

Beyond Attica Prison Reform in New York State 1971-1973

Paul D. Meunier

Howard D. Schwartz

Follow this and additional works at: <http://scholarship.law.cornell.edu/clr>

 Part of the [Law Commons](#)

Recommended Citation

Paul D. Meunier and Howard D. Schwartz, *Beyond Attica Prison Reform in New York State 1971-1973*, 58 Cornell L. Rev. 924 (1973)
Available at: <http://scholarship.law.cornell.edu/clr/vol58/iss5/4>

This Comment is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Review by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

COMMENT

BEYOND ATTICA: PRISON REFORM IN NEW YORK STATE 1971-1973

TABLE OF CONTENTS

I.	THE STRUCTURE FOR REFORM	929
A.	<i>Goals and Objectives</i>	929
1.	<i>Individualized Treatment</i>	934
2.	<i>Reintegration</i>	935
3.	<i>Humanization</i>	935
B.	<i>Implementation of the New Structure</i>	935
1.	<i>Personnel</i>	935
2.	<i>Communication and Policy Enforcement</i>	937
a.	<i>Inspector General Service</i>	939
b.	<i>Legal Services Program</i>	941
3.	<i>Financing Reform</i>	942
a.	<i>Debt Financing</i>	943
b.	<i>Federal Grants-in-Aid</i>	945
II.	HUMANIZATION	948
A.	<i>Recruitment and Training of Correctional Officers</i>	950
B.	<i>Basic Human Needs</i>	954
1.	<i>Food</i>	954
2.	<i>Clothing and Personal Hygiene</i>	957
3.	<i>Medical Care</i>	958
C.	<i>Contact with the Outside</i>	959
1.	<i>Correspondence</i>	959
2.	<i>Visitation</i>	963
3.	<i>Receipt of Reading Material</i>	965
D.	<i>Presentation of Inmate Grievances</i>	968
1.	<i>Access to Judicial and Administrative Forums</i>	968
2.	<i>Access to News Media</i>	970
3.	<i>Access to Intradepartmental Forums</i>	973
E.	<i>Temporary Release into the Community</i>	976
F.	<i>Reduced Cell Time</i>	980
III.	DIVERSIFICATION	982
A.	<i>Rationale and Plan</i>	982
1.	<i>Master Plan</i>	985
2.	<i>Capital Construction Financing</i>	986
3.	<i>Offender Profiles</i>	987
4.	<i>The Correctional Continuum</i>	989

B. <i>Diagnosis and Classification—The Operational Key to a Diversified System</i>	989
C. <i>Multi-Purpose Facilities and Diverse Programs</i>	991
1. <i>Diversified Minimum Security Treatment</i>	993
a. <i>Institutional Community Preparation Centers</i> ...	996
b. <i>Work Camps</i>	998
c. <i>Pre-Release Community Centers</i>	998
d. <i>Residential Treatment Facilities</i>	999
e. <i>Parole</i>	999
2. <i>Medium Security Institutions</i>	1000
3. <i>Maximum Security Institutions</i>	1001
4. <i>Prescription Correctional and Control Program</i>	1002
a. <i>Selection</i>	1004
b. <i>Orientation and Diagnosis</i>	1007
c. <i>Correction and Control</i>	1008
i. <i>Scope of Program Activities</i>	1009
ii. <i>Graded Program Levels</i>	1011
d. <i>Discharge from Program Participation</i>	1014
5. <i>Honor Living Units</i>	1015
D. <i>Diversification in Action: The Adirondack Facility</i>	1016
1. <i>Northeast Reception Program</i>	1017
2. <i>Therapeutic Communities</i>	1017
3. <i>Incentive Place</i>	1019
4. <i>Community Preparation Program</i>	1020
5. <i>Stress Assessment Unit</i>	1020
6. <i>Honor Living Program</i>	1021
7. <i>Prescription Program</i>	1021
CONCLUSION	1021
APPENDICES	1024

When he accepted the leadership of the new department, [Commissioner of Correctional Services Russell G.] Oswald assessed his professional inheritance, and he was not encouraged by what he saw. In testimony before a congressional committee, Oswald was later to enumerate some of the obstacles confronting him in New York State corrections. They included, he said, a department that had been fiscally starved for years; a departmental administration and group of administrators across the state who had met only infrequently in the past ten years to discuss mutual problems and to plan together; a line correctional staff of over 4,000 officers whose training and preparation had been grossly neglected; inmates, healthy young men, confined to their cells 16 hours a day; long-standing policies of tremendous impact on the daily lives of inmates that had not been reviewed in years; inadequate, outdated methods for diagnosis, classification, and assignment of offenders;

and inadequate attention paid to the need to involve the community in the rehabilitative mission of the department.

—New York State Special Commission on Attica¹

The new Department of Correctional Services under the control of Commissioner Oswald made its unheralded appearance eight months prior to the highly publicized uprising at the Attica Correctional Facility.² The Department was still at an early stage of development when

1 ATTICA: OFFICIAL REPORT 20 (1972) [hereinafter cited as MCKAY COMM'N REPORT]. The New York State Special Commission on Attica, headed by Dean Robert B. McKay, was appointed September 30, 1971, 17 days after the state police regained control of the Attica Correctional Facility (*see* note 2 *infra*), by Chief Judge Stanley Fuld of the New York Court of Appeals and the four presiding justices of the state's intermediate appellate court, pursuant to a request by Governor Nelson Rockefeller. Its powers were defined in an executive order issued on November 15. *See* MCKAY COMM'N REPORT xxiii-xxvi. The McKay Commission should not be confused with New York State Select Committee on Correctional Institutions and Programs (hereinafter referred to as the "Select Committee"), also established by Governor Rockefeller in the wake of the Attica uprising. The Select Committee's efforts were directed toward a searching examination of the entire New York correctional system, identification of short- and long-term priorities, and recommendations for improvements in the system. NEW YORK STATE SELECT COMM. ON CORRECTIONAL INSTITUTIONS AND PROGRAMS, REPORT NO. 1, at 1 (1972) [hereinafter cited as SELECT COMM. REP. NO. 1] The Select Committee has issued four reports. A fifth, final report, due to be issued January 1, 1973, has not yet been released.

The *Official Report* of the Special Commission on Attica is a 500-page elucidation of correctional problems and an analysis of their effects at one institution, the Attica Correctional Facility, located in Attica, New York. The scope of this Comment is much broader. The concern here is not with a single institution or the causes and aftermath of the events which occurred at Attica. Rather, the focus will be upon recent changes in the entire New York post-adjudicatory correctional system. The *McKay Commission Report* dissected one facility, took voluminous testimony of those involved, and made findings of fact as to the causes and events of the riot. *See generally* MCKAY COMM'N REPORT xiii-xl. This Comment is based primarily on original and secondary written documentation and research at the departmental rather than institutional level. Detailed investigation of the operations of each of the New York correctional facilities was, of course, impossible. This limitation should be kept in mind, especially in light of the historical independence and isolation of each facility. *See* notes 70, 73-75 and accompanying text *infra*.

This Comment does not undertake to describe nationwide correctional practices or trends or to compare the New York system with those of other states or countries. The breadth of the present topic as well as the necessary reliance herein on unpublished administrative documents renders a national analysis infeasible. One of the most authoritative and influential, though necessarily general, comparative studies of national correctional systems is the *Report* of the Task Force on Corrections of the President's Commission on Law Enforcement and Administration of Justice, published in 1967. *See* note 383 *infra*.

Due to the above research limitations, it is very difficult to ascertain the areas of correctional operations in which New York is unique, innovative, or regressive. Perhaps this description and analysis of one system will spur evaluations of programs in other jurisdictions. For a description of some of the latest developments in one leading jurisdiction, California, see Kelgord & Norris, *New Directions for Corrections*, 36 FED. PROBATION 3 (1972).

² The Department of Correctional Services became operational on January 1, 1971, pursuant to a 1970 reorganization by the legislature. *See* ch. 475, §§ 13, 26, [1970] N.Y. Laws

the Attica takeover began; newly-appointed executive personnel were nursing the infant agency through the state's worst fiscal crisis since the 1930's.³

The new Department, like its predecessors, confronted the awesome task of rebuilding the lives of those thousands of persons whom society had deemed criminals. Most of these wards were considered failures at school and work. All had run the gauntlet of state service and custodial agencies.⁴ These individuals had at least one other common denominator: for them, this fledgling Department and the correctional system which antedated it constituted the last resort.⁵

The formation of the new Department resulted in part from demands on the existing ineffective system. Inmates, administrators, and disinterested observers were in agreement that the inmate population was changing.⁶ The prison population had become less tolerant of a system which preached rehabilitation but practiced incarceration. Many inmates, not just the small bands of hard-core revolutionaries,

1930, 1934; notes 53-68 and accompanying text *infra*. Compare Appendix A with Appendix B.

The Attica Correctional Facility was taken over by an overwhelming majority of its inmates on September 9, 1971. The insurgents occupied three of the five major cell blocks and most of the auxiliary facilities, including the mess hall and the chapel. At least 39 hostages were taken. Following a three-day negotiation stalemate, Commissioner Oswald ordered the New York State Police to retake the institution by force. Forty-three persons died at the Attica Correctional Facility between September 9 and 13. Thirty-nine of that number were killed and more than 80 others were wounded by gunfire during the 15 minutes it took the State Police to regain control of the facility. A comprehensive treatment of the events at Attica can be found in MCKAY COMM'N REPORT 104-466. *But cf.* Starr, *Prisons, Politics & the Attica Report*, COMMENTARY, March 1973, at 31. *See also* R. OSWALD, ATTICA—MY STORY (1972).

On May 1, 1973, Russell Oswald stepped down as Commissioner of Correctional Services. It has been intimated that Governor Rockefeller's displeasure with the Department's handling of the Attica disturbance ultimately led to Commissioner Oswald's resignation. *See* N.Y. Times, April 17, 1973, at 16, col. 3. Commissioner Oswald was succeeded by Peter Preiser, formerly Director of the State Probation Commission. Commissioner Preiser, as Executive Director of the Governor's Special Committee on Criminal Offenders, was largely responsible for drafting the *Preliminary Report* of that body. *See* notes 22-35 and accompanying text *infra*. He has also been involved with drafting the four reports of the Select Committee on Correctional Institutions and Programs. *See* note 1 *supra*. Readers of this Comment are thus given ample exposure to Commissioner Preiser's correctional philosophy.

³ MCKAY COMM'N REPORT 132-33; Address by Commissioner Russell G. Oswald to the Inmates of Attica Correctional Facility, September 3, 1971 (on file at the *Cornell Law Review*).

⁴ *See* Interview with Russell G. Oswald, Commissioner of Correctional Services, Dep't of Correctional Services, in Albany, Oct. 30, 1972 (tape recording on file at the *Cornell Law Review*).

⁵ *See* MCKAY COMM'N REPORT xiv.

⁶ *See* R. OSWALD, *supra* note 2, at 12. *See generally* MCKAY COMM'N REPORT 114-41.

considered themselves "political prisoners."⁷ The rural location of most institutions and the uniformly white color of the officers guarding an overwhelmingly nonwhite inmate population rendered the mix even more volatile.⁸ At the same time, inmates, hardened by this system and by the problems which had brought them to prison in the first place,⁹ were being released onto the streets more quickly than ever.¹⁰ The Department had an average of only twenty-two months to deal with an inmate's problems before he was free again.¹¹

Chronically ineffective at rehabilitation, the correctional apparatus proved also to be of questionable control value.¹² Chief among the systemic flaws was an inadequate budget which the legislature had consistently neglected.¹³ In the throes of this fiscal predicament, the

7 Many inmates came to believe that they were "political prisoners," even though they had been convicted of crimes having no political motive or significance. They claimed that responsibility for their actions belonged not to them—but to a society which had failed to provide adequate housing, equal educational opportunities, and an equal opportunity to compete in American life. Believing themselves to be the victims, not the aggressors, they claimed that the public should concentrate its efforts on rehabilitation of society and not of them. To them, such prison programming and job training as existed did no more than prepare them for a submissive role in a racist and unfair society.

There were many men in Attica in 1971 who held the view that they were victims of society. They must be distinguished, however, from the small group who . . . were totally committed to a firm political ideology of revolution. . . . The bond between these two brands of self-proclaimed political prisoners was their common rejection of established authority and their denunciation as barbaric of the wages, programs, hygiene, medical care, censorship, and other conditions at Attica.

MCKAY COMM'N REPORT 117-18.

8 *Id.* at 80-82; *cf.* TASK FORCE ON CORRECTIONS OF THE PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 4 (1967) [hereinafter cited as TASK FORCE REPORT].

9 MCKAY COMM'N REPORT 4-5.

Examined separately, many of the inadequacies and frustrations of inmate life may appear insignificant. But their cumulative impact created a dehumanizing environment. There was no meaningful programming, employment training, psychological help, or drug rehabilitation; and there were no real efforts to prepare inmates for society. If inmates were rehabilitated, it was not because of Attica but in spite of it.

Id. at 21.

10 NEW YORK STATE SELECT COMM. ON CORRECTIONAL INSTITUTIONS AND PROGRAMS, REPORT No. 2, at 12 (1972) [hereinafter cited as SELECT COMM. REP. No. 2].

11 *Id.*; see Appendix F.

12 Compare MCKAY COMM'N REPORT xiv-xv with NEW YORK STATE CRIME COMM'N, SPECIAL REPORT ON PENAL INSTITUTIONS 3-4 (1930). Inmate success in rapidly assuming control of the Attica Correctional Facility during the early stages of the uprising was due in part to insecure locks and an ineffective communications system. MCKAY COMM'N REPORT 160-63.

13 See N.Y. Times, Sept. 16, 1971, at 43, col. 4; Interview with Wim Van Eekeren, Deputy Comm'r of Administrative Services, Dep't of Correctional Services, in Albany, Oct. 31, 1972; Interview with Frank Daley, Director of Budget, Dep't of Correctional Services, in Albany, Oct. 31, 1972 (tape recordings on file at the *Cornell Law Review*).

Department was unable to plan, to implement, or to evaluate new programs¹⁴ or to monitor the individual components of the system.¹⁵ Each facility was an isolated, autonomous fiefdom that used its limited resources primarily to tighten security.¹⁶ Moreover, the facilities were either unable or unwilling to provide the inmates with a decent, humane living environment.¹⁷ Such failures were hardly surprising for a correctional system that had operated for years without any overall plans or objectives.¹⁸ Although these conditions could be concealed from the public, inmates and officers were forced to live with them every day. Reaction was inevitable; it culminated at Attica.¹⁹

I

THE STRUCTURE FOR REFORM

A. *Goals and Objectives*

The New York State Department of Correctional Services is charged with "providing places of confinement and programs of treatment . . . [with] the objective of assisting sentenced persons to live as law abiding citizens."²⁰ This statutory standard grants the Department broad discretion in the treatment of inmates, but it is much too ambiguous to provide an accurate guide to the practical aims or functions of the correctional system. In the absence of a clear demarcation of goals or a master plan to achieve objectives,²¹ prison reform in

¹⁴ See Interview with Robert H. Fosen, Assistant Comm'r of Planning, Evaluation and Research, Dep't of Correctional Services, in Albany, Oct. 30, 1972 (tape recording on file at the *Cornell Law Review*). See also MCKAY COMM'N REPORT 27-28.

¹⁵ Interview with Russell G. Oswald, *supra* note 4.

¹⁶ See, e.g., MCKAY COMM REPORT 21. See also note 38 *infra*.

¹⁷ See note 9 *supra*; note 153 and accompanying text *infra*.

¹⁸ See generally notes 20-52 and accompanying text *infra*.

¹⁹ For the black inmate in Attica, the atmosphere on September 8, 1971, was not unlike that in the cities before the holocausts of Harlem, Watts, Newark, and Detroit. Sit-ins, demonstrations, and petitions had been met with excuses, delays, and repression. Organized, peaceful efforts had been rebuffed or ignored. Inmates and guards alike later commented, "The tension was so thick around here you could cut it with a knife." No organizers were necessary; no plans were required; no leaders needed. As in the cities in 1967, the situation itself was explosive. All that was needed was a spark to set it off.

MCKAY COMM'N REPORT 141. *But see* Starr, *supra* note 2, at 33-35.

²⁰ N.Y. CORREC. LAW § 70.2 (McKinney Supp. 1972).

In furtherance of this objective the department may establish and maintain any type of institution or program of treatment, not inconsistent with other provisions of law, but with due regard to:

- (a) The safety and security of the community;
- (b) The right of every person in the custody of the department to receive humane treatment; and
- (c) The health and safety of every person in the custody of the department.

Id.

²¹ See GOVERNOR'S SPECIAL COMM. ON CRIMINAL OFFENDERS, STATE OF NEW YORK, PRELIMINARY REPORT 21 (1968) [hereinafter cited as Gov. SPEC. COMM.].

New York began with an effort by a special gubernatorial committee to delineate the purposes and functions of the correctional system within the broad context of crime prevention.²²

The Governor's Special Committee on Criminal Offenders determined that correctional administrators have both discretionary and nondiscretionary duties.²³ Department officials must carry out the sanctions prescribed for offenders by the legislature²⁴ and the courts.²⁵ The

²² This effort was undertaken by the Governor's Special Committee on Criminal Offenders, appointed by Governor Rockefeller in 1965. The committee published a *Preliminary Report* in 1968 that constituted the first modern comprehensive rationalization of the New York correctional system. The McKay Commission attributed the initial redirection of the New York system from a custodial to a rehabilitative basis to the Governor's Special Committee. MCKAY COMM'N REPORT 18.

²³ Gov. SPEC. COMM. 37, 94. The correctional system is, of course, only one component of the criminal justice system. Therefore, the goal of the system, defined in broadest terms, is the prevention of crime. *Id.* at 72. The *Preliminary Report* of the Governor's Special Committee sets forth the specialized purposes of the correctional component and identifies the various functions of the three branches of government in operating the correctional system. See notes 24-26 and accompanying text *infra*. According to the *Report*, the correctional system carries out its objectives as follows:

1. By administering sanctions that have a sufficient degree of unpleasantness to
 - (a) demonstrate to the public at large that the threats annexed to prohibitions cannot be ignored without consequences (*i.e.*, general deterrence), and
 - (b) reinforce the confidence of the public in the fact that the state is determined to uphold norms, through a demonstration of action taken against wrongdoers (*i.e.*, prevention of anomie); and
2. By preventing recidivism through the use of sanctions as a vehicle for administering
 - (a) rehabilitative techniques to bring offenders to the point where they will voluntarily observe the prohibitions set forth in the criminal law, and
 - (b) preventive force through incarceration or closed community supervision of the offender so as to limit his opportunity to offend again, and
 - (c) punishment to make the threats a reality to the individual offender so that he will be more responsive to them in the future (*i.e.*, individual deterrence).

Gov. SPEC. COMM. 29-30. *But see* MCKAY COMM'N REPORT xvi-xix.

²⁴ The legislature intervenes in the correctional treatment process in three major ways. First, it allocates the discretion to intervene in the treatment process among the three branches of government. Thus, the legislature may reserve the authority to legislate certain mandatory minimum sentences, maximum sentence limits, or the conditions under which parole or temporary release is to be granted. This first type of intervention may be called the allocation of discretion. See Gov. SPEC. COMM. 102. The exercise of the discretion it has reserved for itself constitutes the second type of intervention. See, *e.g.*, notes 333-37 and accompanying text *infra* (restrictions imposed on temporary release programs). Third, the legislature annually approves funding of treatment programs and facilities and authorizes debt financing of capital expenditures. See notes 103-30 and accompanying text *infra*. This discretionary power is somewhat diminished by the increased utilization of federal grants by correctional administrators. See notes 131-50 and accompanying text *infra*. But this diminution is itself limited by the matching funds requirements and the temporary nature of the grants. See notes 146-50 and accompanying text *infra*. See generally Gov. SPEC. COMM. 37-38, 100-02.

²⁵ Typically, the courts' authority is directed toward determining the sentence range

Department must also determine custodial and programmatic *treatment* of each individual within the confines of his sentence.²⁶ Accordingly, the goals and objectives of the Department must be formulated in the context of determining how the Department is to exercise the discretion conferred upon it. The Department's response has been that the correctional system should discourage offender recidivism in a threefold manner: first, by individualizing treatment of inmates to conform to their individual custodial and programmatic needs;²⁷ second, by concentrating facilities and programs toward reintegrating the offender into successful community living;²⁸ and third, by providing a decent, humane environment in administering the nondiscretionary, or incarceration, aspects of its duties.²⁹

Although these three systemic objectives are hardly revolutionary

within bounds set by the legislature. *See* GOV. SPEC. COMM. 38-39, 103-08; note 24 *supra*. But, quite apart from any legislative allocation of discretion, courts are being asked to become increasingly involved in prison conditions on constitutional and other grounds. *Cf.* text accompanying notes 94-95 *infra*.

²⁶ *See* GOV. SPEC. COMM. 37, 50-51, 94, 108-09. The central thesis of the *Report* of the Governor's Special Committee is that the executive branch, through the Corrections Department, should have maximum discretion in coping with the problem of offender recidivism. *See id.* at 50-51. Of course, the Department must enforce judicial and legislative determinations in the form of sentences. *See* notes 24-25 *supra*. But these two branches are inherently unable to make the most qualified judgments as to recidivism risk. The legislature does not make its determinations in the context of individual cases. Because offenders represent a wide spectrum of risks (*see* notes 372-74 and accompanying text *infra*), it is possible for the legislature to take accurate cognizance of general deterrence at best. *See* GOV. SPEC. COMM. 100-03. A court, even though it sentences offenders individually, is pragmatically limited to the convicted person's past history and overt activities and is not able to give full weight to diagnoses of individual handicaps or deficiencies, or the deficiencies of the offender's community. *See* GOV. SPEC. COMM. 103, 283; notes 372-74, 382-84 and accompanying text *infra*.

The upshot of this reasoning is that the Department alone is able to administer treatment with a view toward preventing recidivism. To this end, the Department must have maximum custodial and programmatic flexibility:

[This] principle—that decisions as to the appropriate form of custody and the appropriate institution for incarceration are basically within the province of administrators directing treatment operations—reflects recognition, perhaps for the first time, that the field of treatment is a separate and distinct field of endeavor. Up to the present time the court has been responsible for making many treatment decisions that are unrelated to the . . . adjudicatory function. . . . We have reached a point where we now recognize that the form of custody selected and the institution used are vital *treatment* decisions. Accordingly, we also should recognize that such decisions should be made by administrators who specialize in this area, and who are also intimately familiar with the vast array of programs available.

Id. at 50-51 (emphasis added). This analysis is the backbone of the "diversification" concept. *See* text accompanying note 368 *infra*; notes 423-26 and accompanying text *infra*.

²⁷ *See* notes 46-48, 372-74 and accompanying text *infra*.

²⁸ *See* notes 49-50, 382-84 and accompanying text *infra*.

²⁹ *See* notes 51-52, 151-367 and accompanying text *infra*.

either in concept or definition³⁰ the process of engrafting them onto an ongoing penal system such as New York's proved slow and painful. The process began with the appointment of the Governor's Special Committee and the publication of its *Preliminary Report* in 1968.³¹ The committee made three significant determinations. First, it found that the correctional system was devoting its entire effort to the non-discretionary aspect of its duties. Few risks were being taken, and little originality in either treatment or security was being displayed.³² The Department was solely engaged in the incarceration of human beings. Second, the committee recommended that, given the absence of adequate goal demarcation, the post-adjudicatory treatment system should develop objectives and plans consistent with the broad purpose of preventing offender recidivism.³³ Finally, the committee found that, to facilitate careful exercise of treatment discretion consistent with this aim, the fragmented post-adjudicatory offender-treatment system³⁴ should be unified in a single administrative agency capable of administering coordinated treatment throughout the post-adjudicatory process.³⁵ In other words, it was recommended that agency fragmentation based on offender type (youth or adult, male or female) or the custodial restraint imposed (probation, incarceration, or parole) should end.

The committee's recommendations resulted in the creation, effective January 1, 1971, of the Department of Correctional Services.³⁶ The Department was given broad authority over all offenders, whether incarcerated or on parole.³⁷ The first item on the Department's agenda was the specification of objectives designed to prevent recidivism and to coordinate treatment of each offender.

³⁰ See, e.g., H. BARNES & N. TEETERS, *NEW HORIZONS IN CRIMINOLOGY* 524-25 (2d ed. 1951) (outlining 1870 Declaration of Principles of first national prison association); *NEW YORK STATE PRISON SURVEY COMM., REPORT* 104-18, 147-62 (1920); *TASK FORCE REPORT* 11-12. See generally *AMERICAN CORRECTIONAL ASS'N, MANUAL OF CORRECTIONAL STANDARDS* (3d ed. 1966) [hereinafter cited as *AMERICAN CORRECTIONAL ASS'N*]. The *Manual of Correctional Standards* contains the current Declaration of Principles of the American Correctional Association. See *id.* at xxi, xxiv (Principles XIII (individualized treatment), XVI (humane confinement), and XXXIII (community based treatment)).

³¹ See notes 21-22 and accompanying text *supra*.

³² *GOV. SPEC. COMM.* 215-18; *MCKAY COMM'N REPORT* xiv-xv, 16-18; *SELECT COMM. REP. NO. 2*, at 11-12.

³³ See notes 23 & 26 and accompanying text *supra*.

³⁴ See *GOV. SPEC. COMM.* 89-90.

³⁵ *Id.* at 47-50. See also Declaration of Principles of the American Correctional Association, Principle VII: "The correctional facilities, comprising both institutional and non-institutional treatment—probation and parole—should be planned and organized as an integrated system under a central authority responsible for guiding, controlling, unifying, and vitalizing the whole." *AMERICAN CORRECTIONAL ASS'N* xx.

³⁶ See note 2 and accompanying text *supra* Appendix B.

³⁷ *Ch. 475*, § 15, [1970] *N.Y. Laws* 1931.

Several factors served to complicate the new Department's task. An obsession with security was firmly entrenched throughout the system, especially at the institutional level.³⁸ Prior prison reform had been spasmodic³⁹ or cosmetic.⁴⁰ Whereas outsiders took the view that

³⁸ See MCKAY COMM'N REPORT 16-18; SELECT COMM. REP. No. 2, at 11-12; Interview with Wim van Eekeren, Deputy Comm'r of Administrative Services, Dep't of Correctional Services, in Albany, Oct. 30, 1972 (tape recording on file at the *Cornell Law Review*); Interview with Robert H. Fosen, *supra* note 14.

For 90 percent of the adult males committed to the state the only accommodations available were maximum security prisons. In these institutions, first offenders were mingled with men with long criminal careers; young men, for whom there was no place in the medium or minimum security facilities, were housed with older men; inmates who were convicted of property crimes, such as embezzlement, forgery, and cashing bad checks were thrown in with inmates who had a history of violent crimes and sexual aberrations; and men serving short sentences were forced to accommodate themselves to a routine designed for men who would spend the rest of their lives in prison. All lived under the same conditions of constant surveillance and long hours in the cells with little to do and almost nothing to learn. All correctional personnel agreed that many inmates could be trusted with greater freedom, and would benefit from the increased programming possible at medium and minimum security institutions. But the state system was saddled with maximum security institutions like Attica, and there were no places available elsewhere.

MCKAY COMM'N REPORT 17-18 (footnote omitted).

³⁹ Prior to 1972, only one less-than-maximum security facility for 500 adult male inmates existed in New York—Wallkill Correctional Facility, built in 1932. MCKAY COMM'N REPORT 17. See also Gov. SPEC. COMM. 213-14. Two medium security facilities for youthful offenders were in operation. Elmira Reformatory, built in 1876, and the Coxsackie facility, constructed in 1935. It is questionable whether Elmira is now a less-than-maximum security facility. See MCKAY COMM'N REPORT 12. Four minimum security work camps for youth were opened in 1955 pursuant to legislative authorization. See DEP'T OF CORRECTION, STATE OF NEW YORK, CORRECTIONS IN NEW YORK STATE, 14, 19 (1970). These facilities currently house approximately 2,400 inmates. See Appendix I.

Diversification of programs has been even more sporadic. Classification and diagnosis of inmate needs were attempted in the 1930's but were abandoned due to the lack of diverse facilities and programs to handle the specialized needs diagnosed. See Interview with Wim van Eekeren, *supra* note 38. The Clinton Diagnostic and Treatment Center, with a 125-inmate capacity (MCKAY COMM'N REPORT 17 n.13), began operation in 1966. See CORRECTIONS IN NEW YORK STATE, *supra* at 20.

These facilities and programs were not undertaken pursuant to any long-range plan (see notes 385-90 and accompanying text *infra*) and, given the fiscal climate, remained novelties. See notes 103-04 and accompanying text *infra*.

⁴⁰ One change recommended by the [Governor's] Special Committee [on Criminal Offenders] to signify this new commitment became effective on July 8, 1970. On that date the names of all the state's maximum security prisons were changed. There were no more prisons; in their places, instead, stood six maximum security "correctional facilities." The prison wardens became "institution superintendents"; the former principal keepers became "deputy superintendents"; and old-line prison guards awakened that morning to find themselves suddenly "correction officers." No one's job or essential duties changed, only his title. Certainly the institutions themselves did not change. No walls crumbled, no bars disappeared, no windows opened. No attitudes were revolutionized by the euphemistic name change, and no prejudices were erased by the simple expedient of switching titles.

To a man spending 14 to 16 hours a day in a cell being "rehabilitated," and having little useful to do with the rest of his hours, it was scarcely any comfort

rehabilitation had failed, insiders knew that it had never been tried.⁴¹ Programs for the general inmate population were virtually nonexistent.⁴² Thus, the negative conditioning factors in prison life⁴³ were not offset by positive programs.

Plainly, the old ideas about rehabilitation, individual deterrence, and security were ripe for further study.⁴⁴ During the gap period between the initial realization of inadequacies and the formulation of a new program, immediate changes in correctional practices were called for. Emphasis was placed on three problem areas; their resolution has become the goal of the Department of Correctional Services.⁴⁵

1. *Individualized Treatment*

Individualization of treatment is an obvious response to the failures of mass-congregate incarceration without treatment.⁴⁶ Such a treatment program requires an assessment of each inmate's custodial and programmatic treatment needs⁴⁷ and a system of diversified facilities and programs to meet those needs.⁴⁸

and no reassurance to learn that he was suddenly "an inmate in a correctional facility," instead of a convict in prison.

McKAY COMM'N REPORT 18-19. The change referred to by the McKay Commission was mandated by N.Y. CORREC. LAW § 2 (McKinney Supp. 1972).

41 Prison administrators throughout the country have continued pledging their dedication to the concept of rehabilitation while continuing to run prisons constructed in the style and operated in the manner of the 19th-century walled fortresses. "Security" has continued to be the dominant theme; the fantasy of reform legitimized prisons but the functionalism of custody has perpetuated them.

McKAY COMM'N REPORT 2.

42 See *id.* at xiv-xv.

43 See *id.* at 3; note 366 *infra*.

44 The present level of knowledge in this area is woefully inadequate and we are unable to state at the present time with demonstrable certainty whether any particular treatment method is effective in preventing recidivism. The most hopeful recommendation we can offer consists of an organizational structure for more rational administration of treatment services and a method of proceeding that will yield the badly needed knowledge.

Gov. SPEC. COMM. 51; see Dep't of Correctional Services, State of New York, A Preliminary Plan for Diversification of Departmental Facilities and Programs 7 (March 21, 1972) (on file at the *Cornell Law Review*) [hereinafter cited as Preliminary Diversification Plan]; notes 378-81 and accompanying text *infra*.

45 Memorandum from Commissioner Russell G. Oswald to Governor Nelson A. Rockefeller and the Legislature of the State of New York, Dec. 31, 1972, at 2-3 (on file at the *Cornell Law Review*) (summary of the Multi-Year Master Plan preceding its formal release).

46 See *id.* at 2; Dep't of Correctional Services, State of New York, Process Steps for Development of a Diversified System of Facilities and Programs 1-2 (July 1972) (on file at the *Cornell Law Review*) [hereinafter cited as Process Steps]. See also Gov. SPEC. COMM. 51-52, 99.

47 See notes 429-35 and accompanying text *infra*.

48 See notes 368-428, 436-46 and accompanying text *infra*.

2. Reintegration

Treatment must have a rational purpose. Despite decades of experience, penologists have yet to ascertain a successful rehabilitation formula.⁴⁹ Yet the system must react to the needs of inmates returning to the community.⁵⁰ A program of reintegration (or integration) of the offender into successful community living is considered the best interim rehabilitative device available.

3. Humanization

Present methods of incarceration are inconsistent with the reintegration concept.⁵¹ A decent, humane confinement must be provided each inmate.⁵² Although some speculation is inherent in the theories of individualization and reintegration, the system can undertake the humanization of the correctional environment without risk.

B. Implementation of the New Structure

On January 1, 1971, the New York Department of Correction⁵³ and the independent Division of Parole ceased to exist. In their place stood a unified post-adjudicatory correctional agency, the Department of Correctional Services.⁵⁴ The structural changes accompanying the merger⁵⁵ served to strengthen the impetus for reform. Of course, structural reorganization does not in itself constitute reform. Prerequisites to the proper utilization of the reformed structure are competent personnel,⁵⁶ adequate communication and policy enforcement,⁵⁷ and sufficient funds.⁵⁸

1. Personnel

The consolidation occasioned a massive change-over in policy-making personnel.⁵⁹ Most of the new administrators are not replace-

⁴⁹ See note 44 *supra*; notes 378-81 and accompanying text *infra*.

⁵⁰ See notes 9-11 and accompanying text *supra*; notes 382-84 and accompanying text *infra*.

⁵¹ See Preliminary Diversification Plan 8-9; Process Steps 24-25. See also Gov. SPEC. COMM. 93-94; MCKAY COMM'N REPORT 4; SELECT COMM. REP. No. 2, at 11-12.

⁵² The Department is required by law to give "due regard to . . . [t]he right of every [inmate] to receive humane treatment." N.Y. CORREC. LAW § 70.2 (McKinney Supp. 1972).

⁵³ See Appendix A.

⁵⁴ Ch. 475, §§ 13, 26, [1970] N.Y. Laws 1930, 1934; see Introductory Statement by Commissioner Russell G. Oswald, Formal Budget Hearing, Oct. 29, 1971, at 3 (on file at the *Cornell Law Review*) [hereinafter cited as First Year Budget Statement]; Appendix B.

⁵⁵ Compare Appendix A with Appendix B.

⁵⁶ See notes 59-68 and accompanying text *infra*.

⁵⁷ See notes 69-102 and accompanying text *infra*.

⁵⁸ See notes 103-50 and accompanying text *infra*.

⁵⁹ The seven highest positions in the Department's hierarchy—Commissioner, Execu-

ments—the positions they fill are new.⁶⁰ The new Commissioner was permitted to assemble an educated and experienced executive staff drawn from all areas of the United States.⁶¹ The willingness of the legislature and executive authorities to commit the funds necessary to bring these administrators to New York is an early indication of the attitudinal shift which has taken place in this state.⁶² The result of this effort has been the creation of a literal “brain trust” at the central

tive Deputy Commissioner, the Deputy Commissioners in charge of Administrative Services, Correctional Facilities, Correctional Program Services, Parole and Community Services, and the Assistant Commissioner for Planning, Evaluation and Research—are all filled by administrators who have assumed office since January 1, 1971. Certain of the administrators held positions in the predecessor agencies, some came from governmental agencies elsewhere in New York, and others emigrated from other states or the federal correctional system.

The organizational changes have been so extensive that few, if any, of the above positions can be said to have had counterparts prior to the merger. *Compare* Appendix A with Appendix B.

At the facility level, 21 of 22 facility chief administrators have assumed office since the reorganization. *See* N.Y. Times, Sept. 12, 1972, at 1, col. 1. Facility deputy superintendents have been appointed to positions created in October 1972. Dep't of Correctional Services, State of New York, Press Releases of Oct. 17 and 31, 1972 (on file at the *Cornell Law Review*).

⁶⁰ *Compare* Appendices A & C with Appendices B & D.

⁶¹ Interview with Wim Van Eekeren, *supra* note 13.

⁶² *See* text accompanying notes 107 & 115 *infra*. *But see* notes 108, 141-42, 708 and accompanying text *infra*. Federal funds have also played a significant role in recent personnel recruitment. *See generally* notes 131-50 and accompanying text *infra*. The Planning, Evaluation and Research Division, which has been instrumental in the development of the diversification master plan, is funded largely by a federal grant. *See* Dep't of Correctional Services, State of New York, Federal Grant Award Fact Sheets, Grant No. 2—Planning and Evaluation Division (Sept. 22, 1972) (on file at the *Cornell Law Review*) [hereinafter cited as Fed. Grant Award Fact Sheets]. The planning division has also been responsible for procuring a large amount of federal funds for other projects. Interview with Robert H. Fosen, Assistant Comm'r of Planning, Evaluation and Research, Dep't of Correctional Services, in Albany, Oct. 31, 1972 (tape recording on file at the *Cornell Law Review*). The planning grant authorization is due to expire in March 1974. Dep't of Correctional Services, State of New York, Federal Grant Awards Received Since June, 1971, and Proposed Through March, 1973, at 1 (undated) (chart) (on file at the *Cornell Law Review*) [hereinafter cited as Fed. Grant Awards Received and Proposed].

Another example of federal financial involvement in increasing staff development is the Administrative Support Services grant. *See* Fed. Grant Award Fact Sheets, Grant No. 1—Administrative Support Services. Three administrative units were created pursuant to the grant objectives of

provid[ing] administrative and other support services needed for the assessment of Department physical facilities in relation to institutional and community-based programs; monitor[ing] grants from outside sources and assess[ing] funded projects . . . ; and . . . participat[ing] in the recruitment and staffing of funded projects.

Id. Six executive level positions were authorized. *Id.* The grant expires in July 1973. Fed. Grant Awards Received and Proposed 2.

office level. Moreover, these new officials have interpreted the merger as a mandate for drastic correctional reform.⁶³

The principal structural reform, aside from the merging of agencies, was a movement away from a vertical line of authority to a horizontal system of correctional administration.⁶⁴ This shift represents a de-emphasis of the security or control aspect of the Department's duties and a corresponding increase in emphasis on planning and programming.⁶⁵

The corresponding vertical-to-horizontal structural shift at the facility level,⁶⁶ has tremendous potential significance. The long-standing priority of security over programs can be eliminated because the structure now provides for independent administration of custodial and rehabilitative programs. Moreover, the change will permit the employment of deputy superintendents, each with specialized expertise in the area of his authority,⁶⁷ and each of whom has equal access to the facility superintendent and strong communication links with his central office counterpart.⁶⁸

Despite these reforms, the vast majority of departmental personnel did not change with the new administration, and the problems of communication between the facilities and the central office engendered by the rapid reorganization present a significant obstacle to reform.

2. *Communication and Policy Enforcement*

The negative aspect of new leadership is that the change-over is

⁶³ See First Year Budget Statement 11; Dep't of Correctional Services, State of New York, Sixth-Month Operational Digest 1 (July 1971) (on file at the *Cornell Law Review*) [hereinafter cited as Six-Month Operational Digest].

However, certain proposed improvements regarding personnel have not received sufficient support. A bill to remove facility superintendents from civil service status and to give the Commissioner discretionary power to require their removal died in the New York Legislature. See (1972) Sen. Int. No. 9769 (Mr. Dunne). The bill had been proposed by the Governor in response to the recommendations of the Select Committee on Correctional Institutions and Programs. See SELECT COMM. REP. No. 2, at 23-24. The Select Committee implied that the Department was not in favor of the bill. *Id.* at 23.

⁶⁴ See First Year Budget Statement 4; cf. TASK FORCE REPORT 16; compare Appendix A with Appendix B.

⁶⁵ See First Year Budget Statement 3-4.

⁶⁶ Compare First Year Budget Statement 4 (proposing facility level reorganization) and Appendix C with Introductory Statement of Russell G. Oswald, Formal Budget Hearing, Nov. 14, 1972, at 3 (on file at the *Cornell Law Review*) [hereinafter cited as Second Year Budget Statement] (proposal of previous year virtually completed) and Appendix D.

⁶⁷ See Press Releases of Oct. 17 and 31, 1972, *supra* note 59.

⁶⁸ Cf. First Year Budget Statement 4. For example, the Deputy Commissioner for Program Services and his staff would presumably advise and coordinate policy with each deputy superintendent for program services.

perceived as a threat to the old guard,⁶⁹ which may create obstacles to the implementation of policies issued from superiors.⁷⁰ The old, fiscally starved Department of Correction was the lowest agency on the state appropriations "totem pole."⁷¹ Continuation of on-going programs became a major task as budgets either remained constant or were cut. Bureaucratic rigidity and obsession with security were inevitable by-products of such a stagnant situation.⁷²

One result of the inadequate budget was the absence of any central office capability to monitor the institutional response to departmental directives.⁷³ Uniform standards of correctional treatment were unenforceable. Each facility was effectively independent of the central office.⁷⁴ Irrational variations existed in rules governing inmate conduct at the several correctional facilities. These "inconsistencies" have been cited as causes of inmate agitation prior to the Attica takeover.⁷⁵

The response of the Department to the problem of inertia and resistance to reform has taken several forms. Perhaps the most important indication has simply been the vast increase in the volume of communication between Albany and field personnel. The regularity of administrative bulletins, press releases, program reports, and fact sheets has increased sharply.⁷⁶ Inquiries are being made and responses solici-

⁶⁹ Interview with Walter Dunbar, Executive Deputy Comm'r of Correctional Services, in Albany, Oct. 30, 1972 (tape recording on file at the *Cornell Law Review*).

⁷⁰ "You either have a Department and a departmental team or you have a confederation of autonomy. We inherited here too much isolation and autonomy You have to overcome that gradually." *Id.*

⁷¹ See Interview with Wim van Eekeren, *supra* note 13; notes 103-04 and accompanying text *infra*.

⁷² *Cf.* Interviews with Wim van Eekeren, *supra* note 38, and Robert H. Fosen, *supra* note 14.

⁷³ Interview with Russell G. Oswald, *supra* note 4.

⁷⁴ Interview with Walter Dunbar, *supra* note 69; see note 70 *supra*.

⁷⁵ MCKAY COMM'N REPORT 74-76. Commissioner Oswald felt constrained to mention these inequities in a speech delivered to the inmates of the Attica Correctional Facility just six days prior to the takeover. Address by Commissioner Russell G. Oswald to the Inmates of Attica Correctional Facility, *supra* note 3.

⁷⁶ NEW YORK STATE SELECT COMM. ON CORRECTIONAL INSTITUTIONS AND PROGRAMS, REPORT NO. 4, at 20-21 (1972) [hereinafter cited as SELECT COMM. REP. NO. 4]. The Select Committee has reservations about the success of departmental efforts:

While some progress seems to have been made, it is common to have correction officers, teachers, inmates and others complain that they do not know what is going on. There is still the strong vestige of the long-standing isolation of the institutions from the central office. . . .

. . . .

Realism dictates that many of these conflicts are to be expected and will never be resolved in any bureaucratic structure. Once again, the Department is doing much more than was done in the past, but the expectation has changed and much more is needed.

Id.

ted to encourage two-way communication.⁷⁷ Furthermore, structural means of facilitating policy communication and enforcement have been instituted.

a. *Inspector General Service.* The Inspector General Service was established by the Department to enforce central office policy and to aid in vertical communication.⁷⁸ This unit gives the central office the ability to evaluate institutional conditions firsthand. The responsibilities of the Inspector General are broad; he is directed to monitor programs, to insure that operations are in compliance with law and policy, and to investigate incidents and complaints.⁷⁹ He, along with three assistant investigators, has "access to all Department facilities, reports, files and other data, as well as access to any employees, inmates or parolees."⁸⁰

The inspection unit is a necessary device if central office reforms are to be implemented. But the unit is grossly understaffed;⁸¹ four inspectors can hardly be expected to monitor twenty-two scattered facilities⁸² as well as a central office without overlooking many significant details. Moreover, the confidentiality of the inspectors' files⁸³ inhibits meaningful evaluation of the Service's work product or departmental responses to its reports.

Since the Inspector General Service, as a departmental organ,⁸⁴ reports and is responsible directly to the Commissioner,⁸⁵ it cannot act as an ombudsman⁸⁰—a champion of inmates' rights. The Service may, indeed, report systematic or prolonged violations of inmate rights

⁷⁷ See, e.g., Dep't of Correctional Services, State of New York, Memorandum of Sept. 28, 1972 (on file at the *Cornell Law Review*) (request for suggestions on honor living units proposal); Dep't of Correctional Services, State of New York, Admin. Bull. No. 19 (Jan. 18, 1972) (on file at the *Cornell Law Review*) (request for inmate liaison committee evaluation reports). But see SELECT COMM. REP. No. 4, at 20:

Both employees and inmates frequently state that they are not consulted about new programs and policies and that they do not know their details. Many correction officers feel that their experience, insight and responsibility for implementing programs merit consideration by central office staff concerning new programs and procedures.

⁷⁸ Interview with Russell G. Oswald, *supra* note 4. The service is funded by the state.

⁷⁹ Dep't of Correctional Services, State of New York, Admin. Bull. No. 59 (May 22, 1972) (on file at the *Cornell Law Review*).

⁸⁰ Dep't of Correctional Services, State of New York, Press Release (June 2, 1972) (on file at the *Cornell Law Review*).

⁸¹ SELECT COMM. REP. No. 4, at 51; Interview with Russell G. Oswald, *supra* note 4.

⁸² See Appendices I & J.

⁸³ See Admin. Bull. No. 59, *supra* note 79. The authors were unable to gain access to the reports or files of the Inspector General.

⁸⁴ See Appendix B.

⁸⁵ Admin. Bull. No. 59, *supra* note 79.

⁸⁶ See note 300 *infra*.

as an incident to its duty to report policy violations among administrators. But this office lacks the traditional attributes of the ombudsman— independence and powers of public disclosure and persuasion.

Although inmate grievance procedures⁸⁷ are chiefly designed to further inmate rights, they may have the ancillary effect of facilitating intradepartmental communication and policy enforcement. Two such devices are especially relevant to vertical communication: inmate liaison committees and complaint letters sent to central office administrators.

Inmate liaison committees, established at each institution in the wake of the Attica bloodshed,⁸⁸ are subordinated to the facility superintendent. They do not communicate as a group to central office personnel.⁸⁹ This limitation is difficult to reconcile with the departmental objective of breaking down institutional isolation.⁹⁰

Inmates have unrestricted access to the central office by letter; censorship of these letters is prohibited.⁹¹ However, the effectiveness of this channel of communication has been questioned.⁹² The complaint letter technique does not fill the gaps existing in the liaison committee structure because inmate letters can easily be dismissed as unrepresentative. Nevertheless, the Department has embarked on a program of actively encouraging grievance letters.⁹³

⁸⁷ See notes 288-332 and accompanying text *infra*.

⁸⁸ See Admin. Bull. No. 19, *supra* note 77.

⁸⁹ See Interview with Walter Dunbar, Executive Deputy Comm'r of Correctional Services, in Albany, Oct. 31, 1972 (tape recording on file at the *Cornell Law Review*); note 330 and accompanying text *infra*.

⁹⁰ Even if forced negotiations between the superintendent and the inmate liaison committee are desirable, such a policy does not preclude regular committee reporting to the central office. While isolated, frivolous, or minor grievances could be left for solution at the facility level, action could be taken when reports revealed a pattern of complaints indicating widespread laxity in adherence to policy.

⁹¹ See *Sostre v. McGinnis*, 442 F.2d 178, 200-01 (2d Cir. 1971), *cert. denied sub nom. Sostre v. Oswald*, 404 U.S. 1049 (1972); notes 288-93 and accompanying text *infra*.

⁹² See *Sostre v. McGinnis*, 442 F.2d 178, 182 (2d Cir. 1971), *cert. denied sub nom. Sostre v. Oswald*, 404 U.S. 1049 (1972); note 313 *infra*.

⁹³ The Department sought and obtained a federal grant in the amount of \$54,910 for a Correspondence Services Program to "process inquiries and complaints from Departmental clientele and the community . . . insuring that the Department receives the credibility and support of the offenders and the community." Fed. Grant Award Fact Sheets, Grant No. 5—Correspondence Services Program. The original authorization expired March 31, 1973, but it has been extended through March 31, 1974. Telephone conversation with Kevin Dulin, Administrative Ass't to Walter Dunbar, Executive Deputy Comm'r of Correctional Services, April 23, 1973. Under the program, when a complaint is received from an inmate, an immediate interim reply is sent by one of the program's staff members. Meanwhile, the letter is routed to the appropriate departmental official. The Commissioner's executive assistant acts as a liaison between the correspondence unit and

b. *Legal Services Program.* In the waning days of his administration, former Commissioner of Correction Paul McGinnis recognized the expanding role of the courts in securing both a humane correctional environment and the observance of inmate rights.⁹⁴ In his last appearance before budgetary authorities, Commissioner McGinnis pleaded for funds to increase the legal assistance available to the Department:

It would . . . appear to this Department that the Office of Department Counsel must be expanded and improved, if we are to cope with the requirements placed upon the administration of a Correctional system by recent court decisions. It is no longer possible for any Correctional system to ignore the constitutional and legal rights of the inmates under its jurisdiction and therefore, Correctional administrators must have available all the legal assistance that is necessary.⁹⁵

State money was not forthcoming, and expansion of legal service had to await federal funding.⁹⁶

The precise role of correctional counsel is difficult to define. It has been proposed that departmental lawyers be given the authority to represent the Department in actions brought against correctional officials,⁹⁷ but little support has been mustered for this suggestion.⁹⁸ Many see the role of the legal counsel as highly constructive—drafting reform legislation, advising field administrators on the meaning of binding or persuasive court decisions, and anticipating the trend of judicial intervention. On the negative side, counsel could also impede change by endlessly litigating firmly established inmate rights and incorrectly advising the Department on the scope of prisoners' rights.

The new Department has an expanded central office legal staff⁹⁹ and a new, federally-funded regional network of counsel to advise field administrators.¹⁰⁰ These regional offices do not provide legal aid to the Commissioner, apparently in an effort to oversee the pattern and gravity of the complaints.

⁹⁴ See Introductory Statement by Commissioner Paul D. McGinnis, Formal Budget Hearing, Nov. 7, 1970, at 4 (on file at the *Cornell Law Review*).

⁹⁵ *Id.*

⁹⁶ See Fed. Grant Award Fact Sheets, Grant No. 6—Legal Field Services and Law Libraries.

⁹⁷ See SELECT COMM. REP. NO. 1, at 18. The proposals presented in the Select Committee's first report were not formal recommendations of the committee, and it should not be assumed "that a majority of the Committee members necessarily endorse these proposals." *Id.* at 11.

⁹⁸ Indeed, the Select Committee's original idea could not even obtain the formal endorsement of that body. See SELECT COMM. REP. NO. 2, at ii.

⁹⁹ Interview with Robert H. Fosen, *supra* note 62.

¹⁰⁰ Fed. Grant Award Fact Sheets, Grant No. 6, *supra* note 96, at 1. The original

inmates, despite constant demands for such assistance. A departmental fact sheet has listed some activities of the regional counsel, which include developing parole violation procedures, reviewing departmental rules and regulations and relevant court decisions, and aiding in drafting proposed legislation affecting the Department.¹⁰¹ The new lawyers have also assisted the state Attorney General in inmate actions brought against the Department.¹⁰²

3. *Financing Reform*

One of the most serious obstacles to correctional reform in the State of New York is inadequate funding.¹⁰³ Even when the events at Attica resulted in a higher priority for corrections, the state found itself in such a budgetary crisis that support through 1971 remained inadequate.¹⁰⁴ Although the Department did not alter its budgetary requests presented just after the Attica disturbance,¹⁰⁵ a supplemental appropriation of \$12 million was deemed necessary in May 1972.¹⁰⁶ This supplement is viewed as one indication of the changing political attitude toward corrections.¹⁰⁷ Although the appropriation emphasized provisions for added security, some increased funds for rehabilitative programs were also included.¹⁰⁸

grant, in the amount of \$237,191, matched by \$80,666 in state funds (Fed. Grant Awards Received and Proposed 1), was also designed to establish law libraries for inmates at state correctional facilities. See note 295 and accompanying text *infra*. The objectives not pertaining to the law libraries are:

1. To insure that actions taken by Department personnel are legally sound and have a proper basis in law.
2. To reduce litigation against the Department by insuring the legality of Department actions.
3. To insure that Department policies and procedures for handling inmates and parolees are consistent with constitutional guarantees and relevant court decisions.

Fed. Grant Award Fact Sheets, Grant No. 6, *supra* note 96, at 1.

¹⁰¹ Fed. Grant Award Fact Sheets, Grant No. 6, *supra* note 96, at 2.

¹⁰² *Id.* This function does not come within the purposes set forth in the grant authorization. See note 100 *supra*.

¹⁰³ See, e.g., MCKAY COMM'N REPORT 20, 131-33; Interviews with Wim van Eekeren, *supra* note 38, and Robert H. Fosen, *supra* note 14; Interviews with Wim van Eekeren and Frank Daley, *supra* note 13. Comments on the inadequacy of funding of correctional programs permeates the literature available on the New York system.

¹⁰⁴ See Interview with Wim van Eekeren, *supra* note 38.

¹⁰⁵ See First Year Budget Statement 1; Interview with Frank Daley, *supra* note 13.

¹⁰⁶ See note 108 *infra*.

¹⁰⁷ See Dep't of Correctional Services, State of New York, Press Release, May 23, 1972 (on file at the *Cornell Law Review*) (quoting Commissioner Oswald).

¹⁰⁸ For reasons similar to those outlined below (see notes 109-11 and accompanying

The Governor's annual budget proposals formerly contained separate categories for custodial and rehabilitative expenditures.¹⁰⁹ Since the merger of the old departments, however, one consolidated category, "Rehabilitation and Supervision of Offenders," is used.¹¹⁰ This consolidation prevents those outside the Department, including legislators, from discerning the relative appropriations and increases for custody as opposed to rehabilitation. The justification for this change is questionable. A similar consolidation has taken place in the description of personnel engaged in custodial as opposed to rehabilitative work.¹¹¹

a. *Debt Financing.* Until 1972, the entire appropriations of the Department, including funds for large capital expenditures, came from currently available revenues.¹¹² Each new expenditure was subject both to the pitfalls of the annual appropriation process and to the fiscal capacity of the revenue system.

The New York Legislature's provision in 1972 for capital construction bond financing¹¹³ represents a milestone in the Department's quest for adequate funding for reform.¹¹⁴ Large capital expenditures neces-

text *infra*), it is difficult to ascertain the actual ratio of funds allocated to custodial as opposed to rehabilitative operations. The breakdown of the appropriation is as follows:

Central office operations	\$ 1,131,000
Expenses of the Commission of Corrections	125,000
General operating expenses	1,350,000
Strengthening of facilities staffs	5,300,000
Improvement of Parole Services	50,000
Rehabilitative programs	2,874,600
Diversification	1,192,000
TOTAL	\$12,022,600

Ch. 341, [1972] N.Y. Laws 1569. Only the latter two items (\$4,066,660 or 33.8% of the total) are clearly for non-custodial programs. At least 55.3% (\$6,650,000) is clearly allocable to custodial services (staff support and general operating expenses).

¹⁰⁹ See, e.g., STATE OF NEW YORK, EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1970 TO MARCH 31, 1971, at 281 (1970).

¹¹⁰ See, e.g., STATE OF NEW YORK, EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, at 95 (1973).

¹¹¹ Compare STATE OF NEW YORK, EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1972 TO MARCH 31, 1973, at 235 (1972) with EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, *supra* note 112, at 107.

¹¹² Interview with Wim van Eekeren, *supra* note 38.

¹¹³ Ch. 337, [1972] N.Y. Laws 1545 (codified at N.Y. CORREC. LAW §§ 21-a, 177, 186 (McKinney Supp. 1972), N.Y. PUB. AUTH. LAW §§ 1676, 1678, 1680, 1692 (McKinney Supp. 1972), N.Y. STATE FIN. LAW §§ 97-n, 97-o, 121, 175 (McKinney Supp. 1972), and N.Y. UNCONSOL. LAWS §§ 4402-06, 4407-a, 4412, 4414, 4414-a (McKinney Supp. 1972)).

¹¹⁴ See Second Year Budget Statement 9-10; Interview with Wim van Eekeren, *supra*

sary for the success of diversification would have been fiscally prohibitive if made at the expense of other state projects also tied to annual appropriations. The Legislature's approval of the bonding authorization is another example of the changed political climate in the state since the Attica disturbance.¹¹⁵

The bonding act actually consists of technical amendments to four different state laws.¹¹⁶ These amendments engraft authorization for correctional debt financing of capital expenditures onto a pre-existing arrangement for debt financing of college dormitories and mental health facilities.¹¹⁷ The debt authorization has a current ceiling of fifty million dollars; the Department was required to submit its long-term capital construction requirements in a master plan to the legislature by January 1, 1973.¹¹⁸ Increases in the ceiling will be contingent on an annual updating of the plan.¹¹⁹ This method has an obvious political advantage: raising the ceiling does not require concurrent displacement of funds for other state projects.

Pursuant to the act, legal title to all facilities and property of the Department of Correctional Services was transferred to an independent governmental subsidiary, the Health and Mental Hygiene Facilities Improvement Corporation.¹²⁰ This corporation was directed to determine, in cooperation with the Department, the physical capacity and needs of the Department.¹²¹ The corporation has the authority to pledge or convey the correctional facilities it owns, income from correctional projects, and certain other reserves and real property to secure loans for correctional facility construction.¹²² The funds will be provided by another independent governmental subsidiary, the New York State Dormitory Authority,¹²³ which will obtain the funds by

note 38; cf. Executive Chamber of Nelson A. Rockefeller, Governor, State of New York, Press Release, April 6, 1972 (on file at the *Cornell Law Review*).

¹¹⁵ However, there are indications that the legislature is not entirely favorably disposed toward correctional reform. See note 108 and accompanying text *supra*; notes 141-42, 708 and accompanying text *infra*. But see text accompanying notes 62 & 107 *supra*.

¹¹⁶ See note 113 *supra*.

¹¹⁷ N.Y. PUB. AUTH. LAW § 1680(2)(a) (McKinney Supp. 1972); Interview with Wim van Eekeren, *supra* note 38.

¹¹⁸ Ch. 338, § 2, [1972] N.Y. Laws 1562.

¹¹⁹ N.Y. UNCONSOL. LAWS § 4414-a(3) (McKinney Supp. 1972); see Interview with Wim van Eekeren, *supra* note 38.

¹²⁰ N.Y. CORREC. LAW § 21-a (McKinney Supp. 1972).

¹²¹ N.Y. UNCONSOL. LAWS § 4407-a (McKinney Supp. 1972).

¹²² *Id.* § 4414-a.

¹²³ N.Y. PUB. AUTH. LAW § 1677 (McKinney Supp. 1972).

floating bonds which can be secured by property received from the corporation.¹²⁴

The repayment of the dormitory bond obligations depends upon, in effect, the payment of the corporation's obligations to the dormitory authority. Thus, the crucial aspect of the act is the means by which the corporation is to obtain the funds to pay its obligations to the dormitory authority.¹²⁵ Payment of the obligations comes initially from revenues earned through correctional projects such as prison industries.¹²⁶ The balance, if any, is to be made up by state revenues:

To enable the corporation to make its payments to the dormitory authority . . . the state shall, in addition to any other funds that may be appropriated to the health and mental hygiene facilities improvement corporation, annually appropriate and pay to the corporation an amount equal to the aggregate of all . . . payments due and payable to the dormitory authority from the corporation . . .¹²⁷

Other provisions require that the state maintain a reserve equal to obligations which will become due to the dormitory authority within the next year.¹²⁸

The act permits the Department to use its earnings to secure much larger immediate loans for current capital expenditures.¹²⁹ To improve the earning potential of the Department, plans are being formulated to establish new income-producing projects.¹³⁰

b. *Federal Grants-in-Aid.* In 1971, the Omnibus Crime Control and Safe Streets Act of 1968¹³¹ was amended¹³² to add provisions for federal grants under the Law Enforcement Assistance Administration

¹²⁴ *Id.* § 1680(e).

¹²⁵ Compare note 122 and accompanying text *supra* with note 124 and accompanying text *supra*.

¹²⁶ N.Y. STATE FIN. LAW § 97-n (McKinney Supp. 1972).

¹²⁷ N.Y. UNCONSOL. LAWS § 4414-a(3) (McKinney Supp. 1972).

¹²⁸ N.Y. PUB. AUTH. LAW § 1692(3) (McKinney Supp. 1972).

¹²⁹ N.Y. STATE FIN. LAW § 97-n(5) (McKinney Supp. 1972).

¹³⁰ Chief among these plans are the ecology projects proposed for the new adult work camps. Interview with Wim van Ekeren, *supra* note 38. A more aggressive sales effort for the traditional prison products is also planned (*id.*), consistent with the statutory limitation that sales must be made to governmental entities only. N.Y. CORREC. LAW § 177 (McKinney Supp. 1972).

¹³¹ Act of June 19, 1968, Pub. L. No. 90-351, 82 Stat. 197 (codified in scattered sections of 5, 18, 42, 47 U.S.C.) [hereinafter referred to as the "1968 Crime Act"].

¹³² Act of Jan. 2, 1971, Pub. L. No. 91-644, 84 Stat. 1880 [hereinafter referred to as the "1970 Crime Act"]. The amending act, although given final congressional approval in early 1971, is popularly referred to as the Omnibus Crime Control Act of 1970.

(LEAA)¹³³ to state planning agencies¹³⁴ for the purpose of "develop[ing] and implement[ing] programs and projects for the construction, acquisition, and renovation of correctional institutions and facilities, and for the improvement of correctional programs and practices."¹³⁵ Although the 1968 Act did not prohibit grants to state correctional agencies, the 1971 amendment was intended to guarantee that some LEAA funds would be appropriated in this manner.¹³⁶

The increase in LEAA grants to the Department of Correctional Services over the past three years has been dramatic. In the 1969-1970 fiscal year, the state received \$215,554 in federal grants for correctional programs and facilities.¹³⁷ For fiscal year 1972-1973, that figure was well over eight million dollars.¹³⁸ Although the Department estimates a decline (to five million dollars) in fiscal year 1973-1974,¹³⁹ previous experience indicates that this estimate is much too low.¹⁴⁰ The Office of Crime Control Planning, New York's state planning agency under the LEAA, has made a firm commitment to correctional reform;¹⁴¹ many, if not most, of the interim improvements since the Attica rebellion have been financed with federal funds.¹⁴² It is not clear

¹³³ LEAA was established under 1968 Crime Act § 101, 82 Stat. 198, *as amended*, 42 U.S.C. § 3711 (1970). The Administration is within the U.S. Department of Justice under the general authority of the Attorney General. *Id.*

¹³⁴ See 1968 Crime Act §§ 201-05, 82 Stat. 198, *as amended*, 42 U.S.C. §§ 3721-25 (1970). Much of the substantive ordering of priorities is decided by the state planning agency. See 1968 Crime Act § 203(b)(3), 42 U.S.C. § 3723(b)(3) (1970).

¹³⁵ 1970 Crime Act § 6(a), 42 U.S.C. § 3750 (1970).

¹³⁶ See S. REP. NO. 1253, 91st Cong., 2d Sess. 30 (1970).

¹³⁷ EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1970 TO MARCH 31, 1971, *supra* note 109, at 281.

¹³⁸ EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, *supra* note 110, at 95.

¹³⁹ *Id.*

¹⁴⁰ Compare STATE OF NEW YORK, EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1971 TO MARCH 31, 1972, at 243 (1971) (federal grants to be received in fiscal year 1971-72 estimated at \$125,000) and EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1972 TO MARCH 31, 1973, *supra* note 111, at 227 (federal grants to be received in fiscal year 1972-73 estimated at \$5,980,000) with *id.* at 227 (actual federal money received in fiscal year 1971-72 was \$3,551,800) and EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, *supra* note 110, at 95 (actual federal money received in fiscal year 1972-73 was \$8,815,100).

¹⁴¹ See Interview with Robert H. Fosen, *supra* note 62.

¹⁴² The following reform programs are substantially federally funded: legal field services (*see* notes 96 & 100-01 and accompanying text *supra*), facility law libraries (*see* note 295 and accompanying text *infra*), planning and evaluation unit (*see* note 62 *supra*), model reception and classification experiment (*see* notes 429-35 and accompanying text *infra*), personnel training program (*see* notes 168-71 and accompanying text *infra*), correspondence services program (*see* note 93 and accompanying text *supra*; notes 315-18 and accompanying text *infra*), evening academic and vocational program (*see* notes 363-65

whether the increase in federal support is due to the better "grantsmanship" of the Department occurring since the planning staff began work,¹⁴³ the increased amount of federal funds available, or the renewed interest in correctional reform on the part of those outside the Department subsequent to the Attica uprising.¹⁴⁴

Certain conditions are attached to the receipt of LEAA funds.¹⁴⁵ The state is required to match the grants on a seventy-five percent federal, twenty-five percent state-funded basis.¹⁴⁶ More importantly, the grants act as "seed" money; they are not permanent sources of funds for particular programs.¹⁴⁷ In New York, a well-conceived program can normally receive federal support for two years. If the program is especially valuable and the state is not able to fund it completely at the time of expiration, a third year of support is permissible and, in extreme emergencies, even a fourth. But unless the state picks up the program's costs at some point, federal funds will be terminated and the program will cease.¹⁴⁸ Whether the state will be willing to fund

and accompanying text *infra*, administrative support services (*see* note 62 *supra*), new inmate clothing (*see* notes 207-09 and accompanying text *infra*), upgrading of food services (*see* notes 191-92 and accompanying text *infra*), minority personnel recruitment program (*see* notes 178-80 and accompanying text *infra*), and pre-release community centers project. *See* notes 498-504 and accompanying text *infra*. The principal reforms involving substantial expenditures accomplished without federal assistance are limited to the employment of new executive personnel (*see* notes 59-63 and accompanying text *supra*), the Inspector General Service (*see* notes 78-86 and accompanying text *supra*), work release expenses (*see* notes 349-55 and accompanying text *infra*), and central office legal counsel expansion. *See* note 99 and accompanying text *supra*.

Each of the federal grants is matched with a certain amount of state money. *See* Fed. Grant Awards Received and Proposed 1-3; note 146 and accompanying text *infra*.

¹⁴³ The enthusiasm of the present Department for federal aid contrasts sharply with the attitude of the former correctional administration. Former Commissioner of Correction Paul D. McGinnis identified his administration's policy of caution: "The somewhat sudden influx of Federal funds . . . has presented certain problems As we gain experience in these matters, we feel that we will be better able to utilize these grant funds." Introductory Statement by Paul D. McGinnis, *supra* note 94, at 13.

One of the first acts of the new administration was to apply for a federal grant to fund an agency to procure significant amounts of additional federal money. Interview with Robert H. Fosen, *supra* note 62. The new policy is: "We take all the money we can get." *Id.*

¹⁴⁴ *See* notes 156-57 and accompanying text *infra*.

¹⁴⁵ Under the terms of the 1970 Crime Act, the state must set forth a comprehensive statewide plan for building and renovating correctional facilities, provide assurances that funds and property will not be diverted to private persons and that state funding will not be correspondingly reduced, emphasize community-based correctional facilities and programs, recruit and train correctional personnel, and maintain an up-to-date plan for administration of the grants. 1970 Crime Act § 6(a), 42 U.S.C. § 3750b (1970).

¹⁴⁶ *Id.*

¹⁴⁷ 1968 Crime Act § 303(8), 42 U.S.C. § 3733(8) (1970).

¹⁴⁸ Interview with Robert H. Fosen, *supra* note 62.

most of the LEAA-initiated programs in the correctional area remains uncertain.¹⁴⁹ If state support is not forthcoming, reform in New York will suffer a serious setback.

Fundamental change in correctional programs and practices thus will depend on the response of the Legislature. There are significant indicators that the legislative climate is favorable.¹⁵⁰ But since many reform programs remain federally funded or are still in the planning stage, a crucial decision remains as to whether these programs will be given long-term support in the form of state appropriations.

II

HUMANIZATION

In a communiqué issued shortly before the Attica uprising, the newly formed Department of Correctional Services outlined its objectives in terms of providing conditions which would maximize the offender's reintegration into society.¹⁵¹ Although the primary method for achieving this goal would later be formulated in the Department's master plan for diversification,¹⁵² immediate changes were required to better conditions within the existing maximum security structure:

For inmates, "correction" meant daily degradation and humiliation: being locked in a cell for 14 to 16 hours a day; working for wages that averaged 30 cents a day in jobs with little or no vocational value; having to abide by hundreds of petty rules for which they could see no justification. It meant that all their activities were regulated, standardized, and monitored for them by prison authorities and that their opportunity to exercise free choice was

¹⁴⁹ Cf. First Year Budget Statement 8 and Second Year Budget Statement 6 (exhorting state budgetary authorities to authorize funding of planning division when grant expires). *But see* Interview with Robert H. Fosen, *supra* note 62 (state is expected to fund most of the programs); cf. N.Y. Times, April 4, 1973, at 73, col. 7.

¹⁵⁰ The passage of the landmark bonding bill and the \$12 million supplemental appropriation, the funding of salaries for new executive positions, and the matching of federal grants-in-aid with a percentage of state funds are legislative actions indicative of the rise in fiscal priority of corrections.

¹⁵¹ Six-Month Operational Digest 8. While recognizing that rehabilitation eventually was up to the individual, the Department nevertheless pledged to provide an environment that would give opportunity and motivation for "those who want to change and a secure, humane confinement for those who are not interested in change." *Id.*

¹⁵² The Department's original formulation of the master plan appeared in March 1972 as *A Preliminary Plan for Diversification of Departmental Facilities and Programs*. See generally Preliminary Diversification Plan. These efforts culminated on April 1, 1973, with the submission to the legislature of the Department's first formal master plan. DEP'T OF CORRECTIONAL SERVICES, STATE OF NEW YORK, MULTI-YEAR MASTER PLAN (1973) [hereinafter cited as MULTI-YEAR MASTER PLAN].

practically nonexistent: their incoming and outgoing mail was read, their radio programs were screened in advance, their reading material was restricted, their movements outside their cells were regulated, they were told when to turn lights out and when to wake up, and even essential toilet needs had to be taken care of in view of patrolling officers. Visits from family and friends took place through a mesh screen and were preceded and followed by strip searches probing every orifice of the inmate's body.

In prison, inmates found the same deprivation that they had encountered on the street: meals were unappetizing and not up to nutritional standards. Clothing was old, illfitting, and inadequate. Most inmates could take showers only once a week. . . .

. . . .

In the end, the promise of rehabilitation had become a cruel joke. If anyone was rehabilitated, it was in spite of Attica, not because of it.¹⁵³

Undeniably, the new Department had formulated certain concrete plans to change prison life,¹⁵⁴ and limited progress was made in that direction before the Attica rebellion.¹⁵⁵ However, without the new-found public concern with prison conditions as a result of Attica, the new demands made upon the Department,¹⁵⁶ and the reports and rec-

¹⁵³ MCKAY COMM'N REPORT 3-4. These conditions were no worse than those existing in New York's other maximum security prisons. *Id.* at 2.

¹⁵⁴ As of September 1, 1971, the following federal grant projects had already received funding approval: (1) Legal Assistance Program and Law Libraries, (2) Planning and Evaluation Unit, (3) Model Reception-Classification Program, (4) Personnel Training, (5) Residential Treatment Program, (6) Community-Volunteer Program, (7) Academic-Vocational Evening Program, and (8) Support Services Bureau. Six-Month Operational Digest 4-8. *See generally* Fed. Grant Award Fact Sheets.

Rules governing visitation, correspondence, receipt of reading material, and access to news media had also undergone some liberalization. *See* Six-Month Operational Digest 2-3. *See generally* notes 224-340 and accompanying text *infra*. Experimental programs to increase shower time and to remove visitation screens had also been established at certain facilities. Six-Month Operational Digest 3-4. *See generally* notes 210-15, 257-69 and accompanying text *infra*.

¹⁵⁵ *See, e.g.*, Six-Month Operational Digest; Address by Commissioner Russell G. Oswald to the Inmates of Attica Correctional Facility, *supra* note 3; N.Y. Times, Sept. 14, 1971, at 32, col. 3.

¹⁵⁶ The demands made at Attica during the takeover included a list of six "Immediate Demands" (MCKAY COMM'N REPORT 205), 15 "Practical Proposals" (*id.* at 222), and 33 "Observers' Proposals." *Id.* at 251-57. The negotiations centering around these proposals resulted in a list of 28 concessions which were acceptable to Commissioner Oswald. *See* Appendix E. However, the inmates rejected the 28 proposals as inadequate, particularly because they did not include amnesty. *Id.* at 263. Although not legally binding upon the Department because of the subsequent breakdown in negotiations, the 28 concessions contained major penal advances (*see id.* at 257) and provide a convenient standard by which to gauge subsequent departmental action.

The correctional officers also had a set of demands, threatening to lock in the inmates at all facilities until the state agreed to them. *See* N.Y. Times, Oct. 6, 1971, at 52,

ommendations made to and by it,¹⁵⁷ it is impossible to say how far these changes would have progressed.

In the wake of this turmoil and discontent on both sides of the prison wall, the re-evaluation which the Department had begun gained impetus as the need to change prison conditions took on a new sense of immediacy.¹⁵⁸

A. *Recruitment and Training of Correctional Officers*

Correctional officers are charged with implementing change at the institutional level. Preoccupation with security by the majority of officers, however, presents a great obstacle to meaningful change.¹⁵⁹ The lack of officer training in those skills necessary to implement a philosophy of reintegration¹⁶⁰ is attributable to inadequate planning, which has victimized the officer as well as the inmate.¹⁶¹

The Department has taken broad action to improve the situation

col. 1. On October 5, 1971, the Governor and the Department reached agreement with Security Unit Council 82, the labor representative of the correctional officers. The State agreed to provide a special unit wherein an estimated 500 "hardened and dangerous offenders" would be confined. *Id.* In addition, the state agreed to provide the officers with better training facilities and more assistance. Under the agreement the inmates were to receive new clothing, better food, and improved sanitary conditions. *Id.*

¹⁵⁷ See, e.g., MCKAY COMM'N REPORT xi; SELECT COMM. REP. NOS. 1, 2, 4; Second Year Budget Statement.

¹⁵⁸ See N.Y. Times, Jan. 19, 1972, at 21, col 1. See generally SELECT COMM. REP. NO. 1.

¹⁵⁹ For officers, "correction" meant . . . maintaining custody and control over an inmate population which had increasing numbers of young men, blacks, and Puerto Ricans from the urban ghettos, unwilling to conform to the restrictions of prison life and ready to provoke confrontation, men whom the officers could not understand and were not trained to deal with. It meant keeping the inmates in line, seeing that everything ran smoothly, enforcing the rules. It did not mean, for most officers, helping inmates to solve their problems or to become citizens capable of returning to society. For the correction officers, who were always outnumbered by inmates, there was a legitimate concern about security

MCKAY COMM'N REPORT 3-4. The central office is certain that the correctional officers fear many of the new programs and view the changes as lessening their control over the inmates and as threatening their own safety. Interview with Russell G. Oswald, *supra* note 4.

[T]o bring correction officers who through years and years of experience have become accustomed to a correctional system with the principal emphasis on custody, to bring them along to accepting the fact that there are other things which can provide security other than high walls and strict discipline and all the rest of it, is a monumental job These things don't happen overnight.

Id.

¹⁶⁰ Although a 90-day training program, progressive for its time, was in existence during the 1930's, it had been discontinued by the time of World War II. In the late 1950's a two-week course was begun to train correctional officers; however, many of those who participated termed it useless. Moreover, those guards who began work prior to the inauguration of the two-week training program received no formal training. At the time of the Attica uprising, more than a third of the total fell into this latter category. MCKAY COMM'N REPORT 27.

¹⁶¹ *Id.* at 20.

of the officer. Indirectly, the officer will benefit from the reduced frustration and tension which hopefully will result from the administration's overall efforts at humanization and diversification. More immediately, his interests have been advanced by the provision of new and better protective equipment,¹⁶² more security officers,¹⁶³ new programs which will segregate the "troublemakers" from the general inmate population,¹⁶⁴ greater legal protection,¹⁶⁵ and new uniforms.¹⁶⁶ In addition, a task force has been created to widen the career opportunities of the officer and to minimize "dead-end jobs."¹⁶⁷

Most significant, however, has been the effort to modify the traditional concept of the prison guard through augmented officer training programs designed to reach both existing staff and new recruits.¹⁶⁸

¹⁶² See Dep't of Correctional Services, State of New York, Press Release, March 29, 1972 (on file at the *Cornell Law Review*). Following Attica, thousands of gas masks and helmets were distributed to the facilities. Orders were placed for numerous other items. *Id.* at 1. The Department agreed to provide 37 items relating to protective equipment, and by the end of March 1972 it had supplied two-thirds of them. *Id.* One of the items, metal detectors, was the subject of a separate federal grant. See Fed. Grant Award Fact Sheets, Grant No. 9—Metal Detectors.

In an effort to ensure the proper use of this added influx of equipment, the Department has issued several guidelines concerning their use. See Dep't of Correctional Services, State of New York, Admin. Bull. No. 3 (amended) (Feb. 16, 1972) (on file at the *Cornell Law Review*); Dep't of Correctional Services, State of New York, Admin. Bull. No. 76 (Oct. 12, 1972) (on file at the *Cornell Law Review*).

¹⁶³ See Press Release, *supra* note 162, at 1. The total number of officers in the Department by the end of March 1972 had reached 4,000—the most the system ever had. *Id.*

¹⁶⁴ See notes 545-643 and accompanying text *infra*.

¹⁶⁵ See N.Y. CORREC. LAW § 24 (McKinney Supp. 1972). No civil action, except an action on behalf of the state brought by the Attorney General, may be brought against an officer individually, provided he was acting within the scope of his duties. *Id.* § 24(1). All actions for damages must be brought against the State of New York in the Court of Claims. *Id.* § 24(2). For an employee held liable for damages in any federal court, the state will indemnify him provided his conduct was in the course of his employment and not in violation of any rule or regulation of the department or of any statute or governing case law of the state or of the United States" when his action was committed. *Id.* § 24(3).

¹⁶⁶ Dep't of Correctional Services, State of New York, Admin. Bull. No. 56 (amended) (Aug. 29, 1972) (on file at the *Cornell Law Review*). The new uniforms include a navy blue blazer and tie, gray slacks, and a light blue shirt—a departure from the traditional police-type uniforms. *Id.* at 2.

¹⁶⁷ See Dep't of Correctional Services, State of New York, Admin. Bull. No. 30 (Feb. 22, 1972) (on file at the *Cornell Law Review*). Although the compensation paid to guards has been increasing (*compare* N.Y. Times, Sept. 23, 1971, at 66, col. 1, with MCKAY COMM'N REPORT 26), many Attica officers found their wages insufficient and had to take a second job. *Id.* The annual salary of the correctional officer at the time of Attica ranged from \$9,535 for a new officer to a maximum of \$11,941 after 15 years service. If the officer advanced to the rank of captain, he could earn from \$14,720 to \$18,164, depending upon the length of his service. *Id.*

¹⁶⁸ See Fed. Grant Award Fact Sheets, Grant No. 7—Training Program for Staff

In addition to traditional custodial matters, the new training programs emphasize improving human relations, reducing tension, and developing communication skills.¹⁶⁹ Although the programs are too new to allow for meaningful evaluation,¹⁷⁰ their mere establishment suggests

of Department of Correctional Services. Under the first year of this new training program, existing officers received 52 hours of in-service training; for fiscal year 1972-1973, the program was reduced to 32 hours. MULTI-YEAR MASTER PLAN I-29. New candidates receive either a full 13-week training program or an intensive four-week course. SELECT COMM. REP. No. 4, at 18; *cf.* note 160 *supra*. Slightly over \$3,850,000 have been spent on the training program in the 15-month period beginning September 31, 1971. Fed. Grant Awards Received and Proposed 1. Of this amount, approximately \$2,900,000 were supplied through federal funds. *Id.* This grant expired on December 31, 1972, and a new federal grant of approximately \$3,150,000 was proposed which would extend the training program until March 31, 1974. *Id.* It should be pointed out that grants to provide money through federal funding are rarely renewed more than twice (*see* notes 147-48 and accompanying text *supra*); if the training programs are to succeed, the state must be willing to quadruple its expenditures when the renewal program, if granted, expires in March 1974.

¹⁶⁹ Dep't of Correctional Services, State of New York, Press Release, Sept. 11, 1972 (on file at the *Cornell Law Review*); *see* Fed. Grant Award Fact Sheets, Grant No. 7, *supra* note 168. The instruction planned for the new recruits covers "The Criminal Justice System; The Correctional Process; Introduction to the Department of Correctional Services; Reception, Orientation and Classification of Inmates; Correctional Facilities; Human Relations; Public Relations; and periods of on-the-job training at various facilities." *Id.* at 2; *see* Dep't of Correctional Services, State of New York, Press Release, May 31, 1972 (on file at the *Cornell Law Review*).

At its inception, the in-service training program consisted of 20 hours of instruction in "armed and unarmed defense tactics and in non-violent methods for resolving conflict situations." Fed. Grant Award Fact Sheets, Grant No. 7, *supra* note 168. The curriculum for the remaining time in the 52-hour program was scheduled to include "Communication Skills; Description of Offender Populations and Release Planning; Individualized Treatment of Offenders; Decision-making Techniques and Rehabilitative Aspects of the Correctional Facility." *Id.*; *see* note 168 *supra*.

¹⁷⁰ On February 1, 1972, there was an inmate protest at Great Meadow Correctional Facility concerning the officers' practice of rapping their nightsticks on cell bars to attract the inmates' attention. N.Y. Times, March 4, 1973, at 52, col. 3. The following was the superintendent's response to the demand that the rapping be stopped: "Now it's true that it's degrading and will have to be changed, but I know the officers are going to protest. I'll tell you this, I'm not looking forward to the next meeting with the union." *Id.* col. 5. The article went on to point out that "many of the younger guards have stopped the practice, and some do not even carry nightsticks." *Id.*

Concerning the reactions of some of the new black officers at Attica, the Select Committee reports:

[T]hey noted the differences between their training and the reality of their day-to-day work at Attica—*e.g.*, the emphasis on rehabilitation in training as contrasted to their assignments in escorting and supervising inmates, or the emphasis in training on counseling inmates as contrasted to a direction from a supervising officer not to talk to inmates in the yard. From an inmate perspective, it is felt that the new officers are in their probationary period and that the attitude and behavior of the older officers to whom a new officer is assigned to work would be influential and perhaps decisive in forming the attitude and behavior of the new officers.

SELECT COMM. REP. No. 4, at 25.

These two examples indicate that some change is beginning to take place, especially

the Department's commitment to a rehabilitation-oriented program.¹⁷¹

One factor contributing to inmate resentment existing at the time of the Attica uprising was the lack of minority representation among correctional officers.¹⁷² Although sixty-eight percent of all inmates were either black or Puerto Rican,¹⁷³ there were only 260 minority officers in a total of 3,800 positions.¹⁷⁴ Of these, most were stationed in the facilities closest to New York City;¹⁷⁵ the massive rural institutions had almost entirely white staffs.¹⁷⁶ Change was necessary not only from the viewpoint of equal employment opportunity, but also for purposes of dealing more effectively with an inmate population dominated by minority groups.¹⁷⁷

The development of a policy to achieve affirmative action in employment opportunities for minorities has been accomplished with the aid of federal funds.¹⁷⁸ The goal of this federal grant was to recruit

among the younger officers and those who have recently been recruited. However, they also clearly indicate that the Department still has a long way to go.

¹⁷¹ Second Year Budget Statement 5.

¹⁷² [A]t Attica, racial polarity and mistrust were magnified by the constant reminder that the keepers were white and the kept were largely black and Spanish-speaking. The young black inmate tended to see the white officer as a symbol of a racist, oppressive system which put him behind bars.

MCKAY COMM'N REPORT 4; see Appendix E, concession number 17.

¹⁷³ N.Y. Times, Oct. 24, 1971, at 74, col. 1.

¹⁷⁴ *Id.* These pre-Attica figures are not complete because the number of officers at the Training Academy and the four youth camps were excluded from the *Times* list. However, their number was not significant; a January 1973 compilation shows 196 officers at these facilities with minority officers comprising 27 of those positions. Dep't of Correctional Services, State of New York, Memorandum of Jan. 8, 1973 (on file at the *Cornell Law Review*).

¹⁷⁵ The four institutions nearest the metropolitan area (Ossining, Green Haven, Matteawan State Hospital, and Bedford Hills) employed 242 of the 260 minority officers. N.Y. Times, Oct. 24, 1971, at 74, col. 1. See generally Appendix J.

¹⁷⁶ Four of the largest rural institutions (Attica, Auburn, Clinton, and Great Meadow) had seven minority officers among a total of 1,403 guards. N.Y. Times, Oct. 24, 1971, at 74, col. 1. See generally Appendices I & J.

¹⁷⁷ The urgency for change in this respect has been recognized by the Department.

Above and beyond the issue of fairness involved in having a representative body of minority employees, current trends in inmate population require this shift in order to accomplish the task of the Department. With an inmate population that is 56 percent Black and 14 percent Spanish-Speaking; that on one hand is increasingly politicized, and on the other requires more individual attention because of language, ethnic and cultural barriers, it is necessary that we have personnel who can interrelate with them quickly.

Dep't of Correctional Services, State of New York, Admin. Bull. No. 78, at 2 (Oct. 16, 1972) (on file at the *Cornell Law Review*).

¹⁷⁸ See Fed. Grant Award Fact Sheets, Grant No. 10—Recruitment of Minority Group Persons. The project was initiated on January 1, 1972, and was scheduled to run until March 31, 1973. *Id.* at 1. During this period \$584,895 were budgeted for the program of which \$385,305 were supplied by the federal grant. Fed. Grant Awards Received and Proposed 2. A renewal of the program is planned. *Id.*

an average of twenty qualified persons a month.¹⁷⁹ In January 1973, after a year of operation, departmental figures showed 4,358 correctional officers with minority officers filling 543 of these positions.¹⁸⁰ However, the dearth of minority group personnel in the rural institutions continues to plague the Department¹⁸¹ and probably will continue to do so until diversification results in more facilities in or near the urban areas.¹⁸²

B. Basic Human Needs

1. Food

The reasons for inmate discontent with prison food went deeper than typical public complaints concerning large scale food service.¹⁸³ Not only was the food unappealing,¹⁸⁴ but budget restrictions dictated

¹⁷⁹ Fed. Grant Award Fact Sheets, Grant No. 10, *supra* note 178, at 2.

¹⁸⁰ See Memorandum, *supra* note 174.

¹⁸¹ Of the approximately 280 minority officers added since Attica, the four institutions near New York City (*see* note 175 *supra*) absorbed 208 (*see* Memorandum, *supra* note 174), whereas little or no gain was made at several of the large, remote institutions. The facilities at Auburn, Clinton, and Great Meadow registered no gain, while Attica gained 18. See N.Y. Times, Oct. 24, 1971, at 74, col. 1; Memorandum, *supra* note 174.

At Attica, the superintendent and the officers were enthusiastic about the contribution made by the new black recruits. SELECT COMM. REP. No. 4, at 24. Nevertheless, the only hope these rural institutions have for significant minority representation is the relocation of minority group personnel in nearby communities. The Department is trying to assist new minority group employees with the problems connected with moving. However, few minority officers are willing to move into remote localities because of the absence of minority residents. *Id.* This problem was viewed in another light by the superintendent of the Great Meadow facility, which is located in a remote northeastern part of the state (*see* Appendix J): "One of the problems with the black people is that they don't go for this type of weather." N.Y. Times, March 4, 1973, at 52, col. 6. This type of thinking is largely responsible for the reluctance of minority officers to make the move. However, see SELECT COMM. REP. No. 4, at 20: "[Correctional] [u]nion officials at Great Meadow . . . where there are no black officers, offer to help recruit black correction officers from Saratoga and Glens Falls (where there are some blacks living) but are somewhat disappointed that they had never been asked [by the Department] to help."

¹⁸² See notes 466-72, 542 and accompanying text *infra*.

¹⁸³ See MCKAY COMM'N REPORT 47-48; SELECT COMM. REP. No. 4, at 39-41. Although the Select Committee found inmate discontent over food to be an important issue, its members were of the opinion it was not a key issue in any facility they toured. *Id.* at 39. They also found the quality of the food service programs to vary greatly among the institutions. *Id.* However, their general findings (*see id.* at 37-42) support the observations made in the text.

¹⁸⁴ In his 1971 annual report, Superintendent Mancusi wrote that Attica provided "meals which are tasty, possess eye appeal and contain the necessary nutritional ingredients to provide a balanced diet." The Commission's experience with the Attica food did not fit that description. The ingredients were of good quality, but the preparation rendered some food virtually inedible. The segmented metal trays from which inmates ate were not thoroughly cleaned, and the food placed in them was, at times, half-cooked or cold.

MCKAY COMM'N REPORT 47; *accord*, SELECT COMM. REP. No. 1, at 19.

that the inmate be fed on a cost basis of sixty-three cents per day.¹⁸⁵ The inmate received his main meal at noon;¹⁸⁶ at most institutions, security factors required that his light evening meal be served at three-thirty or four in the afternoon.¹⁸⁷ This left a fifteen-hour period until breakfast,¹⁸⁸ broken only by recourse to an occasional package of food from home¹⁸⁹ or to a purchase from the commissary.¹⁹⁰

The Department has engaged in a massive effort to upgrade the food service program. Shortly before the Attica uprising, a directive was issued requiring that a nutritional diet be implemented despite cost factors.¹⁹¹ This has been done, and the inmates' nutritional intake

¹⁸⁵ MCKAY COMM'N REPORT 47. ³

¹⁸⁶ *Id.*

¹⁸⁷ SELECT COMM. REP. No. 4, at 38; Interview with Wim van Eekeren, *supra* note 38. Deputy Commissioner van Eekeren pointed out that the early mealtime was required because the day shift of correctional officers went home at four p.m.; the needs and convenience of the staff and institution took precedence over the needs of the inmates. Cf. MCKAY COMM'N REPORT 26, 34, 47-48.

¹⁸⁸ See SELECT COMM. REP. No. 4, at 38; cf. MCKAY COMM'N REPORT 47. At Attica, inmates were permitted to take their uneaten food back to their cells to ease their hunger during this period. *Id.*

¹⁸⁹ Inmates were permitted to receive monthly food packages not exceeding 15 pounds; special provisions were made for certain holidays. Dep't of Correction, State of New York, Inmates' Rule Book, rules nos. 76-77 (Sept. 1, 1968) (revised) [hereinafter cited as Inmates' Rule Book] (on file at the *Cornell Law Review*); see MCKAY COMM'N REPORT 48; Dep't of Correctional Services, State of New York, Admin. Bull. No. 87, at 6 (Nov. 17, 1972) (on file at the *Cornell Law Review*).

¹⁹⁰ See MCKAY COMM'N REPORT 51-52. "Most inmates spent whatever they earned at the commissary, and commissary visits, scheduled about once every two weeks, assumed an extraordinary importance." *Id.* at 51. The prices the commissary charged were regular market prices; the inmate earned an average of only \$7.50 a month. *Id.* at 50. Depending upon his job, the inmate could earn from twenty cents to one dollar per day. Those in segregation housing or keeplock (confined to their cells), of course, received no pay. *Id.* at 49. See generally *id.* at 49-51. One way around the meager wages was provided by the rule that the inmate could receive money from approved persons by mail. The money was not directly received by the inmate, but was credited to his account by the prison officials. Inmates' Rule Book, rule 85; see MCKAY COMM'N REPORT 50. However, inmates did not trust a system which gave institutional authorities control over their funds. See Appendix E, concession number 19. Aside from the fear of misappropriations, there were and still are two additional problems in relying on outside funds to supply the inmate with money for desired purchases. First, many inmates either have no one on the outside to send them money or have families which are destitute and unable to send extra money. Second, all purchases, either from the commissary or by mail order, were subject to a ten-dollar-per-week limitation. Inmates' Rule Book, rule no. 73; see MCKAY COMM'N REPORT 50. In addition, the present rules on correspondence continue to prohibit the inmate from soliciting funds in his letters. Compare Dep't of Correctional Services, State of New York, Admin. Bull. No. 20 (amended), at 3 (Dec. 14, 1972) (on file at the *Cornell Law Review*), with MCKAY COMM'N REPORT 60.

¹⁹¹ See MCKAY COMM'N REPORT 47. When Commissioner Oswald took office, he was confronted with many budgetary difficulties. He insisted, however, that the cost basis of food supply be eliminated. Interview with Wim van Eekeren, *supra* note 13.

now exceeds the standard set by the Food and Nutritional Board of the National Academy of Sciences.¹⁹²

However, inmate reaction to this effort has thus far been unfavorable.¹⁹³ The Select Committee attributes this seeming paradox to the difficulty in translating more and better food into better meals.¹⁹⁴ In order for this conversion to occur, improvements must be made in mess hall atmosphere, food preparation, and food service.¹⁹⁵ Furthermore, food service personnel require training, and menu plans need added variety.¹⁹⁶ The Department is aware of these obstacles and is presently taking steps to correct them.¹⁹⁷

One additional problem the Department has had to face in the food service area has been the dietary practices of the Black Muslim inmates. Although the serving of pork elicited strong complaints from this group,¹⁹⁸ pork continued to appear frequently at mealtime because of its relative inexpensiveness.¹⁹⁹ In 1970, a New York appellate court decision required that "Muslims shall be provided whenever possible with meals that are wholly free of pork and pork products, and when that is not practicable then there shall be available at each meal some food free of those substances."²⁰⁰ Soon after the new administration

¹⁹² Press Release, *supra* note 162, at 2. The move from a cost to a nutritional basis of feeding was aided by the award of a federal grant. See Fed. Grant Award Fact Sheets, Grant No. 11—Nutritious Food Service Program. A total of \$1,063,040 was spent in a 12-month period ending December 31, 1972, to improve the food service program. Fed. Grant Awards Received and Proposed 2. Of this sum, \$783,254 were supplied by federal funds. *Id.* The federal grant enabled the Department to increase the portions of certain food items and to provide more frequent servings of fruit, vegetables, and fruit juices. SELECT COMM. REP. No. 4, at 38; see Appendix E, concession number 14. In addition, the funds were used to help assuage the hunger arising from the long span of time between dinner and breakfast by providing the inmate with an evening snack of fresh fruit or cookies. Dep't of Correctional Services, State of New York, Summary of Progress Reports on the Select Comm. Recommendations 5 (Aug. 18, 1972) (on file at the *Cornell Law Review*).

¹⁹³ The Select Committee failed to receive one affirmative inmate comment in any of its interviews concerning basic improvement in the food. Nor did its members feel this negative sentiment was attributable to a general critical attitude on the part of the inmates, since positive comments had been made with respect to other areas. See SELECT COMM. REP. No. 4, at 38.

¹⁹⁴ *Id.* at 39.

¹⁹⁵ See *id.* at 40.

¹⁹⁶ See *id.* at 39-40.

¹⁹⁷ See Interview with Robert H. Fosen, *supra* note 14; accord, SELECT COMM. REP. No. 4, at 41-42.

¹⁹⁸ See N.Y. Times, Sept. 27, 1971, at 28, col. 1; Appendix E, concession number 14.

¹⁹⁹ See N.Y. Times, Sept. 27, 1971, at 28, col. 1. Because pigs are cheaper and easier to raise than cattle or chickens, the prison farms produced an inordinate amount of pork. For example, during the 1970-1971 fiscal year, the 370-acre farm at Attica produced 1,559 lbs. of chicken, 15,500 lbs. of beef, and 50,000 lbs. of pork. *Id.*

²⁰⁰ *Marion v. McGinnis*, 35 App. Div. 2d 684, 684, 314 N.Y.S.2d 715, 716 (4th Dep't 1970).

took office, it determined that to serve Muslim inmates a non-pork main dish when pork was on the menu would not be "practicable" in view of economic considerations and the probable reactions of other inmates.²⁰¹ The Department took steps to assure that side dishes were free of pork,²⁰² but it left the number of pork meals to be served to the discretion of the facility superintendent.²⁰³ This latter provision, however, was later revised to place a mandatory twice weekly limit on the serving of meals which are not wholly free of pork.²⁰⁴

Although much effort and money have been expended to upgrade the food service program, negative inmate reaction²⁰⁵ should provide sufficient warning that increased expenditures and new policy directives will not automatically be translated into improved conditions from the vantage point of the inmate.²⁰⁶

2. Clothing and Personal Hygiene

Since the Attica incident, federal funds totalling nearly two million dollars²⁰⁷ have been used to supply each inmate with a complete new issue of clothing.²⁰⁸ The clothing exchange was directed toward improving inmate morale and encouraging a willingness on the part of the inmate to maintain a well-groomed appearance.²⁰⁹

Headway is also being made in the area of personal hygiene. Al-

²⁰¹ Dep't of Correctional Services, State of New York, Admin. Bull. No. 8, at 1 (July 7, 1971) (on file at the *Cornell Law Review*).

²⁰² Prior departmental practice not only had permitted lard to be used in cooking, but also had resulted in pork often being mixed in with other meats and served to the inmates as hamburger or meatloaf. MCKAY COMM'N REPORT 48. To assure that side dishes and supposedly non-pork main dishes were free of pork, the directive required that pure vegetable shortening be used instead of lard and ordered the practice of using pork in the preparation of non-pork items to be discontinued. Admin. Bull. No. 8, *supra* note 201, at 1-2.

²⁰³ Admin. Bull. No. 8, *supra* note 201, at 2.

²⁰⁴ See Dep't of Correctional Services, State of New York, Admin. Bull. No. 8 (amended), at 2 (March 21, 1972) (on file at the *Cornell Law Review*).

²⁰⁵ See MCKAY COMM'N REPORT 47-48; note 193 and accompanying text *supra*.

²⁰⁶ See SELECT COMM. REP. No. 2, at 6.

²⁰⁷ Fed. Grant Awards Received and Proposed 2. The total clothing outlay from December 31, 1972, to March 31, 1973 was \$2,694,554, of which the federal grant comprised \$1,903,784. *Id.*; see Fed. Grant Award Fact Sheets, Grant No. 12—Model Clothing Program.

²⁰⁸ See Dep't of Correctional Services, State of New York, Press Release, Aug. 30, 1972 (on file at the *Cornell Law Review*).

²⁰⁹ See Fed. Grant Award Fact Sheets, Grant No. 12, *supra* note 207. The old uniforms were a remnant of the nineteenth century attitude that uniforms should remind the inmate of his lowly condition. They were of poor quality, did not fit, and were reused until they wore out. MCKAY COMM'N REPORT 45. The new uniforms are forest green and made for year-round use. Press Release, *supra* note 208. In addition to the uniforms, the new clothing issued includes innerwear and outerwear for summer and winter use. Fed. Grant Award Fact Sheets, Grant No. 12, *supra* note 207.

though the inmate is required to keep his person clean and neat,²¹⁰ prior departmental policy made it difficult to conform to this standard. Most inmates were permitted to shower only once a week,²¹¹ and the only supplies given them were a comb, a towel, and monthly issues of a roll of toilet paper and a bar of soap.²¹² In addition to the replacements necessitated when the periodic allotment of these supplies was exhausted, all other nonissue items needed by the inmate to keep his person clean had to be purchased by the inmate out of his meager earnings.²¹³

A recent policy directive changes these practices by requiring that all basic personal hygiene items be distributed on an as-needed basis.²¹⁴ Also, permissible shower time has been increased to twice a week, and provisions are to be made for daily showers, where possible.²¹⁵

3. Medical Care

Dissatisfaction focusing upon the competence and dedication of doctors and other medical personnel has been and continues to be a major source of inmate grievances throughout the New York correctional system.²¹⁶ One indication of progress in this area has been the enactment of a more liberal outside medical care program. In 1972, the Legislature passed a leave of absence program under which inmates may leave the correctional facility without escort to obtain elective surgery or medical treatment not available in the institution.²¹⁷ Whereas great expense was involved under the old practice, which required inmates in outside hospitals to be kept under twenty-four hour guard,²¹⁸ the new legislation should enable a greater number of inmates to obtain competent medical care outside of the facility.²¹⁹

²¹⁰ Inmates' Rule Book, rule 9.

²¹¹ MCKAY COMM'N REPORT 46.

²¹² *Id.*

²¹³ *Id.*; see note 190 *supra*.

²¹⁴ These items include toilet paper, soap, razors, razorblades, shampoo, toothbrushes, and toothpaste. Dep't of Correctional Services, State of New York, Admin. Bull. No. 28, at 1 (Feb. 18, 1972) (on file at the *Cornell Law Review*).

²¹⁵ *Id.* at 2. Problems with shower locations and lack of available supervision prevent daily showers from presently being offered at all institutions. *Id.*

²¹⁶ See SELECT COMM. REP. NO. 4, at 43. See generally MCKAY COMM'N REPORT 63-72. "[M]edical care, while adequate to meet acute health needs, was dispensed in [a] callous, indifferent manner by doctors who feared and despised most of the inmates they treated." *Id.* at 3.

²¹⁷ N.Y. CORREC. LAW § 851(5)(c) (McKinney Supp. 1972); see note 336 *infra*.

²¹⁸ SELECT COMM. REP. NO. 4, at 44.

²¹⁹ The Department has asked for funds to expand the use of outside hospitals during the 1973-1974 fiscal year. See EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, *supra* note 110, at 97.

Progress is also being made with respect to certain categories of inmates in need of special medical attention—the drug addict, the elderly, and the physically handicapped—who will benefit from current efforts by the Department to diversify its programs.²²⁰

Despite these advances, little has been accomplished on behalf of the majority of inmates who require neither outside medical care nor drug, old age, or disability care.²²¹ In large measure, this lack of progress is attributable to the inability of the Department to attract doctors, psychiatrists, and other qualified medical personnel.²²² At present, the administration is uncertain whether it will be able to overcome this obstacle and to provide the inmate with acceptable medical treatment.²²³

C. *Contact with the Outside*

I. *Correspondence*

An inmate wishing to maintain contact by corresponding with his family or friends faced several obstacles at the time of the Attica rebellion.²²⁴ First, the category of persons with whom he could correspond was limited to an approved list.²²⁵ Second, the subjects which the inmate could discuss in his letters were restricted to the inmate's own personal matters; discussions about institutional matters or other inmates were strictly forbidden.²²⁶ A third restriction centered upon

²²⁰ At the Green Haven facility, a rehabilitation program for drug addicts has been established. See Second Year Budget Statement 12. Its purpose is to provide intensive drug counseling for 250 inmates in the medium security, pre-release setting. See Dep't of Correctional Services, State of New York, Admin. Bull. No. 81, at 13 (Oct. 26, 1972) (on file at the *Cornell Law Review*).

At Beacon, New York, part of the proposed Correctional Center for Medical Services (see EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, *supra* note 110, at 97) will serve to furnish appropriate programs for the elderly and the physically handicapped offender in a minimum security unit with a capacity of 300 inmates. The major function of the Medical Center, however, is to furnish care for the mentally defective. See Dep't of Correctional Services, State of New York, Program Manual for Correctional Center for Medical Services 1, 32-35 (Sept. 12, 1972) (revised) (on file at the *Cornell Law Review*).

²²¹ See SELECT COMM. REP. No. 4, at 43-44; Second Year Budget Statement 5.

²²² Second Year Budget Statement 5.

²²³ See *id.* The Department also fears that failure to improve the situation may result in the institution of legal actions by inmates who do not receive proper treatment. In an effort to forestall this possibility experts have been employed to try to find a solution to the problem of providing adequate medical care. *Id.* For an indication that the Department's efforts are not corresponding to the scope of the problem, see SELECT COMM. REP. No. 4, at 43-44.

²²⁴ See MCKAY COMM'N REPORT 59-60; Inmates' Rule Book, rules 47-54.

²²⁵ Inmates' Rule Book, rule 47; see Appendix E, concession number 23.

²²⁶ Inmates' Rule Book, rule 54; see MCKAY COMM'N REPORT 60.

the number of letters an inmate could send or receive.²²⁷ To ensure compliance with these standards, all incoming and outgoing mail was read and censored.²²⁸ If an outgoing letter was rejected, it was sent back to the inmate; however, all unacceptable incoming mail was placed in a file without notifying either the sender or the inmate.²²⁹ This practice multiplied the "[m]isunderstandings and anxieties between inmates and their families . . . when each waited for a reply in ignorance of the withheld letter."²³⁰

The Department has made significant progress since that time. The revised rules governing the inmate correspondence program²³¹ encourage the inmate to maintain contact with his family, friends, and others.²³² The new rules eliminate the concept of an approved list of correspondents,²³³ although in practice two restrictions remain as to those with whom an inmate may correspond. First, before correspondence may begin, the person to whom the inmate wishes to write must verify that he desires to correspond with the inmate.²³⁴ Second, special permission from the superintendent is still required for correspondence with "unrelated persons who have marital ties, crime partners, inmates in other facilities in this or other states, and persons currently on

²²⁷ The Inmates' Rule Book specified that the number of letters the inmate could write was to be determined by his conduct. Inmates' Rule Book, rule 48. On January 31, 1972, guidelines revising the rule book authorized the inmate to mail and to receive seven letters per week, provided they could be processed that rapidly. See Dep't of Correctional Services, State of New York, Admin. Bull. No. 20, at 2, Jan. 31, 1972 (on file at the *Cornell Law Review*). For the current provision, see text accompanying notes 237-38 *infra*.

²²⁸ See SELECT COMM. REP. NO. 4, at 36; Inmates' Rule Book, rule 50. The censor had authority "to withhold such [letters] as he deem[ed] proper." *Id.* The inmate had to consent to this authorization as a condition precedent to the privilege of writing letters or receiving mail. *Id.*

Prior to Attica, the Department changed this policy as applied to letters to and from public officials, judges, and attorneys. MCKAY COMM'N REPORT 59. For the current standards governing this special category of correspondence, see notes 288-93 and accompanying text *infra*.

²²⁹ MCKAY COMM'N REPORT 60.

²³⁰ *Id.*

²³¹ Admin. Bull. No. 20 (amended), *supra* note 190. This bulletin amended the original Administrative Bulletin number 20 issued in January 1972, which had in turn superseded most of the rules on correspondence existing in the Inmates' Rule Book. Admin. Bull. No. 20, *supra* note 227, at 1. These actions have lent credence to the Department's stated policy of on-going review and revision of inmate rules to effect needed changes. See Six-Month Operational Digest 2.

²³² See Admin. Bull. No. 20 (amended), *supra* note 190, at 1. For the special rules applicable to correspondence between an inmate and public officials, judges, or attorneys, see note 293 and accompanying text *infra*.

²³³ Admin. Bull. No. 20 (amended), *supra* note 190, at 4.

²³⁴ *Id.* at 2.

probation or parole."²³⁵ The inmate is encouraged to write about any legal problem he may have, his activity in institutional programs, family matters, and his employment and residence plans after release.²³⁶ Unauthorized materials are defined as those dealing with or containing obscene statements, threats or blackmail, plots to escape, criminal activity, code writing, plans to overthrow lawful authority by using overt action, asking for money or packages, and plans to evade institutional rules. Under the new rules, when an incoming or outgoing letter is found to violate any of the correspondence rules, it is returned with an explanation to the person who wrote it.²³⁷ Although all previous limits on the number of letters received or sent were removed by the guidelines,²³⁸ there are indications that some restrictions have crept back in.²³⁹

Probably the most controversial subject in the correspondence area has been censorship.²⁴⁰ The United States Court of Appeals for the Second Circuit, sitting en banc to hear the case of *Sostre v. McGinnis*,²⁴¹ had an opportunity to restrict prison officials' practice of reading and censoring inmate letters within the context of a broad-based attack on the conditions of punitive segregation.²⁴² Although questioning the wisdom of censorship and realizing the possible harm it might cause,²⁴³ the court could not

say with requisite certitude that the traditional and common practice of prisons in imposing many kinds of controls on the correspondence of inmates, lacks support in any rational and constitutionally acceptable concept of a prison system.²⁴⁴

²³⁵ *Id.*

²³⁶ *Id.* at 3.

²³⁷ *Id.*

²³⁸ *Id.* at 4.

²³⁹ MULTI-YEAR MASTER PLAN I-21.

²⁴⁰ See, e.g., Singer, *Censorship of Prisoners' Mail and the Constitution*, 56 A.B.A.J. 1051 (1970); Stern, *Prison Mail Censorship: A Nonconstitutional Analysis*, 23 HASTINGS L.J. 995 (1972); Note, *Palmigiano: The Constitutionality of Prison Mail Censorship*, 21 CATH. L. REV. 215 (1972); Note, *Prison Mail Censorship and the First Amendment*, 81 YALE L.J. 87 (1971).

²⁴¹ 442 F.2d 178 (2d Cir. 1971), *cert. denied sub nom.* *Sostre v. Oswald*, 404 U.S. 1049 (1972).

²⁴² 442 F.2d at 185-87; see Schwartz, *A Comment on Sostre v. McGinnis*, 21 BUFFALO L. REV. 775 (1972).

²⁴³ The harm censorship does to rehabilitation cannot be gainsaid. Inmates lose contact with the outside world and become wary of placing intimate thoughts or criticisms of the prison in letters. The artificial increase of alienation from society is ill advised.

442 F.2d at 199, quoting Singer, *supra* note 240, at 1054.

²⁴⁴ 442 F.2d at 199.

Despite the broad discretion granted the Department by the court, the new guidelines on correspondence do contain a major advance in the extent of censorship. The superintendents have been instructed that the letters of the majority of inmates are to be inspected only for contraband and are not to be read.²⁴⁵ Although each superintendent retains discretion to select those inmates whose mail will be read, the guidelines require him to follow certain standards. First, reading of an inmate's mail must be necessary for the safety and security of the facility. Second, a memo must be placed in the file of the inmate whose mail is to be read setting forth why the preceding standard applies to him. Third, the number of inmates who have their mail read must be limited. Finally, the authorization to read an individual's mail must be periodically reviewed.²⁴⁶ However, since the guidelines do not require that the inmate be notified of the superintendent's decision, the impact of the new censorship standards upon the prisoners will probably be minimal.²⁴⁷

²⁴⁵ Admin. Bull. No. 20 (amended), *supra* note 190, at 4. According to the guidelines, all envelopes are to have their contents examined for the purpose of ensuring that no contraband enters or leaves the facility. *Id.* at 2. However, the traditional practice of reading all mail has been ordered discontinued.

²⁴⁶ *Id.* at 4.

²⁴⁷ Even if notification is given the inmate telling him that his letters are not being read, anything short of the right to send sealed letters or to be present when the letter is being inspected for contraband will have little humanizing effect upon the inmates.

However strongly the warden may feel about a possible indignity to the prison administration in a suggestion by the court that it is not to be trusted not to read the letter, this misses the point. The court does not suggest that the warden is untrustworthy. Rather, it is that a prisoner . . . may feel . . . that someone in the chain of command may not be trusted. . . . If a prisoner can see no good reason for opening a letter in his absence, it would not be unnatural for him to suspect a bad one.

Smith v. Robbins, 454 F.2d 696, 697 (1st Cir. 1972). Although the refusal of the *Smith* court to allow even inspection of mail without the inmate's presence dealt solely with inmate-attorney correspondence and was decided on constitutional grounds (*see id.* at 697), the court's language has equal applicability to the current censorship standard of the Department. Although the constitutional argument is not as strong when dealing with regular correspondence as opposed to inmate-attorney mail (*but see Palmigiano v. Travisono*, 317 F. Supp. 776 (D.R.I. 1970); Note, *supra* note 240, 81 YALE L.J. 87), the same conclusion, *i.e.*, not only that there should be no censorship but also that the prisoner should be present when the letter is opened for inspection, could be reached from a common-sense analysis of the utility found in the present departmental policies of limited censorship and mail inspection. Any subject matter which is currently unauthorized in a letter (*see text accompanying note 237 supra*) can presently be discussed during visits. *See* notes 260-69 and accompanying text *infra*. Furthermore, censorship itself is contrary to the goal of rehabilitation. *See generally Stern, supra* note 240. The only danger in allowing uncensored, uninspected mail into the facilities, which the present policy on correspondence prevents, is the introduction of contraband into the facilities. However, less restrictive means could be employed to accomplish this purpose than opening the letter without the inmate present. Even if it could be argued that requiring the inmate's

2. Visitation

Until recently, visitation privileges were surrounded by seemingly senseless rules.²⁴⁸ Potential visitors were classified into five groups:

- a. Inmate's immediate family consisting of father, mother, sisters, brothers, wife, husband and children. (Foster and step parents, sisters, brothers and children may be approved by the Warden as members of the immediate family.)
- b. Attorneys and members of the clergy.
- c. Relatives not members of the immediate family.
- d. Friends of inmates.
- e. Former inmates.²⁴⁹

Whether the inmate had a right to see a particular visitor and how frequently such a visit was available depended upon the classification of the visitor. A good conduct record enabled the inmate to receive visitors from class *a*.²⁵⁰ However, those visits could not be more frequent than weekly and were limited to a maximum of four visitors at one time.²⁵¹ Lawyers and clergymen—class *b*—could visit “as often as the situation demands, provided the Warden is informed of the intent of the visit.”²⁵² Members of the three remaining classes had to request and receive written permission from the warden in advance of each visit.²⁵³ Approved class *c* visitors could make monthly visits; those in classes *d* and *e* had to renew their request for each visit.²⁵⁴ All visitors except attorneys and clergymen had to be fingerprinted at the time of their first visit.²⁵⁵ The inmate was subjected to a vigorous strip search preceding and following each visit.²⁵⁶ Once in the visitation room, the inmate and his visitor found themselves separated by a screen, the

presence for all correspondence would be too burdensome for prison officials, one district court has pointed out that fluoroscopes, metal detecting devices, and manual manipulation could be used without having to open the mail. *Marsh v. Moore*, 325 F. Supp. 392, 395 (D. Mass. 1971). If anything suspicious appeared as a result of such inspection techniques, the inmate could then be summoned and the letter opened in his presence.

²⁴⁸ See MCKAY COMM'N REPORT 61-62; Inmates' Rule Book, rules 55-65.

²⁴⁹ Inmates' Rule Book, rule 55; cf. Appendix E, concession number 23.

²⁵⁰ Inmates' Rule Book, rule 57.

²⁵¹ *Id.*

²⁵² *Id.*, rule 58.

²⁵³ *Id.*, rule 59. The policy at Attica for determining whether permission would be granted often depended upon the number of regular visitors the inmate was receiving. If he received frequent visits, the request would be denied. MCKAY COMM'N REPORT 61.

²⁵⁴ Inmates' Rule Book, rule 60.

²⁵⁵ *Id.*, rule 56. The Select Committee severely criticized as humiliating and virtually useless the practice of routinely fingerprinting visitors. See SELECT COMM. REP. No. 4, at 35.

²⁵⁶ MCKAY COMM'N REPORT 3.

ostensible purpose of which was security.²⁵⁷ However, it "was seen by inmates not as a security device, but as another example of senseless harassment and dehumanization."²⁵⁸ Even if the inmate and his visitor were willing to endure these annoyances, the distance of rural facilities from urban centers made visitation rights illusory for many inmates.²⁵⁹

Major changes have been made by the Department. For those inmates fortunate enough to have visitors,²⁶⁰ the entire process has been made more rational. The classification of visitors and the compilation of approved lists has been ended,²⁶¹ and visits from "family members, friends, former business associates, former and prospective employers, governmental officials and counsel"²⁶² are encouraged. The only people who are required to obtain special approval from the superintendent are those who have been convicted of a crime.²⁶³ The sole restrictions remaining on the number of visitors and the length and frequency of their visits are those necessary to accommodate all visits during the visitation period.²⁶⁴

Significant advances have also been made in providing the inmate

²⁵⁷ *Id.* at 61.

²⁵⁸ *Id.* As one inmate said: "I have two children and during the entire time I was in Attica . . . I didn't have my children visit me. If they want to see an animal, they can go to the zoo." *Id.* at 62.

²⁵⁹ This observation may be illustrated by the situation of the inmates at Attica. Most [of the] inmates were poor and 43 percent came from New York City. There was no direct transportation between New York and Attica. The bus trip from New York to the nearest depot, Batavia, cost \$33.55 round trip and took 9 hours one way. . . . A weekend visit from New York cost over \$100, with 20 hours spent in transit.

Id. at 61.

²⁶⁰ Although the remote institutions are no nearer now than they were before, at several facilities a new call-home telephone program allows the inmates to make unmonitored three-minute, collect phone calls to their parents, wives, or close relatives once each month. The call-home program began in March 1972 at the Wallkill Correctional Facility. The program has enabled several inmates to talk to close relatives whom they have not seen for years. According to Wallkill's superintendent, many inmates term the program "the best thing that has happened to us since we've been in prison." Dep't of Correctional Services, State of New York, Press Release, March 15, 1972 (on file at the *Cornell Law Review*). Since its inauguration at Wallkill, the program has been expanded to other facilities. See, e.g., Press Release, *supra* note 169; cf. Appendix E, concession number 9.

²⁶¹ See Dep't of Correctional Services, State of New York, Admin. Bull. No. 58, at 2 (May 17, 1972) (on file at the *Cornell Law Review*).

²⁶² *Id.* at 1.

²⁶³ *Id.* at 2. This standard applies whether or not they have finished serving their sentence. The exact wording of the provision reads: "Ex-prisoners and all persons currently on probation or parole will be allowed to visit you only with the special permission of the Superintendent or the officer in charge of the facility." *Id.*; cf. text accompanying note 235 *supra*.

²⁶⁴ Admin. Bull. No. 58, *supra* note 261, at 2.

and his visitor with a friendlier environment for the visit. The routine fingerprinting of visitors has been ordered discontinued.²⁶⁵ Many institutions, in an effort to brighten the surroundings, have installed food and beverage vending machines in the visiting room.²⁶⁶ The most dramatic change, however, has been the removal of the visitation screens.²⁶⁷ Most of the correctional officers have reacted favorably to this change,²⁶⁸ and the inmate-visitor response has also been positive.²⁶⁹

3. Receipt of Reading Material

Prior to March 1971, the decision on the acceptability of literature was left to the total discretion of the censor.²⁷⁰ The result of this absence of standards was often arbitrary action by prison officials.²⁷¹ The present administrative guidelines governing the receipt and review of literature²⁷² remove much of the prior discretion by providing the inmate with minimum due process rights.²⁷³

²⁶⁵ Dep't of Correctional Services, State of New York, Memorandum of Sept. 15, 1972 (on file at the *Cornell Law Review*). Before an inmate's visitors may now be fingerprinted, the superintendent must place an authorization in the inmate's file stating his reasons why the practice should apply to that inmate's visitors. *Id.* The reasons he specifies "must be related to a clear and present danger of the safety and security of the facility." *Id.*

²⁶⁶ SELECT COMM. REP. No. 4, at 34.

²⁶⁷ As of September 1972 the screens had been removed in all the facilities except the Elmira Correctional Facility. *Id.* Elmira needed new construction to secure the areas next to the visitation room (see Dep't of Correctional Services, State of New York, Press Release, June 5, 1972 (on file at the *Cornell Law Review*)) but is now in compliance. Telephone conversation with Kevin Dulin, Administrative Ass't to Walter Dunbar, Executive Deputy Comm'r of Correctional Services, April 16, 1973.

²⁶⁸ See SELECT COMM. REP. No. 4, at 34.

²⁶⁹ Superintendents have received moving letters of appreciation from wives, relatives and inmates. For the first time in many institutions, children can view their fathers without looking through wire mesh, fathers can hold their children and husbands and wives can greet and depart with a brief kiss. Family ties have been strengthened.

Id.

²⁷⁰ See MCKAY COMM'N REPORT 56; Inmates' Rule Book, rule 49. Rule 49 of the Inmates' Rule Book specified that all newspapers, magazines, and books had to be reviewed by the institutional censor and approved by the warden.

²⁷¹ See *Sostre v. Otis*, 330 F. Supp. 941 (S.D.N.Y. 1971); *Fortune Soc'y v. McGinnis*, 319 F. Supp. 901 (S.D.N.Y. 1970).

²⁷² See Dep't of Correctional Services, State of New York, Admin. Bull. No. 60 (May 30, 1972) (on file at the *Cornell Law Review*).

²⁷³ See *id.* These guidelines are a result of departmental initiative and constitutional mandate as ordered by the United States District Court in *Sostre v. Otis*, 330 F. Supp. 941 (S.D.N.Y. 1971). The *Otis* court, dealing with the procedure used to screen literature for receipt by New York inmates, found

that a prisoner is entitled as a matter of constitutional right to rudimentary due process under prison conditions including (1) notice; (2) some opportunity

A media review committee has been established at each facility.²⁷⁴ Represented on these units are prison officials from a number of fields—correctional officers, librarians, chaplains, teachers, and mental hygiene staff members.²⁷⁵ At the central office in Albany, a departmental review committee has been established to coordinate and review the action of the facility committees.²⁷⁶ When a question arises concerning the acceptability of incoming literature, the facility review committee is to be guided by the departmental policy of allowing inmates access to a wide range of outside literature.²⁷⁷ This broad directive is subject to the qualification that “some censorship or prior restraint of inflammatory, obscene or disruptive literature is necessary to deter unrest, violence, and maladjustment.”²⁷⁸ Guidelines have been set forth to aid the facility committees in determining what types of literature should be rejected.²⁷⁹

to object (either personally or in writing), and (3) a decision by a body that can be expected to act fairly.

Id. at 946. Prior to the *Otis* decision, the new Department had created an administrative review system which the court found acceptable as “a body that will act fairly in deciding censorship disputes.” *Id.* The court commended the Department on the administrative review system which had been established, but found the guidelines inadequate to ensure basic fairness because no account was taken of the basic due process requirements of notice and some opportunity to be heard. *Id.*

²⁷⁴ See Admin. Bull. No. 60, *supra* note 272, at 3.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 5.

²⁷⁷ *Id.* at 1.

²⁷⁸ *Id.* at 2. The court in *Otis* recognized that a modicum of censorship is inevitable in a prison setting in order to prevent inflammatory material from causing disruption or violence. Nevertheless, the court cautioned that any prior restraint on literature should be exercised only when there was substantial danger of disruption. 330 F. Supp. at 945.

²⁷⁹ 1. In general, the materials should be acceptable for regular mailing in the United States.

2. In general, publications which are utterly without redeeming social value, or which clearly depict acts involving necrophilia, masochism, sadism, bestiality, or unnatural preoccupation with excrement, are not acceptable. Otherwise, literature dealing with the subject of sex is to be considered appropriate.
3. The publication should not defame, vilify [*sic*] or incite hatred towards persons because of their race, religion, creed or national origin.
4. The publication should not advocate the violent overthrow of the existing form of government of the United States or of this State. . . .
5. The publication should not advocate lawlessness, violence, anarchy or rebellion against governmental authority or portray such conduct as a commendable activity.
6. The publication should not incite disobedience towards law enforcement officers or prison personnel.
7. The publication should not depict the use or manufacture of firearms, explosives and other weapons.
8. The publication should not be of such a nature as to depict, describe or teach methods and procedures for the acquisition of certain physical manipulations and skills which expertise will, in the opinion of Department

If a facility committee decides that a review of requested material is warranted, the inmate will receive prompt written notification informing him of the reason for the delay.²⁸⁰ In addition, the inmate is to be invited to explain by way of a written statement submitted to the committee his reason for desiring the material.²⁸¹ Considering this statement along with their own evaluation, the committee is to arrive at a decision, subject to the review of the superintendent.²⁸² If the literature is found acceptable, it is to be given to the inmate immediately. If, however, the literature is rejected, the offensive material, the inmate's written statement, and a report justifying the rejection by citing to the specific page numbers which make the literature unacceptable is forwarded to Albany.²⁸³ The central review committee will then examine the material and send written notification of its decision to all correctional facilities.²⁸⁴ This notification is to be posted for the information of the inmates and for consultation when similar questions arise.²⁸⁵ From time to time the central review committee will, in addition, issue a master list of acceptable books and periodicals.²⁸⁶ Once a publication has been included on this list, it is to be admitted into the facility even if an occasional article contradicts the departmental guidelines.²⁸⁷

authorities constitute a threat to the safety, welfare and health of other inmates and employees.

Admin. Bull. No. 60, *supra* note 272, at 2.

²⁸⁰ *Id.* at 4; *see* note 273 *supra*. ◦

²⁸¹ Admin. Bull. No. 60, *supra* note 272, at 4. This provision was recognized as a sufficient due process safeguard "although in some cases such an opportunity to be heard may have limited utility in that the inmate has no foreknowledge of the material he has ordered." *Sostre v. Otis*, 330 F. Supp. 941, 946 (S.D.N.Y. 1971).

²⁸² Admin. Bull. No. 60, *supra* note 272, at 4.

²⁸³ *Id.*

²⁸⁴ *Id.* at 5. In November 1971, when the central office began publishing its decisions, 55% of the rejections made by the facility committees were overturned. MCKAY COMM'N REPORT 57. The strong stance taken in Albany has in turn resulted in less literature being rejected at the facilities. *Id.* n.45. Nevertheless, the central office itself has occasionally lapsed into practices which previously had been rejected by the courts. For example, Albany refused to approve *Fortune News*, a magazine published by a prison reform organization and run by ex-prisoners, because it was highly critical of corrections personnel and was not objective enough in its reporting. These same reasons for censorship of *Fortune News* were rejected by the court in *Fortune Soc'y v. McGinnis*, 319 F. Supp. 901 (S.D.N.Y. 1970).

²⁸⁵ Admin. Bull. No. 60, *supra* note 272, at 5.

²⁸⁶ *Id.* at 6; *see* Dep't of Correctional Services, State of New York, First Periodic Master List of Approved Literature (April 28, 1972) (on file at the *Cornell Law Review*). This list contains 361 periodicals considered acceptable. Also listed are 40 books on Afro-American studies which were approved by the Department on March 24, 1971. *Id.* at 9.

²⁸⁷ Admin. Bull. No. 60, *supra* note 272, at 6. Only if the entire philosophy on ap-

D. Presentation of Inmate Grievances

1. Access to Judicial and Administrative Forums

The court of appeals in *Sostre v. McGinnis*²⁸⁸ observed: "The generous scope of discretion accorded prison authorities . . . heightens the importance of permitting free and uninhibited access by prisoners to both administrative and judicial forums . . ." ²⁸⁹ While ruling that all regular correspondence may be read and censored,²⁹⁰ the court recognized as *sui generis* a letter between an inmate and a court or public official.²⁹¹ Although holding that the part of a communication intending to effect a redress of grievance could not be censored, the court nevertheless granted prison authorities the power to open and read these special letters, whether incoming or outgoing.²⁹² The Department, however, has gone beyond *Sostre* by forbidding prison officials from reading even such special correspondence.²⁹³

proved publications changes will unrestricted acceptance be reviewed. See First Periodic Master List of Approved Literature, *supra* note 286, at 1.

²⁸⁸ 442 F.2d 178 (2d Cir. 1971), *cert. denied sub nom. Sostre v. Oswald*, 404 U.S. 1049 (1972).

²⁸⁹ 442 F.2d at 200.

²⁹⁰ See notes 421-44 and accompanying text *supra*.

²⁹¹ 442 F.2d at 200.

²⁹² *Id.* at 200-01. Although prison officials were enjoined from deleting material dealing with legitimate protests, they were permitted to read this mail in order to prevent the inmate from abusing his right of access to his attorney, a court, or a public official. Such abuse could consist of the attempted transfer of contraband or unlawful schemes, or the use of special correspondence as a mere pretext for communication about restricted matters. When the prison censor found such misuse present, he could strike that portion of the communication. *Id.* at 200. *But see* *Smith v. Robbins*, 454 F.2d 696 (1st Cir. 1972); *Marsh v. Moore*, 325 F. Supp. 392 (D. Mass. 1971). Notwithstanding *Sostre*, the trend is likely to be in the direction of enjoining the opening of inmate-attorney mail. See DEP'T OF CORRECTIONS, STATE OF SOUTH CAROLINA, *THE EMERGING RIGHTS OF THE CONFINED* 44 (1972).

²⁹³ See Admin. Bull. No. 20 (amended), *supra* note 190. The definition of special correspondence encompasses letters to the President of the United States, members of Congress, the Governor of New York, New York State legislators, the Commissioner of Correctional Services, the Chairman of the State Board of Parole, and any judge or lawyer. *Id.* at 2. If an inmate mails a letter to any of the above persons, the envelope is to be examined for contraband, but "[t]he letter will not be read or censored." *Id.* at 3. When special correspondence is received, it is to be opened in the inmate's presence and examined for contraband, but it will likewise not be read or censored.

The practice of having the inmate present when the letter is opened assures the inmate that it is not being read and inhibits the chilling effect of any procedure under which the inmate must trust prison staff not to read an opened letter. See *Smith v. Robbins*, 454 F.2d 696, 697 (1st Cir. 1972); note 247 *supra*. However, the Department's rules only provide for the inmate's presence upon receipt of special correspondence and not upon its mailing (*cf.* Admin. Bull. No. 20 (amended), *supra* note 190, at 3), where the chilling effect rationale would have the same, if not greater, application. The Department

In an effort to give substance to the inmate's right of unfettered access to the courts and to attorneys, the Department has engaged in various attempts to upgrade the legal assistance provided inmates.²⁹⁴ Federal funds have enabled the Department to establish law libraries at six institutions, and to provide training in their use.²⁹⁵ The former ban on legal assistance from "jailhouse" lawyers has been lifted, provided that no compensation is paid.²⁹⁶ Attempts are also being made to expand outside legal assistance.²⁹⁷

originally had provided for the inmate's presence at the time the outgoing letter was inspected and sealed. See Six-Month Operational Digest 2.

²⁹⁴ The Select Committee termed these efforts "ad hoc" or taken on a "good idea" basis and criticized the Department for the failure to proceed systematically in assessing "the need[s] of inmates for legal assistance in civil and criminal matters, including a determination as to appropriate types and levels of legal assistance." SELECT COMM. REP. No. 4, at 48. For a view that inmates should be provided with full-time, in-house counsel, see Ashman, *The Rhetoric and Reality of Prison Reform*, JUDICATURE, June-July 1972, at 12.

²⁹⁵ See Fed. Grant Award Fact Sheets, Grant No. 6, *supra* note 96. Part of the \$234,191 in federal funds was used to establish law libraries at the Great Meadow, Green Haven, Clinton, Auburn, Elmira, and Attica Correctional Facilities. The remaining money was used in the Legal Field Services Program. *Id.*; see notes 94-102 and accompanying text *supra*. The state supplied an additional \$80,666 to these programs. Fed. Grant Awards Received and Proposed 1.

The libraries' legal materials emphasize recent cases, statutes, and treatises in the criminal area. Fed. Grant Award Fact Sheets, Grant No. 6, *supra* note 96. The Attica Correctional Facility Law Library contains a complete set of McKinney's Consolidated Laws of New York Annotated, the 1971 edition of McKinney's Sessions Laws of New York, the second series of New York Supplement, and a 1971 edition of McKinney's New York Court Rules—State and Federal. Attica Correctional Facility Law Library Catalog, New York Statutes (undated list) (on file at the *Cornell Law Review*). In the federal area, Attica inmates are provided with the United States Code Annotated, the Modern Federal Practice Digest, Handbook on Criminal Procedure in the United States District Court, the Federal Rules of Criminal and Civil Procedure, the Federal Supplement (volumes 200 to date), the second series of the Federal Reporter (volumes 300 to date), and the Supreme Court Reporter (volumes 76 to date). Attica Correctional Facility Law Library Catalog, Federal Statutes (undated list) (on file at the *Cornell Law Review*). Inmates who work in the Attica Law Library informed the authors that all these materials were new, and that previously, only privately owned law books were available for legal research. The inmates expressed great satisfaction with the new material, although they were trying to obtain copies of Shepard's citators and prior volumes of New York and Federal cases.

The federal district court opinion in *Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970), *aff'd per curiam sub nom.* *Younger v. Gilmore*, 404 U.S. 15 (1971), has been read as announcing that "the state has an affirmative burden to provide inmates with the basic necessities of legal care The law library may be the functional equivalent of a prison's hospital." DEP'T OF CORRECTIONS, STATE OF SOUTH CAROLINA, *supra* note 292, at 52.

²⁹⁶ Summary of Progress Reports on the Select Comm. Recommendations, *supra* note 192, at 6. This step is required under the decision of the United States Supreme Court in *Johnson v. Avery*, 393 U.S. 483 (1969), unless the Department can demonstrate that it is providing a reasonable alternative to the legal assistance provided by the jailhouse lawyer. *Id.* at 490.

²⁹⁷ In an effort to expand existing programs, the Department has invited law schools

2. Access to News Media

Although the Department is seeking to provide the inmate with unrestricted access to judicial and administrative forums and the opportunity for greater inmate contact with family and friends, "[i]t is apparent that these limited avenues of communication are not good enough to bring to the public attention a complete and accurate picture of prison life."²⁹⁸ Thus, the Second Circuit in *Burnham v. Oswald*²⁹⁹ found that inmate access to the news media and

throughout the state to participate in legal assistance programs. See Summary of Progress Reports on the Select Comm. Recommendations, *supra* note 192, at 6. The Columbia Law School project, after a very brief period of operation at Green Haven Correctional Facility in Stormville, New York, terminated all operations. However, the Cornell Law School project, serving inmates of the Auburn Correctional Facility, has now successfully operated for more than two years. If partial outside funding continues to be available, the project will probably become a permanent addition to the Cornell Law School's curriculum. Memorandum from John L. Zenor, Staff Attorney, Auburn Prison Project, Cornell Law School, to the authors, March 12, 1973 (on file at the *Cornell Law Review*).

At the Albany and Syracuse Law Schools, a prisoner legal assistance project is reportedly in the planning stages. See Narrative Description of the Cornell Law School Legal Assistance Project for the Auburn Correctional Facility 2E (Jan. 1973) (on file at the *Cornell Law Review*). Several law schools outside of New York have experimented with student legal aid for prisoners. See Jacob & Sharma, *Justice After Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process*, 18 KAN. L. REV. 493, 604 (1970). Some of these programs, such as that of the University of Kansas Law School serving the inmates of the federal penitentiary at Leavenworth, Kansas, have had a notable degree of success. See Wilson, *Legal Assistance Project at Leavenworth*, 24 LEGAL AID BRIEFCASE 254 (1966).

The provision of legal aid to prisoners by law students has frequently received judicial endorsement. See, e.g., *Johnson v. Avery*, 393 U.S. 483, 489 (1969); *Gilmore v. Lynch*, 319 F. Supp. 105, 110-11 (N.D. Cal. 1970), *aff'd per curiam sub nom. Younger v. Gilmore*, 404 U.S. 15 (1971).

Beyond the area of student legal aid, the New York Bar Association is cooperating in a lawyer-observer program designed to monitor institutional disciplinary processes, and the American Civil Liberties Union is now providing a legal assistance and counseling program for the women at Bedford Hills. See Dep't of Correctional Services, State of New York, Press Release, Sept. 11, 1972 (on file at the *Cornell Law Review*). The Select Committee was impressed by the considerable effort involved in planning the ACLU project and expressed the hope that it would provide a model which other facilities might follow in developing legal services. SELECT COMM. REP. No. 2, at 39.

²⁹⁸ *Burnham v. Oswald*, 342 F. Supp. 880, 886 (W.D.N.Y. 1972) [hereinafter referred to as *Burnham I*].

²⁹⁹ 342 F. Supp. 880 (W.D.N.Y. 1972). This action was brought in March 1971 as a class action on behalf of all news media members who were seeking to interview New York inmates and all inmates who desired to be interviewed. *Id.* at 882. The complaint alleged that the policy of the Department was to deny private inmate-media interviews. *Id.* at 883. The proceeding was suspended while the parties voluntarily engaged in discussions which resulted in the promulgation of departmental guidelines concerning the news media. See Dep't of Correctional Services, State of New York, Admin. Bul. No. 9 (July 15, 1971) (on file at the *Cornell Law Review*).

From July 15 to September 9, 1971, the date of the Attica riot, no request by a newsman for an inmate interview was denied. After the uprising was quelled, however, all requests

the media's access to the facilities was required to implement this goal.³⁰⁰

for interviews with Attica inmates were denied. See *Burnham v. Oswald*, 333 F. Supp. 1128, 1128-29 (W.D.N.Y. 1971) [hereinafter referred to as *Burnham II*]. The action in *Burnham II* was brought by plaintiffs to challenge the Department's refusals; the constitutionality of the guidelines was not at issue. The court upheld the denials as not being unreasonable under the existing circumstances. *Id.* at 1131.

After the close of the proceedings in *Burnham II*, a new set of news media guidelines was issued on January 31, 1972. See Admin. Bull. No. 20, *supra* note 227. The proceeding in *Burnham I* was then reconvened, and the court reached for the first time the question of whether the inmates and the press had a constitutional right of access to one another, and if so, whether the Department's guidelines were sufficient to protect this right. See notes 302-10 and accompanying text *infra*.

³⁰⁰ 342 F. Supp. at 885-86. Another technique which would be of great value in breaking down the isolation existing between the public and the inmate would be the provision of penal ombudsmen. The concept of providing our prisons with ombudsmen has been gaining growing support. See SELECT COMM. REP. NO. 2, at 9; SELECT COMM. REP. NO. 4, at 3; Ashman, *supra* note 294, at 12-13; Tibbles, *Ombudsmen for American Prisons*, 48 N.D.L. REV. 383 (1972); Note, *The Penal Ombudsman: A Step Toward Penal Reform*, 3 PACIFIC L.J. 166 (1972); Appendix E, concession number 4. The purpose of an ombudsman is to investigate complaints made about administrative practices. The office has four distinguishing characteristics: (1) it is independent of the agency it investigates; (2) it has full power to investigate the agency; (3) it recommends a course of action and makes its recommendations public; and (4) it lacks power to take direct action. Note, *supra* at 178. The ombudsmen would provide the inmate with an independent agency capable of investigating alleged administrative abuse. They not only would act as a safety valve by lessening prisoner frustration, but also would provide the department with valuable feedback on the prison situation.

The Select Committee has been performing a type of ombudsman function since its inception in October 1971. Unfortunately, the Committee will disband after it issues its final report some time in 1973. The New York State Commission of Correction (to be distinguished from the Department of Correctional Services) could also be used to provide New York's correctional facilities with ombudsman service. The Commission is charged by the New York Constitution with the responsibility to "visit and inspect, or cause to be visited and inspected . . . all institutions used for the detention of sane adults charged with or convicted of crime." N.Y. CONST. art. XVII, § 5. See also N.Y. CORREC. LAW § 46 (McKinney Supp. 1972). The 1968 study of New York's post-adjudicatory criminal system analyzed the Commission and recommended several changes. See Gov. SPEC. COMM. 276-77. The Governor's Special Committee recommended that the Commission be continued, but that its duties be narrowed to purely visitation and inspection. "The Commission would [become] an independent watchdog." *Id.* at 277. In order to ensure the independence of the Commission, the committee also recommended the elimination of the requirement that the Commissioner of Correction head the Commission charged with monitoring his Department. *Id.* By the time Attica erupted, nothing had been done to effect these recommendations. See SELECT COMM. REP. NO. 2, at 7-10. The Select Committee has proposed that immediate restructuring take place to make the State Commission of Correction "an independent inspection service and most importantly to give it authority to act as 'ombudsman.'" SELECT COMM. REP. NO. 4, at 3. However, instead of limiting the functions of the Commission as the Governor's Special Committee recommended in 1968, the Select Committee proposed an expansion of them. See SELECT COMM. REP. NO. 2, at 7-10. This approach is basically unsound for the reasons expressed by the Governor's Special Committee: certain duties can be performed by the Department more efficiently, and the more roles the Commission is

The present guidelines dealing with the news media³⁰¹ recognize that the inmates and members of the press have a qualified right of contact.³⁰² When a media representative desires to interview a specific inmate he is required to make the nature of the interview known to the superintendent, who may withhold permission for the interview if it "presents a clear and present danger to the security, discipline or orderly administration of the Correctional Facility of [*sic*] where the inmate has clearly abused his right of access to the news media on a prior occasion."³⁰³ Three rudimentary due process requirements are set out in the guidelines to prevent the abuse of discretion by the superintendent.³⁰⁴ First, the inmate is to be notified when a request has been made to interview him. Second, both the inmate and the news media representative are to be given an opportunity to be heard in support of the request. Third, an appeal may be taken to the Commissioner if the superintendent rejects the requested interview.³⁰⁵ Interviews are to be directly observed, although they are no longer to be

required to perform, the less time it will be able to devote to "ombudsman" duties. See GOV. SPEC. COMM. 276-77.

In 1972, the legislature initiated procedures to solve the "independence" problem by adopting a resolution to end the requirement that the Commissioner of Correctional Services head the State Commission of Corrections. See SELECT COMM. REP. NO. 4, at 4. However, although the legislature did not enact the sweeping proposals made by the Select Committee to restructure the Commission, neither did it take any action to limit the Commission's functions to investigation. In recent years, the actions of the Commission have been trifling, and the failure of the legislature to act will cause New York to "go for at least another year without any independent correctional inspection service or ombudsman." *Id.*; see N.Y. Times, March 25, 1973, at 47, col. 1.

³⁰¹ See Dep't of Correctional Services, State of New York, Admin. Bull. No. 83 (Oct. 30, 1972) (on file at the *Cornell Law Review*).

³⁰² *Id.* at 2. The court in *Burnham I* agreed that this right could be limited, provided that the restrictions were necessary and reasonably related to a justifiable purpose of incarceration. 342 F. Supp. at 886.

³⁰³ Admin. Bull. No. 83, *supra* note 301, at 3. The quoted standards were specifically approved by the court in *Burnham I*. 342 F. Supp. at 887. The present guidelines still grant the superintendent very broad discretion, however. In *Burnham I*, the court objected to the provision whereby the superintendent *may* deny an interview upon the fulfillment of certain conditions. "In the opinion of the court, the law requires that the Superintendent *must* grant an interview unless denial is necessary to protect 'a compelling state interest . . .'" *Id.* (emphasis in original).

³⁰⁴ The court in *Burnham I* directed that the procedural safeguards required under *Sostre v. Otis*, 330 F. Supp. 941 (S.D.N.Y. 1971), also be provided in this situation. 342 F. Supp. at 888; see note 273 *supra*.

³⁰⁵ Admin. Bull. No. 83, *supra* note 301, at 3. The court in *Burnham I* held that the initial decision by the superintendent together with the right of appeal to the commissioner meets the due process requirement of a fair administrative body required by *Otis* so long as the superintendent is guided by constitutionally proper standards. 342 F. Supp. at 888.

listened to or monitored.³⁰⁶ Furthermore, reprisals are not to be taken against an inmate because of his participation in any interview.³⁰⁷

Correspondence initiated by the inmate for the purpose of contacting the news media is judged by a different standard from that applied to correspondence seeking redress from courts, counsel, or public officials.³⁰⁸ Although the news media guidelines give the inmate a limited right to correspond with the press, such letters may be opened and read.³⁰⁹ This procedure would appear to have a substantial chilling effect upon the inmate's right to protest and the public's right to know.³¹⁰

3. Access to Intradepartmental Forums

[T]he tragic experience at Attica . . . would make correctional officials, an observer might think, seek more peaceful ways of resolving prison problems than the old, ironclad, solitary-confinement, mail-censoring, dehumanizing methods that have worked so poorly in the past.³¹¹

Early in the new administration, inmates with complaints or inquiries were granted the right to send sealed letters to the Commissioner of Correctional Services.³¹² Although the utility of complaining to the Commissioner has been questioned,³¹³ the Department is attempting to

³⁰⁶ Admin. Bull. No. 83, *supra* note 301, at 3. The present provision to safeguard the confidentiality of the interview goes beyond the requirements of *Burnham I*. The plaintiffs there argued that the Department's prior existing practice of monitoring their interviews had a chilling effect on their first amendment rights. 342 F. Supp. at 888. Although the court was of the opinion that any justifiable security need could be gained by observation from a distance without listening to the interview, the practice nevertheless was allowed to be continued. *Id.* 888-89. The court felt constrained by the mandate of *Sostre v. McGinnis*, 442 F.2d 178 (2d Cir. 1971), *cert. denied sub nom.* *Sostre v. Oswald*, 404 U.S. 1049 (1972), reasoning that since *Sostre* permitted all incoming and outgoing mail to be opened and read by prison officials to prevent "the risk of plotting escapes or transferring contraband . . . [i]t would be inconsistent . . . [to] prohibit them from monitoring interviews for the same purpose." 342 F. Supp. at 889.

³⁰⁷ Admin. Bull. No. 83, *supra* note 301, at 3.

³⁰⁸ Compare *id.* with note 293 and accompanying text *supra*.

³⁰⁹ Admin. Bull. No. 83, *supra* note 301, at 3.

³¹⁰ *Burnham I* permitted this practice in accordance with the rationale expressed in note 306 *supra*. 342 F. Supp. at 889. See also *Nolan v. Fitzpatrick*, 451 F.2d 545, 551 (1st Cir. 1971).

³¹¹ *Goodwin v. Oswald*, 462 F.2d 1237, 1245 (2d Cir. 1972) (concurring opinion) (citations and footnotes omitted). See generally Note, *Bargaining in Correctional Institutions; Restructuring the Relation Between the Inmate and the Prison Authority*, 81 YALE L.J. 726 (1972).

³¹² See Six-Month Operational Digest 2.

³¹³ The court of appeals in *Sostre v. McGinnis*, 442 F.2d 178 (2d Cir. 1971), termed the

improve the credibility of this procedure.³¹⁴ A communication unit has been established in Albany to process inmate correspondence with the Commissioner rapidly.³¹⁵ The inmate is to "receive an immediate interim reply and inquiries or complaints that require further information will be followed up."³¹⁶ However, the central office in Albany is handicapped by its limited ability to carry out the field investigations necessary for strict adherence to this procedure. Although one of the objectives of the Inspector General Service is to investigate inmate complaints,³¹⁷ the small number of inspectors, who also have other duties to perform,³¹⁸ limits the Service's ability to follow up on all inmate complaints.

The major effort of the Department in providing grievance channels for "the early recognition of the underlying causes of discord or disturbance"³¹⁹ has been the creation of an inmate liaison committee at each facility.³²⁰ This committee is designed to serve as an inmate body that facilitates communication between the inmates and the facility administration and that provides the superintendent with recommendations for improving institutional operation.³²¹ Each committee consists of elected inmates³²² who are to act as a liaison with the superintendent.³²³

Several problems have arisen with respect to these committees. The high inmate expectations arising from their formation have not been

administrative procedure of writing a letter to the Commissioner a "meaningless and plainly futile gesture." *Id.* at 182.

³¹⁴ See Fed. Grant Award Fact Sheets, Grant No. 5—Correspondence Service Program.

³¹⁵ *Id.* The unit also processes all inquiries and complaints from the public. A federal grant of \$57,000 set up the program, which is operated by two professionals and two clerical employees. The unit was in operation by mid-April 1972. *Id.*

³¹⁶ *Id.*

³¹⁷ See Admin. Bull. No. 59, *supra* note 79.

³¹⁸ See notes 81-82 and accompanying text *supra*.

³¹⁹ Admin. Bull. No. 19, *supra* note 77, at 3.

³²⁰ Inmate liaison committees have been established in all the facilities except Great Meadow and Matteawan State Hospital. The members of the committee at Great Meadow resigned (see note 326 and accompanying text *infra*), while at Matteawan there were special problems in obtaining inmate participation. See Summary of Progress Reports on the Select Comm. Recommendations, *supra* note 192, at 6. The committees were established as a result of a directive issued in January 1972. Admin. Bull. No. 19, *supra* note 77; see AMERICAN CORRECTIONAL ASS'N 547-50; DEP'T OF CORRECTIONS, STATE OF SOUTH CAROLINA, *supra* note 292; at 93-94.

³²¹ See Admin. Bull. No. 19, *supra* note 77, at 1.

³²² The inmates are selected by ballot in a free election. However, the Superintendent has the discretion to "restrict from membership those inmates who have been recent or chronic disciplinary problems in the institution." *Id.* at 2.

³²³ *Id.*

met.³²⁴ Moreover, the members of the committees, while under intense pressure from the inmates to bring about change, "fear that they are being 'used' by the administration."³²⁵ This conflict has caused one committee to disband,³²⁶ and others are considering similar action.³²⁷ Although some problems can be attributed to the difficulties involved in implementing a new program, many of the problems have arisen from the limited authority given the committees.³²⁸ The guidelines direct that the inmate liaison committee is to have no decision-making, administrative, or disciplinary functions,³²⁹ nor may it meet with the

³²⁴ See SELECT COMM. REP. NO. 4, at 45. Nor have all the superintendents been pleased with the committees. *Id.* One example is provided by the comment made by J. Leland Casscles, the superintendent at Great Meadow: "I honestly don't know what they want . . . They can't seem to get organized. *And you have to remember that we got along fine for years without a liaison committee.*" Quoted in N.Y. Times, March 4, 1973, at 52, col. 3 (emphasis added). However, some negative reaction was anticipated, and the feeling of the central office is that the committees have done as well as was expected. SELECT COMM. REP. NO. 4, at 45.

³²⁵ SELECT COMM. REP. NO. 4, at 45.

³²⁶ *Id.* The resignations occurred at the Great Meadow Correctional Facility, and the committee elected there in the spring of 1972 dissolved. See N.Y. Times, March 4, 1973, at 52, col. 3. When new elections were held the following September, only 134 inmates out of 1358 voted. *Id.* A group was then appointed by the superintendent, but the inmates refused to serve. *Id.* For the superintendent's view of the inmate liaison committee, see note 324 *supra*.

³²⁷ See SELECT COMM. REP. NO. 4, at 45.

³²⁸ Both the American Correctional Association and the South Carolina Department of Corrections suggest that the authority of any inmate advisory counsel be severely circumscribed. AMERICAN CORRECTIONAL ASS'N 548; DEP'T OF CORRECTIONS, STATE OF SOUTH CAROLINA, *supra* note 292, at 94.

³²⁹ Admin. Bull. No. 19, *supra* note 77, at 2. The inmate grievance commission to which the Department agreed at Attica was to have the power of participation in the decision-making process. See Appendix E, concession number 18. However, the Department is "naturally interested in quelling any inmate activity which may arrogate to inmates themselves some decision-making power about the conditions of prison life." *Goodwin v. Oswald*, 462 F.2d 1237, 1243 (2d Cir. 1972).

The *Goodwin* case dealt with the unsuccessful attempt by the Department to withhold attorney correspondence from the inmates who were trying to establish a prisoners' labor union at Green Haven. The letters, a reply to the inmates' inquiry about the formation of a union, advised the prisoners that they could legally form a union and have it officially certified. See *id.* at 1240. The Department, vehemently disagreeing with this conclusion of law and fearing the establishment of "an alternate source of authority to challenge the officials," withheld the letters. *Id.* at 1244. The court, however, held that the inmates had a right to receive the letters by analogizing the attorney action to a large scale section 1983 proceeding "trying to establish a right, possibly derived from the first and thirteenth amendments, for the prisoners to associate and try to lessen the harshness of prison work conditions and contribute to the success of training and rehabilitation programs." *Id.* at 1243. However, the issue of the constitutionality or legality of prison unions was not in question. The sole issue being litigated was whether or not the Department could stop the letters from reaching the inmates. *Id.* at 1239. For a discussion of the novel issues surrounding the right of inmates to form a union, see Symposium Comment,

Commissioner or the press.³³⁰ Its power is further limited to discussions with facility officials concerning "the welfare of the inmate body as a whole."³³¹ This provision is interpreted to mean that no individual complaint may be presented by the committee, nor may it discuss the personality of any inmate or employee.³³²

E. *Temporary Release into the Community*

Under legislation enacted in 1972, the Department of Correctional Services has been given broad discretion to release trustworthy inmates into the community on a short-term basis.³³³ The comprehensive tem-

Labor Unions for Prison Inmates: An Analysis of a Recent Proposal for the Organization of Inmate Labor, 21 BUFFALO L. REV. 963 (1972).

³³⁰ Dep't of Correctional Services, State of New York, Press Release, July 21, 1972, at 2 (on file at the *Cornell Law Review*). Although the refusal to allow the committee to meet with the press is inexcusable, the denial to allow it to meet with the Commissioner can be justified on the grounds that it would usurp the superintendent's authority. The central office, however, has gone beyond what would be required to maintain the superintendent's authority and has cut itself off from all communication with the inmate liaison committees. See Interview with Walter Dunbar, *supra* note 89.

Although each member of the committee as an individual has a right to correspond with the Commissioner, the committee as a whole may not write to the Commissioner about inmate complaints or suggestions, even those which have already been presented to the superintendent and upon which no action has been taken. See *id.* The problems such an approach entails are obvious. A letter from an individual will not convey to the Department the extent of widespread discontent; even letters from several individuals will not have the significance of a letter from the inmates' elected representatives. Presently, the only way the central office can become informed of the suggestions or complaints raised by the liaison committee is if the superintendent brings them to Albany's attention. See *id.* Whereas the purpose of the inmate liaison committee is primarily to work with the superintendent at the facility level, the central office gains nothing and loses much valuable information by so greatly circumscribing its access to the opinions of the committee. Furthermore,

[i]nmate members of the liaison committee complain that they are not consulted on new programs and policies by central office staff and that as human beings they should have an opportunity to recommend what might be done concerning their existence. Failure to do so is regarded by them as a form of degradation.

SELECT COMM. REP. No. 4, at 20. Thus, the overall approach of the Department to the inmate liaison committee would appear to be completely contrary to its efforts toward providing better communication. See notes 69-77 and accompanying text *supra*.

³³¹ Admin. Bull. No. 19, *supra* note 77, at 2. Generally, this means matters such as food, shelter, and clothing. *Id.* at 3.

³³² *Id.* at 2. The lack of justification and clarity surrounding these restrictions has been critically questioned. See SELECT COMM. REP. No. 2, at 37. However, the Department has not responded with clarification or supporting rationale. See SELECT COMM. REP. No. 4, at 46. *But cf.* AMERICAN CORRECTIONAL ASS'N 547-50. The effect of prohibiting the presentation of individual grievances is to destroy the inmate liaison committee as a grievance channel for individual inmates, leaving letters to the Commissioner as the only means of protest within the Department.

³³³ See N.Y. CORREC. LAW §§ 851-58 (McKinney Supp. 1972).

porary release program includes an expanded work release program³³⁴ and establishes programs dealing with furloughs³³⁵ and leaves of absence.³³⁶ These programs are essential to the concept of reintegrating the inmate into the community. Moreover, they represent a potentially humanizing and motivational device which could be used effectively to lessen the impact of institutional life.³³⁷ Unfortunately, the Department's guidelines which implement the legislative provisions of the furlough and leave of absence programs³³⁸ are excessively cautious and perpetuate the Department's traditional reluctance to take risks.

Although the statute indicates that leaves to attend family funerals or to visit terminally ill relatives shall be granted for whatever time is necessary,³³⁹ the guidelines specify that such leaves are normally to be

³³⁴ Under the original work release program an inmate could leave the institution only for the purpose of education, on-the-job training, or employment. Ch. 472, § 1, [1969] N.Y. Laws 1578. The new program encompasses the purposes of the prior program plus release for volunteer work and "any matter necessary to the furtherance of such purposes." N.Y. CORREC. LAW § 851(3) (McKinney Supp. 1972). Daily absences are authorized for a period of up to 14 hours. *Id.* To qualify as a participant, the inmate must be an "eligible inmate," defined as an inmate who is within one year's eligibility for release by parole or an inmate who is serving an indeterminate sentence and whose minimum period of imprisonment fixed by the court or by the state board of parole has expired. *Id.* § 851(2).

³³⁵ See N.Y. CORREC. LAW § 851(4) (McKinney Supp. 1972). Under the furlough program, an inmate may leave the facility for a period not exceeding seven days when such absence is necessary to seek employment, maintain family ties, solve family problems, attend educational or vocational training courses of limited duration, or for any purpose required to further the above. In order to participate in a furlough program the inmate must come within the definition of an "eligible inmate." *Id.*; see note 334 *supra*.

³³⁶ See N.Y. CORREC. LAW § 851(5) (McKinney Supp. 1972). The leave of absence program permits an inmate to leave the institution for the time necessary:

- (a) to visit his or her father, mother, child, brother, sister or spouse during his or her last illness if death appears to be imminent; or
- (b) to attend the funeral of such relative; or
- (c) to undergo surgery or to receive medical or dental treatment not available in the correctional institution.

Id. The privilege of participation in a leave of absence program may be granted to any inmate, regardless of whether he meets the statutory definition of "eligible inmate." *Id.*

³³⁷ However, the eligibility requirements for participation in work release and furloughs present serious limitations on the potential of these programs. Most inmates are not within one year of parole eligibility; they contend "that the one-year requirement . . . is mechanistic, unfair to inmates and unrelated to public protection." SELECT COMM. REP. No. 4, at 14. The inmates' grievance is a valid one. Although the length of time the inmate has remaining to serve should be a factor in deciding whether to grant a particular request, the Department should have the discretion to balance the time factor against other factors, such as the crime for which the offender was convicted, his present behavior and attitude, and the benefit which he could derive from participation in the designated program.

³³⁸ Dep't of Correctional Services, State of New York, Admin. Bull. No. 63 (June 22, 1972) (on file at the *Cornell Law Review*).

³³⁹ N.Y. CORREC. LAW § 851(5) (McKinney Supp. 1972).

limited to one day plus travel time.³⁴⁰ The legislation also provides that to qualify for a furlough to seek employment, the inmate must be within one year of parole eligibility, and that the length of the furlough is not to exceed seven days.³⁴¹ The administrative bulletin, on the other hand, lists as a general guide the following restrictions in granting employment furloughs: (1) the inmate should be within thirty days of release; (2) he should have a definite lead on a job; and (3) an interview should normally be scheduled in advance. When these three conditions are met, the furlough may be granted, but only for the period of one day plus travel time.³⁴² Other limitations for which no statutory mandate can be found include the limitation that furloughs, employment or otherwise, should not exceed one per year for any inmate,³⁴³ the stipulation that furloughs and leaves are not to be granted as vacations or as rewards for good behavior,³⁴⁴ and the requirement that before a request is granted all other means of accomplishing the objective should be exhausted.³⁴⁵

Nevertheless, the Department has moved rapidly to make these programs operational.³⁴⁶ In the first six months, 1,331 inmates were temporarily released.³⁴⁷ The results thus far have exceeded all expecta-

³⁴⁰ Admin. Bull. No. 63, *supra* note 338, at 4.

³⁴¹ N.Y. CORREC. LAW § 851(4) (McKinney Supp. 1972); *see* note 335 *supra*.

³⁴² Admin. Bull. No. 63, *supra* note 338, at 4. If an appointment has not been secured and it is decided that a furlough should be granted, it may not exceed four days. *Id.*

³⁴³ *Id.*; *see* note 347 *infra*.

³⁴⁴ Admin. Bull. No. 63, *supra* note 338, at 5. *But see* note 347 *infra*.

³⁴⁵ Admin. Bull. No. 63, *supra* note 338, at 5.

³⁴⁶ The furlough and leave of absence programs became effective on June 21, 1972, and were operational by July. Dep't of Correctional Services, State of New York, Memorandum of Jan. 15, 1973, at 1 (on file at the *Cornell Law Review*).

³⁴⁷ *Id.* From July 1 to December 31, 1972, the Department granted 1,160 furloughs involving at least 1,100 different inmates from a total of 3,041 requests. *Id.* The dominant reason given by the inmates in their requests was "maintaining family ties." *Id.*; *see* N.Y. CORREC. LAW § 851(4) (McKinney Supp. 1972). This was also the category with the highest approval rate. Memorandum, *supra* note 346, at 1. Of the 1,160 furloughs, 855 were granted during the Christmas and Thanksgiving holiday seasons to help the inmate strengthen family ties. *Id.*

During the same six-month period, there were 339 requests for leaves of absence, of which 171 were approved. Most of these requests were for visits to a relative during a last illness. *Id.*; *see* N.Y. CORREC. LAW § 851(5)(a) (McKinney Supp. 1972). This category, however, had the highest disapproval rate. For the most part, these rejections were based either upon field investigations which found that the seriousness of the illness had been exaggerated or upon requests to visit relatives not enumerated in the statute. Memorandum, *supra* note 346, at 1. As to the latter reason for rejection, the Department's legal unit has proposed an amendment to widen the statutory list of relatives. *Id.* In the meantime, "the judicious use of the furlough [has been] encouraged in cases of eligible inmates requesting deathbed visits (also funeral attendance) to persons not recognized in the present statute." *Id.* Such persons include those who have acted as a de facto guardian or substitute parent to the inmate. *Id.*

tions.³⁴⁸ But despite the impressive six-month record of the Department, the guidelines necessarily inhibit the full benefit these programs could have for trusted inmates. Indeed, the failure of the Department to exercise the full discretion granted it may well result in added bitterness among the prisoners. Hopefully, the success which the Department has so far experienced with these programs will overcome the cautious approach evidenced in the guidelines.

The remaining program under the temporary release legislation is work release, which allows an inmate to leave the facility several hours a day for purposes of education, employment, on-the-job training, or volunteer work.³⁴⁹ The objective of this program is to provide the inmate with the opportunity to benefit from the resources of the community while acquiring and demonstrating acceptable behavior patterns in preparation for his future re-entry into the community.³⁵⁰ Although a limited form of work release had been in existence since late 1969, by August 1972 a cumulative total of only 173 inmates had participated.³⁵¹ As of that date, sixty-four inmates were participating in work release—less than one half of one percent of all inmates.³⁵² Limited expansion of the program has occurred since that date.³⁵³ If the funds which the Department is requesting for the 1973-1974 fiscal year are made available, the number of inmates who could participate in some form of work release would be increased to 660.³⁵⁴ This in-

³⁴⁸ Memorandum, *supra* note 346, at 2. Of the 1,331 requests granted for furloughs and leaves, only 13 inmates failed to return voluntarily. Of these, three were arrested for new offenses, two were picked up at their homes for overstaying their furlough, and the remaining eight were in absconder status. *Id.*

³⁴⁹ See note 334 *supra*.

³⁵⁰ See Dep't of Correctional Services, State of New York, Admin. Bull. No. 12 (amended), at 1 (June 22, 1972) (on file at the *Cornell Law Review*). The privileged position of a work release inmate in comparison to the other inmates is staggering. In addition to the obvious benefits derived from participating in constructive programs, the inmate regularly leaves his stark prison existence behind him. He has the opportunity to eat meals in outside restaurants, shop for incidental and work-related needs, and have limited contact with members of the opposite sex. SELECT COMM. REP. NO. 4, at 15. It is not unusual for those gainfully employed to have saved \$2,000 by the time of parole. *Id.* at 14.

³⁵¹ *Id.* at 13.

³⁵² *Id.* at 13-14.

³⁵³ See EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, *supra* note 110, at 97.

[T]he Governor emphasized prisoner-release programs as having "the highest potential for rehabilitating the positively motivated inmate." However, among the multimillion-dollar expenditures as repairs for Attica and plans for additional prison guards and supervisors, the Governor could find room for only 135 additional work-release inmates in his planned 1972-73 budget.

N.Y. Times, Jan. 19, 1972, at 21, col. 1.

³⁵⁴ EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, *supra* note 110, at 97.

crease would still involve only four and one-half percent of the projected inmate population.³⁵⁵

In addition to the problem of available funds,³⁵⁶ further expansion is limited by the location of the major correctional facilities, which presents difficult transportation problems and insufficient community release opportunities.³⁵⁷ Realistically, effective utilization of work release can only result from the use of community-based correction centers.³⁵⁸

F. *Reduced Cell Time*

At the time of the Attica uprising, ninety percent of the adult male inmates were serving time in maximum security institutions throughout the state³⁵⁹ and were spending fifteen hours each day confined to their cells.³⁶⁰ This amount of cell time was dictated not by the goals of

³⁵⁵ *Id.* at 98. However, since the present work-release legislation restricts participation to "eligible inmates" (*see note 334 supra*), it would be more accurate to compare the Department's progress with the number of inmates it could legally involve in work release. This can be done by dividing into 660 the projected number of inmates who will be discharged in 1973-1974, since they would be the only inmates qualified to participate. If this measure is taken, approximately 9% of the inmates who will be released during the 1973-1974 fiscal year could receive some work release experience. *See id.* The program is presently structured to involve each inmate for three and one-half months and then to have him paroled. SELECT COMM. REP. NO. 4, at 13.

³⁵⁶ *See* SELECT COMM. REP. NO. 4, at 14. In September 1972, the Select Committee reported that between \$75,000 and \$125,000 were required to operate a work release program at each facility. *Id.* at 13. However, the cost of these programs will rise as the number of inmates released for nonemployment purposes increases. This result will follow because those who are gainfully employed are required to pay for their own expenses (*see* N.Y. CORREC. LAW § 857 (McKinney Supp. 1972); Admin. Bull. No. 12 (amended), *supra* note 350, at 4), whereas those participating in educational or volunteer programs earn no money which can be used to lessen the program's expense. For example, the expansion of work release at Green Haven and the institution of work release at Ossining planned for the 1973-1974 fiscal year will cost a total of \$426,900. Of this sum, \$164,400 represents expenses connected with the education program. EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, *supra* note 110, at 98-99.

³⁵⁷ SELECT COMM. REP. NO. 4, at 14; *see* MCKAY COMM'N REPORT 91; *cf.* Appendix J.

³⁵⁸ *See* SELECT COMM. REP. NO. 4, at 16. For a discussion of community-based centers, *see notes 498-508 and accompanying text infra.*

³⁵⁹ MCKAY COMM'N REPORT 17. *See generally notes 534-44 and accompanying text infra.*

³⁶⁰ SELECT COMM. REP. NO. 4, at 30. The inmate spent the greatest share of the 15 hours in a single period beginning with his lock-up after an early supper and ending with breakfast the following morning. *See notes 186-87 and accompanying text supra.*

Cells at Attica are small cubicles approximately 6 feet wide, 9 feet long, and 7 feet high. . . . All cells contain a bed, a stool, a small table, a two-drawer metal cabinet, a naked light bulb, earphones for the radio system, a toilet, and a cold-water sink. There is not much room left for a man to move about.

MCKAY COMM'N REPORT 34.

rehabilitation and reintegration, but by the lack of funds and by security needs.³⁶¹

In an effort to alleviate the harsh effects of long hours of confinement, the Department has been exploring various methods of reducing cell time.³⁶² The most promising program now in effect involves more than one thousand inmates who are currently participating in evening academic or vocational instruction at four institutions.³⁶³ These federally aided programs,³⁶⁴ in addition to getting the inmate out of his cell, are designed to present opportunities for personal enrichment for the many inmates who can not participate in instruction offered during the day.³⁶⁵

³⁶¹ The original 19th-century therapeutic justification for isolation had long since been discarded; but the routine of solitude still served the needs of economy and security. According to the administrators, there were insufficient officers to assure security for evening programs, and most inmates could not be trusted outside their cells without supervision. Locking inmates up at night was the cheapest way to assure safety.

McKAY COMM'N REPORT 34.

³⁶² A sampling of the Department's efforts includes an evening industrial program at Auburn, Black poetry sessions at Attica, evening recreation and hobby programs at several facilities, and an evening library program at Bedford Hills. See SELECT COMM. REP. No. 4, at 30; Summary of Progress Reports on the Select Comm. Recommendations, *supra* note 192, at 4. In addition, the Department has asked for funds to establish new evening industrial programs at six institutions. EXECUTIVE BUDGET FOR THE FISCAL YEAR, APRIL 1, 1973 TO MARCH 31, 1974, *supra* note 110, at 97. The industrial programs will require 32 additional security guards at a cost of \$343,500. *Id.* at 99. If the funds are provided, the programs could reduce the cell time of approximately 1,000 inmates. *Id.* at 97.

³⁶³ See Dep't of Correctional Services, State of New York, Memorandum of Jan. 5, 1973 (on file at the *Cornell Law Review*). Although this is a large number of inmates, it includes less than one-fourth of all inmates confined at those institutions.

Facility	Number participating in:		Inmate Population
	Academic Program	Vocational Program	
Auburn	163	143	1,468
Elmira	403	0	1,149
Green Haven	185	55	1,762
Bedford Hills	71	20	339

Compare Appendix 1.

³⁶⁴ Fed. Grant Award Fact Sheets, Grant No. 13—Evening Academic and Vocational Program. The budget for this 12-month federal grant project includes \$271,347 in federal money and \$379,000 in state funds. Fed. Grant Awards Received and Proposed 2. The federally supported project was scheduled to expire in March 1973, although a renewal was being planned. *Id.*

³⁶⁵ Fed. Grant Award Fact Sheets, Grant No. 13, *supra* note 364. Only 20% of Attica inmates were able to attend academic or vocational classes during the day. McKAY COMM'N REPORT 36. See generally *id.* at 36-43. One additional benefit of evening instruction hoped for was increased participation by community volunteers. The enlistment of community

Although progress has been made in reducing cell time, the Department's programs have not provided the majority of inmates with consistent relief from their long hours of solitude.³⁶⁶ The ultimate solution to the problem of cell time, as is true of most of the Department's programs to change the prison environment, depends upon the complete implementation of the diversification concept discussed in the next section. At present, however, the overwhelming number of inmates are still confined in large maximum security institutions.³⁶⁷

III

DIVERSIFICATION

A. *Rationale and Plan*

Diversification pursuant to a long-range plan is at the core of the Department of Correctional Services' philosophy of correctional reform.³⁶⁸ A diversified system is a continuum of individualized correc-

volunteers to aid in prison programs is the subject of a separate federal grant project. See Fed. Grant Award Fact Sheets, Grant No. 4—Volunteer Services Program.

Although the Department hopes to expand these programs to all facilities, severe economic obstacles must first be overcome. The present program costs \$641,347. Of this amount, almost one-half goes to pay correctional officers for the additional security coverage needed, SELECT COMM. REP. NO. 2, at 28. In addition, the federal funds for this project have expired. Even if the planned renewal is granted, the state must be prepared to assume the full financial burden following the renewal's expiration date. See notes 147-48 and accompanying text *supra*.

³⁶⁶ See SELECT COMM. REP. NO. 4, at 30. Existing programs do not include all inmates; furthermore, because of insufficient evening security and lack of available space, the programs must be offered on a rotational basis. *Id.*

On weekdays, the inmate in maximum security spends eight hours outside of his cell, and of these, only five hours are allotted for work or schooling. "[T]hey were in reality primarily opportunities for socializing between inmates." MCKAY COMM'N REPORT 36. For a description of the job and educational assignments, see *id.* at 36-43.

Although task forces have been created to study educational and work programs (see SELECT COMM. REP. NO. 4, at 32-33), the inadequacies found by the McKay Commission still exist today for the maximum security inmate. See, e.g., N.Y. Times, March 4, 1973, at 52, col. 3.

³⁶⁷ See Appendix I. On the first anniversary of the Attica revolt, Commissioner Oswald observed:

A start has been made toward modernizing over-aged facilities. Undeniably, far more remains to be done.

A penal administration in the process of modernizing the penal concepts, approaches and, in some cases, even the penal facilities of another age, cannot be rebuilt overnight, even when the harsh glare of publicity has revealed to the public the shortcomings that penal officials struggle with daily. What is necessary is sustained public awareness and support of prison reform, which can be translated into the financial backing needed to continue carrying forward effective reform.

Press Release, *supra* note 169, at 1.

³⁶⁸ Commissioner Oswald has stated:

As I publicly announced in the initial weeks of my administration, the primary

tional treatment, achieved by a process of creating and molding custodial facilities and programs around perceived inmate needs.³⁶⁹

The broad targets for diversification correspond with the overall goal of the Department—individualization of treatment aimed at reintegrating the offender into the community.³⁷⁰ The diversified system is also seen as the ultimate means of achieving a humane correctional environment.³⁷¹

The Department offers four primary justifications for diversification. First, there are many different types of offenders in the custody of the Department.³⁷² Inmates range from the mentally defective to the near genius. Some offenders are only situationally or “accidentally” involved in a single crime; others are chronic or professional criminals who represent an immediate danger to society.³⁷³ The custodial and treatment needs of these inmates naturally vary substantially.³⁷⁴

Second, public attitudes as to the causes of crime and their solution are ambivalent.

Revenge, retribution, incapacitation, punishment, deterrence, protection, training, diagnosis, and treatment have all been specified and continue to exert influence on correctional philosophy and practices. The movement from revenge, restraint, reformation, [and] rehabilitation to *reintegration* has been incomplete and the preceding phases continue to leave their mark on contemporary expectations.³⁷⁵

Until a single solution is accepted by public authorities, a diversified system can maintain a multiple-function capability.³⁷⁶ The various

objective of my administration has been and has remained a complete diversification of our correctional programs and facilities in order to serve the diversification needs of the inmates in terms of security and program.

Second Year Budget Statement 9; see MULTI-YEAR MASTER PLAN iii; Interview with Wim van Eekeren, *supra* note 38.

³⁶⁹ See MULTI-YEAR MASTER PLAN S-1; Process Steps, *supra* note 46, at 1-2.

³⁷⁰ See MULTI-YEAR MASTER PLAN S-11; Preliminary Diversification Plan, *supra* note 44, at 1.

³⁷¹ See MULTI-YEAR MASTER PLAN S-11; Preliminary Diversification Plan 1; Second Year Budget Statement 12.

³⁷² Preliminary Diversification Plan 6-7; cf. TASK FORCE REPORT 1-2.

³⁷³ Preliminary Diversification Plan 6-7.

³⁷⁴ *Id.* at 7.

³⁷⁵ MULTI-YEAR MASTER PLAN I-15 (emphasis in original); cf. TASK FORCE REPORT 2-3.

³⁷⁶ “The correctional apparatus is still expected to serve as a deterrent to criminality although its function as an instrument for revenge and retribution may fade as lessened public pressure is exerted.” Preliminary Diversification Plan 7; see note 23 *supra*. The Corrections Task Force of the President’s Commission on Law Enforcement and Administration of Justice contended that public acceptance of the rehabilitation ideal is growing. TASK FORCE REPORT 6. This judgment was made in 1967, and the trend may since have been reversed.

aspects of the program may appeal to diverse public attitudes toward the crime problem.³⁷⁷

Third, despite decades of experience, penology has not arrived at a solution to criminal recidivism.³⁷⁸ "One thing seems fairly certain and this is that the solution does not lie in any one form of treatment or in any one combination of treatments for every offender."³⁷⁹ The correctional system must therefore adopt a strategy of trial and error which, when coupled with continuous accumulation and evaluation of treatment data, will yield answers to the value of treatment options.³⁸⁰ Penology has not advanced to the point of certainty which justifies investment of massive amounts of money, time, and effort in a monolithic system of corrections.³⁸¹

Fourth, the Department argues that there is substantial evidence that crime is a product of the interaction between the offender and his community. Reintegration is one practical, if difficult, rehabilitative technique which can be utilized in the absence of a proven rehabilitation success formula.³⁸² The rationale behind reintegration was stated by the Corrections Task Force of the President's Commission on Law Enforcement and the Administration of Justice:³⁸³

The general underlying premise for the new directions in cor-

³⁷⁷ The potential for broad appeal of a diversified system can be seen by comparing the prescription program (*see* notes 545-643 and accompanying text *infra*) with the community-based facilities and programs. *See* notes 447-522 and accompanying text *infra*. But the diversification plan does not appear to be aimed solely at mollifying all members of the public, since the emphasis is clearly in favor of minimum security treatment. *See* MULTI-YEAR MASTER PLAN 5-6; Six-Month Operational Digest 1.

³⁷⁸ *See* GOV. SPEC. COMM. 51, 312.

³⁷⁹ *Id.* at 51.

³⁸⁰ *See id.* at 301; Preliminary Diversification Plan 7; *cf.* TASK FORCE REPORT 13.

³⁸¹ *See* MULTI-YEAR MASTER PLAN I-15.

³⁸² *See* GOV. SPEC. COMM. 86-87, 300-01; Preliminary Diversification Plan 8.

Since no one can state with certainty what the cause of any individual's criminality might be, the best the post adjudicatory system can do is to focus its efforts upon attempting to assist the offender to overcome the impediments to acceptable social functioning that can be detected in his case. Thus, even without proof that such impediments have "caused" his criminality, there is a rational basis for attacking the impediments in an effort to prevent recidivism.

GOV. SPEC. COMM. 300; *Cf.* TASK FORCE REPORT 7-11.

³⁸³ The President's Commission on Law Enforcement and Administration of Justice was established by President Lyndon B. Johnson on July 23, 1965, by Executive Order No. 11,236, 3 C.F.R. 329 (1964-65 Comp.). Nicholas deB. Katzenbach was appointed Chairman of the Commission. The general report of the commission, *The Challenge of Crime in a Free Society*, was issued in February 1967. The Commission subsequently issued nine detailed reports covering specialized aspects of its investigation conducted by smaller groups of Commission members, called task forces. One such task force investigated corrections and issued its report in 1967. Although *Task Force Report: Corrections* is rapidly becoming dated, its fundamental conclusions remain valid.

rections is that crime and delinquency are symptoms of failures and disorganization of the community as well as of individual offenders. In particular, these failures are seen as depriving offenders of contact with the institutions that are basically responsible for assuring development of law-abiding conduct

The task of corrections therefore includes building or rebuilding solid ties between offender and community, integrating or reintegrating the offender into community life—restoring family ties, obtaining employment and education, securing in the larger sense a place for the offender in the routine functioning of society. This requires not only efforts directed toward changing the individual offender, which has been almost the exclusive focus of rehabilitation, but also mobilization and change of the community and its institutions.³⁸⁴

1. *Master Plan*

The concept of a diversified system—and the existence of diversified facilities—is not new.³⁸⁵ The significant departure made by New York is the formulation of a long-term diversification master plan based on perceived inmate needs and the establishment of a long-term funding commitment.³⁸⁶ Moreover, the master plan is not static. While the goal of developing an individualized treatment capability remains the same, the stages and methods of implementation are subject to change as needs change and as data on the effectiveness of operational diversified programs become available.³⁸⁷

The master plan is designed to avoid the mistakes of the past. Accordingly, it will end reliance on the one-approach solution³⁸⁸ and

³⁸⁴ TASK FORCE REPORT 7.

³⁸⁵ The concept is not even novel in New York State. See note 39 *supra*.

³⁸⁶ This new aspect was pointed out by Robert H. Fosen, Assistant Commissioner for Planning, Evaluation and Research, whose unit was partially responsible for the master plan drafts:

The great merit of the master plan is that [the Department is] not saying that because there are certain fads in architectures we are going to build this fad out into a physical plant. We are saying "No, let's look back at the numbers and types of inmates we are now receiving" . . . so that you end up with a physical plant which meets the programmatic as well as the security needs of the inmates I don't know of any other state which has done this.

Interview with Robert H. Fosen, *supra* note 14.

³⁸⁷ See MULTI-YEAR MASTER PLAN S-8; Process Steps 37.

³⁸⁸ Preliminary Diversification Plan 8-9; Process Steps 24, 38. Even community-based facilities will not receive the entire emphasis. See, e.g., notes 545-643 and accompanying text *infra* (prescription program); notes 692-700 and accompanying text *infra* (stress assessment unit).

The master plan is a statutory prerequisite to achieving a long-term debt funding commitment. Ch. 338, § 2, [1972] N.Y. Laws 1562. It is also possible that the master plan will aid administrators, budgetary authorities, the legislature, the courts, and the public to remain aware of correctional priorities.

will place a premium on maximum flexibility. Furthermore, the master plan calls for expanding diversified programs and facilities as diagnosis and classification are refined³⁸⁹ and seeks to avoid situations in which inmates are classified without facilities or programs available to meet diagnosed needs.³⁹⁰ The converse—diversified facilities without a capability to identify inmate custodial or treatment needs—will also be avoided.

2. Capital Construction Financing

The primary impact of the recent legislation dealing with capital construction debt financing³⁹¹ is upon diversification.³⁹² The law makes the diversified system a practical possibility by providing for debt financing of capital construction, acquisitions, or renovations³⁹³ pursuant to the diversification master plan.³⁹⁴ Three provisions of the act are especially relevant. First, the law provides the method by which revenues from prison industries and projects can be used to pay the interest or principal on bond obligations issued to raise capital construction funds or to secure such obligations.³⁹⁵ Second, the act enables the facilities and real property formerly held by the Department of Correctional Services to be used in securing the bond obligations issued to provide capital funding.³⁹⁶ Third, the state commitment to capital construction does not have to be made from current operating revenues. The state is obligated to secure the integrity of the debt service but only in an amount equal to interest and principal becoming due in the succeeding fiscal year.³⁹⁷ This enables the legislature to approve capital construction projects of the Department without overtly having to withhold funds from other state agencies or programs. Moreover, in lean budgetary years, the Department will be assured of some priority

³⁸⁹ In addition to a more diversified network of facilities and programs we need an expanded and responsive diagnostic and delivery system which will enable us to use what we have more effectively and to take optimum advantage of new programs as they are developed.

Preliminary Diversification Plan 8; see Gov. SPEC. COMM. 301; Process Steps 5; notes 429-35 and accompanying text *infra*.

³⁹⁰ Interview with Wim van Eekeren, *supra* note 38.

³⁹¹ Ch. 337, [1972] N.Y. Laws 1545; see notes 112-30 and accompanying text *supra*.

³⁹² Interview with Wim van Eekeren, *supra* note 38.

³⁹³ N.Y. PUB. AUTH. LAW §§ 1680(2)(g), 1692 (McKinney Supp. 1972).

³⁹⁴ Ch. 338, § 2, [1972] N.Y. Laws 1562.

³⁹⁵ N.Y. STATE FIN. LAW §§ 97-n, 97-o (McKinney Supp. 1972).

³⁹⁶ N.Y. UNCONSOL. LAWS § 4414-a (McKinney Supp. 1972).

³⁹⁷ N.Y. PUB. AUTH. LAW § 1692 (McKinney Supp. 1972); N.Y. UNCONSOL. LAWS § 4414-a (McKinney Supp. 1972).

as to capital funding, to the extent state funds are necessary to assure an adequate balance in the reserve funds used to pay interest and principal becoming due in the following fiscal year. The price of this assurance is, of course, the requirement that new debt financing be approved by the legislature and the Governor in the year the project is recommended.³⁹⁸ Nevertheless, such approval does not result in an immediate drain on current revenues and therefore is not given at the expense of other priorities.

3. *Offender Profiles*

The absence of diversified programs makes master planning difficult since it deprives the system of the data upon which inmate needs and responses are to be evaluated.³⁹⁹ Until sufficient data become available, master planning will be based on theoretical profiles of inmate needs. Offender profiles consist of untested assumptions of major diverse needs of inmates based on correctional experience in the absence of evaluative data.⁴⁰⁰ Specifically, an offender profile is a description of the type of inmate who falls within a major treatment class, an estimate of the number of inmates likely to fall within this class, and a prognosis of the type and number of facilities and programs required to meet the needs of the class.⁴⁰¹ As diversified programs and facilities

³⁹⁸ N.Y. UNCONSOL. LAWS § 4414-a (McKinney Supp. 1972).

³⁹⁹ The *Preliminary Report* of the Governor's Special Committee on Criminal Offenders, as well as the Department's own diversification documents, emphasize data collection, research, and evaluation as an integral part of every diversified program. See, e.g., Gov. SPEC. COMM. 316-21; Dep't of Correctional Services, State of New York, A Diversification Program: RX (Prescription Correctional and Control Program) 35-37 (July 21, 1972) (on file at the *Cornell Law Review*) [hereinafter cited as Prescription Program Manual].

⁴⁰⁰ Hopefully, the inventory can be developed through induction as well as through deduction. One may start with a set of characteristics arrived at through deduction from causal theory and . . . modify such characteristics or add to the list by information gained through experience with offenders. Naturally, the same would be true of the various treatment methods utilized . . .

Gov. SPEC. COMM. 301. The profiles are deductive assumptions based on extrapolations of inmate characteristics perceived as impeding orientation in the community. As recidivism data are received and other evaluations are made of diverse programs, the profiles will be modified, supplemented, or discarded based on inductive conclusions.

The profiles are not to be confused with the diagnosis and classification program. The profiles determine the categories of need upon which a diversified system is based; the facilities and programs are formulated to meet the needs of sizeable *groups* of inmates. Classification is the process by which an *individual* inmate is categorized into one or more of the need groups. The profiles are designed to ensure that the program or facility needed to solve the individually diagnosed impediments will be available once the diagnosis is completed. Interview with Robert H. Fosen, *supra* note 14; see MULTI-YEAR MASTER PLAN I-2.

⁴⁰¹ See, e.g., Appendix F.

become operational, the assumptions can be altered or discarded as experience dictates.⁴⁰²

The New York master plan is based on eighteen inmate profiles designed to typify broad categories of inmates with similar needs justifying specialized treatment.⁴⁰³ Of course, certain needs are common to all inmates, and services to meet those needs will have to be provided regardless of which profile an inmate happens to fall within.⁴⁰⁴ One profile, developed in early master plan drafts, identifies the characteristics and needs of a hypothetical "typical" inmate.⁴⁰⁵ The other seventeen more specific profile categories are: (1) the offender with severe educational impairment,⁴⁰⁶ (2) the offender with an educational disadvantage,⁴⁰⁷ (3) the vocationally and educationally disadvantaged offender,⁴⁰⁸ (4) the offender in need of institutional community preparation experience,⁴⁰⁹ (5) the offender in need of community-based center experience,⁴¹⁰ (6) the offender in need of camp living/work experience,⁴¹¹ (7) the educationally advanced offender,⁴¹² (8) the offender with emotional impairment,⁴¹³ (9) the offender in need of intensive medical/surgical intervention,⁴¹⁴ (10) the elderly and physically handicapped offenders,⁴¹⁵ (11) the female offender,⁴¹⁶ (12) the mentally ill offender,⁴¹⁷ (13) the offender on parole,⁴¹⁸ (14) the parolee in detention,⁴¹⁹ (15) the newly admitted offender,⁴²⁰ (16) the New York City

402 See Process Steps 5.

403 See MULTI-YEAR MASTER PLAN I-7 to -14.

404 See *id.* at I-17 to -21; Process Steps 5. No profile of inmates needing these services is identified, since they are thought to relate to basic human needs of every inmate. The universal services and capabilities are nutritious food and appropriate clothing, routine and emergency medical care, religious and spiritual guidance, recreational and avocational activity, work, visitation, library access, and access to legal assistance. Efforts are being undertaken to provide all inmates with each of these services with the exception of legal assistance.

405 See Appendix F.

406 MULTI-YEAR MASTER PLAN I-7 to -8 (projected number of inmates needing specialized treatment under this category annually: 1855).

407 *Id.* at I-8 (projected annual number: 1055).

408 *Id.* (projected annual number: 3885).

409 *Id.* at I-9 (projected annual number: 930).

410 Process Steps 12 (projected annual number: 1,000).

411 MULTI-YEAR MASTER PLAN I-9 to -10 (projected annual number: 1,200).

412 *Id.* at I-10 (projected annual number: 255).

413 *Id.* (projected annual number: 400).

414 *Id.* at I-11 (projected annual number: 100).

415 *Id.* (projected annual number: 300).

416 *Id.* (projected annual number: 450).

417 *Id.* at I-12 (projected annual number: 1,000).

418 Process Steps 24 (projected annual number: 16,500).

419 MULTI-YEAR MASTER PLAN I-12 (projected annual number: 200).

420 *Id.* at I-13 (projected annual number: 900).

Department of Corrections inmate,⁴²¹ and (17) the offender in need of prescription correctional and control program.⁴²²

4. *The Correctional Continuum*

The diversified system is a continuum of individualized treatment; it is not a system of independent facilities for different inmates.⁴²³ Thus, an inmate may be assigned during the course of his sentence to six or seven different facilities which are designed to meet certain of his needs. Accordingly, the treatment profiles listed above overlap in certain instances.⁴²⁴ The profiles simply identify separate need groupings which, given present expertise and reasonable resource limitations, the Department is willing to attack separately. Certain profiles are situational.⁴²⁵ These are categories which the Department feels justify separate treatment regardless of the diverse needs of inmates within the situation. Some of the profiles represent needs which may be attacked concurrently.⁴²⁶ But most will doubtlessly be treated consecutively.

The continuum concept can have a great impact on current system deficiencies. For example, the implementation of the continuum would necessitate an end to institutional isolation and security-obsession.⁴²⁷ More important, the diversified system, if operated successfully, would have maximum impact on the daily lives of the inmates themselves.⁴²⁸

B. *Diagnosis and Classification—The Operational Key to a Diversified System*

Effective employment of the treatment continuum requires an adequate diagnosis and classification capability.⁴²⁹ The system must be able to make reasonably valid initial and continuing assessments of

⁴²¹ *Id.* (projected annual number: 1,800). This service is provided under contract with New York City to relieve overcrowding in that city's jails.

⁴²² *Id.* at I-13 to -14 (projected annual number: 195).

⁴²³ See *id.* at I-1; First Year Budget Statement 3.

⁴²⁴ For example, an emotionally disturbed offender may have severe educational and vocational handicaps. In fact, an inmate may change considerably in the course of his correctional treatment, "requiring differential approaches in the various phases of his institutional or parole experience." Process Steps 2.

⁴²⁵ Examples of inmate groupings based not on relatively uniform needs but on the inmate situation include the parolee in detention, the newly admitted offender, and the female offender.

⁴²⁶ For example, moderate impairments in educational, vocational, and emotional adjustment will be attacked concurrently. See MULTI-YEAR MASTER PLAN I-7.

⁴²⁷ See notes 38, 69-75 and accompanying text *supra*.

⁴²⁸ See MULTI-YEAR MASTER PLAN II-1 to -2.

⁴²⁹ See SELECT COMM. REP. NO. 2, at 19; Interview with Wim van Eekeren, *supra* note 38. See generally MULTI-YEAR MASTER PLAN I-2 to -4.

individual inmate needs. In the current embryonic stage of diversification, fitting an inmate to one of the offender profiles is the critical diagnostic step.⁴³⁰

Penologists have expressed reservations concerning reliance upon diagnosis and the inevitable inadequacy of the treatment categories.⁴³¹ These objections cannot be fully overcome unless and until operation of the diversified system yields sufficient data to develop accurate categories. One aspect of the diversified system mitigates the inadequacies, however. The treatment continuum concept does not embrace irrevocable categorization as the present system tends to do. Theoretically, diagnosis and classification are continuing processes;⁴³² errors will hopefully be discovered before much time is wasted. The possibility of error is not comforting, but at least the new system holds out some hope of correcting the misclassifications.

The diversification theory must not obscure present reality: diagnosis and classification are virtually nonexistent.⁴³³ Since ninety percent of adult male offenders are currently compelled to serve in maximum security facilities,⁴³⁴ it matters little whether diagnosis of alternative custodial needs is ever made. The overwhelming majority of New York's 8,500 incarcerated adult male offenders were processed into the system at mass reception centers without meaningful diagnosis or classification.⁴³⁵ Mass reception and indiscriminate assignment to

⁴³⁰ Presumably, the continuum is disrupted whenever an inmate is misclassified—for example, when a compulsive murderer is placed in a residential treatment facility or released on parole. In addition, precious treatment time is wasted when a diagnostic error results in misclassification.

⁴³¹ It would simply be unrealistic, for example, to expect the Department to be able to assign an elementary school dropout with a sporadic employment record, dull normal intelligence, ingrained anti-social attitudes, overt hostility, latent homosexuality and numerous other problems to a program specifically designed for rehabilitating him.

GOV. SPEC. COMM. 224-25; see TASK FORCE REPORT 20, 21-22.

⁴³² MULTI-YEAR MASTER PLAN I-3; see AMERICAN CORRECTIONAL ASS'N 362-63. See also Fed. Grant Award Fact Sheets, Grant No. 8—Model Reception-Classification Program.

⁴³³ See GOV. SPEC. COMM. 225-26; SELECT COMM. REP. No. 1 at 10. Compare SELECT COMM. REP. No. 2, at 19, with SELECT COMM. REP. No. 4, at 17. For years, the Elmira reception center has been gathering invaluable data on the needs of diverse youthful offenders, but funding for an evaluation to tap this expertise was cut off in the 1971 budgetary squeeze. Interview with Frank Daley, *supra* note 13. For adult offenders, the Clinton Diagnostic and Treatment Center, now comprising two components of the Adirondack complex (see notes 665-86 and accompanying text *infra*), has been in operation for several years but has only recently been expanded to a 150-inmate capacity. The Adirondack facility also contains a model reception center of the type necessary for a diversified system, but it is limited to a 110-15 annual inmate capacity. See notes 658-64 and accompanying text *infra*.

⁴³⁴ MCKAY COMM'N REPORT 17; see Appendix I.

⁴³⁵ See MCKAY COMM'N REPORT 18 n.14. Compare *id.* at 31-33 (reception at Attica)

rural, security-based facilities, totally devoid of need-oriented programs, renders the rehabilitation ideal a cruel myth.

C. *Multi-Purpose Facilities and Diverse Programs*

In a diversified system offering genuine individualized treatment, the security level or type of facility (minimum, medium, maximum) is merely one aspect of the inmate's overall program assignment.⁴³⁶ The classification unit will diagnose the inmate's custodial needs along with his other physiological, psychological, and sociological requirements.⁴³⁷ The custodial need determination will be given priority in an attempt to ensure public protection and the enforcement of court-imposed sanctions.⁴³⁸ But security requirements are not the exclusive consideration; these requirements are de-emphasized by the Department in response to its conclusions that (1) maximum security treatment may entail unacceptably high future risks by inhibiting reintegration⁴³⁹ and (2) control over much of the inmate population can be reduced without

with Dep't of Correctional Services, State of New York, Adirondack Correctional Treatment and Evaluation Center: Northeast Reception Program (Nov. 1972) (on file at the *Cornell Law Review*) (reception at a model reception center).

⁴³⁶ See Preliminary Diversification Plan 2. "The goals of public protection and rehabilitation of the criminal offender challenge, but do not dissuade. *Confinement is punishment enough. There will be no punishment during confinement.*" MULTI-YEAR MASTER PLAN S-3 (emphasis added).

⁴³⁷ See Preliminary Diversification Plan 2.

⁴³⁸ See MULTI-YEAR MASTER PLAN S-6.

⁴³⁹ Traditional prisons, jails, and juvenile institutions are highly impersonal and authoritarian. Mass handling, countless ways of humiliating the inmate in order to make him subservient to rules and orders, special rules of behavior designed to maintain social distance between keepers and inmates, frisking of inmates, regimented movement to work, eat, and play, drab prison clothing, and similar aspects of daily life—all tend to depersonalize the inmate and reinforce his belief that authority is to be opposed, not cooperated with. . . . Such an attitude is, of course, antithetical to successful reintegration.

TASK FORCE REPORT 11. The McKay Commission argued convincingly that the present practices in New York maximum security institutions are more harmful than helpful. See, e.g., MCKAY COMM'N REPORT 4-5. But there is substantial reasoning to support the view that the maximum security institution is *inherently* defective:

The single most important factor to bear in mind when considering the problems involved in changing an offender is that the ultimate change sought is not adjustment to institutional life, but rather adjustment to freedom in the community. And it is well known that there is little if any correlation between the two. An offender who seems to have changed for the better because he has become a model prisoner may become worse than he was before when he is released to the community; and an offender who is unable to adjust to institutional life may have been so affected by the experience that he will never risk it again. Therefore, it is important to work with the offender under supervision in the community to the maximum extent possible. In this way unsatisfactory tendencies can be noted while he is still in custody and the system has a chance to modify or intensify treatment.

unacceptably high present risk.⁴⁴⁰ Consequently, diversification in New York is primarily, though not exclusively, a movement toward minimum security treatment programs and facilities.⁴⁴¹ Diversification also involves the expansion of medium security programs⁴⁴² and the modification of programs presently available in maximum security confinement.⁴⁴³

Since the emphasis in the diversified system is upon specialized programs geared to diagnosed inmate needs, it is misleading to describe diversification plans solely in terms of changing types of facilities. Moreover, most of the facilities envisioned by the master plan embody units with multiple security levels.⁴⁴⁴ The employment of multi-purpose facilities, with various security levels and program units within each, is an attempt to provide additional incentives to inmates in such institutions to improve their custodial situation.⁴⁴⁵ Nevertheless, most facilities in the master plan will have a security level "identity."⁴⁴⁶

⁴⁴⁰ See MCKAY COMM'N REPORT 17-18; MULTI-YEAR MASTER PLAN S-5; Process Steps 35; Interview with Russell G. Oswald, *supra* note 4.

⁴⁴¹ See MULTI-YEAR MASTER PLAN S-6 to -7, S-10, I-1 to -2, I-16 to -17, II-4 to -5; Six-Month Operational Digest 1; notes 447-522 and accompanying text *infra*.

⁴⁴² See notes 523-33 and accompanying text *infra*.

⁴⁴³ See notes 151-367 and accompanying text *supra*; notes 534-643 and accompanying text *infra*.

⁴⁴⁴ See Process Steps 33-34. This characteristic is illustrated in the description of the Adirondack facility. See notes 655-705 and accompanying text *infra*.

⁴⁴⁵ This philosophy is well illustrated in the operation of the prescription correctional and control program (see notes 545-643 and accompanying text *infra*) and Incentive Place, an Adirondack program. See notes 677-86 and accompanying text *infra*. The multi-purpose facility would also appear to maximize diverse program capabilities in all areas of the state.

The multi-purpose concept is directly contrary to the "maxi-maxi" (maximum security, maximum programming) facility proposal of the Department and the Governor. The maxi-maxi facility failed to obtain legislative funding. See N.Y. Times, May 15, 1972, at 39, col. 5. The maxi-maxi proposal was part of the supplemental appropriation request (see N.Y. Times, April 17, 1972, at 1, col. 3) ultimately passed without funds for the special facility. See note 108 *supra*. The maxi-maxi concept has resurfaced as one unit within a multi-purpose facility under the prescription program for incorrigible offenders. See notes 545-50 and accompanying text *infra*.

⁴⁴⁶ See Process Steps 33-34. The approach taken below in describing and analyzing the master plan is designed to emphasize the principal programmatic changes called for by the plan. Certain of the new programs are made possible by the utilization of a lessened-security environment and are therefore associated with facilities of a particular security level identity. See, e.g., notes 447-522 and accompanying text *infra*. Other programs are sufficiently independent of normal security arrangements to warrant separate analysis. See, e.g., notes 644-54 and accompanying text *infra*. This approach should not obscure the fundamental consideration that facilities and programs under the master plan will be intermixed and that diversification spells an end to the monolithic institution. See MULTI-YEAR MASTER PLAN I-15; Process Steps 25.

1. *Diversified Minimum Security Treatment*

In the context of a correctional system based predominantly on rural, mass-congregate, maximum security prisons, diversification means the development of small, urban-based minimum security facilities and programs. The emphasis of the diversification master plan is therefore upon the minimum security capability of the New York system.⁴⁴⁷

The movement toward minimum security facilities may represent the beginning of the ultimate rejection of incarceration as a useful device.⁴⁴⁸ But, at the very least, the movement finds its chief justification in the concept of reintegration.⁴⁴⁹

The argument for conducting as much of the correctional process as possible in the community rather than in custodial institutions is a simple one. What is wrong with most offenders is that for any number of good or bad reasons they are unable or unwilling to respect the standards of the community, to adhere to its customs, to fulfill their obligations to it, or use to advantage the opportunities it provides. Hence "correction" or "rehabilitation" or "reintegration"—use what polysyllable you will—is at bottom a process intended to give offenders the ability and the desire to be good citizens. The difficulty of pursuing this objective in the authoritarian, monotonous and, above all, artificial environment of a jail or prison is obvious; you do not train aviators in submarines. The way to learn how to solve the problems of community living is to tackle them where they exist. The way to learn to understand and appreciate community life is to become immersed in it.⁴⁵⁰

Minimum security programming as a reintegration device is widely accepted among penologists and correctional administrators.⁴⁵¹ Several caveats to the general acceptance of minimum security treatment are worth noting, however. First, the system is generally unproven.⁴⁵²

⁴⁴⁷ See Process Steps 24-25, 34-35; Six-Month Operational Digest 1; note 441 and accompanying text *supra*.

⁴⁴⁸ Cf. SELECT COMM. REP. NO. 1, at 6.

⁴⁴⁹ See TASK FORCE REPORT 9; Preliminary Diversification Plan 8-9; Process Steps 24-25.

⁴⁵⁰ PRESIDENT'S TASK FORCE ON PRISONER REHABILITATION, THE CRIMINAL OFFENDER—WHAT SHOULD BE DONE? 20-21 (1970).

⁴⁵¹ See, e.g., TASK FORCE REPORT 10-11, 210. The minimum security facility is not new. See *id.* at 38. Furthermore, many states have employed minimum security programs at one time or another. See GOV. SPEC. COMM. 312; TASK FORCE REPORT 184.

⁴⁵² [I]t is important to remember that the theory of rehabilitation is only a theory and validation has yet to be carried out. Although strong arguments can be made for the notion that removal of the impediments will aid socially acceptable functioning and, hence, assist the offender to refrain from criminal acts, there is no proof that this is so.

GOV. SPEC. COMM. 312.

Second, the minimum security approach involves risks. Lessened security may increase the danger to the public,⁴⁵³ and inappropriate treatment may increase the likelihood of recidivism.⁴⁵⁴ The risk element makes this treatment device less acceptable to the public and consequently less effective at performing a reintegration function.⁴⁵⁵ However, the emphasis on risk may be misplaced or at least exaggerated.⁴⁵⁶

A third major stumbling block is that reintegration is a two-way street and will require community reorientation.⁴⁵⁷ Indeed, community ills may be the ultimate cause of the crime problem. If so, then reintegration, as opposed to rehabilitation, deterrence, or punishment, at least has the virtue of focusing on the true source of the difficulty.⁴⁵⁸

Although the minimum security concept has been employed in several states, minimum security programming is virtually nonexistent in New York. Less than three percent of incarcerated inmates are presently housed in minimum security facilities.⁴⁵⁹ Over ninety percent of these select few are found in one type of facility, work camps.⁴⁶⁰ The criticism that New York State places excessive reliance upon the maximum security institution⁴⁶¹ is especially persuasive in light of the decreasing average length of sentences or periods of incarceration.⁴⁶²

The defects inherent in maximum security institutions are ag-

⁴⁵³ *Id.* at 312-13.

⁴⁵⁴ *Id.* at 312, 314.

⁴⁵⁵ *Cf. id.* at 322.

⁴⁵⁶ The alternatives for the criminal treatment system cannot be perceived in terms of security vs. risk (*i.e.*, danger to the community from use of less structured forms of custody). The comparison of security and risk can only hold in a system that has an unlimited avenue for pursuing security—where security as an alternative to risk can assure us that the offender will be put away for life. Such alternative is not available—except for the most heinous crimes—in a system that weighs the permissible sanction against the gravity of the conduct; and one sound reason for preservation of this system is the inability to determine with any degree of assurance that a particular offender will offend again. Hence, our system is one that forces us to take risks in almost every case; and the question is not one of security vs. risk, but rather one of doing that which will reduce risk, taking into consideration the entire lifespan of the offender and not just the period he might be in custody.

Id. at 285.

⁴⁵⁷ *See id.* 316; TASK FORCE REPORT 7, 10; *cf.* AMERICAN CORRECTIONAL ASS'N 140.

⁴⁵⁸ *See* AMERICAN CORRECTIONAL ASS'N xix (Principle I of the Declaration of Principles of the American Correctional Association).

⁴⁵⁹ *See* Appendix I.

⁴⁶⁰ *Id.*; *see* notes 490-97 and accompanying text *infra*.

⁴⁶¹ *See* MCKAY COMM'N REPORT 17-18; SELECT COMM. REP. No. 2, at 11-13.

⁴⁶² The anomaly of our present situation can be viewed as follows. The State has approximately 13,000 inmates in maximum security with all sorts of devices and procedures for security and prevention of escape, but one-third of these inmates will be paroled to release in the community each year.

SELECT COMM. REP. No. 2, at 12.

gravated by two additional characteristics of their deployment in New York—mass congregation and rural location. The historical rationale for the large institution was probably a desire to reduce per-capita costs and increase utilization of large scale industrial programs.⁴⁶³ But authorities are increasingly of the opinion that maximum security prisons are not only costly in human and social terms, but also are monetarily more expensive than facilities requiring less custodial intervention.⁴⁶⁴ Moreover, work camps have demonstrated that economically viable work programs can be conducted with smaller groups of inmates.⁴⁶⁵

The optimum size of correctional facilities is still unknown. Although some have suggested that the ideal institution will house between 100 and 150 inmates, fiscal considerations may necessitate reliance on facilities of 400 to 600 inmates each.⁴⁶⁶ Tension between security and program needs could be resolved within this size limitation by employing structured living units of twenty-five to fifty inmates in larger residential buildings housing 150-200 inmates. Three or four of these larger residential buildings could be located together, thereby “permitting the sharing of administrative and professional services, and involvement for inmates in ‘institutional community’ activities available to the total population.”⁴⁶⁷

Several factors may account for the choice of rural locations for New York prisons,⁴⁶⁸ the second major objection to the current institutional set-up. It was thought that more of the public would be protected if convicts were imprisoned away from larger cities and towns.⁴⁶⁹ Furthermore, prisons in rural areas supported depressed economies. Land was more easily and cheaply obtainable there, and could be used for farming. Also, many thought that a bucolic life was morally rehabilitative and character-building.⁴⁷⁰

In New York, rural location of correctional facilities is inconsistent with the goal of reintegration, since seventy percent of the inmates under custody are from the New York City metropolitan area and an

⁴⁶³ See Process Steps 25; cf. MCKAY COMM’N REPORT 8-9.

⁴⁶⁴ See, e.g., Process Steps 25. For example, correctional authorities estimate that the average wall guard tower costs \$50,000 annually to man and maintain. Interview with Wim van Eekeren, *supra* note 38. There are 14 such towers on the wall at the Attica facility alone. MCKAY COMM’N REPORT 21.

⁴⁶⁵ The Department is planning to expand the economic role of work camps in the financing of diversification. See notes 490-97 and accompanying text *infra*.

⁴⁶⁶ Process Steps 25.

⁴⁶⁷ *Id.* at 25-26.

⁴⁶⁸ See generally Appendix J.

⁴⁶⁹ *Id.* at 26. At the very least, the public would *feel* safer as a result of an “out-of-sight, out-of-mind” attitude.

⁴⁷⁰ *Id.*

additional twenty percent are from the metropolitan areas of Buffalo, Rochester, and Syracuse.⁴⁷¹ Thus, while only ten percent are from rural or semi-rural environments, the vast majority of departmental facilities are in rural and relatively inaccessible areas of the state.⁴⁷²

The master plan calls for a vast shift of the inmate population from current facilities to small, urban-based, minimum and medium security facilities.⁴⁷³ The plan envisions a system in which thirty-five percent of its population is located in minimum security facilities. Only twenty percent would be housed in maximum security facilities.⁴⁷⁴ Moreover, the continuum concept dictates that as many inmates as possible be exposed to minimum security programming prior to final release.⁴⁷⁵

Minimum security treatment encompasses a vast array of different programs and facilities which may be employed alone or in combination. Minimum security programs include certain forms of work release,⁴⁷⁶ furloughs,⁴⁷⁷ honor living programs,⁴⁷⁸ educational release,⁴⁷⁹ expanded visitation,⁴⁸⁰ and other programs found at minimum security institutions. Minimum security facilities can be grouped into four principal categories: (1) institutional community preparation facilities, (2) work camps, (3) pre-release community centers, and (4) post-release residential treatment facilities. The ultimate in minimum security treatment is, of course, parole.

a. *Institutional Community Preparation Centers.* The minimum security institution is a large (300-inmate capacity) facility designed for maximum programming accompanied by a minimum level of custodial intervention.⁴⁸¹ Although the emphasis is upon reintegration,⁴⁸² the

⁴⁷¹ *Id.* at 27.

⁴⁷² See MCKAY COMM'N REPORT 17; SELECT COMM. REP. NO. 1, at 9; Appendix J. As has been indicated, rural location of facilities also handicaps the recruitment of professional and minority group personnel. See notes 172-82 and accompanying text *supra*.

⁴⁷³ See MULTI-YEAR MASTER PLAN II-1 to -5; Appendix H.

⁴⁷⁴ MULTI-YEAR MASTER PLAN I-17; see Appendix H.

⁴⁷⁵ Cf. Process Steps 1. The master plan documents do not reveal a present intention to permit all offenders to participate in minimum security arrangements prior to release. But plans are geared to expanding the present potential significantly. See *id.* at 31.

⁴⁷⁶ See notes 349-58 and accompanying text *supra*.

⁴⁷⁷ See notes 333-48 and accompanying text *supra*.

⁴⁷⁸ See notes 644-54 and accompanying text *infra*.

⁴⁷⁹ See note 349 and accompanying text *supra*.

⁴⁸⁰ See note 652 and accompanying text *infra*.

⁴⁸¹ See MULTI-YEAR MASTER PLAN I-9; Process Steps 11 (profile of inmate in need of institutional community preparation experience).

⁴⁸² See Dep't of Correctional Services, State of New York, Albion Correctional Facility 9 (undated) (on file at the *Cornell Law Review*) [hereinafter cited as Albion Program Manual]; Process Steps 11.

facility is basically designed to reduce custodial intervention whenever higher security levels are not required. Thus, many inmates falling within the "typical" offender profile will be located at these facilities.⁴⁸³

The primary programmatic characteristics of institutional minimum security treatment are (1) intensive vocational and educational training, (2) expanded group therapy, group living arrangements, and individual counselling, and (3) liberalized visitation privileges.⁴⁸⁴ Since the institution is designed to encourage work and educational releases and job-seeking furloughs, it serves a pre-release function.⁴⁸⁵

The differences between the new institutional community preparation facility at Albion, New York, and the old maximum security facility at nearby Attica are indeed striking.⁴⁸⁶ Albion has no imposing wall and no vast empty yards exposed to gun towers. Inmates normally have freedom of movement between rooms and buildings.⁴⁸⁷ Rooms are private, unlike the fishbowl cells at Attica. Inmates eat their meals as they desire within specified meal periods and are not marched in groups to and from meals. Lounges accessible to inmates in the evening have television and game areas.⁴⁸⁸ Inmates are expected to work during the day but are personally responsible for reporting to work. Work periods parallel a normal civilian working day. This list is not exhaustive; much of the difference between Albion and the typical maximum security institution is in fact attributable to an intangible "atmosphere" developed at Albion in response to the treatment changes. Although

⁴⁸³ See Appendices F & H. The master plan, which is based on an eventual inmate work load in excess of 16,000, estimates that almost 1,000 of these inmates could be placed in minimum security institutions annually. This capability can be achieved only if three new facilities of over 300-inmate capacity each are built. The master plan calls for two such facilities in the New York City area. See Process Steps 11, 31, 39; Appendix H (Ossining & N.Y.C. In-Town Community Preparation Center). The third, already in operation, is located near Rochester in Albion, New York. See generally Albion Program Manual. The Adirondack facility will house a smaller preparation unit. See MULTI-YEAR MASTER PLAN I-9.

⁴⁸⁴ See Albion Program Manual i; Process Steps 11.

⁴⁸⁵ However, the institutional community preparation program is not wedded to a pre-release concept. See MULTI-YEAR MASTER PLAN I-26. The inmate at the minimum security institution need not be within one year of parole, which is a requirement for pre-release programming. See notes 334-35 *supra*.

⁴⁸⁶ Compare Albion Program Manual with Dep't of Correctional Services, State of New York, Data Sheet: Attica Correctional Facility (Feb. 14, 1972) (on file at the *Cornell Law Review*) and MCKAY COMM'N REPORT xii-xxi, 16-102, 466-70.

⁴⁸⁷ Cf. Albion Program Manual 7.

⁴⁸⁸ *Id.* These characteristics were observed by the authors during their visit to the facility on November 27, 1972.

the original participants in this pilot facility were no doubt carefully selected, as diversification proceeds, this type of facility will play an ever-expanding role in the reintegration of the typical offender.⁴⁸⁹

b. *Work Camps.* Those minimum security facilities which have existed in the past have been in the form of youth work camps.⁴⁹⁰ The most recent figures indicate that some 300 youthful offenders⁴⁹¹ are housed dormitory-style in four work camps.⁴⁹²

The basic change embodied in the master plan, already being implemented with the opening of Camp Adirondack,⁴⁹³ is the expansion of the work camp concept to include adult offenders.⁴⁹⁴ The plan suggests that the system utilize ten work camps scattered throughout the state and housing an aggregate of 1,200 inmates.⁴⁹⁵

The programmatic emphasis of work camps is two-fold. First, the work release is of a type not found in urban-based facilities; agricultural, vocational, and ecological training will be available.⁴⁹⁶ Second, the work camp is a major component of the financing of diversification, especially the ecology programs aspect.⁴⁹⁷

c. *Pre-Release Community Centers.* Pre-release community centers, often referred to as "half-way houses,"⁴⁹⁸ represent a wholly new approach to correctional treatment in New York. The pre-release center is a diversified facility further along the correctional continuum of lessened custodial restraint and increased community-oriented programming.⁴⁹⁹

The pre-release community center differs from institutional minimum security facilities in three ways. First, the community center houses a maximum of fifty inmates; the institution is a 300-man facil-

⁴⁸⁹ Thus, although only 25 inmates were housed at Albion at the end of 1972 (see Appendix I), over 900 will be housed in this type of unit in coming years. See Appendix H (Albion, Ossining, N.Y.C. In-Town Community Preparation Center).

⁴⁹⁰ See Dep't of Correctional Services, State of New York, *Inmates Under Custody in New York State Correctional Institutions: Age, Institution and Sex as of Dec. 31, 1971* (Nov. 1, 1972) (on file at the *Cornell Law Review*). See also CORRECTIONS IN NEW YORK STATE, *supra* note 39, at 19.

⁴⁹¹ Cf. Process Steps 13 (inmate profile of offender in need of camp living/work experience).

⁴⁹² See Appendix I (Camps Georgetown, Monterey, Pharsalia, and Summit).

⁴⁹³ See Dep't of Correctional Services, State of New York, Admin. Bull. No. 70, at 1 (Sept. 25, 1972) (on file at the *Cornell Law Review*); Appendix I (Camp Adirondack).

⁴⁹⁴ See Process Steps 13.

⁴⁹⁵ *Id.*; see MULTI-YEAR MASTER PLAN I-9 to -10.

⁴⁹⁶ MULTI-YEAR MASTER PLAN I-27.

⁴⁹⁷ See *id.*; Process Steps 13.

⁴⁹⁸ See TASK FORCE REPORT 40.

⁴⁹⁹ See Process Steps 33.

ity.⁵⁰⁰ Second, participation in the pre-release program is limited by statute⁵⁰¹ to inmates within six months of release or parole. Third, the bulk of the community center programs take place within the community. Aside from some counseling services, the community center does not itself provide the programs; rather, various community services are utilized.⁵⁰² The minimum security institution, on the other hand, is designed to serve programmatic functions independent of the community in which it is located.⁵⁰³ The community center capability envisioned by the master plan is seven urban-based facilities of fifty inmates each.⁵⁰⁴

d. *Residential Treatment Facilities.* Residential treatment facilities are not departmental facilities at all. The centers are run under contract with the state by certain private social service agencies.⁵⁰⁵ These facilities are designed to ease community transition for inmates granted early release.⁵⁰⁶ Each agency is responsible for ten inmates on parole. Daily activities are primarily the parolee's own responsibility. The centers serve as evening recreational and housing units for short periods while the early parolee is seeking employment and housing.⁵⁰⁷ The residential treatment concept is not implemented under the initial master plan but rather is currently a limited, federally-funded project.⁵⁰⁸

e. *Parole.* The parole system,⁵⁰⁹ although considered by the Department of Correctional Services to rank among its most successful operations,⁵¹⁰ has come under recent attack as being a major source of institutionalized inmate discontent.⁵¹¹

The 1971 merger of the parole and custody systems was designed to create a Department capable of administering individualized treat-

⁵⁰⁰ *Id.* at 31.

⁵⁰¹ See N.Y. CORREC. LAW §§ 851(3) (work release), 851(4) (furloughs); Process Steps 12.

⁵⁰² MULTI-YEAR MASTER PLAN I-26.

⁵⁰³ *Id.*

⁵⁰⁴ *Id.* at I-9; see Appendix H.

⁵⁰⁵ See Fed. Grant Award Fact Sheets, Grant No. 3—Residential Treatment Centers.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ See Fed. Grant Awards Received and Proposed 1. The federal grant has been renewed through March 31, 1974, and the facilities have been redesignated Parole Resource Centers. *Id.* Their function appears to remain the same.

⁵⁰⁹ Those seeking a thorough evaluation of parole in New York State are referred to the annual evaluation published by the Department. See, e.g., DIVISION OF PROGRAM PLANNING AND EVALUATION, DEP'T OF CORRECTIONAL SERVICES, STATE OF NEW YORK, FIVE YEARS OUT: THE THIRTY-FOURTH EVALUATION OF PAROLE (1972).

⁵¹⁰ Interview with Russell G. Oswald, *supra* note 4.

⁵¹¹ See MCKAY COMM'N REPORT 91-102; see Appendix E, concession numbers 20, 21, and 25.

ment along a broad continuum of past-adjudicatory restraints and programs.⁵¹² Accordingly, it has been formally recognized that parole is one more diversified treatment program employing less custodial and programmatic intervention than other correctional services.⁵¹³

The "mixing" of minimum security treatment instrumentalities can further serve to aid the reintegrative function of parole.⁵¹⁴ Technical rule violations need not result in the parolee's return to maximum security incarceration.⁵¹⁵ Custodial supervision can be increased by means of community centers or minimum or medium security institutions to the extent necessary to protect the public with less danger of anti-reintegrative overcontrol.

The diversification plan embodies earlier departmental requests⁵¹⁶ for a special facility for parolees returned to detention.⁵¹⁷ This facility is labelled maximum security,⁵¹⁸ although it is questionable whether any purpose is served by placing parole rule violators back into this setting.⁵¹⁹ The capacity of this proposed facility is 200 inmates.⁵²⁰ Since the annual number of returning parolees is much higher,⁵²¹ it can be inferred that the inmate will remain in the facility for only a very short time. Nevertheless, this facility's potential to interrupt the successful aspects of the parolee's integration into the community, as well as its adverse psychological effect in promoting a sense of "bastillism,"⁵²² justifies a careful re-examination of security plans for this facility.

2. Medium Security Institutions

The bulk of the inmate population in the diversified system will be housed in medium security institutions.⁵²³ The medium security facility is distinguished by two primary characteristics. First, inmate movement outside the facility is restricted to a greater degree than in minimum security arrangements; supervision is more direct and frequent. Second, inmate housing, although it must be located in the

⁵¹² See notes 34-37 and accompanying text *supra*.

⁵¹³ Cf. MULTI-YEAR MASTER PLAN I-12.

⁵¹⁴ See GOV. SPEC. COMM. 97-99.

⁵¹⁵ Cf. *id.* at 314-16.

⁵¹⁶ See Second Year Budget Statement 14.

⁵¹⁷ See MULTI-YEAR MASTER PLAN I-12, I-50 to -51.

⁵¹⁸ See Process Steps 22.

⁵¹⁹ See GOV. SPEC. COMM. 314-16. Parolees returned under a new crime conviction present different considerations. See *id.* at 314.

⁵²⁰ MULTI-YEAR MASTER PLAN II-50.

⁵²¹ Process Steps 24. There are about 4,300 delinquent parole cases annually. *Id.*

⁵²² Cf. GOV. SPEC. COMM. 315-16.

⁵²³ See MULTI-YEAR MASTER PLAN S-5.

institution, does not have to be "secure" housing—defined as "inside cells with single cell occupancy."⁵²⁴

The medium security institution is best suited for intrafacility programs. Relatively normal living arrangements, a more personalized living environment, and intensive vocational, educational, and occupational training are emphasized. Counseling and therapy are utilized to a greater extent than in maximum security institutions.⁵²⁵

New York presently has one medium security institution for adult male offenders, Wallkill, which may serve as a model for the new facilities planned in diversification. The vocational offerings at Wallkill are many and varied;⁵²⁶ the educational curriculum resembles a high school course of study.⁵²⁷ Indoor recreation facilities, including handball and swimming facilities, are provided, as is a hobby shop.⁵²⁸ Visitation, telephone, and mail restrictions are more relaxed than in maximum security institutions.⁵²⁹

Under the master plan, four new medium security facilities would be constructed, two of these in the New York City area.⁵³⁰ Seven existing facilities will be predominantly medium security institutions.⁵³¹ Many of the medium security units will operate in conjunction with minimum or maximum security units within a single facility.⁵³² The ultimate goal is for forty-five percent of the inmate population to be housed in a medium security atmosphere.⁵³³

3. Maximum Security Institutions

The present New York correctional system is primarily a maximum security system. The overwhelming majority of all offenders, men and women, adult and youth, are incarcerated in security-dominated mass congregate institutions.⁵³⁴ These institutions in their pres-

⁵²⁴ Process Steps 30-31; see MULTI-YEAR MASTER PLAN I-28.

⁵²⁵ Compare Wallkill Correctional Facility, Information Booklet for the Guidance of Residents (undated) (on file at the *Cornell Law Review*), with MCKAY COMM'N REPORT 33-82.

⁵²⁶ See Wallkill Correctional Facility, *supra* note 525, § I, at 5.

⁵²⁷ *Id.* at 6.

⁵²⁸ *Id.* at 7-8.

⁵²⁹ Compare *id.* § II, at 1-6, with notes 224-69 and accompanying text *supra*.

⁵³⁰ See Appendix H (Wallkill No. 2, Multi-Purpose Parole Facility, Downstate Nos. 1 and 2).

⁵³¹ *Id.* (Attica, Auburn, Bedford Hills (male and female), Coxsackie, Eastern, and Green Haven).

⁵³² *Id.*

⁵³³ MULTI-YEAR MASTER PLAN I-17.

⁵³⁴ See notes 16-17, 72-75 and accompanying text *supra*; Appendix I.

ent form will not survive under the diversified system.⁵³⁵ The master plan goes beyond the changes being made in the present maximum security facilities.⁵³⁶ First, no facility will remain solely maximum security. Inmates will always have medium and sometimes minimum security alternatives within the institution.⁵³⁷ Second, the size of all maximum security facilities will be reduced as the master plan is implemented. The six major maximum security prisons presently have an average inmate population of nearly 1,400.⁵³⁸ The average size of these six facilities under the master plan will be about 1,000 inmates each.⁵³⁹ These facilities will be divided into minimum, medium, and maximum security units. Moreover, smaller maximum security units will be added at other facilities. No security unit in the system will house more than 700 inmates. Many of the maximum security units will house much smaller populations; their average size at all facilities will be about 200 inmates each.⁵⁴⁰ Finally, new maximum security facilities will be located near urban centers⁵⁴¹ to facilitate minority personnel recruitment⁵⁴² and increased utilization of community professional and volunteer services.⁵⁴³ Nevertheless, the majority of inmates in maximum security will be located in rural areas.⁵⁴⁴

4. Prescription Correctional and Control Program

The prescription correctional and control program, designed for the incorrigible inmate,⁵⁴⁵ is being established at several New York correctional facilities "for the assignment, control and intensive treatment of selected inmates in order to protect the safety and security of . . . facilities . . . , personnel, other inmates, and the public."⁵⁴⁶ The prescription program is essentially a maximum security, maximum programming regimen designed to resocialize or radically to alter highly undesirable inmate behavior.⁵⁴⁷

⁵³⁵ The metamorphosis of these facilities has already begun, and is outlined in notes 151-367 and accompanying text *supra*.

⁵³⁶ See Second Year Budget Statement 11-12.

⁵³⁷ See Appendix H.

⁵³⁸ See Appendix I (Attica, Auburn, Clinton, Great Meadow, Green Haven, and Ossining).

⁵³⁹ See Appendix H.

⁵⁴⁰ See *id.*

⁵⁴¹ Process Steps 39-40; Appendix H (Beacon, Multi-Purpose Parole Facility, and Downstate Correctional Facilities Nos. 1 and 2).

⁵⁴² See SELECT COMM. REP. No. 1, at 9.

⁵⁴³ See *id.*; SELECT COMM. REP. No. 2, at 13.

⁵⁴⁴ See Appendix H.

⁵⁴⁵ Interview with Russell G. Oswald, *supra* note 4.

⁵⁴⁶ Prescription Program Manual I.

⁵⁴⁷ See text accompanying notes 588-92 *infra*.

Prescription programming is seen as one aspect of a diversified correctional system.⁵⁴⁸ This program, consistent with the philosophy of individualization of treatment, was created to deal with a specialized inmate group—the approximately ten percent of the inmate population which constitute the “problem prisoners” in need of intensive custodial/treatment intervention.⁵⁴⁹ According to Department officials, this group accounts for a grossly disproportionate amount of heightened tension, increased danger, and program failure within the institutions.⁵⁵⁰ Thus, the prescription program is premised on dual grounds: (1) the needs of the selected inmates and (2) the needs of the facility from which the selected inmate is removed.

The importance attached to the prescription program by correctional authorities, as well as the controversial nature of its premises and

⁵⁴⁸ See Prescription Program Manual 1.

⁵⁴⁹ Interviews with Russell G. Oswald, *supra* note 4, and Walter Dunbar, *supra* note 69; cf. TASK FORCE REPORT 15.

⁵⁵⁰ See Prescription Program Manual 35. Of principal concern is a small group of inmates who advocate the complete disruption of the correctional system. It is feared that this group preys on adverse prison conditions and a changed, more receptive inmate population in order to maximize violence and to minimize responsiveness to remedial programs. Interview with Russell G. Oswald, *supra* note 4, and Walter Dunbar, *supra* note 69; see MCKAY COMM'N REPORT 118. The Department has not been able to demonstrate empirically the existence or size of this specialized contingent, nor its effect on the correctional program, but disinterested observers have attested to the existence of an intractable revolutionary minority which is quite distinct from the general inmate population. See, e.g., MCKAY COMM'N REPORT 117-18; cf. TASK FORCE REPORT 15. It is hardly surprising that the Department is unable to document the extent or effect of this revolutionary contingent in view of the present absence of diagnostic or research capabilities. In fact, the Department insists that one of the objectives of the prescription program is to furnish such documentation. See Prescription Program Manual 35-37. But see Ward, *Evaluative Research for Corrections*, in PRISONERS IN AMERICA 197-98 (L. Ohlin ed. 1973):

Despite the trial and failure of treatment programs to produce law-abiding—or even obedient—behavior on the part of inmates and parolees, the treatment ideology has proved to be of great value as the latest and most sophisticated justification for controlling the behavior of “militants,” “radicals,” and “agitators” who threaten the interests of organizational and community power structures. . . .

. . . .
 . . . It is still useful to characterize criminal behavior (prison “trouble-making”) as stemming from a disturbed emotional state and to argue that the prison system should devote its efforts to “helping” persons so afflicted. Because “correctional treatment” is so ambiguously defined and because it presents such a seemingly up-to-date, scientific and solicitous image, it should be expected that social control agencies will continue to publicly justify imprisonment in its name.

Stated in ideal terms, the treatment approach . . . includes assumptions that even strong critics can endorse. For instance, it recognizes the need to provide individualized or special attention to persons who are genuinely psychologically disabled. . . .

It has, nonetheless, been overrated as an explanation of and a solution to “the crime problem.” It has permitted Americans to pretend that the administration of criminal justice is just and that people who end up in prison deserve to be there because they are really different from the rest of us.

application, justifies detailing its operation. Unfortunately, the program is too new to be evaluated in terms of empirical success. Evaluation must therefore proceed along three theoretical lines: Can the program contribute to the overall objectives of the department? Is the program properly constructed to achieve its objectives? What is the potential for administrative abuse in the program's operation? The program comprises four stages: (1) selection, (2) orientation and diagnosis, (3) correction and control, and (4) discharge.

a. *Selection.* The selection stage of prescription programming has a substantive aspect—the criteria for selection⁵⁵¹—and a procedural aspect—the process by which the criteria are applied to an inmate.⁵⁵² Axiomatically, the selection stage is vital to the success of the program. Neither objective of the program—treatment of the inmates selected and improvement of the institutional atmosphere by their removal—can be achieved if the wrong inmates are selected.⁵⁵³

The selection criteria⁵⁵⁴ allow for maximum administrative flexibility in reaching perceived incorrigibles. First, flexibility is enhanced by terming the three criteria "factors."⁵⁵⁵ Although the initial selection body, the facility program committee,⁵⁵⁶ is required to provide documentation from the inmate's official record on each of these three factors,⁵⁵⁷ the Department does not specifically require that each inmate selected meet all three standards. Second, the language of the factors permits discretionary application.

⁵⁵¹ See note 554 *infra*.

⁵⁵² See Prescription Program Manual 4.

⁵⁵³ It can safely be assumed that courts will scrutinize both the selection criteria and process. Cf. *Sostre v. McGinnis*, 442 F.2d 178, 198 (2d Cir. 1971), *cert. denied sub nom. Sostre v. Oswald*, 404 U.S. 1049 (1972).

⁵⁵⁴ The selection criteria for this program will be based on the following factors regarding the individual's behavior and behavior pattern:

1. *Disruptive, dangerous behavior.*

Behavior represents a clear and present danger to the safety and security of the facility and personnel, and inmates thereof, and is reflected in a consistent pattern of violation of rules, disrespect for the rights and responsibilities of personnel and inmates, overt acts contrary to rules and procedures, and which disrupt operations and instigate riotous and destructive acts.

2. *Participation in program behavior.*

Behavior reflects a serious and chronic failure of the inmate to participate in the regular correctional programs.

3. *Adjustment of behavior.*

Behavior indicates the critical need for an opportunity to participate in a prescription program with intensive counseling which may lead to individual recognition of the reasons for present attitude and behavior, and for obtaining solutions related to adjustment of attitude and behavior.

Prescription Program Manual 3.

⁵⁵⁵ *Id.*

⁵⁵⁶ See notes 564-69 and accompanying text *infra*.

⁵⁵⁷ See Prescription Program Manual 5 (transfer recommendation form).

The first factor—disruptive, dangerous behavior—if taken literally, would seem to meet the objectives of the selection process single-handedly. Pursuant to this factor, an inmate, before being placed in prescription programming, must behave in such a way as to (1) constitute a clear and present danger to the facility, its personnel, and inmates, and (2) reflect disrespect for the rights and responsibilities of others, and (3) consistently violate rules and regulations by overt acts which disrupt operations and instigate riotous and destructive acts.⁵⁵⁸

The second factor, based on the extent of participation in regular programs, overlaps the first. Presumably, failure to engage in programs is violative of rules and procedures.⁵⁵⁹ Moreover, serious and chronic nonparticipation may be the result of an inmate's confinement in segregated housing due to previous rule violations.⁵⁶⁰ Nevertheless, the philosophical thrust of the second factor differs from the first. The first factor is aimed at "anti-institutional" behavior; the second factor appears designed to embrace a failure of the inmate to attempt self-betterment.⁵⁶¹

The third selection criterion is highly subjective. Although selection criteria are designed to identify inmates in need of prescription programming, the third factor is couched in those very terms—the inmate's "[b]ehavior indicates the critical need . . . to participate in a prescription program . . ." ⁵⁶² This factor provides no guide or limitation to administrators in selecting participants. A circular reasoning, which could lead to emphasis on attitudes and beliefs rather than on "behavior," thus develops whereby those seen by the administrators as in need of a program "which may lead to individual recognition of the reasons for present attitude . . . and for obtaining solutions" are those who are perceived by administrators as having a poor attitude.⁵⁶³

The procedure for selection of program participants is three-tiered. First, the facility program committee⁵⁶⁴ nominates or recommends an inmate for prescription programming. The nomination is made by

⁵⁵⁸ See note 554 *supra*.

⁵⁵⁹ Cf. MCKAY COMM'N REPORT 36.

⁵⁶⁰ See *id.* at 76.

⁵⁶¹ The second factor seems to constitute increased correctional intervention. An inmate may not have the right to disrupt the institution, but he may have the right to refuse rehabilitation. See DEP'T OF CORRECTIONS, STATE OF SOUTH CAROLINA, *supra* note 292, at 170-73.

⁵⁶² Prescription Program Manual 3.

⁵⁶³ *Id.*

⁵⁶⁴ The facility program committee "generally consists of representatives from security (Lieutenant or above), education, industry and service units." *Id.* at 4.

completing a transfer recommendation⁵⁶⁵ which consists of excerpts from the inmate's official record, categorized under the three selection factors. The recommendation form also allows the committee to "specify other factors or summary comments as considered appropriate."⁵⁶⁶ Although the committee is required to hold a meeting with the inmate prior to the nomination,⁵⁶⁷ no provision is made for the inmate to see the transfer recommendation. A staff member chosen by the inmate may represent him at the required hearing.⁵⁶⁸ The committee must review each of the selection criteria with the nominee and review his record as it relates to that criterion. Written or oral responses by the inmate are recorded on the transfer recommendation and must be considered by the committee when making its recommendation.⁵⁶⁹

Second, the nomination is passed upon by a central office classification review board.⁵⁷⁰ The duties of this on-going board are vague, but presumably it reconciles the facility program committee's judgment with central office philosophy as to the purpose and capacity of the prescription program. There is no further input of information or argument beyond the transfer recommendation to aid the board in its decision. Thus, its determination is based solely on material prepared and edited by the facility administration.

Third, although the board makes the actual transfer decision, a check on its power exists. The inmate has seven days in which to appeal by confidential letter to the Commissioner.⁵⁷¹ If the inmate appeals, his transfer must await the Commissioner's decision.⁵⁷² However, because the classification review board is hand-picked by the Commissioner,⁵⁷³ thus reflecting his program conceptions, it is doubtful that the Commissioner's review constitutes a meaningful appeal process. Perhaps more significantly, the Commissioner, like the classification review board, has limited access to information in making his determination. He must weigh an administratively compiled record,

⁵⁶⁵ *Id.* at 5.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.* at 4.

⁵⁶⁸ *Id.* Professional counsel is apparently not permitted.

⁵⁶⁹ *Id.*

⁵⁷⁰ *Id.* The classification review board is presently composed of the Deputy Commissioner of Program Services (Chairman), the Deputy Commissioner of Correctional Facilities, departmental counsel, the Coordinator of Inmate Classification and Movement, the Director of Correctional Guidance, and any other facility or Department representatives designated by the Commissioner of Correctional Services. The board was established by the Commissioner on March 22, 1971, and is presumably responsible to him. *Id.* at 6.

⁵⁷¹ *Id.* at 4.

⁵⁷² *Id.*

⁵⁷³ See note 570 *supra*.

consisting of two levels of committee arguments, against one inmate's letter, prepared without the advice of counsel and without access to the report against which he is arguing. There is some doubt as to whether a court would attach significance to this perfunctory final appeal in assessing the due process sufficiency of the selection apparatus.⁵⁷⁴

b. *Orientation and Diagnosis.* For the selected inmate, the prescription program begins at the Diagnostic and Evaluation Center.⁵⁷⁵ The program at the center consists of two phases: reception-orientation and diagnosis-evaluation. The entire second stage lasts from four to six weeks.⁵⁷⁶

The reception phase is intended to supplement the correction/control program, which constitutes stage three.⁵⁷⁷ This phase is designed to identify for the inmate acceptable conduct which will lead to improved status, to outline the limits of conduct to be tolerated, and to establish the beginnings of a system of rewards and punishments to reinforce acceptable behavior and discourage misbehavior.⁵⁷⁸ Like other parts of the prescription program,⁵⁷⁹ the reception phase appears to rely primarily on the grant or denial of privileges to inmates to induce favorable responses.⁵⁸⁰ This phase also begins diagnosis by the compilation of a detailed social history of the inmate⁵⁸¹ and by the administration of certain routine psychological tests.⁵⁸² The inmate is also subjected to a rigorous physical examination.⁵⁸³

The diagnostic phase, in addition to the psychological testing, includes a psychiatric examination⁵⁸⁴ and behavioral observation of

⁵⁷⁴ Cf. note 313 and accompanying text *supra*. A further review of the suitability of a selected inmate takes place at the reception diagnosis stage. Prescription Program Manual 4; see note 586 *infra*.

⁵⁷⁵ See generally Prescription Program Manual 7-10; Appendix G. The center is a permanent component program of the Adirondack complex. See note 703 and accompanying text *infra*.

⁵⁷⁶ Prescription Program Manual 7. Exit can come earlier if an inmate is paroled or determined to be mentally ill. *Id.* at 22.

⁵⁷⁷ *Id.* at 7-8; see notes 588-634 and accompanying text *infra*.

⁵⁷⁸ Prescription Program Manual 7-8.

⁵⁷⁹ See, e.g., notes 617-19, 624-25, 627 and accompanying text *infra*.

⁵⁸⁰ Prescription Program Manual 8.

⁵⁸¹ The complete social history includes birth and early childhood data, family history (including ethnic, religious, and demographic data), school history, public agency involvement, medical and psychiatric history, military history, legal history, incarceration history, marital history, and "philosophical behavior and ideological history." *Id.* at 10.

⁵⁸² Psychological tests include Rotter Incomplete Sentences, Minnesota Multi-Phasic Personality Inventory, Bender-Gestalt, Tennessee Self-Concept, and Edwards Personal Preference tests. *Id.*

⁵⁸³ *Id.* at 8. The physical examination includes an electrocardiogram and, if needed, an electroencephalogram. *Id.* at 10.

⁵⁸⁴ The stated object of the psychiatric examination is the formulation of a psycho-

inmate response to contrived stimuli.⁵⁸⁵ The culmination of stage two is the completion of an evaluative report containing (1) a clinical diagnosis, (2) a psychodynamic diagnosis, (3) a developmental diagnosis, (4) an estimated prognosis of the inmate's motivation and capacity for treatment, and (5) if the inmate is found suitable for prescription programming,⁵⁸⁶ a correction/control prescription.⁵⁸⁷

c. *Correction and Control.* The prescription correction/control program is a mutually agreed upon⁵⁸⁸ rehabilitation plan consisting of a set of expectations for changing the inmate's attitude, behavior, and skills,⁵⁸⁹ a specific, highly regimented schedule for achieving these expectations,⁵⁹⁰ and rewards contingent upon meeting these expectations.⁵⁹¹ An inherent characteristic of the program is periodic assessment of achievements, failures, and adherence to the schedule.⁵⁹²

The rehabilitation prescription is agreed upon by correctional administrators and the inmate.⁵⁹³ The psychological effect of the consensus approach is seen as its prime justification.

It is assumed that if the offender feels involvement in, and responsibility for, what is expected of him, both the institutional adjustment of the offender, including his amenability to training and treatment, and his post release behavior should improve. . . .

The concept of mutual agreement means that institutional administration, and offender concur as to the treatment needs and

dynamic diagnosis including the inmate's "significant emotional forces, levels of maturation, prominent defense mechanisms, capacity for and quality of object relations, ego identity, [and] quality of superego functions." *Id.*

⁵⁸⁵ *Id.* The nature of the stimuli is not identified in the prescription program manual.

⁵⁸⁶ Alternatively, an inmate can be sent to a mental hospital, special housing unit (isolation), returned to the original facility, or transferred to a medical center or hospital as diagnosis indicates. *Id.* at 9, 11.

⁵⁸⁷ *Id.* at 10.

⁵⁸⁸ See notes 593-95 and accompanying text *infra*.

⁵⁸⁹ Prescription Program Manual 16; see notes 600-08 and accompanying text *infra*.

⁵⁹⁰ Prescription Program Manual 16.

⁵⁹¹ See *id.* at 20.

⁵⁹² See notes 596-99, 606-08 and accompanying text *infra*. The Select Committee on Correctional Institutions and Programs, in one of the few published comments on the prescription program, has expressed grave conceptual reservations:

While [the prescription program] utilizes rehabilitative rhetoric, it could be extremely punitive in result and likely to raise the level of tension and alienation among the inmates. In a society that formally prizes human dignity and mental, emotional and spiritual freedom from governmental intrusion, there must be concern with any program whose method is a quite detailed regimentation of daily life and whose logic and vision may raise the spectre of the resocialization, rethinking and brainwashing camps of totalitarian societies.

SELECT COMM. REP. No. 4, at 10-11.

⁵⁹³ Prescription Program Manual 16, 20.

schedule for the individual, as a basis for current and future programming, and that the inmate concurs to undertake and accomplish the activities prescribed as a basis for earning positive consideration for assignment to a future program in another facility.⁵⁹⁴

But the contract is hardly arrived at by arms'-length negotiations; when an impasse is reached the inmate is relegated to the "nonparticipating" category, with adverse consequences attaching to his recalcitrance.⁵⁹⁵

A decision on whether to continue the prescribed program or to transfer the inmate to another facility or program is made no earlier than six months and no later than twelve months after the program begins.⁵⁹⁶ The decision is made by the central office classification review board on the advice of the prescription facility administrators.⁵⁹⁷ The inmate may appeal this decision to the Commissioner.⁵⁹⁸ Subsequent reviews by the board are made annually or as the prescription agreement dictates.⁵⁹⁹

i. *Scope of Program Activities.* The prescription agreement may embrace any of the following categories of inmate activity: personal hygiene (including cleanliness, laundering and barbering), feeding, health care, dental care, correspondence and visitation privileges, counseling and guidance program (including community living sessions, personal behavior review, and social-psychological therapy), physical fitness and exercise, education, work and avocational experience, religious services and guidance, custodial escort requirements, commissary rights, and unit housekeeping duties.⁶⁰⁰ Participants are evaluated on their achievements relative to the requirements established in these activity categories.⁶⁰¹

Certain elements of the prescription program are established by the Department.⁶⁰² If the inmate fails to perform these required activities, he will be classified as "nonparticipating" with negative consequences attached thereto.⁶⁰³ Pursuant to Department mandates, the inmate must:

⁵⁹⁴ *Id.* at 20.

⁵⁹⁵ *See id.* at 29; notes 622-25, 629 and accompanying text *infra*. *See generally* Appendix G.

⁵⁹⁶ Prescription Program Manual 22.

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.* at 29. *But see* notes 573-74 and accompanying text *supra*.

⁵⁹⁹ Prescription Program Manual 16, 22.

⁶⁰⁰ *Id.* at 24-26.

⁶⁰¹ *Id.* at 27-28.

⁶⁰² *Id.* at 16-17.

⁶⁰³ *See* text accompanying notes 622-25 *infra*.

1. Exercise daily self-control in relationship with others, staff and inmates.
2. Participate daily in community living sessions.
3. Converse with others, staff and inmates with frankness and acceptable language.
4. Adhere to the daily schedule of activities.
5. Keep his person, clothing and living quarters clean and neat.
6. Select and participate daily in work and avocational activities.
7. Overcome educational deficiencies or improve education via program learning or correspondence courses.
8. Review personal problems as they occur within the community living group as to attitude and behavior, and in relation to Rights and Responsibilities.
9. Participate with program staff to develop and present suggestions covering program adjustment and development; i.e., cultural, ethnic studies, legal assistance program to inmates, and citizens rights and responsibilities.
10. Participate in meetings for discussion of the program, and for assessment of personal plans for reentry into the community.
11. Participate daily in physical exercise of [*sic*] recreational activities to promote physical fitness and good health.
12. Maintain contact with family and friends through correspondence and visiting.
13. Complete a monthly self-appraisal report⁶⁰⁴

In addition to these requirements, the prescription program manual specifies a set of eleven inmate "rights and responsibilities."⁶⁰⁵

⁶⁰⁴ Prescription Program Manual 16-17.

⁶⁰⁵ *Your Rights and Responsibilities*

1. You have the right to unrestricted and confidential access to the courts by correspondence.

It is your responsibility to present honestly and fairly your petitions, questions and problems to the court.

2. You have the right to confidential legal counsel from an attorney of your choice by interviews and correspondence.

It is your responsibility to use honestly and fairly the services of an attorney.

3. You have the right to participate in the use of law library reference materials to assist you in regard to your legal problems. You further have the right to receive assistance when such assistance is available through a legal assistance program.

It is your responsibility to use these resources in keeping with the procedures and schedule prescribed.

4. You have the right to health care which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of them, an opportunity to shower frequently, proper ventilation for warmth and fresh air,

The prescription program participant is required to complete a monthly self-appraisal report which becomes part of his personal record and is used to evaluate his correctional progress.⁶⁰⁶ Two aspects of the evaluation deserve special comment. First, the inmate is required to list legal assistance sought and received,⁶⁰⁷ although it is difficult to envision any justifiable reason for requiring such information. Second, the inmate must comment on his participation in religious programs.⁶⁰⁸ This requirement is either superfluous (if not considered by the evaluating team) or discriminatory (if religious participation is given favorable consideration in determining progress).

ii. *Graded Program Levels.* The term "prescription program"

a daily exercise and recreation period, toilet articles and prompt medical and dental treatment.

It is your responsibility to not waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, and to seek medical and dental care as needed.

5. You have the right to visit and correspond with family members, friends, prospective employers and members of the news media in keeping with the facility schedule.

It is your responsibility to conduct yourself properly during visits without dealing in contraband, and to limit the contents of your correspondence to appropriate subject matter.

6. You have the right of freedom of religious affiliation, and voluntary religious worship.

It is your responsibility to participate in religious programs and services in designated locations as scheduled.

7. You have the right to a wide range of reading material for educational and avocational activities, and these materials may be magazines and newspapers sent from the publishers.

It is your responsibility to seek and utilize such materials for your benefit.

8. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.

You have the responsibility to treat others, personnel and inmates, in a courteous and respectful manner and not attempt to organize or advocate violent solutions to social and institutional problems.

9. You have the right to be informed of the rules, procedures and schedules governing the operation of the facility.

You have the responsibility to know and abide by the rules and procedures.

10. You have the right to participate in education, vocational training and employment as available, in keeping with your interests, needs, and abilities.

You have the responsibility to take advantage of activities which may enhance your ability to live a successful and law-abiding life in the community.

11. If authorized by statute, you have the right to be considered for parole, and to know the standards for grant of parole.

You have the responsibility to abide by the rules and improve yourself, and to make constructive future plans as a basis for earning parole.

Id. at 18-19. Despite the vagueness of certain of the responsibilities, questions of interpretation and monitoring are left unanswered.

⁶⁰⁶ *Id.* at 16-17. The Parole Board will have access to this self-evaluation, *Id.* at 16.

⁶⁰⁷ *Id.* at 23.

⁶⁰⁸ *Id.* See also note 605 *supra* (rights and responsibilities no. 6).

actually embraces three interrelated treatment/control programs which operate at several facilities around the state: the *correctional* prescription program,⁶⁰⁹ the *control* prescription program,⁶¹⁰ and the *open* prescription correctional program.⁶¹¹ An inmate can be transferred to any one of the three programs directly from the diagnostic phase at the Adirondack complex.⁶¹² Assignment is based on the diagnostic evaluation and transfer facility capabilities, although theoretically the assignment is mutually agreed upon by the inmate and staff.⁶¹³

The correctional prescription program is the mainstay of the prescription apparatus. Inmates may be assigned to the correctional unit directly from the diagnostic center or from the control or the open prescription programs.⁶¹⁴ All newly-admitted participants to the correctional program are placed in Level I.⁶¹⁵ The participant may progress to Level II, or he may be relegated to the "nonparticipating" level.⁶¹⁶ The three levels within the correctional program are designed to facilitate the granting of privileges and the administration of sanctions in order to reinforce acceptable behavior and discourage unacceptable conduct.⁶¹⁷ Thus, each level is characterized by a different set of privileges, requirements, and programs. If the Level I inmate⁶¹⁸ progresses in terms of his prescription, he advances to Level II, where

⁶⁰⁹ See notes 614-25 and accompanying text *infra*.

⁶¹⁰ See notes 626-30 and accompanying text *infra*.

⁶¹¹ See notes 631-34 and accompanying text *infra*.

⁶¹² Prescription Program Manual 15; see Appendix G.

⁶¹³ Prescription Program Manual 17, 20.

⁶¹⁴ *Id.* at 15; see Appendix G.

⁶¹⁵ Prescription Program Manual 29; see Appendix G.

⁶¹⁶ Prescription Program Manual 29; see Appendix G.

⁶¹⁷ *Id.* But see SELECT COMM. REP. No. 4, at 10:

[T]here is some question as to whether [the prescription program] requires conformity in matters affecting religious and political beliefs, and whether it can result, for those who elect not to participate, in a day-to-day regimen that is more severe than "special housing units", without most of the procedural due process safeguards that are designed to foster fairness. While it utilizes rehabilitation rhetoric, it could be extremely punitive in result and likely to raise the level of tension and alienation among the inmates.

⁶¹⁸ The Level I characteristics in the correctional prescription program are: daily earnings of twenty cents; feeding in cell or in large groups, contingent on behavior, attitude, and available space; clothing of regular issue only; educational and avocational pursuits in cell only; one hour each of individualized indoor and outdoor recreation; individual and group counselling, contingent on behavior and attitude; lock-in hours based on facility time schedule; visitation limited to once per month with only three visitors at one time; commissary rights limited to restricted items to be purchased in one visit per month (\$15.00 per month maximum cost); one telephone call allowed every two months; inmate movement restricted (cells locked when occupied). Prescription Program Manual 30. This list is not exclusive. Other "positive and negative reinforcers" are tailored to each individual in his prescription. *Id.* at 29.

privileges are expanded and control is lessened.⁶¹⁹ Eventually he may be assigned to an open prescription program or returned to general population status.⁶²⁰ But if the inmate refuses to cooperate or does not progress at either level, he may be placed in the nonparticipating category or transferred to the control program.⁶²¹

Inmates sent to the nonparticipating level are considered by the Department to be incorrigible within the limits of present penological expertise.⁶²² Inmates designated as nonparticipating are seen as unwilling to improve attitudes, behavior, or skills, or as incapable of such improvement. These inmates will be incarcerated pursuant to legislative and judicial determination in the strict sense of the word.⁶²³ For example, the nonparticipating inmate receives no wages, has no commissary or telephone privileges, enjoys only severely limited visitation privileges, and has no opportunity to participate in educational or avocational programs.⁶²⁴ Most significantly, he is locked in his cell at all times except for a short daily exercise period and twice weekly showers.⁶²⁵

The control prescription program is an additional administrative option for dealing with inmates who do not adjust to the correctional or open programs. Inmates may also be sent to a control unit directly from diagnosis and evaluation.⁶²⁶ The structure of the control program parallels that of the correctional program, except that the former is characterized by generally fewer privileges, less programming, and more control.⁶²⁷ Thus, the control program has the two regular levels⁶²⁸

⁶¹⁹ Some of the Level II privileges in the correctional prescription program are: daily earnings of twenty-five cents; feeding in congregation or in cells with cell doors open; limited personal civilian clothing for use during leisure periods; educational and avocational training inside or outside cells and either individualized or congregate; individualized and group counseling, contingent on inmate needs and attitudes; two hours of recreation, both indoors and outdoors, with television and movie privileges; lock-in hours based on facility time schedule; visitation rights equal to those of inmates in the general population; regular commissary rights; telephone privileges corresponding to inmates not in the prescription program; some unrestricted inmate movement. *Id.* at 31.

⁶²⁰ *Id.* at 29; see Appendix G. The privileges of the open prescription program participant are the same as those of inmates in the general population unless specified otherwise in the individual's prescription. *Id.* at 33.

⁶²¹ *Id.* at 29; see Appendix G.

⁶²² *Cf.* Interview with Russell G. Oswald, *supra* note 4.

⁶²³ See Prescription Program Manual 29; notes 24-25 and accompanying text *supra*.

⁶²⁴ Prescription Program Manual 32.

⁶²⁵ *Id.*

⁶²⁶ *Id.* at 29; see Appendix G.

⁶²⁷ Compare notes 618-19 *supra* with note 628 *infra*.

⁶²⁸ Prescription Program Manual 29; See Appendix G. Among the characteristics of Level I of the control program are: no earnings; feeding in cell only; individualized educational and avocational training (in cell); clothing of regular issue; one hour of individual

and a nonparticipating level. The nonparticipating level is identical to its correctional program counterpart.⁶²⁹ Transfer from the control program, other than by exit from prescription programming, takes place only to the correctional program and not to the open program.⁶³⁰

The open prescription program is designed for inmates who are in need of intensive treatment but who do not require the constant regimentation characteristic of the separate prescription units.⁶³¹ The participant in the open program is assigned to the general inmate population of the correctional facility, although he remains subject to a detailed, agreed upon set of expectations, a schedule for achieving these expectations, and the self-assessment requirements.⁶³² The open program can serve either as a separate treatment device based on the diagnostic evaluation or as a reintegrative step between the correctional program and the general inmate population.⁶³³ Open program inmates can be sent to either the correctional or control program if their progress is deemed unsatisfactory.⁶³⁴

d. *Discharge from Program Participation.* Inmates are subject to parole,⁶³⁵ conditional release,⁶³⁶ or expiration of their maximum sentence at any time during administration of the prescription program and from any stage, program, or level.⁶³⁷ Furthermore, inmates can be sent to another appropriate facility at any time for reasons of mental or physical illness.⁶³⁸

The prescription participant, upon the approval of the classifica-

recreation; lock-in hours based on facility time schedule; visitation privileges same as general population; commissary limited to \$10.00 per month for restricted items; no telephone calls; movement restricted to cells and areas around recreation and shower facilities.

Among the Level II characteristics of the control program are: daily earnings of twenty cents; feeding in cell only; individual educational and avocational training in cell; limited personal civilian items of clothing; recreation of two hours outdoors and one hour inside, with limited television privileges; individual and group counselling; lock-in hours based on facility time schedule; visitation privileges same as general inmate population; commissary rights of \$20.00 per month to be spent on limited items; one telephone call per month; unrestricted movement in selected areas outside cells. *Id.* at 32-33.

⁶²⁹ *Id.* at 33; see notes 622-25 and accompanying text *supra*.

⁶³⁰ Prescription Program Manual 29; see Appendix G.

⁶³¹ *Cf.* Prescription Program Manual 15, 29.

⁶³² *Id.*; see notes 588-92 and accompanying text *supra*.

⁶³³ Prescription Program Manual 29.

⁶³⁴ *Id.*; see Appendix G.

⁶³⁵ See N.Y. CORREC. LAW §§ 210-25 (1968 & McKinney Supp. 1972).

⁶³⁶ See *id.* §§ 212, 825-35.

⁶³⁷ Prescription Program Manual at 11; see Appendix G. The McKay Commission elaborated upon these three forms of release and the defects of each. See MCKAY COMM'N REPORT 91-102.

⁶³⁸ Prescription Program Manual 11. The departmental classification review board must approve the transfer. *Id.*; see note 570 *supra*.

tion board,⁶³⁹ can be discharged from the program and returned to the general inmate population "based on the judgment of the staff that improvement in [the] inmate's behavior and attitude as regard the selection criteria has sufficiently improved to warrant his return to population of a regular correction facility."⁶⁴⁰ On the other hand, unresponsive "problem" inmates⁶⁴¹ are subject to transfer to a special housing unit "based on the judgment of the staff that the inmate has been given an adequate opportunity to respond to the program and has failed to cooperate."⁶⁴² All inmates leaving a program are required to complete a battery of tests and a psychiatric appraisal for comparison with the corresponding evaluation made at the orientation and diagnosis stage.⁶⁴³

5. Honor Living Units

Honor living units are a minimum security adjunct to medium and maximum security facilities.⁶⁴⁴ The units may also be employed in connection with other specialized programs.⁶⁴⁵ The impetus for the honor living concept in New York came from the Select Committee on Correctional Institutions and Programs.⁶⁴⁶ The committee's original suggestions were refined and expanded by the Department of Correctional Services, and units have now been established at several maximum security facilities.⁶⁴⁷

The purposes of the honor living program are to provide incentives for inmates to move beyond the more restricted areas of the facility, to reduce cell time, to promote improved staff-inmate relations, to test individual readiness for further reduction of security and possible release, to reduce supervision costs, and to provide participating inmates with a quasi-normal living experience prior to their eventual release.⁶⁴⁸

⁶³⁹ Prescription Program Manual 12.

⁶⁴⁰ *Id.* at 11.

⁶⁴¹ See note 550 and accompanying text *supra*.

⁶⁴² *Id.* Classification review board ratification is required for the transfer. The inmate may appeal in writing to the Commissioner as with any other transfer. *Id.* at 6, 22. It is unclear how the nonparticipation unit differs from the special housing unit. See notes 622-25 and accompanying text *supra*.

⁶⁴³ *Id.*; see notes 577-82 and accompanying text *supra*.

⁶⁴⁴ See Dep't of Correctional Services, State of New York, Memorandum of Sept. 28, 1972 (on file at the *Cornell Law Review*) (guidelines for honor living program).

⁶⁴⁵ See, e.g., text accompanying notes 701-02 *infra*.

⁶⁴⁶ The honor living concept was embodied in the Select Committee's proposed reforms in the area of visitation. See SELECT COMM. REP. NO. 2, at 31-32; SELECT COMM. REP. NO. 4, at 34.

⁶⁴⁷ See text accompanying note 700 *infra*.

⁶⁴⁸ Memorandum, *supra* note 644, at 1, 3.

The units are characterized by: (1) inmate group management, (2) severely restricted staff supervision, (3) increased inmate privileges, and (4) more normal living arrangements.⁶⁴⁹

The fundamental elements of an honor living unit are established in advance by the facility superintendent and original inmate nominees. These elements include the location of the unit (within or without the "security area"), the degree and types of staff supervision, and basic administrative details such as staff work assignments, support services, and inmate upkeep responsibilities.⁶⁵⁰ But most of the operational decisions for the unit—for example, evening schedule, recreational and educational activities, individual inmate housekeeping assignments—are made by the inmates.⁶⁵¹ Honor living participants have greater access to the yard, television rooms, library, and commissary. Visitation restrictions are relaxed.⁶⁵² Work release and furloughs are encouraged.⁶⁵³

The basis for selection to the honor living unit is, as the name implies, good conduct. Evidence of good conduct is established by a satisfactory facility work record, favorable evaluation of educational and other program participation, and a minimum or medium security "clearance" by the facility classification committee.⁶⁵⁴

D. *Diversification in Action: The Adirondack Facility*

The initial steps toward the development of a completely diversified correctional system in New York have already been taken. The prime example of diversification in operation is the Adirondack Correctional Treatment and Evaluation Center (ACTEC),⁶⁵⁵ located in Dannemora, New York. ACTEC, which became operational in October 1972, consists of an amalgam of seven small, diverse programs in various security environments.⁶⁵⁶ Program effectiveness data on the facility are too scattered and too recent to be considered representative, and evalua-

⁶⁴⁹ *Id.*

⁶⁵⁰ *Id.*

⁶⁵¹ *Id.* at 1-2.

⁶⁵² For example, family picnics outside the facility may be scheduled. *Id.* at 3. *See generally* notes 248-69 and accompanying text *supra*.

⁶⁵³ Memorandum, *supra* note 644, at 2.

⁶⁵⁴ *Id.* at 4.

⁶⁵⁵ Other examples of newly operational diversified programs are the Albion Correctional Facility, a minimum security institution (*see* notes 486-89 and accompanying text *supra*), and several residential treatment facilities (*see* note 508 and accompanying text *supra*).

⁶⁵⁶ *Cf.* Dep't of Correctional Services, State of New York, Press Release, June 23, 1972 (on file at the *Cornell Law Review*).

tions have yet to be prepared. The ACTEC facility does, however, provide an example of proposed multi-purpose facilities.⁶⁵⁷

1. *Northeast Reception Program*

The Northeast Reception Center⁶⁵⁸ consists of a regional intake and classification unit for offenders sentenced in courts of the northeast region of New York.⁶⁵⁹ The center is a modern classification unit, unlike the mass reception centers at Attica and Ossining.⁶⁶⁰ Accordingly, the program operates on a two-week schedule consisting of diagnosis, assignment, and orientation for each inmate. Security is at a maximum level; movement of inmates is severely restricted.⁶⁶¹

The Northeast Reception Center has an annual capacity of between 100 and 115 inmates.⁶⁶² Since the master plan predicts an annual systemic intake of 11,000 inmates in the near future,⁶⁶³ the new center is a very small step in the development of a modern classification capability.⁶⁶⁴

2. *Therapeutic Communities*

A therapeutic community is a diversified program designed for the older (preferably thirty-five years of age or older), chronic offender.⁶⁶⁵ The assumption underlying the program is that some inmates

⁶⁵⁷ The various units of ACTEC operate with considerable independence. See Dept' of Correctional Services, State of New York, Program Manual; Adirondack Correctional Treatment and Evaluation Center 3 (Nov. 1972) (on file at the *Cornell Law Review*). It should be noted that the diversified programs at ACTEC are designed for inmates throughout the New York State penal system and not just for those received at the Northeast Reception Center. See *id.* at 1.

⁶⁵⁸ See generally notes 429-35 and accompanying text *supra*.

⁶⁵⁹ Northeast Reception Program, *supra* note 435, at 1.

⁶⁶⁰ See notes 433-35 and accompanying text *supra*.

⁶⁶¹ See Northeast Reception Program, *supra* note 435, at 1-2, 11.

⁶⁶² SELECT COMM. REP. No. 4, at 9.

⁶⁶³ Process Steps 24.

⁶⁶⁴ The Department's original plan was to convert the Ossining Correctional Facility into a reception and classification center serving the entire state. But the statewide classification center concept was not favorably reviewed by the Select Committee on Correctional Institutions and Programs. See, e.g., SELECT COMM. REP. No. 1, at 21; SELECT COMM. REP. No. 2, at 19-20. The principal objection of the committee was that the statewide center would further increase the inmate's conception of the system's facilities as dehumanizing, remote bastilles, and would thus have a negative psychological impact. *Id.* As the Northeast Reception Program indicates, the Department has been persuaded to abandon the statewide concept in favor of regional intake. The Ossining Facility will continue to serve as a regional reception center for the New York City metropolitan area, which will necessitate its handling about 70% of all offenders received annually. See Process Steps 27.

⁶⁶⁵ See Dept' of Correctional Services, State of New York, Diagnostic & Treatment Program I & II (Therapeutic Community) of the Adirondack Correctional Treatment and Evaluation Center: Program Manual 1 (Nov. 1972) (on file at the *Cornell Law Review*).

reach an age at which an abatement of criminal or delinquent tendencies can be expected.⁶⁶⁶ The program is designed to "ameliorate the dependencies, inhibitions, conflicts with authority, loss of identity, rejection and bitterness resulting from long criminal history and long-term incarceration, and to advance the resocialization process."⁶⁶⁷

The two Adirondack therapeutic communities are so radically different from typical correctional programs in existence at other facilities that comparison is difficult. Each program is small—fifty inmates—and the staff/inmate ratio is high—twenty-five officers and three psychologists in each.⁶⁶⁸ "All members of the community [including inmates] are expected to function as co-therapists in the sense that their observations and insights are respected and contribute to the understanding of the behavior patterns and personalities present."⁶⁶⁹

Each community utilizes two devices to aid in achieving its goals. First, a maximum effort is made to blur the definitional lines between staff and inmates. The purpose is to create a new peer group, superior to the peer group the inmate was accustomed to in his former facility.⁶⁷⁰ Second, all members of this peer group are expected to respond to intra-group pressure, and a highly analytical and reflective atmosphere is promoted.⁶⁷¹

Community committees composed of inmates, officers, and psychologists discuss and evaluate various institutional operations.⁶⁷² Security is "medium" in nature since each inmate has a private room unlike a typical cell.⁶⁷³ All community members must attend committee meetings and community meetings, and participate in weekly "socio-dramas" and panel discussions.⁶⁷⁴

A selected inmate must be at least twenty-five years of age, but preferably an older, chronic offender, and not more than eighteen months nor not less than nine months from parole consideration. Moreover, the inmate should be "intelligent and verbal."⁶⁷⁵ Any evidence

⁶⁶⁶ *Id.* at 2.

⁶⁶⁷ *Id.* at 1.

⁶⁶⁸ *Id.*

⁶⁶⁹ *Id.*

⁶⁷⁰ *Id.* at 1-2.

⁶⁷¹ "Constant pressure is placed on the inmate to examine his feeling state and understand the meaning behind his behavior." *Id.* at 2.

⁶⁷² *Id.* at 5.

⁶⁷³ "Because of the intensity and constancy of the therapeutic confrontation process each inmate is housed in a separate room to which he can withdraw when tension and pressures become too great." *Id.* at 4.

⁶⁷⁴ *Id.* at 5.

⁶⁷⁵ *Id.* at 2.

of mental illness disqualifies an applicant since the pressurized environment may be harmful to an unstable person.⁶⁷⁶

3. *Incentive Place*

Incentive Place⁶⁷⁷ deals with young, chronically delinquent offenders who "demonstrate serious potential for criminal acts which are likely to result in lengthy periods of incarceration and protracted criminal careers."⁶⁷⁸ The program is thus designed to reach criminal behavioral patterns in their incipiency. Selection criteria are vague,⁶⁷⁹ but the inmate must be less than thirty years of age, within six to twenty-four months of release, and serving a sentence of three years or less. There must also be "[n]o strong indicators of potential escape risk."⁶⁸⁰

The theory behind Incentive Place programming resembles that of prescription programming:⁶⁸¹ good behavior is to be rewarded by progressively expanded personal privilege; poor behavior is to be discouraged by a denial of certain privileges. The quality of conduct is judged solely by staff members, however, unlike the self-evaluation aspects of the therapeutic communities.⁶⁸²

The operation of the Incentive Place program revolves around a "point system" whereby participants are rewarded for meeting specific behavioral criteria.⁶⁸³ The program consists of three program levels; behavioral requirements vary among the levels. Further differences among the levels include the assigned value of the points, the "point cost" of privileges and products which may be purchased, the minimum point requirement necessary to maintain status within a given level, and the minimum behavioral criteria which must be met for the participant to advance to the next program level.⁶⁸⁴

Fifty inmates can occupy the center at a given time.⁶⁸⁵ Security

⁶⁷⁶ *Id.*

⁶⁷⁷ See Dep't of Correctional Services, State of New York, Preliminary Program Manual for Incentive Place (Nov. 16, 1972) (on file at the *Cornell Law Review*).

⁶⁷⁸ *Id.* at 1.

⁶⁷⁹ For example, the inmate must be "without chronic psychiatric disturbance" and have average or above average intelligence, defined by the program manual as an I.Q. of 80+. *Id.* at 6.

⁶⁸⁰ *Id.*

⁶⁸¹ See generally notes 545-643 and accompanying text *supra*.

⁶⁸² Preliminary Program Manual for Incentive Place, *supra* note 677, at 4-5.

⁶⁸³ *Id.* at 14.

⁶⁸⁴ *Id.*

⁶⁸⁵ The total capacity of the therapeutic communities and Incentive Place, both located in ACTEC's Clinton Diagnostic and Treatment Center, will be 150 inmates. See SELECT COMM. REP. NO. 4, at 8. The advisability of handling this "somewhat dubious mix" within one center has been questioned by the Select Committee. *Id.*

levels vary within the program from near maximum at the first level to minimum security in the third level.⁶⁸⁶

4. *Community Preparation Program*

The ACTEC complex contains a small, minimum security program unit, designated the Community Preparation Program,⁶⁸⁷ similar to that at the Albion facility.⁶⁸⁸ The unit is operated for inmates who are within one year of possible release and who have "evidenced a need to participate in social and vocational programs based within the community . . . in preparation for release."⁶⁸⁹ The unit houses fifty inmates;⁶⁹⁰ programs are typical of those associated with minimum security institutions.⁶⁹¹

5. *Stress Assessment Unit*

The Stress Assessment Unit⁶⁹² involves, in effect, controlled risk-testing of inmates with histories of " 'crimes of violence, who [have] . . . demonstrated dangerous, violent, disruptive or bizzare behavior, but who . . . are now approaching parole eligibility.' "⁶⁹³ Inmates currently exhibiting violent behavior will not be selected, since there is little chance for them to be paroled.⁶⁹⁴ The stress assessment concept is thus designed to test *formerly* violent inmates prior to release.⁶⁹⁵ The "stress" on the participants arises from increasing "doses" of freedom and lessened restrictions and security.⁶⁹⁶ Thus, the parole board will have some basis upon which to determine the risk involved in the release of participating inmates.⁶⁹⁷ Phase I of the program is test evaluation.⁶⁹⁸ Phase II involves behavioral evaluation in less restrictive

⁶⁸⁶ See Preliminary Program Manual for Incentive Place, *supra* note 677, at 17-27.

⁶⁸⁷ See Dep't of Correctional Services, State of New York, Community Preparation Program of the Adirondack Correctional Treatment and Evaluation Center: Preliminary Program Manual 1 (Nov. 1972) (on file at the *Cornell Law Review*).

⁶⁸⁸ See notes 486-89 and accompanying text *supra*.

⁶⁸⁹ Community Preparation Program, *supra* note 687, at 2.

⁶⁹⁰ See SELECT COMM. REP. NO. 4, at 9.

⁶⁹¹ See, e.g., notes 481-89 and accompanying text *supra*.

⁶⁹² See Dep't of Correctional Services, State of New York, Stress Assessment Unit of the Adirondack Correctional Treatment and Evaluation Center (Nov. 1972) (on file at the *Cornell Law Review*).

⁶⁹³ SELECT COMM. REP. NO. 4, at 9.

⁶⁹⁴ Cf. Press Release, *supra* note 656, at 2.

⁶⁹⁵ Stress Assessment Unit, *supra* note 692, at 1, 3.

⁶⁹⁶ *Id.* at 1-2.

⁶⁹⁷ *Id.* at 5.

⁶⁹⁸ See *id.* at 8-9.

environments.⁶⁹⁹ Phase III is a minimum security honor living program.⁷⁰⁰

6. Honor Living Program

Honor living units⁷⁰¹ are operated at ACTEC in conjunction with the final phases of the Community Preparation and Stress Assessment programs.⁷⁰²

7. Prescription Program

The Adirondack complex currently serves as the orientation and diagnosis phase (Stage II) of the entire statewide prescription program.⁷⁰³ In addition, the facility has a correctional program unit⁷⁰⁴ with a capacity of approximately thirty inmates.⁷⁰⁵

CONCLUSION

The ideal correctional system is one which enables persons committed to its care to live harmoniously with others once the restraints of criminal adjudication have been lifted. Differing theories of corrections have evolved in an effort to achieve this ideal. Originally, the harsh, punitive prison atmosphere was designed to exorcise the perceived moral defects in the convicts. Vestiges of this punitive approach still exist.⁷⁰⁶ Later, the correctional reform movement embraced rehabilitation as an alternative correctional device. However, the theory of rehabilitation relied in part upon understanding the root causes of criminal behavior, an understanding which has proved elusive. Moreover, programs of potential rehabilitative value became lost in the shuffle of

⁶⁹⁹ See *id.* at 9-10.

⁷⁰⁰ See *id.* at 9.

⁷⁰¹ See notes 644-54 and accompanying text *supra*.

⁷⁰² See Dep't of Correctional Services, State of New York, Honor Living Program (Nov. 1972) (on file at the *Cornell Law Review*).

⁷⁰³ See ACTEC Program Manual, *supra* note 657, at 1. See generally notes 545-643 and accompanying text *supra*.

⁷⁰⁴ See ACTEC Program Manual, *supra* note 657, at 1.

⁷⁰⁵ Prescription Program Manual 49.

⁷⁰⁶ For example, an indefensible qualification to the prescription program formulated by the Department is buried in staff guidelines for the program: "[T]he elements of the prescription must be determined not only by what appears to be most likely to alter the offender, but what type of sentence he is serving, and what the expectations of society are." Prescription Program Manual 20. This concept is irreconcilable with individualization of treatment, reintegration, and humanization and is a vestige of the punitive or retributive theory of corrections.

reduced budgets, program cutbacks, mass congregation economies, and security priorities. Finally, rehabilitation, with its emphasis on the ultimate "cure" of criminal behavior, fell easy prey to inflated expectations.

The current thinking of correctional officials in New York is that prison reform cannot await the development of the socio-psychological expertise needed for rehabilitation. Accordingly, the basis for prison reform planning and implementation in New York lies in the concept of reintegration, which calls for the radical alteration of the correctional system to meet those practical needs of the inmates and the community which impede successful co-functioning.

The first step toward reintegration—the treatment of offenders as human beings⁷⁰⁷—could be accomplished with relative ease. Although steps are being taken to humanize the correctional environment, the system still cannot be described as humane. Compared to its predecessor, this department has accomplished a great deal. But the former department was virtually a total failure; the most difficult and important steps in changing the system remain.

The long-term restructuring of the correctional system is, of course, the second fundamental step toward reintegration. Again, the most significant obstacles are yet to be overcome. The master plan for facility renovation and construction has not yet received legislative approval.⁷⁰⁸ Debt authorization must also be obtained from the legislature if the master plan is to be implemented. Apart from the plans for facility construction, the state must be willing to assume funding of experimental programs currently receiving temporary federal support. Moreover, the state and federal governments must be willing to embark on other experiments. Unfortunately, the positive fiscal response to the Attica disaster was less than overwhelming and can be expected to subside as memory of the event fades.⁷⁰⁹

Nevertheless, the new Department, through its long-range planning and budgetary efforts, has placed New York in a position of being able to achieve radical reform in the space of a few years. There can be little question that this Department will not be content with sinking into bureaucratic oblivion.

The ultimate success of reintegration rests with the community.

⁷⁰⁷ MULTI-YEAR MASTER PLAN II-1.

⁷⁰⁸ See N.Y. Times, April 4, 1973, at 73, col. 7.

⁷⁰⁹ See, e.g., *id.* As diversification proceeds, the professional staffing required for the many specialized programs may prove to be the most difficult obstacle of all.

Only sustained public support can assure necessary funding. Public acceptance of offenders as human beings and as community members is implicit in the concept of reintegration. Most significantly, the successful treatment of offenders depends upon the community's treatment of its own fundamental social ills.

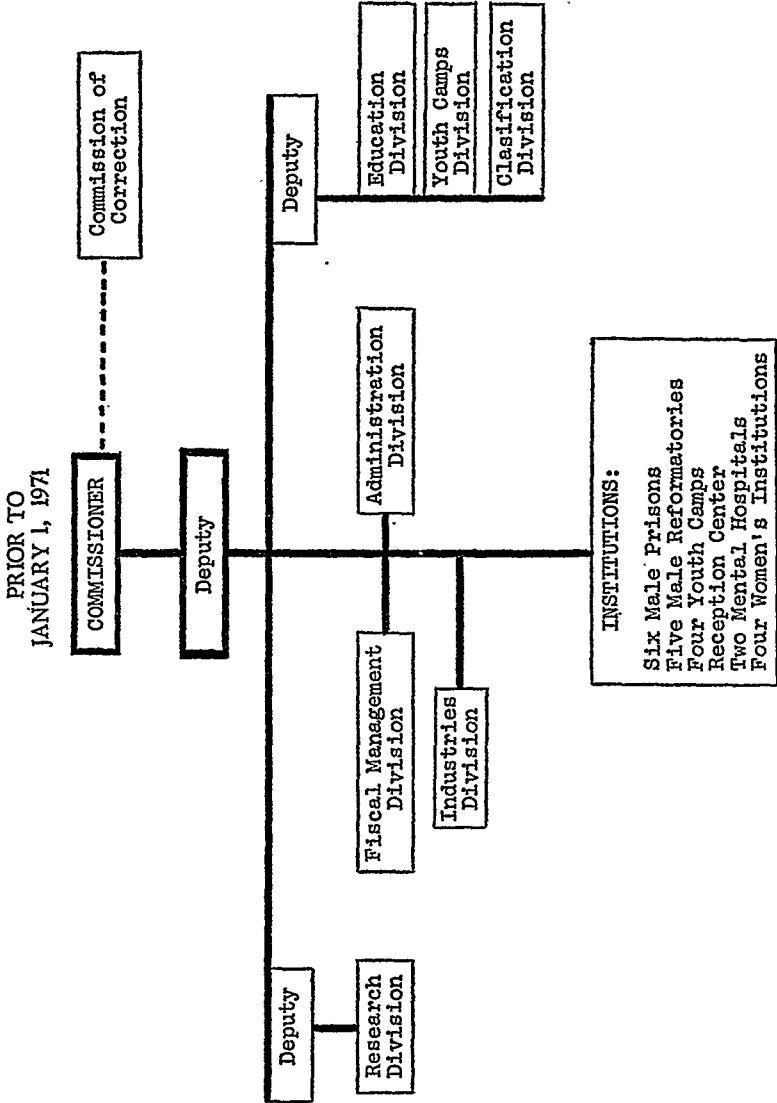
Paul D. Meunier

*Howard D. Schwartz**

* The authors wish to express their appreciation to the New York State Department of Correctional Services and former Commissioner Russell G. Oswald for their cooperation in providing free access to research materials. Special thanks are extended to Walter Dunbar, Executive Deputy Commissioner of Correctional Services, and his Administrative Assistant, Kevin Dulin, for their invaluable assistance.

DEPARTMENT OF CORRECTION

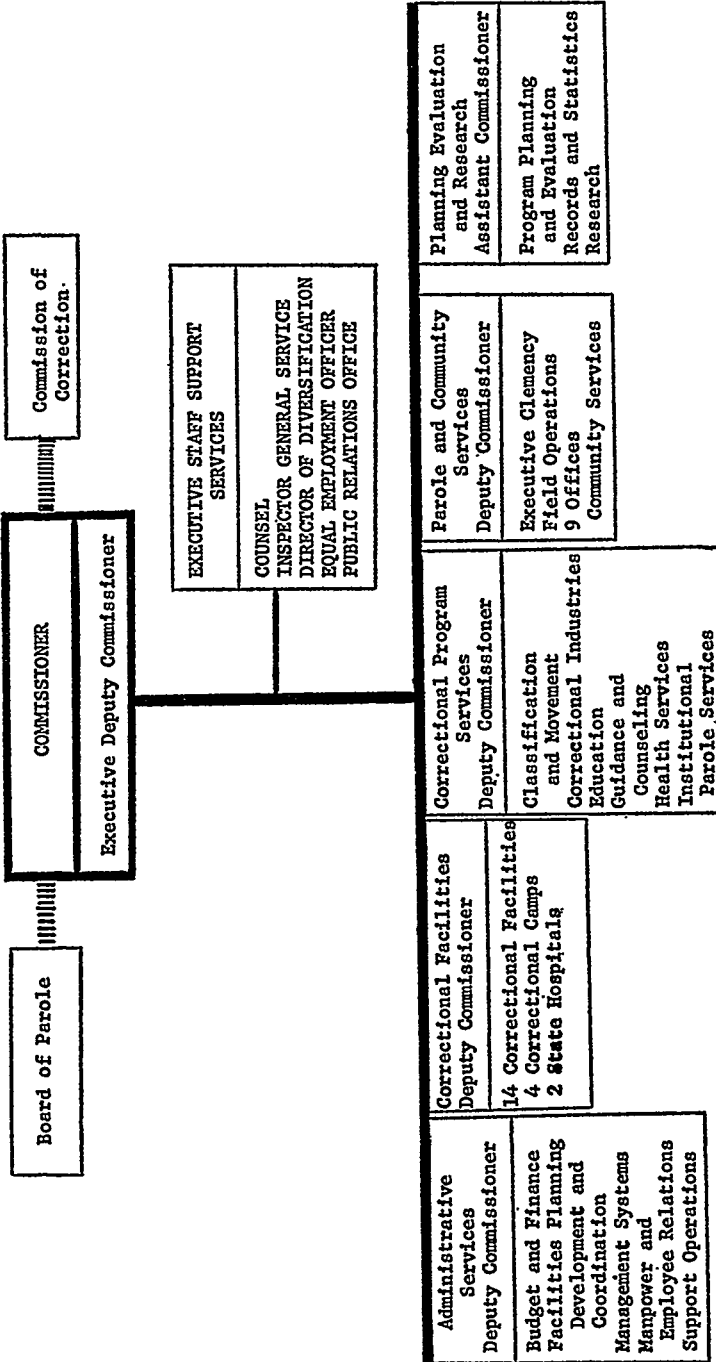
APPENDIX A



APPENDIX B

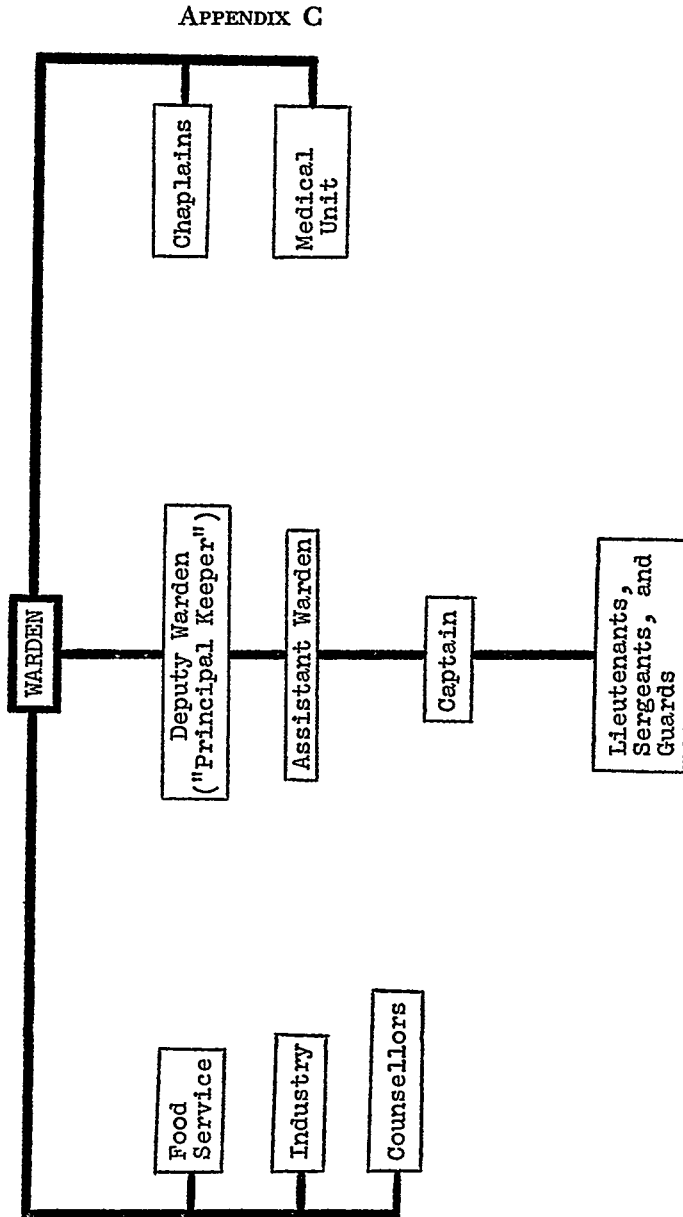
**DEPARTMENT OF
CORRECTIONAL SERVICES**

AS OF
JANUARY 1, 1973



PRISON ORGANIZATION

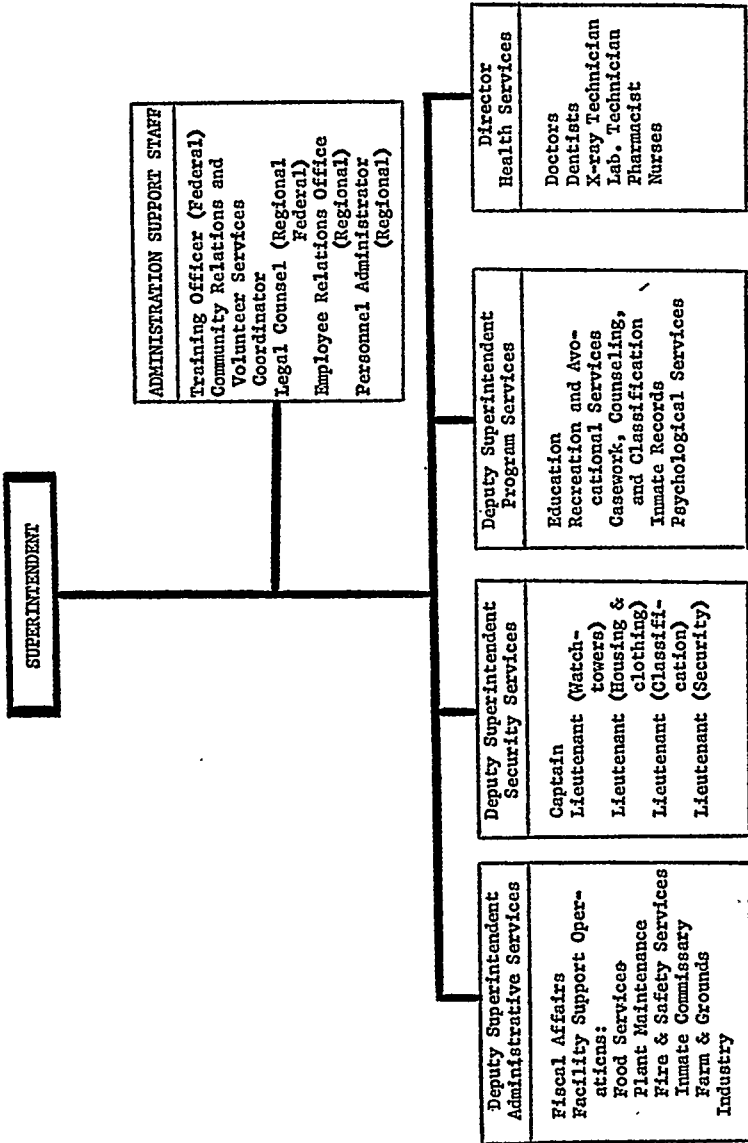
PRIOR TO
JANUARY 1, 1971



APPENDIX D

**CORRECTIONAL FACILITY
ORGANIZATION**

AS OF
JANUARY 1, 1973



APPENDIX E

CONCESSIONS MADE BY COMMISSIONER OSWALD TO
ATTICA INMATES, SEPTEMBER 11, 1971

1. Provide adequate food, water, and shelter for all inmates.
2. Inmates shall be permitted to return to their cells or to other suitable accommodations or shelter under their own power. The observers' committee shall monitor the implementation of this operation.
3. Grant complete administrative amnesty to all persons associated with this matter. By administrative amnesty, the state agrees:
 - a. Not to take any adverse parole actions, administrative proceedings, physical punishment, or other type of harassment such as holding inmates incommunicado, segregating any inmates, or keeping them in isolation or in 24-hour lockup.
 - b. The state will grant legal amnesty in regard to all civil actions which could arise from this matter.
 - c. It is agreed that the State of New York and all its departments, divisions, and subdivisions, including the State Department of Corrections and the Attica Correctional Facility, and its employees and agents shall not file or initiate any criminal complaint or act on complaints in any criminal action of any kind or nature relating to property, property damage, or property-related crimes arising out of the incidents at the Attica Correctional Facility during September 9, 10, 11, 1971.
 - d. The District Attorney of Wyoming County, New York, has issued and signed the attached letter as of this date.
4. Establish by October 1, 1971, a permanent ombudsman service for the facility staffed by appropriate persons from the neighboring communities.
5. Recommend the application of the New York State minimum wage law standards to all work done by inmates. Every effort will be made to make the records of payments available to inmates.
6. Allow all New York State prisoners to be politically active, without intimidation or reprisal.
7. Allow true religious freedom.
8. End all censorship of newspaper, magazines, and other publications from publishers, unless there is determined by qualified authority which includes the ombudsman that the literature in question presents a clear and present danger to the safety and security of the institution. Institution spot censoring only of letters.
9. All inmates, at their own expense, to communicate with anyone they please.
10. Institute realistic, effective rehabilitation programs for all inmates, according to their offense and personal needs.
11. Modernize the inmate education system, including the establishment of a Latin library.
12. Provide an effective narcotics treatment program for all prisoners requesting such treatment.

13. Provide or allow adequate legal assistance to all inmates requesting it or permit them to use inmate legal assistance of their choice in any proceeding whatsoever. In all such proceedings, inmates shall be entitled to appropriate due process of law.
14. Provide a healthy diet; reduce the number of pork dishes; increase fresh fruit daily.
15. Reduce cell time, increase recreation facilities and equipment, hopefully by November 1, 1971.
16. Provide adequate medical treatment for every inmate; engage either a Spanish-speaking doctor or inmate interpreters who will accompany Spanish-speaking inmates to medical interviews. (See point 11 above.)
17. Institute a program for the recruitment and employment of a significant number of black and Spanish-speaking officers.
18. Establish an inmate grievance commission comprised of one elected inmate from each company which is authorized to speak to the administration concerning grievances, and develop other procedures for inmate participation in the operation and decision-making processes of the institution.
19. Investigate the alleged expropriation of inmate funds and the use of profits from the metal and other shops.
20. The State Commissioner of Correctional Services will recommend that the penal law be changed to cease administrative resentencing of inmates returned for parole violation.
21. Recommend that Menechino hearings be held promptly and fairly.
22. Recommend necessary legislation and more adequate funds to expand work-release program.
23. End approved lists for correspondence and visitors.
24. Remove visitation screens as soon as possible.
25. Paroled inmates shall not be charged with parole violations for moving traffic violations or driving without a license, unconnected with any other crime.
26. Institute a 30-day maximum for segregation arising out of any one offense. Every effort should be geared toward restoring the individual to regular housing as soon as possible, consistent with safety regulations.
27. Permit access to outside dentists and doctors at the inmates' own expense within the institution, where possible, and consistent with scheduling problems, medical diagnosis, and health needs.
28. It is expressly understood that members of the observers' committee will be permitted into the Institution on a reasonable basis to determine whether all of the above provisions are being effectively carried out. If questions of adequacy are raised, the matter will be brought to the attention of the Commissioner of Correctional Services for clearance.

APPENDIX F

OFFENDER PROFILE: THE TYPICAL INMATE
NUMBER: 7,200*Characteristics:*

Age:	26 years
Sentence:	23-60 months
Prior Offense:	In prison before
Education:	High School drop-out
Work:	Unskilled, unstable history
Race:	Most likely Black
Drugs:	Has been exposed and is a possible user
Alcohol:	Uses alcohol possibly to excess
Behavior:	Generally cooperative with staff and other inmates
Physical Condition:	Unimpaired—will require routine services and odds are 1 to 4 he will be hospitalized sometime during confinement

Control-Treatment Needs:

Estimated Length of Confinement:	22 months
Release:	Within next 12 months
Diverse Security Needs (Maximum, Medium, Minimum)	
Will Profit from Transitional Release Program	
Educational Upgrading	
Vocational Training	
Work Experience to Develop Employable Skills and Habits	
Access to Counseling	

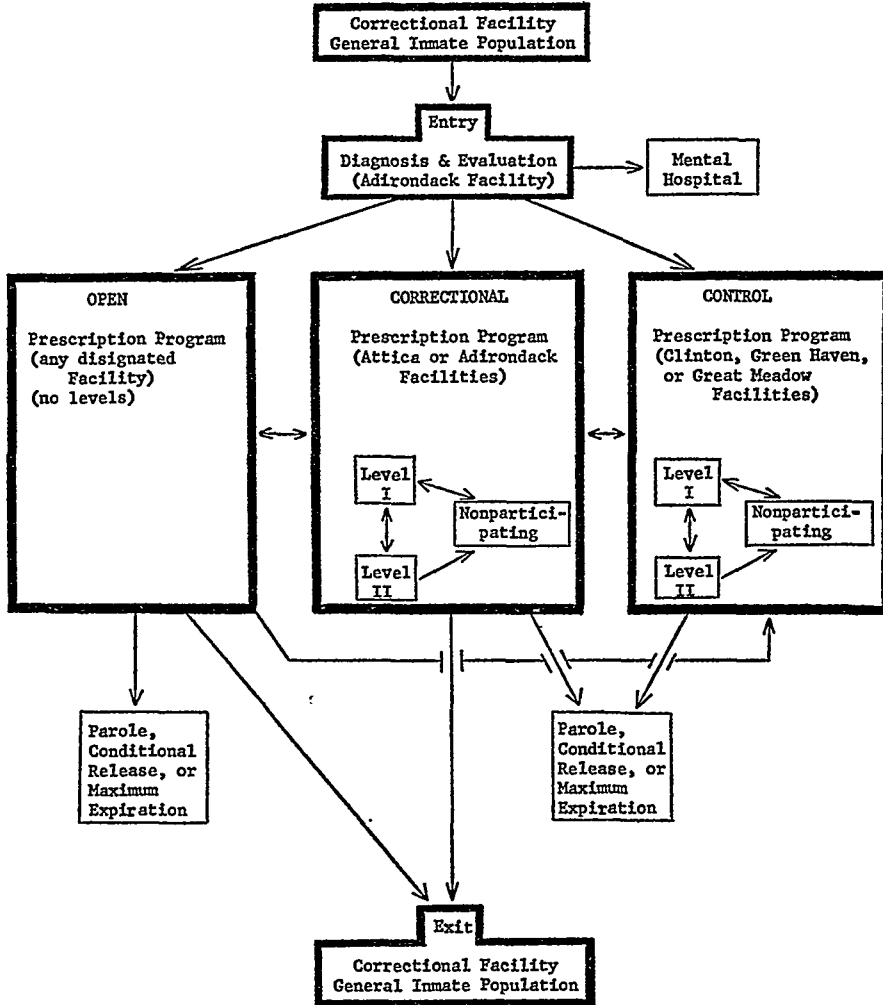
Diversification Goals:

12 Units of about 600—Statewide

Source: DEP'T OF CORRECTIONAL SERVICES, STATE OF NEW YORK, PROCESS STEPS FOR DEVELOPMENT OF A DIVERSIFIED SYSTEM OF FACILITIES AND PROGRAMS 6 (July, 1972).

APPENDIX G

PRESCRIPTION PROGRAM FLGW CHART



APPENDIX H
SUMMARY OVERVIEW OF
PROPOSED DIVERSIFIED SYSTEM

	Planned Capacity	Custody Level			Capital Costs (millions)
		Min.	Med.	Max.	
<i>Existing Facilities</i>					
Adirondack Corr. Treatment and Evaluation Center	410	150	160	100	\$ 9.8
Albion	300	300	—	—	3.1
Attica	1250	300	650	300	13.0
Auburn	900	200	600	100	7.8
Beacon	1900	600	600	700	18.2
Bedford Hills (Female)	450	150	250	50	4.0
Bedford Hills (Male)	300	—	300	—	6.0
Clinton	1220	120	400	700	13.0
Coxsackie	700	250	450	—	8.0
Eastern	800	200	500	100	8.5
Elmira	750	375	375	—	10.0
Elmira Reception Center	200	—	100	100	1.0
Great Meadow	820	100	320	400	9.9
Green Haven	1245	120	725	400	7.5
Ossining	900	400	300	200	37.0
Wallkill	500	400	100	—	8.4
Camp Adirondack	100	100	—	—	1.0
Camp Georgetown	150	150	—	—	1.0
Camp Monterey	150	150	—	—	1.0
Camp Pharsalia	150	150	—	—	1.0
Camp Summit	150	150	—	—	1.3
	13,345	4,365	5,830	3,150	170.5
<i>Being Established</i>					
Rochester Community Center	50	50	—	—	1.2
Rivington Community Center	50	50	—	—	1.2
<i>Proposed to be Established</i>					
Western Adult Camp	100	100	—	—	2.0
Central Adult Camp	100	100	—	—	2.0
Downstate Adult Camp #1	100	100	—	—	2.0
Downstate Adult Camp #2	100	100	—	—	2.0
Downstate Adult Camp #3	100	100	—	—	2.0
Wallkill Corr. Facility #2	650	150	475	25	14.0
N.Y. In-Town Community Preparation Center	230	150	80	—	5.0
Multi-Purpose Parole Facility	200	—	100	100	18.0
3 Upstate Comm. Corr. Centers (50 each)	150	150	—	—	3.6
2 N.Y. City Comm. Corr. Centers (50 each)	100	100	—	—	4.4
Downstate Corr. Facility #1	650	140	490	20	24.0
Downstate Corr. Facility #2	650	145	485	20	25.0
	3,230	1,435	1,630	165	106.4
Total	16,575	5,800	7,460	3,315	\$276.9

Source: DEP'T OF CORRECTIONAL SERVICES, STATE OF NEW YORK, MULTI-YEAR MASTER PLAN S-13 (1973).

APPENDIX I

ETHNIC DISTRIBUTION OF INMATES UNDER CUSTODY
IN NEW YORK STATE CORRECTIONAL INSTITUTIONS
AS OF NOVEMBER 30, 1972—COURT COMMITMENTS ONLY

Institution and Sex	Black		White		Puerto Rican		Other		
	Total	Number	Per- cent	Number	Per- cent	Number	Per- cent	No.	Per- cent
<i>Total</i>	12,434	7,056	56.7	3,577	28.8	1,770	14.2	31	0.3
Males	12,041	6,810	56.6	3,461	28.7	1,740	14.5	30	0.2
Females	393	246	62.6	116	29.5	30	7.6	1	0.3
<i>Maximum Security</i>	8,230	4,699	57.1	2,274	27.6	1,243	15.1	14	0.2
Attica	1,153	561	48.7	494	42.8	91	7.9	7	0.6
Auburn	1,468	800	54.5	511	34.8	154	10.5	3	0.2
Clinton	1,367	802	58.7	402	29.4	161	11.8	2	0.1
Eastern*	5	4	80.0	1	20.0	—	—	—	—
Great Meadow	1,335	895	67.0	192	14.4	248	18.6	—	—
Green Haven	1,762	1,123	63.7	446	25.3	191	10.9	2	0.1
Ossining	1,140	514	45.1	228	20.0	398	34.9	—	—
<i>Medium Security</i>	3,021	1,823	60.3	791	26.2	396	13.1	11	0.4
Beacon	72	30	41.7	39	54.2	3	4.1	—	—
Coxsackie	476	200	42.0	207	43.5	61	12.8	8	1.7
Elmira	1,149	813	70.7	146	12.7	188	16.4	2	0.2
Glenham**	254	179	70.5	40	15.7	35	13.8	—	—
Elmira Reception Ctr.	274	167	61.0	76	27.7	31	11.3	—	—
Wallkill	457	210	46.0	198	43.3	49	10.7	—	—
Bedford Hills	339	224	66.1	85	25.1	29	8.5	1	0.3
<i>Minimum Security</i>	344	165	48.0	164	47.7	14	4.1	1	0.3
Albion	25	6	24.0	18	72.0	—	—	1	4.0
Camp Adirondack	13	6	46.1	5	38.5	2	15.4	—	—
Camp Georgetown	91	46	50.5	40	44.0	5	5.5	—	—
Camp Monterey	64	34	53.1	28	43.8	2	3.1	—	—
Camp Pharsalia	71	38	53.5	30	42.3	3	4.2	—	—
Camp Summit	80	35	43.7	43	53.8	2	2.5	—	—
<i>Multi-Level Security</i>	839	369	44.0	348	41.5	117	13.9	5	0.6
Dannemora (state hospital)†	—	—	—	—	—	—	—	—	—
Matteawan (state hospital)**	755	342	45.3	299	39.6	109	14.4	5	0.7
Males	701	320	45.7	268	38.2	108	15.4	5	0.7
Females	54	22	40.7	31	57.4	1	1.9	—	—
A.C.T.E.C.	84	27	32.2	49	58.3	8	9.5	—	—

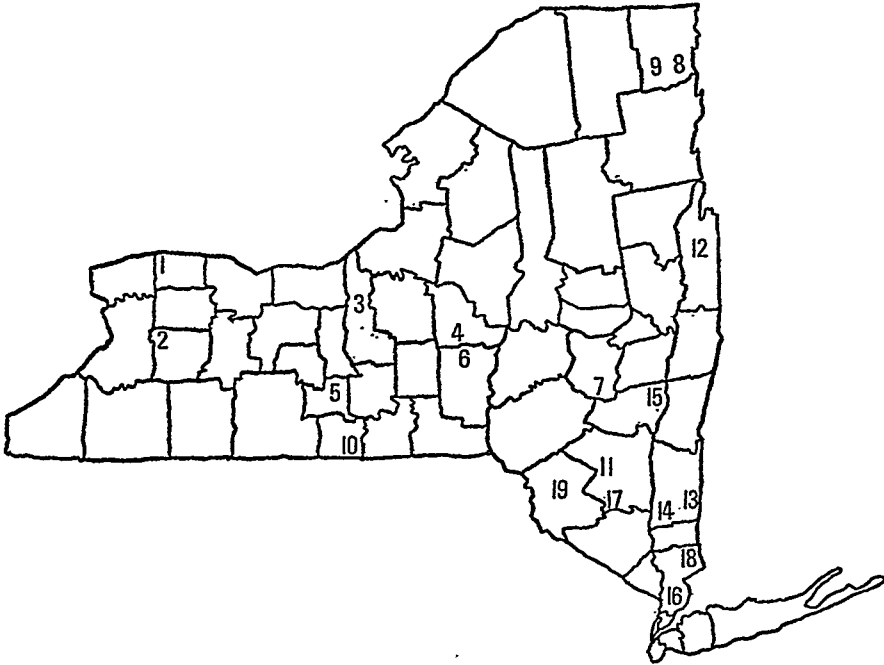
* Leased to New York City Department of Corrections.

** Merged into Correctional Center for Medical Services, Beacon.

† Inmates transferred to Correctional Center for Medical Services, Beacon.

Source: DIVISION OF RESEARCH, DEP'T OF CORRECTIONAL SERVICES, STATE OF NEW YORK,
S.S. Form DR-5 4000-68.

APPENDIX J

LOCATION AND USE OF CORRECTIONAL FACILITIES
AS OF JUNE 1, 1973

LEGEND

- | | |
|---|--|
| a. Long Term Adults | 8. Clinton Correctional Facility, Dannemora (a) |
| b. Female Offenders | 9. Adirondack Correctional Treatment and Evaluation Center, Dannemora (a, f, i) |
| c. Youthful Offenders | Camp Adirondack, Dannemora (e) |
| d. Youth Correctional Camp | 10. Elmira Correctional Facility, Elmira (c) |
| e. Adult Correctional Camp | Elmira Reception Center, Elmira (f) |
| f. Diagnostic Center | 11. Eastern New York Correctional Facility, Napanoch (a) |
| g. Mentally Ill Offenders | 12. Great Meadow Correctional Facility, Comstock (a) |
| h. Mentally Retarded Offenders | 13. Green Haven Correctional Facility, Stormville (a) |
| i. Community Preparation Center | 14. Correctional Center for Medical Services, Beacon (a, b, f, g, h) |
| | 15. Coxsackie Correctional Facility, West Coxsackie (c) |
| | 16. Ossining Correctional Facility, Ossining (a, f) |
| | 17. Wallkill Correctional Facility, Wallkill (a) |
| | 18. Bedford Hills Correctional Facility, Bedford Hills (a, b) |
| | 19. Woodbourne Correctional Facility, Woodbourne (Leased to Narcotic Addiction Control Commission) (c) |
| 1. Albion Community Preparation Correctional Center, Albion (i) | |
| 2. Attica Correctional Facility, Attica (a) | |
| 3. Auburn Correctional Facility, Auburn (a) | |
| 4. Camp Georgetown, Georgetown (d) | |
| 5. Camp Monterey, Beaver Dams (d) | |
| 6. Camp Pharsalia, South Plymouth (d) | |
| 7. Camp Summit, Summit (d) | |