviction legal aid provided by the student worker is not necessary in cases involving civil or criminal liability for crimes committed in the jail (i. e. escape, assaulting a deputy sheriff etc.), because the accused inmate is once again in a position to request the services of a court-appointed attorney.

Law Student Representation in the DRB Hearings

Whether a law student merely advises an inmate on procedures and strategy, or actually represents him before the Disciplinary Review Board, it is important that he first obtain a copy of the DRB *Rules and Procedures*[55] and achieve a basic understanding of the hearing.

The nature of representation before an administrative body such as the DRB, where the hearing officers have a broad discretionary authority over evidence procedures, disciplinary sanctions and the criteria on which the final decision is based, is significantly different from that in a court of law. Due process and equal protection elements do not operate as effectively in the discretionary hearing to protect a defendant and his eager counsel from being prejudiced by the vigor of their pursuit of total exoneration. Administrative disciplinary boards respond most favorably, as far as the accused is concerned, to compromises and admissions of at least partial culpability on the inmate's part. Ethical questions raised by this apparent lack of "vigorous representation" on the part of the inmate's counsel are beyond the scope of this article. Law students should be aware, however, that representation before a Disciplinary review Board involves only a quasi-adversarial confrontation between the inmate and the jail personnel, with an emphasis on "settling," rather than "winning," the dispute and pleasing both sides.

Sympathies on the San Francisco Disciplinary Review Board are aroused by accuseds who realize their mistakes and are willing to submit to correction and rehabilitation. Board members feel a responsibility to back up their fellow officers in maintaining security

55. San Francisco Sheriff's Department, *A Disciplinary Review Board Memorandum, supra* note 48.

and discipline in the County Jail. Unless the deputy sheriff bringing the charge is obviously lying, the DRB members will most likely side with their colleague. An accused inmate should be aware of these facts when suggesting fellow inmates as witnesses on his behalf. If his friends alienate the Board in their enthusiastic defense they will negate any positive effect they might have achieved.

The attitude of the inmate has a crucial effect on the final decision by the board. The adoption of a penitent stance before the Board may be personally demeaning for the inmate, but he may prefer this to a stiff sentence in solitary confinement following a display of indignant pride. Common sense must be used in securing the minimum punishment without unduly sacrificing the inmate's need to express his feelings.

The opinions expressed herein concerning the prejudices and persuasions of Disciplinary Review Board members are necessarily specific to the San Francisco County Jail system. Any workable relationship between law students and a jail disciplinary system requires a close tailoring of procedures to the makeup and personality of the local jail administrators. The following tactics have been suggested by various members of the San Francisco Counseling Project who have represented inmates before the DRB in the San Francisco County Jail:

(1) Generally, the inmate should not appear hostile or bitter. It rarely helps his case to contradict directly the statements of a deputy sheriff.

(2) Instead of denying the allegations of misbehavior, it is usually more effective to admit to them, and then mitigate the culpability with a heavy emphasis on mistake, momentary lack of judgment, mis-information, or confusion.

(3) Along with (2), the inmate should discuss his desire to atone for his temporary transgression.

(4) Any inmate witnesses should be carefuly briefed to be tacit, concise, and undemonstrative. Their testimony should be controlled by careful questioning while they are on the stand. They should be advised to politely respond to any cross-examination by the Board members or the deputy sheriff bringing the charge. In considering the use of inmate testimony, it should be realized

that general inmate credibility is low in the minds of law enforcement personnel.

(5) The deputized DRB members usually respond well to character evidence or some indication of prior good behavior, especially when offered by another deputy sheriff. Testimony that the inmate is a good jail citizen, except for the incident in dispute, tends to reduce the feeling on the Board that they are dealing with an "incorrigible." The deputy sheriff bringing the charge might yield this information on cross-examination, but as with any cross-examination, the law student should have a good idea of what the answer will be before asking a question about past behavior.

The law student should utilize the hearing to minimize his client's hardship, rather than to establish a forum for jailhouse dissent. General discussions of official abuse and administrative prejudice are not relevant. A reasonable presentation, balancing law enforcement priorities with a respect for the individual inmate's plight, usually results in limiting the inmates post-hearing punishment, while allowing the Board its prerogatives of discipline and deterrence.

Student legal workers in San Francisco were fortunate to participate in the inauguration of the Disciplinary Review Board program. Law students assisted the San Francisco Sheriff's Attorney in explaining DRB procedures to deputy sheriffs in the county jails, and were present at one of the first sessions held in the San Francisco Jail facilities. From its outset law student counselors have played a strategic role in the San Francisco County Jail Disciplinary Review Board hearings. It has provided them with a uniquely challenging opportunity to serve the post-conviction legal needs of county jail inmates.

A MODEL JAIL COUNSELING QUESTIONNAIRE

The San Francisco Jail Counseling Project was initiated with the twin goals of helping individual inmates and improving conditions in the San Fransicso County Jail. In order to achieve these ends, complex operating procedures were necessary to deal with a wide range of problems in post-conviction legal aid. Because of the general lack of student familiarity with jail conditions and programs, most of the jail counseling procedures were developed

through a gradual exposure to jail problems while assisting numerous individual inmates in the counseling operation. After much confusion and duplication of research efforts, it became apparent that an important first step had been omitted in the establishment of the San Francisco Jail Counseling Project. The common questions which arose as the porgram progressed could have been asked and answered more profitably in a comprehensive questionnaire addressed to jail authorities prior to the first inmate interview.

In an attempt to facilitate accurate pre-counseling investigation in future law student counseling projects a jail counseling questionnaire was prepared, concentrating on those subjects found to be most important in the San Francisco jail counseling operation. The questionnaire was designed to elicit clear and straightforward responses from county jail authorities in California county jails.

In order to illustrate the usefulness of such a questionnaire, a report on ten Northern California county jail systems was prepared. After initial telephone contacts were made with the appropriate jail authorities, questionnaires were mailed with self-addressed return envelopes to each of the ten counties chosen for the study. In addition to the mailed questionnaires, personal interviews with jail officials were condicted by law student counselors whenever possible. The result of these investigations was a report exhibiting widely varying jail programs and procedures in the localized Northern California area. The comments made in response to the questionnaire provided a diversified selection of jail administrators' opinions concerning county jail problems and solutions.

In most cases the questionnaires were submitted to jail commanders. These officials play a unique and central role in shaping and administering procedures in the county jails. Although the county sheriff is the individual with final authority over county jail policy, his office is usually located outside the jail facilities, and the jail commander is the individual who oversees the daily operations of the jail. The jail commander usually has lengthy experience in jail work and possesses a practical knowledge of rehabilitative programs operating in the jail. The attitudes and outlook of the jail commander are often determinative in the formulation of jail programs and procedures, and his cooperation is an important prerequisite to an effective law student jail counseling operation.

Despite the uniform regulations maintained by the California state Board of Corrections, as set down in the Minimum Standards

for Local Detention Facilities,[56] each California county jail executes its basic duties in slightly different ways. Such programs as Work Furlough, parole, good time and work time, and weekend passes, vary significantly in administration and control from jail to jail. Before a fledgling law student counseling project can begin to seriously deal with the post-conviction problems of county jail inmates, the specific procedures and operations of the local jail must be systematically investigated and understood.

Participating County Jails:

(1) Alameda County Jail
(2) Contra Costa County Jail
(3) Marin County Jail
(4) Monterey County Jail
(5) San Francisco County Jail
(6) San Joaquin County Jail
(7) San Mateo County Jail
(8) Solano County Jail
(9) Sonoma County Jail
(10) Stanislaus County Jail

General Questions

(1) Approximately how many inmates are housed in the jail?

(2) What is the ratio of inmates to personnel?

(3) Is the system of rotating assignments employed within the jail to divide more evenly among all personnel the more tedious and depressing jobs which are entailed in correctional work

(4) Are any law students involved in inmate counseling at the jail?

(5) If so, how does an inmate go about setting up an appointment with the law student?

(6) If counseling by law students is not available, who would normally handle inmate inquiries concerning things like outstanding holds, credit-for-time-served, work furlough and other programs the jail may offer?

56. California State Board Of Corrections, Sacramento, *Minimum Standards for Local Detention Facilities,* mimeo distributed to California county jail facilities, regulations adopted March 30, 1973 and amended August 20, 1973. § 1005 states: "Nothing contained in the standards and requirements hereby fixed shall be construed to prohibit a city, county, or city and county agency operating a local detention facility from adopting standards and requirements governing its own employees and facilities; provided, such standards and requirements exceed and do not conflict with these standards and requirements."

(7) Is a memo given to incoming inmates explaining the rules and regulations of the jail? If not, how is the prisoner made aware of the rules?

(8) Is the prisoner also made aware of the various means by which his sentence may be reduced (CTS, good time/work time, sentence modification, county parole, weekend passes, etc.)?

The average size of the jails investigated fell into two categories: (1) six smaller county jails adjacent to courthouses with an average of 100 inmates, and (2) four larger county, separate facilities with an average of 500 inmates.[57] Reported inmate-deputy sheriff ratios ranged from four-to-one to thirty-five-to-one, with the larger ratios usually occurring in the larger jails. Answers to the remaining questions were generally independent of the size of the jail.

All but one jail reported periodic rotation of jail personnel through various assignments in the jail. The average length of time between rotations was six months.

Only two jails indicated law student counseling services on a continuing basis; one "large" jail and one small "courthouse" jail. The former program was administered by law student participants and the jail rehabilitation office, the latter controlled by the county public defender's office. In those counties without law student counseling, public defenders, rehabilitation officers, deputy sheriffs, probation officers, "social service officers," chaplains and desk sergeants provided post-conviction legal assistance to inmates.

Four of the jails supplied inmates with a printed handout describing disciplinary rules, rehabilitation programs and prior release procedures. Three of the counties provided no printed rules or regulations, referring the inmates instead to the desk officers.[58]

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57. California State Board of Corrections, *Minimum Standards for Local Detention Facilities, supra* note 57, describes three different jail classifications in § 1006. § 1006(c) defines a "Type I" jail as "a local detention facility used for the detention of persons pending arraignment. . . ." § 1006(d) defines a "Type II" jail as "a local detention facility used for the detention of persons pending arraignment, after arraignment and during trial, and upon sentence of commitment." § 1006(e) defines a "Type III" jail as a "local facility used only for the detention of convicted and sentenced persons who have been committed for a period up to one year." The six smaller jails reporting in the study fell into the Type II category, while the four larger jails qualified for Type III rating. Type I facilities are not involved with post-conviction legal aid programs.

58. *Id.*, § 1170 states: "Each facility administrator shall establish rules and disciplinary penalties to guide inmate conduct. Such rules and disciplinary penalties shall be stated simply and affirmatively, and posted conspicuously in housing units and the booking area or issued to each inmate upon booking."

Most of the responses suggested that prior release programs were explained in the same manner as the jail disciplinary rules. One answer indicated that this information was sufficiently known to inmates through prior jail experience or talk around the jail facility.

Credit-For-Time-Served

(9) Are inmate inquiries concerning credit-for-time-served a common occurrence at the jail?

(10) What procedure is generally followed when an inmate raises a question concerning credit-for-time-served?

(11) Do the custody cards generally contain a notation stating whether credit-for-time-served has been taken into consideration at sentencing?

The responses to the questionnaires indicated that inmate inquiries concerning whether creditfor-time-served had been granted, although frequent, were generally answerable by reference to notations either on the custody card or the commitment order of the court, depending on which records system was employed in the jail.[59] The main procedural difference among the various institutions was the amount of effort expended by jail personnel if the information requested by the inmate was not available from either source. Some jails reported that the matter then became one for the inmate's attorney to investigate. Others stated that they would make an attempt to contact the court in order to determine whether credit-for-time-served had been granted in a particular case.

Security Holds

(12) How do you determine whether an incoming inmate has any holds on him?

(13) Is the check for holds upon arrival, during serving of the sentence, or before release?

(14) What effect will a hold have upon an inmate's status within the jail and his eligibility for work furlough, county parole, passes and the like?

59. *Id.*, § 1041 states: Each facility administrator shall maintain individual inmate records which shall include but not be limited to personal receipts, commitment orders, court orders reports of disciplinary action taken, and medical orders issued by the jail physician." Some of the jails indicated the use of photocopied court commitment orders for jail records, others utilized separate "custody cards" for each inmate.

(15) What procedure is followed if an inmate is scheduled for release but still has a hold on him?

(16) Are problems involving holds a common source of complaint by inmates?

Upon arrest, upon arrival at a county jail and prior to release, a computerized check is made to determine whether the incarcerated individual has any outstanding arrest warrants. If an inmate has an outstanding warrant in another jurisdiction, a "hold" is placed on him until the other jurisdiction either cancels the warrant or picks him up for trial. Responses to the questionnaires indicated that a hold has two major effects on a county jail inmate. First, in most jails, if the warrant involved a felony or high misdemeanor, the inmate was given a special security status which prevented him from being assigned to certain jobs, rendered him ineligible for work furlough, sentence modification or county parole and often resulted in his being placed in a maximum security cell area. Two of the reporting jails imposed the above security restrictions on inmates with any holds (including petty misdemeanors), making them automatically ineligible for all programs involving prior release. Second, if the hold was not removed by the time the inmate was scheduled for release, he was, pursuant to California Penal Code section 821, detained for five days beyond his release date while officials checked with the jurisdiction in which the outstanding warrant existed. This procedure worked an undue hardship on the inmate if the hold was subsequently proved to be invalid. Two counties indicated that they occasionally held inmates beyond the five day period provided by statute if the warrant involved a serious charge and the other jurisdiction had not responded to their inquiry.

The responding jails were evenly divided as to whether the hold problem generated a large number of inmate complaints. Three jails indicated that hold disputes were the single most troublesome problem in post-conviction legal aid. Because it is virtually impossible for an inmate to research the validity of a hold while incarcerated and because of the collateral effects such a hold has on the inmate's jail tenure, this appears to be one of the areas in which law student counseling could be of particular importance.

Requests For Speedy Trial

(17) How would an inmate-request for speedy trial be handled?

(18) Are special forms available for this purpose?

(19) Is there a requirement that the inmate have at least ninety days remaining on his sentence before a request under California Penal Code section 1381 will be processed?

All responding counties indicated that special forms were available for inmates seeking a speedy trial. In two counties, however, the jail authorities imposed a requirement that the inmate have at least ninety days remaining in his sentence before the application would be processed. This days-remaining prerequisite was imposed regardless of the location or procedure of the law enforcement agency maintaining the warrant. In the two county jails where days-remaining restrictions were applied to the dispatch of the section 1381 petition, the local district attorney's office had likewise imposed the restriction, and the jail authorities had extended the restriction to all speedy trial requests originating from the county jail.

Good Time And Work Time Sentence Reductions

(20) Does the jail employ a system whereby good time and work time are computed and credited upon arrival subject to subsequent revocation for disciplinary problems or failure to work? Or are the sentence reductions computed periodically during the inmate's jail confinement as they are "earned" by good behavior and jailhouse work?

(21) Are work performance time credits granted if an inmate expresses a willingness to work, even if work is unavailable?

(22) Can accrued good time or work time or both be taken away if the inmate is subject to disciplinary action?

In six of the reporting county jails both good time and work time were computed and granted prospectively with a tentative release date calculated at the time of the inmate's arrival at the jail. In three jails the good time credits were granted in this manner, but work performance time credits were deducted from the inmate's sentence as he "earned" them during his jailhouse confinement. One jail allowed good time and work time only *after* the inmate had served time with both good behavior and satisfactory work completion.

Work performance time credits were granted in eight counties to all inmates who expressed a willingness to work, regardless of the availability of jailhouse jobs. Two other county jails provided

for work time credits only when inmates had specifically performed jail labor. Because of the "earned" nature of work performance time credits, most of the jails did not allow the removal of work time credit as a punishment for infraction of jail rules. Of the three jails which allowed loss of good time and work time for disciplinary reprisals, one of them restricted this cancellation of sentence reduction credits to a Disciplinary Review Board adjudication. Seven jails reported that only good time credits could be removed as a result of jail rules violations, and two of these jails restricted the good time cancellation to the month in which the violation occurred, so that only five days of good time were subject to disciplinary removal.

Prior Release; Sentence Modification

(23) What role does the jail play in sentence modification (writing letters of recommendation, appearing in court, etc.)?

(24) Do you know what factors are taken into consideration in determining whether modification is justified?

(25) Are applications for sentence modification a common occurrence at the jail?

Responses to the above questions indicated that sentence modification requests were frequent because of the large percentage of "court controlled" commitments in the county jails. Although only those inmates serving county jail time as a condition of probation are eligible for judicial modification, some of the jails reported more than 80 of their inmates falling into this category. In most cases, the county jail personnel took little active role in applications by inmates for sentence modifications. Some jails provided the inmate with a "good behavior" recommendation if requested by the applicant, and two jails employed jailhouse rehabilitation counselors for various duties, including the processing of sentence modification forms. In one of these jails, this assistance extended to appearances before the sentencing judge in support of deserving sentence modification applicants.

Modification requirements were variously described as uncertain, unknown and controlled by the courts by those county jail officials not informed of the factors important to a decision on sentence modification. Those jails indicating an awareness of factors considered in the granting of sentence modification listed such things as employment, prior record and residence. Modification ap-

peared to be granted primarily in cases of special need (illness or death in the family) or where a job was waiting for the inmate on the outside, strong family ties existed and the inmate's criminal record did not involve a violent crime or hard narcotics offenses.

Prior Release; County Parole

(26) What factors are taken into consideration in determining whether an inmate should be granted county parole?

(27) Can an inmate be present at the Parole Board hearing?

(28) Can an inmate be represented by counsel at the Board hearing?

(29) Must an inmate have served any portion of his sentence prior to his application for parole?

(30) Have inmates been paroled to Synanon or similar organizations serving as halfway houses, rehabilitation centers or prisoner co-operatives?

The rules and regulations governing the granting of county parole are left to the statutorily created County Board of Parole Commissioners, but all counties indicated a common requirement that the inmate be serving a "straight sentence" involving no probation, parole or days suspended before he would be considered eligible. County parole is thus reserved for those inmates who, because of their past record or other reasons, have received no reduction or mitigation of their sentences by the court, and yet while confined have shown themselves to be good parole risks. Only a small portion of the jail populations (ten to thirty percent) were reported in this category of sentencing. The inmates serving jail time as a condition of probation, or other "rehabilitative scheme," were provided with the prior release procedure known as sentence modification, discussed in the previous section.

Although two responding counties indicated a requirement that the inmate serve at least half his sentence before he could become eligible for parole, the primary considerations appear to be the same ones operative in granting sentence modification, namely good conduct, strong family ties, job opportunities and the absence of a violent criminal record or one involving hard narcotics violations. Six counties stated that an inmate could not be present at the hearing unless his presence was requested by the board, and only one county allowed the inmate representation of counsel. Four counties answered that the inmate could appear at the hearing if he so desired.

Inmates were occasionally paroled to such institutions as Synanon and other halfway houses in those counties where such organizations existed.

Prior Release; Weekend Passes

(31) Are weekend passes ever granted in this jail, pursuant to California Penal Code section 1203.1a?

(32) If so, under what circumstances are they granted?

(33) Is an inmate accompanied by correctional personnel while on pass?

(34) Are weekend passes ever granted for job interviews just prior to final release from the jail?

(35) Should the reasons for granting such passes be expanded to include more situations and thus more inmates?

Six counties responding to the questionnaire indicated that weekend passes were not being used under any circumstances at the present time. The four counties reporting use of the weekend pass uniformly required that there be either a death in the inmate's family or similar serious need shown before it would be issued. Whether an inmate was accompanied by correctional personnel while on pass depended upon the inmate's security status, the nature of the offense he had committed and whether the pass was from an honor farm or a regular jail facility.

Most of the jails granting weekend passes expressed a desire to maintain the present weekend pass procedures, and felt no need to expand the situations under which they should be granted. One jail reported a successful use of the weekend pass, under the regulation of the jail rehabilitation office, in securing job interviews for soon-to-be-released county jail inmates. With this one exception, it appeared that county jails in the Northern California area were not interested in any significant use of the weekend pass.

Prior Release; Work Furlough

(36) Does the jail have a work furlough program in operation?

(37) If so, what criteria are used in determining eligibility? (i. e. standardization tests, criminal record etc.)

(38) Are both a job and transportation required?

(39) Does the jail employ a work furlough officer?

(40) Would you consider the program to be a success?

(41) Does the program cost the participating inmate any fees for the processing of his application or his placement in the field?

Nine of the counties interviewed indicated that they had work furlough projects in operation and the tenth reported that such a project was planned for early 1974. Eligiblity standards for the work furlough projects appeared to vary. Only one county used any form of standardized test to determine eligibility. All counties required an inmate to have both an existing job and private transportation. Four counties required neither. All of the counties employed at least one work furlough officer to handle inmate applications and job placement. The most common employment background of this officer included law enforcement and jail supervisory work, although some of the administrators had social science backgrounds. All participating counties indicated that they considered the program to be a success and were in favor of its continuation and development.

Disciplinary Review Boards

(42) Does the jail have a disciplinary review board to handle inmate infractions of the jail rules?

(43) Are there non-jail personnel members sitting on this board, or is it composed solely of law enforcement officers working in the jail?

(44) May counsel for the inmate appear before the board?

(45) What sanction may be imposed by the board if the inmate is foiund to have violated the jail rules?

(46) Is there an appeal from such a finding?

(47) Are there limits on the amount of time an inmate may serve in solitary confinement?

(48) If no such review board exists, would you favor establishing one as a means of reducing tension within the institution? Do you feel non-jail members should sit on this disciplinary review board?

Correctional personnel have traditionally exercised great latitude in determining the proper punishment to be meted out for infractions of jail rules. In certain county jails today, newly established "disciplinary review boards," composed of both non-jail and jail members, are being initiated in order to provide a disinterested forum for rulings on jailhouse disturbances. The general reluc-

tance of county jail authorities to accept any outide review of internal jail disciplinary procedures was reflected in the responses to the questionnaire.

While nine counties stated that they afforded prisoners a review of disciplinary decisions, in only two counties were persons outside the jail staff involved in such review. The other seven employed a system whereby a deputy sheriff would write out a report of the incident. The supervising officer (usually a sergeant in charge of a particular watch) would then read the report and determine what action, if any, was to be imposed. A final appeal, if desired by the charged inmate, could be taken to the jail commander. None of these seven counties favored the creation of a board with outside members and none felt that such a board would reduce the level of tension in the jail. One respondent actually felt that such a board would increase jailhouse tension. Various reasons were advanced in support of this maintenance of internal control. Some jail administrators felt that the emergency nature of most disciplinary actions would be poorly served by a weekly or byweekly disciplinary review board meeting. Others considered their jail facilities too small, understaffed or without appropriate room for such an operation. One jail reported that they felt the availability of an appeal to the jail commander would eliminate any possiblity of a one man disciplinary board becoming too harsh.

Possible sanctions for infractions of the rules ranged from loss of visiting, mail and commissary privileges to confinement in an isolation cell. The maximum amount of time an inmate could spend in isolation ranged from five to fourteen days, with possible extensions if approved by the jail commander or the county sheriff. Good time or work time or both were subject to cancellation as a reprisal for rules violations in most of the jails. The inmate could also be removed from participation in the work furlough program or be ruled ineligible for sentence modification and county parole.

Successful Programs; Suggested Change

(49) Are there any special features in the operation of the jail that have proved successful in reducing tendion within the institution?

(50) If you could effectuate one major change in the institution, what would it be?

The answers to the questions eliciting general comments about the jail were both the most interesting and the least predictable. Each jail has unique problems that stem from the size and location of the facility, the type of inmate it holds, the nature of the staff and the amount of money available for improvements. The possibility of change is deeply influenced by these considerations and each county jail appears to have developed its own appropriate solutions.

The installation of pay telephones and television sets was commonly cited as a special feature of the jail that had proved successful in reducing tension. The hiring of a food service manager and counseling programs, the work of a jail liaison officer and county library services were also mentioned. One response indicated that efforts to stay in close communication with the inmates and give honest consideration to every request was an effective way to relieve jail tension.

This last remark was indicative of an important fact, brought out by the answers to the last two questions in the questionnaire: the need for new attitudes and new ideas is now generally recognized by the administrators of California's county jails. Particularly in the informal questioning in supplementary personal interviews, it became clear that those being interviewed had considerable knowledge of and interest in emerging concepts of rehabilitation. A great hope was expressed that such programs as inmate education and training, and work furlough programs, would serve as a means of combating the boredom and frustrations of jail life. Interest in efficient medical services and comprehensive exercise programs emphasized the importance of inmate health and physical wellbeing in running a peaceful county jail.

The most significant obstacle to jail reform reported in the questionnaires was the condition of the county jail facilities themselves. The responses indicated that most of the jails were built many years ago, and simply were not designed to meet modern needs. The necessity for classroom space, outside recreation areas, modern plumbing and lighting facilities, and many other size and design requirements in the county jail are frustrated by the prohibitive cost of a new jail facility. The replacement of old, inadequate, overcrowded jails with modern facilities is seen by the reporting jail officials as the one major change most likely to promote an adequate balance between the rehabilitation of county jail inmates and the security of county jails.

GOLDEN GATE LAW REVIEW

APPENDIX; SAMPLE PROCEDURAL FORMS

INTAKE FORM; LAW STUDENT COUNSELING PROJECT

THE INMATE INTERVIEW

Investigation of Security Holds

NAME OF INMATE _____ Alias? _____

Date of Interview _____ Re-Interview _____ Re-Interview _____

Inmate's Cell ____ Tier ____ Name of Law Student _____

Inmate's Date of Birth _____ Sex ____ RELEASE DATE _____

CHARGES (for this county jail commitment):

Calif. Penal Code sec. _____ Description _____

Calif. Penal Code sec. _____ Description _____

Calif. ____ Code sec. _____ Description _____

Did you plead guilty? _____

Did you participate in a plea-bargaining session? _____

Court of Conviction _____ Judge on Sentencing _____

Judge on Conviction _____ Court of Sentencing _____

Date of Conviction _____ Date of Sentencing _____

COURT ACTION NUMBERS ____ PRIOR CONVICTIONS _____

SENTENCE:

Probation? _____ Parole? _____

Credit-for-time-served? _____ Suspended Sentence? _____

Concurrent Sentences? _____ Consecutive Sentences? _____

LENGTH OF SENTENCE _____

SECURITY HOLDS:

Do you know of any holds? _____

Custody Card Verification:

Police Letter #_____ For _____

Police Letter #_____ For _____

POST CONVICTION LEGAL AID

Date _____

REQUEST FOR SPEEDY TRIAL; PURSUANT TO
SECTION 1381 CALIFORNIA PENAL CODE

Inmate _____ Date of Birth _____

Date of Sentence _____ Charges _____

Charges Pending _____

Charging Law Enforcement Agency _____

Length of Present Sentence _____

Sentencing Court _____ Sentencing Judge _____

DAYS REMAINING IN PRESENT SENTENCE _____

Certified: _____
San Francisco Deputy Sheriff

To Whom It May Concern:

I am at present serving time in the San Francisco County Jail at San Bruno for the above charges. It has come to my attention that:

1. Charges are still pending on me under your jurisdiction, and are noted on my jail custody card as security HOLDS,
2. These charges, under California Penal Code section 1381, may be brought before the appropriate judge, or dropped, before the statutorily set 90 day period.

I would like to have action on my case before my release date _____, so that consideration of concurrent sentence, consecutive sentence, etc., might be available to me while I am still in the San Francisco County Jail.

With the HOLDS taken off my custody card, I will be eligible for the various programs here unavailable to inmates under outstanding warrant.

I have read the pertinent code section.

Signed _____
inmate-defendant

_____
law student/legal worker

authorized by REHABILITATION OFFICER: _____

APPLICATION FOR COUNTY PAROLE OR SENTENCE MODIFICATION

NAME of Applicant _____ Date of Birth _____ Sex ___

County Jail Facility: County #1 #2 #3 #4 #5 (circle one)

Work Furlough? _____

SENTENCE CHARACTER:

Are you serving time as a condition of probation? _____

Are you serving a straight sentence? _____

Date of Sentencing _____ Length of Sentence _____

Have you served half your sentence yet? _____

FAMILY INFORMATION:

What is your family's present means of support? _____

Is your spouse working? _____ Is your spouse receiving Welfare? ____

Children and/or Dependents:

Name	Age	Relationship

INMATE INFORMATION: Are you seeking SENTENCE MODIFICATION? _____ PAROLE? _____

Disabilities _____

Usual Occupation(s) _____

Prior Convictions _____

Residence Address if Released _____

ARE THERE ANY HOLDS ON YOUR JAIL CUSTODY CARD? _____

Charges for Which you are Serving Time _____

Sentencing Court _____ Sentencing Judge _____

REFERENCES: Attach any references or jail staff evaluations

REASONS FOR WHICH YOU SEEK PAROLE OR MODIFICATION:

_____

_____

_____

(please use other side if needed)

POST CONVICTION LEGAL AID

Work Furlough #_____

WORK FURLOUGH APPLICATION

Height:
Weight:
Hair Color:
Eye Color:
S. S. #
Date of Arrest:
Name: _____ Birthdate _____ Age ___ Sex___
Address: _____ Residing with _____
Telephone: _____ Relation: _____
Occupation: _____
Present or Prospective Employer: _____
Address: _____ Phone: _____
Union Member: _____ How Long With Present Employer _____
Supervisor's Name: _____ Department: _____
Paydays: _____ Usual Form of Pay (Cash or Check)
Usual Gross Pay $_____ per _____ Usual Take Home Pay $_____ per _____

(Time)	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
Report to Work: (Time)	____	____	____	____	____	____	____
Leave Work:	____	____	____	____	____	____	____

How will you reach your place of employment? _____
Present Offense: _____ Sentencing Date: _____
Sentence: _____ Attorney: _____
Judge & Court _____ Probation Officer: _____
Amount of Family Support Paid Monthly: _____ To Whom Paid _____ Telephone: _____
Address: _____
Persons who depend on your financial support:

Name	Age	Relationship

Are you or your family on WELFARE? ____ Are your wages being attached? ____
Do you have a CAR? ____ Driver's License? ____ Insurance? ____