Standards and Goals for the New Jersey Criminal Justice System: Second Report

October, 1976

Governor's Adult and Juvenile Justice Advisory Committee

TABLE OF CONTENTS

Foreword

To improve the quality of the justice system in New Jersey, the Governor's Adult and Juvenile Justice Advisory Committee has prepared its second report. The recommendations contained herein reflect the Advisory Committee's response to selected problems within the justice system. This report recommends standards in the areas of judicial selection, education and training; detention and shelter care of juveniles; police personnel covering recruitment, selection, training and promotion; and trial preparation, including grand jury, speedy trial and plea negotiations. The second phase of this two year study has been compiled in this working document and will be presented at the second Advisory Committee Adoption Conference on October 22, 1976.

The Committee recommends these standards with the assumption that local, State and federal governments will take active steps to ensure adoption. In some cases, new legislation will be required in order to implement these proposals, while in other cases new administrative rules will be needed and in others, only encouragement. Although it is hoped that these standards will influence future legislation, their usefulness can be lost if they are not promulgated, discussed and campaigned for throughout the State by those individuals who are involved with the day to day workings of the system.

This working document was developed in conjunction with the preferences of the four respective subcommittees and therefore reflects differences in the format. The standards contained within this document, once recommended by the Advisory Committee, will be sent to the State Law Enforcement Planning Agency (SLEPA) Governing Board and the Governor of New Jersey.

Judicial Selection, Education and Training

Introduction

The quality of judges in large part determines the quality of justice. The judicial selection process is the key to maintaining that quality.

The importance of selecting well qualified judges is bolstered by the realization that the judicial role is more than determining the guilt, innocence or liability of individuals before the court. Judges interpret and enforce laws, affect rules and procedures of police and correctional agencies, sentence offenders, influence the allocation of public and private resources and make decisions which affect the social and economic well-being of individuals and groups. In many of these areas they have broad discretion which is not precisely drawn by statutes, established policies or rules.

The selection process is concerned with two main objectives: identifying individuals who are qualified in terms of past experience and performance and screening out those who are unsuited for the judiciary. Several national studies recommend that judicial candidates be selected on the basis of merit after an assessment of factors such as temperament, character, motivation, humanism, emotional stability, work performance and knowledge. Training and education can provide knowledge and skills necessary for a judge to perform well but cannot teach the other factors.

Education cannot be a substitute for an effective selection process just as the selection process cannot be a substitute for a thorough education and training program. Upon assuming the bench, judges must be prepared to hear a variety of cases ranging from minor ordinance violations to complex criminal cases.

To perform effectively a judge must be flexible and possess a broad knowledge of court procedures, law and other fields directly impinging on the judicial function such as criminology, penology, sociology, psychology and administration. Knowledge in each of these fields is expanding so fast that few individuals can keep pace on their own. Judges come from a variety of legal specialities and educational backgrounds. Therefore, judicial education and training must be designed to keep judges current and to address the specific needs of each judge or groups of judges.

In summary, the manner in which judges perform influences the effectiveness of the justice system and the public's image of the judicial system and government. The success of the judiciary in fulfilling its roles is a direct result of the quality of judges selected, their education and training.

Problem Assessment

A. Judicial Selection

The judicial selection process in New Jersey is considered more advanced than most states based on the fact that County, Superior and Supreme Court judges are appointed by the Governor rather than chosen through the election process. Municipal Court judges are appointed by the mayors.[1] Another influential factor is the process for screening judicial candidates involving two State Bar Association Committees. The evaluation of a candidate's professional qualifications is performed by the State Bar Association's Judicial Selection Committee and Judicial Appointments Committee. The Judicial Selection Committee is responsible for finding individuals with the highest qualifications for possible judicial appointment and for furnishing their names to the Governor along with a detailed background questionnaire completed by the possible nominee. The questionnaire seeks detailed responses to questions concerning the candidate's educational background, nature and extent of legal experience, state of health, involvement in any disciplinary proceedings, political and business association and civil backgrounds and activities.

If the Governor wishes to pursue further evaluation for possible appointment the answers to the questionnaire are forwarded to the Judicial

[1] Twenty-five states elect judges through partisan or non-partisan elections. Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice Systems, Washington, D.C., U.S. Gov't. Printing Office, 1971, pp. 101, 102, 196 - 199. The National Advisory Commission, American Bar Association and Advisory Commission on Intergovernmental Relations recommend an appointive system for selection of judges as opposed to an elected system.

Appointments Committee. The member of the Committee representing the county from which the proposed nominee comes is responsible for contacting judges, attorneys and others who have had direct contact with the prospective nominee's practice of law. This member is responsible for investigating the responses to the questionnaire and reporting to the community on

> the individual's conduct in such areas as: relations to the judiciary, avoidance of impropriety, administrative ability, courtesy and civility, knowledge and experience, independence, idiosyncrasies and inconsistencies, business and investment relations, and partisan political ties. A response to a similar questionnaire is filed with the State Committee by the appropriate county bar committee.
>
> The Committee secures from the Office of the Administrative Director of the Courts the full record of any complaints ever made against the candidate for a violation of ethics in the practice of law.
>
> The individual is then invited to appear in person before the full Judicial and County Prosecutor Appointments Committee for a face-to-face interview. Before that interview, the Committee receives the personal data supplied by the prospective nominee, the report of the member of the State Committee specifically charged with the investigation, the views and bases therefore of other members of the Committee, the report of the county-level committee, the ethics complaint record, and all other information concerning the individual which has come to the Committee's attention. The interview covers especially questions that have arisen as a result of the written and verbal material submitted to the Committee. Questions are usually asked by several members of the Committee.

The nominee's qualifications are evaluated and the nominee is then ranked as exceptionally well qualified, well qualified, qualified or not qualified. The evaluation is then forwarded to the Governor.[2]

[2]State Bar Association, "Judicial Appointments Committee Procedures," 98 N.J.L.J., November 13, 1975, pp. 1, 10.

Governor Byrne and former Governors Hughes and Cahill have usually followed the recommendations of the Judicial Appointments Committee. Although the judicial selection process is considered more advanced than selection processes in most other states, there are a number of concerns with the present judicial selection process identified by the public, media, judiciary and State Bar Association.

A concern is that New Jersey has a "voluntary merit selection process"[3] for selecting county, superior and supreme court judges in which the Governor is not bound to abide by the decision of the State Bar Association screening committees. The effectiveness of a voluntary merit selection process, according to the Chairman of the State Bar Association Committee on State Legislation, depends on the interest of the Governor in judicial excellence.[4] As the following editorial suggests, recent New Jersey Governors have been interested in judicial excellence, but cautions that such concern may not always exist.

> New Jersey's judicial system has been fortunate that its last five Governors have been lawyers. Two of them had been judges. This has provided a basic safeguard in the judicial appointment process since these men had an appreciation of the needs of the judicial office. But as one speaker at the General Council put it, the state needs

[3]Margaret Gordon Seiler, "Judicial Selection in New Jersey," Seton Hall L. Rev., Vol. 5, Summer, 1974, p. 752.

[4]"State Bar Holds Discussion on the Selection of Judges," 97 N.J.L.J., Thursday, March 21, 1974, p. 2 (Index p. 189).

> "insurance" against a Governor who will not have this background and who may be annoyed by some of the rebuffs his actions and programs may receive in the Courts. Such a Governor, during a single tenure in office, could do great and lasting damage to the judicial system. Since the appointments a Governor makes are only one of many factors involved in his election, poor judicial appointments may not serve to defeat him at the next election.[5]

In the case of Municipal Court magistrate appointments there is little formal screening[6] similar to the process described for County, Superior and Supreme Court judges. Although many municipal magistrates perform their duties with a high level of efficiency and effectiveness, the present selection process may overlook some of the most qualified candidates and fail to identify potentially unqualified candidates.

The importance of Municipal Courts cannot be overstated since they have the greatest caseloads and administer to the needs of more New Jersey residents than any other court in the judicial system.[7] For many people their image of the judicial system and government is formed during these contacts.

The dissipated interest and enthusiasm of the judicial selection committees in some counties hinders the effective screening of candidates. Consequently, some committees do not maintain a list of potential candidates for judicial office to be forwarded to the State Judicial Selection

[5]Ibid., p. 4.

[6]Only one out of the 10 county bar associations presidents surveyed indicated a municipal court magistrate merit screening process by the county bar association.

[7]Administrative Office of the Courts, Annual Report of the Administrative Director of the Courts, 1973-1974, Trenton, New Jersey, 1974.

Committee and then to the Governor. The reason for the dissipation is unclear and varies depending on who is discussing it. On the one hand, some past and present members of the county selection committees suggest that their recommended list of potential judicial candidates have been overlooked by the State Selection Committee or the Governor and individuals not on the lists nominated. On the other hand, other individuals involved in the selection process suggest that one or more of the county judicial selection committees have recommended candidates who, subsequent to intensive investigation, have not been found to be of sufficient caliber by the Judicial Appointments Committee or Governor and consequently have lost their credibility as an advisory body. It is difficult to test the validity of both arguments because the Judicial Selection Committee and Judicial Appointments Committee are sworn to secrecy and are not permitted to discuss the qualifications of prospective candidates or those candidates who are being or have been considered.

A further problem area is the considerable time and resources required for the thorough evaluation of a judicial candidate's character and professional qualifications. The State Police are responsible for character investigations and the State Bar Association is responsible for evaluating each candidate's professional qualifications. The State Police perform an extensive character investigation of judicial candidates, their families and associates which requires on the average of 35-40 man-hours to complete.

The State Bar Association's Judicial Selection and Judicial Appointments Committees however, do not have comparable resources to investigate

a nominee's professional capabilities. The membership on these committees is voluntary, therefore the quality of the investigation of a candidate's professional qualification often depends on the amount of time the committee member assigned to do it can afford to spend. It also depends on how well the candidate's credentials are known to that committee member. In the counties with smaller populations there appears to be greater likelihood that the candidate is known by all local bar members and personally acquainted with the investigator which may also bring to question problems of conflict of interest.

Several survey respondents, mainly those from the counties with larger populations, have suggested that there is a need to have at least a part-time paid staff to assist the committees in investigating a candidate's professional qualifications and to take care of record keeping. One county selection committee utilizes the services of a paid county bar secretary for these functions. Presently the State Bar Association staff performs record keeping for the State Judicial Appointments Committee.

Another concern which has been raised is the lack of direct representation of the judiciary and lay-public on the Judicial Selection Committee and Judicial Appointments Committee. The argument against lay representation is that they would not be qualified to determine the qualifications and performance of an attorney for judicial appointment.

Some attorneys surveyed disagree with the statement that only attorneys can determine the qualifications of an attorney for the judiciary. The State Bar Committee on Court Modernization recently stated:

> From the perspective of the organized bar, the present process is very unattractive. Carrying the entire burden of review of nominees puts the bar in a "no-win" posture in relation to the public. The absence of publicized standards and the absence of citizens in the review process creates the impression that unworthy considerations may play a vital role in the decision-making. The public sees the present process as "clubby" and political.[8]

The American Bar Association (ABA) states that selection committees need lay members not only to assure that public expectations concerning the judiciary are influential but also that non-professional attributes of a good judge are recognized.[9] Another reason for including laypeople in the decision-making process is to counteract professional solidarity or esprit-de-corps which may result in fellow bar members overlooking negative characteristics of a candidate.

Direct input by committee members representing the judiciary should also be considered because:

> Lawyers should not be the dominant influence in selection. Moreover, the question must be raised as to whether judges may be better qualified and more likely than lawyers to be disinterested in assessing professional qualifications. It is judges who understand from personal experience the unique set of qualities for the job.[10]

On the other hand, some survey respondents suggested that judges should not be given a dominant role in judicial selection screening in order to

[8]"Report of the State Bar Committee on Court Modernization," 98 N.J.L.J. Thursday, March 20, 1975, p. 12 (Index p. 233).

[9]American Bar Association Commission on Standards of Judicial Administration, Standards Relating to Court Organization, Chicago, Illinois, 1974, p. 40.

[10]Seiler, "Judicial Selection in New Jersey," p. 746.

avoid judicial inbreeding since judges may tend to recommend individuals who only reflect their points of view. The solution to this problem they suggest, is to balance the interests of the laypeople, attorneys and judges on selection committees.

Even though judicial elections are nonexistent in New Jersey, politics have not been completely eliminated from the selection of judges. It is argued by many however, that politics should never be completely removed from judicial selection under our democratic form of government. Although politics has many positive influences it can operate as a detriment to effective and efficient justice. Many individuals who are well qualified for judicial office but not involved in politics or not favored by decision makers may be overlooked or blocked from attaining a judgeship.

Nominations by the Governor for judgeships must be approved by the Senate. The process by which one senator can block the nomination of a candidate from moving to the floor of the Senate for a vote is viewed by some people as a necessary extension of the Senate's authority to advise and consent. Others view this as an abuse of that power.

Senatorial courtesy and the role of "advice and consent" is far more complicated than can be explained in a few paragraphs. The fundamental problems of these functions revolve around three interdependent factors: politics, visibility of decision making and vested interests.

The key issue in the debate over senatorial courtesy is the legitimate definition of the Senate's constitutional role of "advice and consent" of gubernatorial appointments. "Advice," according to some Senators, should be limited to advising the Governor on who should be appointed on the basis

of qualifications and merit. Some Senators indicate that "consent" should be limited to providing a check on the Governor's extensive powers of appointment by ensuring that only qualified individuals are appointed.

Many Senators, however, submit that the best way to represent their constituencies is to utilize whatever tools are available. Senatorial courtesy provides them with a tool by which leverage can be applied to the Governor and thus benefits for constituents can be obtained. Yet others view the use of senatorial courtesy as a method to foster personal or political interests.

The lack of time limits in which judicial vacancies or newly created positions must be filled has contributed to the backlog of court cases in New Jersey. (See "Trial Preparation" section for data on backlog). According to Administrative Office of the Courts data, New Jersey recently had 31 judicial vacancies representing approximately 10% of the authorized upper level trial court positions. Although the increasing backlog of criminal and civil cases pending in the courts may result in part from the number of judicial vacancies, it is only one of many factors affecting backlog.

The New Jersey State Bar Committee on Court Modernization apparently recognizing these and other problems made recommendations incorporating elements of the Missouri Plan for selecting judges:

> Judges should be selected through a procedure in which for each judicial vacancy as it occurs (including the creation of a new judicial officer) a judicial nominating commission nominates at least three qualified candidates, of whom the chief executive appoints one to office.
>
> The judicial nominating commission should be constituted of eight members as follows: The chief justice of the highest court, or a justice of that court nominated by him, should be a member ex officio, and should be the commission's presiding officer, and should have a vote. Four public members, who are neither judges nor lawyers,

> should be appointed to the commission by the chief executive, for staggered terms of at least three years by the New Jersey State Bar Association.
>
> The commission should be provided with staff assistance. It should maintain an inventory of qualified nominees by actively and continually soliciting names of persons suggested as potential nominees or persons who have expressed their interest in being nominated. The appointment procedure should be as follows: within 30 days after the occurrence of a vacancy in a judicial office with respect to which it has nominating authority, the commission should submit to the chief executive, and simultaneously make public, the names of at least three persons qualified for appointment to the office. Fewer than three names may be submitted if the commission certifies that there are not three persons with the requisite qualifications. The chief executive should appoint one of those nominated; if he fails to do so within 30 days after the list of nominations has been submitted to him, the chief justice should select an appointee from the list of nominees.[11]

The State Bar Committee further stated that the American Bar Association and all other national standard-setting efforts in recent years, have urged New Jersey to adopt a merit selection process similar to what is commonly referred to as the Missouri Plan and further indicated that the New Jersey methods have none of the essential elements found in that plan.[12] Other improvements to the present selection process include the establishment of a Senate Rule that mandates that a nomination be moved to the floor of the Senate within 60 days upon receipt from the Governor.

[11] "Report of the State Bar Committee on Court Modernization," 98 N.J.L.J., p. 12 (Index p. 233).

[12] Ibid.

B. Judicial Education and Training

Judges come from a variety of backgrounds having different educational and work experiences and often must perform a variety of duties which may not pertain to their most recent professional or educational experiences. Although studies analyzing the background of judges are few, those that do exist reflect this variety of backgrounds. Judicial appointees tend to have pre-judicial work experience specialized in one area such as corporate law, government service, administration, financial areas, civil law or criminal law, with little or no exposure to other areas. The results of a 1963 survey of State and Federal judges showed that 25% of the judges responding reported that their "private practice had included no criminal cases, nor did any judge say that he had specialized in criminal practice."[13]

Similar results were found in a more recent study of judicial appointees.[14] Interviews with participants in the New Jersey selection process and confirmed by some personnel of the Administrative Office of the Courts, indicate that most newly appointed judges have considerable trial experience

[13]The survey included 982 State and Federal judges. Institute of Judicial Administration, "Judicial Education in the United States," 12 (1965), found in Task Force Report: The Courts, the President's Commission on Law Enforcement and Administration of Justice, Washington, D.C., U.S. Gov't. Printing Office, 1967, p. 68.

[14]Stuart Nagel, "Comparing Elected and Appointed Judicial Systems," American Politics Series, California, Sage Publications, 1973.

but that experience is primarily in the civil law areas. Data to support this opinion, however, has not been gathered in New Jersey.

The National Advisory Commission (NAC) on Criminal Justice Standards and Goals states that:

> It is more than just a step in a legal career when a lawyer becomes a judge. It is a major career change to a position involving significantly different functions and requiring different skills and knowledge than were required of the person in his prior professional position.

The NAC also suggests that subjects appropriate for judicial education for judges sitting on criminal cases include:

> psychiatry, social work, and the law; theory of government and separation of powers; computers in courts; poverty law; criminal law - substantive and procedural; criminal law - sentencing; court administration, including special seminars for chief judges of metropolitan courts with emphasis on techniques to assure a speedy trial; the relationship between corrections and courts; the relationship between law enforcement and courts; the relationship between courts and the executive and legislative branches of government; the relationship between courts and the news media; family law; juvenile law; criminal penalties for infractions of environment law; and opinion writing.[15]

Systems and Training Analysis Requirements for Criminal Justice Participants (Project STAR), a four-State research and training development program which included New Jersey, surveyed over 600 New Jersey criminal justice participants including 48 judges, 18 prosecutors, 464 police officers, 152 corrections officers and five defense attorneys to determine

[15] National Advisory Commission on Criminal Justice Standards and Goals, Report on Courts, Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 158.

roles, tasks and performance objectives for each position. The survey concluded that judges should receive education and training in areas such as: organization theory, management and administration to increase efficiency of judicial operations; education concerning the relative nature of deviant behavior, the changing character of contemporary morality and the increasing discrepancy between existing laws and behavior that the public regards as acceptable to increase the judge's effective use of discretion; education in the methods of empirical science and the results of the most recent scientific studies in the field of corrections; and be educated or trained to deal with large caseloads without sacrificing individualized due process of law.[16]

Currently there is a one-week orientation program for newly appointed County, Superior, Juvenile and Domestic Relations Court judges and a two-day orientation for Municipal Court judges. Municipal Court judge orientation is held at least every February when newly appointed municipal judges take office or on demand, when 20 or 25 judges are ready, but judges may be appointed at any time and serve before being trained. Some of the aforementioned subjects are discussed during these orientation programs. There are several problems with the orientation programs which have been identified by judicial selection and training personnel.

[16]Perry E. Rosove, The Impact of Social Trends on Crime and Criminal Justice, for Systems and Training Analysis of Requirements for Criminal Justice Participants (Project STAR), sponsored by the California Department of Justice Commission on Peace Officer Standards and Training, March 23, 1973.

One problem with orientation programs is that County and Superior Court judge orientation is provided only when there are at least 10 to 15 new appointments. As a result newly appointed judges often start performing judicial duties without training. This problem is highlighted when newly appointed judges must make decisions

> ...without time to obtain help, and in such circumstances his inexperience is a factor which increases the probability of error. Although this problem might be mitigated in a multi-judge court where a new judge can be assigned to less complex cases, this breaking-in process is frequently accomplished at the expense of lawyers and litigants.[17]

Another problem is that the time alloted for the judicial orientation program is too short. Judges perform one of the most difficult roles in our society and therefore must possess knowledge from a broad range of fields including law, penology, sociology, criminology, psychology and administration. The fields of law and social science are expanding so rapidly that few professionals can remain "up to date" in their field.[18]

> Today change is so swift and relentless in the techno-societies that yesterday's truths suddenly become today's fictions, and the most highly skilled and intelligent members of society admit difficulty in keeping up with the deluge of new knowledge - even in extremely narrow fields.[19]

[17]The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, p. 68.

[18]American Bar Association, Standards Relating to Court Organization, pp. 65, 66.

[19]Alvin Toffler, Future Shock, Bantam Books, Random House, New York, New York, 1970, p. 157.

Judicial seminars (usually one per year for upper court and one per year for lower court judges lasting two to three days) are utilized to supplement orientation training and provide continuing education. Both orientation and seminar education programs are law-, procedure- and sentencing-oriented with little exposure to the organizational, administrative and social science areas which are considered important for effective and efficient adjudication. Administrative Office of the Courts personnel indicate that present resource restrictions do not allow the education programs to adequately cover the latter areas. They suggest that present education programs should at least be doubled. Division of Correction and Parole staff, for example, indicate that it is difficult for many judges to get an accurate view of the correctional system through one- or two-day visits to correctional institutions.

Part of the problem of expanding time for judicial education focuses on the difficulty in freeing a significant number of judges from the bench for longer durations for training. A counter argument to the problem of taking judges off the bench for training suggested by some of those interviewed, is that the long term potential gain in efficiency and more sound judgments will override the initial short run costs of expanding training.

There are no court rules or legislation requiring that judges participate in any orientation or regular education programs. Although the Office of Judicial Education indicates that participation in orientation and seminar programs is high, this is not a guarantee that it will remain high. Those who do not attend will still hear cases affecting the lives and futures of New Jersey residents.

Still another concern is that judicial orientation programs do not significantly utilize the experience and knowledge of non-judicial or non-attorney experts in the criminal justice system as instructors. The most recent orientation seminar for upper court judges allocated no time for lay lecturers. Criminal justice personnel interviewed suggested that inter-system criminal justice education programs utilizing police, correction and court personnel, social scientists, criminologists and administrative specialists will increase inter-system understanding and thus cooperation and efficiency. In addition, they indicated that inter-system education can reduce the tendency toward intellectual and professional inbreeding.

A related problem is that judicial appointees need more in-depth education and training in areas where they have little or no pre-judicial experience. Some judges for example, need intensive training in criminal law and little training in civil law and vice versa. Other judges need intensive training in juvenile adjudication or administration. Present education programs provide judges with the same learning experiences irrespective of their backgrounds. One solution to this problem is to apply modern educational technology to judicial education, such as programmed learning which allows each participant to progress independently at his own pace. Other training methods which can prepare an appointee to assume the bench include role playing, situation simulation and research projects. The NAC and ABA also recommend a program of sabbatical leave for experienced judges to enable them to do research and pursue studies relevant to their judicial duties.

The focal problem of judicial education is the need for the improvement in the evaluation, planning and development of training programs. Presently, judicial training programs are developed based on two sources of information by a 16 judge/faculty committee. These sources include information from judicial educators throughout the country and survey questionnaires filled out by judges attending the training seminars. Little planning information can be obtained from the answers to the questionnaires.

The National Advisory Commission standards for the criminal justice system suggest that training for all criminal justice personnel should be based on studies which indicate specific and detailed roles, tasks and performance objectives for criminal justice positions identified by criminal justice personnel and the public.[20] These perceptions should be compared with actual practice and training developed from the results of the comparison. Such a study has been undertaken in New Jersey by Project STAR in which 48 judges and several hundred other criminal justice personnel were surveyed to determine roles and tasks. Personnel from the Administrative Office of the Courts indicated that the findings and training modules developed by Project STAR are not being used in present judicial training and that there are no plans to do so because the training modules are "too basic, elementary and too much role playing is stressed." A former New Jersey coordinator for Project STAR agrees in part with this statement. He indicates however, that some of the conclusions, findings, data and training techniques can be synthesized from the Project STAR reports and utilized for training newly appointed municipal judges. Whether or not

[20]National Advisory Commission on Criminal Justice Standards and Goals, Report on Criminal Justice System, Washington, D,C., U.S. Gov't. Printing Office, 1973, pp. 165-169.

Project STAR is utilized, there does appear to be a need to develop training programs for judges based on a more scientific planning approach than is presently used.

In conclusion, the report of the State Bar Committee on Court Modernization supports some of the findings herein when it recommends:

> No person should begin the awesome judicial responsibilities without intensive pre-service training. Regular continuing education should also be mandatory for all judges and course offerings should not only deal with the evolving law and judicial administration but with self-perception and with the behavioral sciences. The state should support a College of Judicial Education to meet these needs and the needs of court-related personnel. The Committee also urges upon the Supreme Court the institutionalization of the judicial conference to make possible a full-time staff looking to a minimum of two, three-day meetings per year with an agenda set up on the most important issues involving courts, courts and legislature and courts and the citizen. Great effort should be made to obtain meaningful citizen participation and also legislative and executive participation. (See ABA Court Organization Standard #1.25, NAC Courts Standard #7.5).
>
> On an experimental basis, the Supreme Court should develop a sabbatical program for judges who have served seven years on the bench. The appellate division might supply initial judges for sabbaticals and they, like tenured law school faculty members, would utilize the opportunity for research, special study or, because of the needs, as faculty in the expanded judge training programs. A sabbatical policy will increase the appeal of the bench and rejuvenate those who otherwise stagnate in the impersonal, detached world of opinion writing. (See NAC Courts Standard #7.5).[21]

The high cost of sending judges to regional and national education programs could be solved by establishing a judicial education program in

[21]"Report of the State Bar Committee on Court Organization," 98 N.J.L.J., p. 12 (Index p. 233).

New Jersey which utilizes national legal expertise. Presently the cost of travel and room and board exceeds the cost of tuition and conference fees for out-of-state education programs. The Administrative Office of the Courts recently received a grant from the State Law Enforcement Planning Agency for the period of June 1, 1976 to March 31, 1977 to send 26 judges to national education programs in Colorado and Nevada which vary from one week to four weeks in duration. The total cost of the program is $38,901 as outlined in Table 1:

Table 1

Costs of out-of-state judicial education for 26 judges from June 1, 1976 to March 31, 1977.

Transportation	$10,280.00
Room and board	11,221.00
Tuition and conference fee	16,230.00
Transportation to and from airport	1,170.00
Total	$38,901.00

The cost of these out-of-state judicial education programs averages approximately $1,496.19 per judge. The transportation and room and board expenses totaling $22,671 averages $871.96 per judge.

The total amount spent on the above out-of-state education program for 26 judges could be utilized to send approximately 158 New Jersey judges to a week long in-state education program at which nationally and regionally recognized authorities on judicial topics could speak. For such a program the expense per judge could be as follows:

Tuition and conference fee	$156.00
Food	70.00
Transportation	20.00
Estimated total cost per judge for in-state education	$246.00

New Jersey's Status in Comparison with the National Standards

A. Judicial Selection

The NAC and ABA[22] standards recommend that each state develop a merit selection process for appointing judges. This merit selection process involves a judicial nominating commission which, when a judicial vacancy occurs or a new judicial office is created, forwards the names of three qualified candidates to the chief executive who appoints one to office.

The ABA recommends that the judicial nominating commission be composed of eight members: the chief justice of the highest court or a justice appointed by him as a non-voting presiding officer; four public members, who are neither judges nor attorneys, to be appointed for staggered terms of at least three years; and three members of the legal profession, selected by the state bar association, to be appointed for staggered terms of at least three years.

The NAC recommends generally the same type of commission, with minor differences. The NAC proposes the commission be composed of seven members, three of whom are neither attorneys nor judges and not more than two of the same political party. The presiding officer should be a senior judge of the highest court but is not restricted from voting.

[22]National Advisory Commission, Report on Courts, Standard 7.1, pp. 147-149; American Bar Association, Standards Relating to Court Organization, Standards 1.20 and 1.21, pp. 39-44.

The ABA recommends that in states with a large or geographically separated population, separate nominating commissions should be established on a statewide basis for appellate judges and on a regional basis for judges of the courts of original proceedings. The judicial member of the regional nominating commission should be a supreme court justice or intermediate appellate court judge designated by the chief justice and chosen on the basis of his special familiarity with the bench and bar of the district involved.

The ABA and NAC advocate the same operating procedures for the nominating commission. The commission(s) should be provided with staff assistance which is responsible for maintaining an updated list of qualified potential nominees from which the commission should draw three names to submit to the Governor. The list should be sent to the Governor within 30 days of a judicial vacancy and if the Governor does not appoint a candidate within another 30 days, the power of appointment should shift to the chief justice or the commission itself.

The NAC suggests, in its commentary on judicial selection, that the investigation of potential nominees, reports, preliminary evaluations and administrative tasks be carried out by a permanent staff. The staff's preliminary screening of candidates should consist of two stages. First, the staff should ask candidates to answer a questionnaire to determine whether they are interested in and qualify for a judicial position. Second, the staff, in cooperation with the Federal Bureau of Investigation, State Police and disciplinary section of the Administrative Office of the

Courts, should conduct a security and ethics investigation.

The ABA recommends that the nominating commission determine whether the candidates are of good moral character, emotionally stable and mature, in good physical health, patient, courteous and capable of deliberation and decisiveness. Candidates should have been admitted to the bar and have substantial experience in the practice, administration or teaching of law. Those to be considered for trial court positions should have substantial experience in the preparation, presentation or decision of legal argument and matters of proof according to rules of procedure and evidence. Appellate judge nominees should have experience as a trial judge and experience in expressing legal ideas.

NAC Court Standard 7.2 advises that initial appointment should be for a term of four years for trial court judges and six years for appellate court judges. At the end of each term, the judge should be required to run in an uncontested election at which time the electorate is given the option of voting for or against his retention. The ABA recommends that a judge hold office either during good behavior until reaching the age of compulsory retirement or for a preliminary term of two years and until the next general election at which time the judge's name should be submitted in an uncontested election.

New Jersey does not have a judicial nominating commission or similarly functioning body in most municipalities for the selection of municipal court magistrates. Presently over 400 municipal magistrates fall into this category.

There are two committees representing State and county bar associations designed to perform the functions of a judicial nominating commission for the selection of County, Superior and Supreme Court judges. The Bar Association's Judicial Selection Committee, with components at the State and county levels, is responsible for providing the Governor with a list of qualified judicial candidates. The committees request candidates to complete a questionnaire relating to their background. The Bar Association's Judicial Appointments Committee is responsible for investigating and evaluating each prospective candidate's background when requested by the Governor.

To facilitate the evaluation the Appointments Committee uses a 30-item survey based on the Cannons of Judicial Ethics to determine such factors as the candidate's relations with the judiciary, personal and professional conduct, work habits, demeanor, professional competence, ability to avoid the appearance of impropriety and business interests.

The present judicial selection process in New Jersey falls short of the ABA and NAC standards because of the following elements:

1. There are no time limits by which recommendations to the Governor, the Governor's nomination and approval of a judicial candidate must be made once a vacancy occurs or a new position is created.
2. The State and county Bar Associations' Judicial Selection Committees and Judicial Appointments Committees do not include members representing the public and the judicial system. The members are all appointed by the State Bar and County Bar presidents.

3. The Selection and Appointments Committees do not have permanent staff to assist in record keeping and investigation of judicial candidates.
4. The Governor is not required by statute or the constitution to follow the recommendations of the Bar Association's Judicial Selection and Appointments Committees.
5. The public cannot confirm or reject judicial appointments through the electoral process once they are in office.

B. Judicial Education and Training

NAC Courts Standard 7.5 and ABA Court Organization Standard 1.25 recommend that every court system maintain a comprehensive program of continuing judicial education. The NAC suggests that all new trial judges, within three years of assuming office, attend both local and national orientation programs as well as one of the other national judicial education programs. The local orientation program should be attended immediately before or after the judge first takes office.

The New Jersey court system provides intrastate judicial orientation programs for judges. Upper and lower court judges, however, may perform judicial duties for a considerable period of time before having the opportunity to attend orientation training. The participation of New Jersey judges in national education programs is very low, in part due to a lack of financial resources.

The NAC advises that each state develop its own state judicial college, which should be responsible for the orientation programs for new judges and providing graduate and refresher programs similar to those of the national judicial education organizations. New Jersey offered its first courses in a State Judicial College in September, 1976. The courses, however, were not aimed at providing orientation for new judges.

The NAC recommends that each state should plan specialized subject matter programs as well as two- or three-day annual state seminars for trial and appellate judges. New Jersey has one seminar which is presented annually to trial and appellate judges.

The NAC further recommends that the failure of any judge to pursue orientation and regular continuing educational programs should be considered by the judicial conduct commission as grounds for discipline or removal if good cause is not shown. There are no court rules, statutes or constitutional mandates that require judges to attend judicial orientation or regular continuing education programs.

The NAC also suggests that each state prepare a bench manual on procedural laws with forms, samples, rule requirements, sentencing alternatives and information concerning correctional programs. New Jersey appears to be consistent with this recommendation through the Court Rules, the orientation manual and other manuals, forms, guidelines and materials provided to all judges in the State.

The NAC advises that each state periodically publish a newsletter with information from the chief justice, the court administrator, correctional authorities and others. The periodical should include citations of

important appellate and trial court decisions and references to new literature in the judicial and correctional fields. New Jersey, through the Administrative Office of the Courts sends separate monthly bulletins containing this information to municipal court judges and upper court judges. In addition all judges receive slip sheets immediately on all published, approved opinions.

The ABA and NAC advocate that provisions be made to give judges the opportunity to pursue advanced legal education and research. The NAC suggests a sabbatical leave program to fulfill this need. New Jersey does not provide funds for sabbatical leave programs.

The NAC Criminal Justice System Standard 12.1 recommends that educational programs for criminal justice personnel be developed based on a process by which specific roles, tasks and performance objectives are identified. These perceptions should be compared with actual practices and, where appropriate, included in education programs.

As mentioned before, Project STAR surveyed 48 judges to determine roles and tasks for that position. The survey concluded that judges should receive education and training in a number of areas which included management and administration to increase efficiency of judicial operations, education concerning the changing character of contemporary morality, education in the methods of empirical science and education or training to deal with large caseloads without sacrificing individual due process of law. The Administrative Office of the Courts, Office of Judicial Education, has no plans to utilize Project STAR's research findings or training modules.

The NAC Criminal Justice System Standard 12.1 further advises that plans be developed and implemented for evaluating the effectiveness of education programs as they relate to on-the-job performance. New Jersey's Office of Judicial Education is not performing on-the-job evaluations.

The NAC also recommends that the findings on role, tasks, and performance objectives be incorporated in criteria for recruitment and selection of criminal justice personnel. New Jersey has not incorporated the findings of Project STAR into its judicial selection process.

The NAC advocates the development of techniques for a continuous assessment of education needs as they relate to changes in social trends and public needs on a national and local basis. Presently participants in New Jersey judicial training programs are asked to fill out a questionnaire concerning the effectiveness of the programs. A 16-judge committee is responsible for planning future judicial training programs.

Standards for Judicial Selection, Education and Training

Standard 2.1 Judicial Nominating Process

The New Jersey screening process forms a solid basis for selecting judges but should be modified pursuant to Standards 2.2 through 2.6. All participants in the selection process should make their decisions purely on the merit of the individual and evaluate the candidate only as to whether he or she meets the qualifications of a good judge as delineated by Standard 2.4.

Several elements of the New Jersey judicial selection process should be maintained:

1. The Judicial Selection Committees of the State and county Bar Associations should continue to forward names of prospective judicial candidates to the Governor for consideration.
2. The Judicial Appointments Committee should continue to assess the professional qualifications of prospective judicial nominees.
3. The Special Investigation Unit of the New Jersey State Police should continue to investigate the background of prospective judicial nominees.
4. The Governor should nominate judicial candidates.
5. The New Jersey Senate should continue its constitutional role of "advice and consent" in the nomination of judges.

A selection process should aggressively seek out the best potential judicial candidates through the participation of the bench, the organized bar, law schools and the lay public.

Standard 2.2 Judicial Selection Committees

Judges should be selected as judicial vacancies occur (including the creation of a new judicial office) through a procedure in which the New Jersey Bar Association's State Judicial Selection Committee nominates at least three qualified candidates from a list of candidates forwarded by a county judicial selection committee(s). Judicial Selection Committees should be composed of at least eight members representing the bar associations, judiciary and lay public. All members should be appointed on a voluntary basis.

1. A judicial representative on the State Judicial Selection Committee should be appointed by the Chief Justice of the Supreme Court. The judicial representative on each county bar association's selection committee should be appointed by the assignment judge of the respective county. The judicial member should serve as the presiding officer.
2. Two representatives of the public on the State Judicial Selection Committee should not be attorneys and should be appointed by the Governor. Two lay representatives on each county judicial selection committee should be residents of the county, non-lawyers and appointed by the Governor. The lay representatives should be appointed for staggered terms and not be of the same political party.

Each county judicial selection committee should continue to survey practicing attorneys in the county to determine those who are willing to accept a position as judge. Those who are willing should be asked to answer a questionnaire concerning their background and qualifications as is

presently done. A current list of potentially qualified candidates should be maintained and at least five names forwarded to the State Judicial Selection Committee along with the answers to the questionnaire immediately upon notice of a judicial vacancy in the respective county or vicinage. For upper court vacancies in vicinages which include more than one county all of the county selection committees in that vicinage should submit the names of at least three candidates.

The State Judicial Selection Committee should review the questionnaires forwarded by the county selection committees, evaluate the answers on the questionnaire, make inquiries if necessary and submit the names of at least three potentially qualified candidates to the Governor. If all candidates whose names are forwarded to the Governor are considered unqualified by the Governor or the Judicial Appointments Committee, a new list should be forwarded to the Governor. The State Judicial Selection Committee should have the services of a paid staff to aid in record keeping and clerical tasks and to make inquiries for the Committee.

Standard 2.3 Judicial Appointments Committee

The State Bar Association's Judicial Appointments Committee should continue evaluating the professional qualifications of judicial nominees. The membership of the Committee should include representatives of the judiciary, lay public and bar associations.

1. A judicial representative should be appointed by the Chief Justice of the Supreme Court and serve as presiding officer.
2. Two representatives of the public who are not lawyers should be appointed by the Governor. The lay members should serve for staggered terms and not be of the same political party.
3. The State Bar Association membership should continue as it is currently constituted.

The Judicial Appointments Committee should expand its present format for evaluating the professional qualifications of judicial nominees. The Committee, in cooperation with the judiciary, the State Bar Association and other interested parties should develop a format for determining a candidate's professional qualifications for performing judicial duties from research which clearly identifies the knowledge and skill requirements of judges operating in each type of court including Supreme Court, Superior Court Appellate Division, Superior Court Law Division, County Court and Juvenile and Domestic Relations Court. The identification of appropriate skills and knowledge should be based on an assessment of specific roles, tasks and performance objectives and verified through observation of judges while they are performing their everyday duties.

Judicial nominees should be required to undergo a physical examination and the findings should be considered by the Judicial Appointments Committee. The Appointments Committee should continue to receive and review

information provided by the Special Investigations Unit of the State Police concerning the nominees' background.

The professional and personal qualifications of judges who wish to be reappointed should be re-examined by the Judicial Appointments Committee prior to reappointment. Additional information on the judge's performance during the first term of office should include a report from the Supreme Court's Advisory Committee on Professional Ethics. The Governor should appoint judicial candidates within 30 days after they have been cleared by the Judicial Appointments Committee.

The Judicial Appointments Committee should have a paid staff. The responsibility of the staff should include:

1. Record keeping and clerical functions.
2. Investigation via telephone or personal interviews to provide the Committee with information on the nominee's professional qualifications.
3. Expansion and improvement of the format for evaluating the professional qualifications of judicial nominees.

Standard 2.4 Advice and Consent by the Legislature

The Senate should exercise its constitutional role of advice and consent. The Senate should adopt and maintain the following internal rules.

1. The Judiciary Committee should report to the Senate within 60 days of receipt of a judicial nomination with recommendations for, against or otherwise, together with the reasons for such recommendations, plus the vote of each Committee member.
2. In the event that the Judiciary Committee fails to report on any nomination within 60 days, and such nomination is not withdrawn by the Governor, any Senator may move the nomination before the full Senate or the Senate should automatically consider the nomination at its next meeting.
3. The nominee should have the right to receive a hearing, which would be public or private at the discretion of the nominee; where the nominee can demand to know the objections against him and demand the right to respond publicly or privately.

Senatorial courtesy* should be abolished by internal Senate rule or if necessary, by a constitutional amendment.

*Senatorial courtesy is the process whereby the Senate accedes to the veto of a single member where a nomination from his or her district is concerned.

Standard 2.5 Qualifications of a Judge

Persons should be selected as judges on the basis of their personal and professional qualifications for judicial office. Their concept of judicial office and views as to the role of the judiciary may be pertinent to their qualification as judges. Selection should not be made on the basis of partisan affiliation.

Personal and professional qualifications: All persons selected as judges should be of good moral character, emotionally stable and mature, in good physical health, patient, courteous and capable of deliberation and decisiveness when required to act on their own reasoned judgment. They should have a broad general and legal education and should have been admitted to the bar. They should have had substantial experience in the practice, administration, or teaching of law for a term of years commensurate with the judicial office to which they are appointed. In addition to these qualifications:

Trial judges: Persons selected as trial judges should have had substantial experience in the adversary system, preferably as judges or judicial officers in other trial courts or as trial advocates. In any event, they should have had experience in the preparation, presentation or decision of legal argument and matters of proof according to rules of procedure and evidence.

Appellate judges: The selection of appellate judges should be guided by the aim of having an appellate bench composed of individuals having a variety of practical and scholarly viewpoints, including some with substantial experience as a trial judge. Persons selected as appellate judges preferably should have high intellectual gifts and experience in developing and expressing legal ideas and facility in exchanging views and

Standard 2.6 Assessment of the Need to Fill Judicial Vacancies and to Provide Support Services

The decision whether a judicial position should be filled is an executive decision which should be based on an assessment of whether it is needed or feasible. To aid in the assessment of such needs the Supreme Court, through the Administrative Office of the Courts, should initiate a study to determine and provide continuous data to appointing authorities concerning:

1. The number of judges needed to process all criminal and civil cases within the specific time limits set by the Supreme Court.
2. The proper ratio of support personnel to each judge to ensure that cases are processed within appropriate time limits. Support personnel includes public defenders, prosecutors, probation officers, clerks, stenographers, secretaries and court attendants.

Within 30 days after a judicial vacancy occurs, the Supreme Court or its administrative branch, the Administrative Office of the Courts, should notify the appointing authority as to whether there is a need to appoint a judge or provide supporting staff to ensure that the judge can function on a full-time basis. If there is not enough supporting personnel a judge should only be appointed contingent upon hiring of the needed staff.

Standard 2.7 Establishment of a State Judicial College

A State Judicial College should be established in New Jersey to provide judges with access to a year-round comprehensive program of education. The curriculum of the college should include three major areas: judicial practice, the social sciences and law. The following elements should be included in the development of a State Judicial College.

1. The teaching staff should be composed of full-time judges on temporary leave from the bench, former judges and use experts on a part-time basis from various aspects of the criminal justice system, social sciences and administration fields.
2. Courses should be offered at regional facilities to allow judges easy access.
3. Class size should be restricted to a limited number of participants to increase individual participation and provide greater individualized instruction.
4. Each judge should be required to participate in at least 12 hours of classroom education per year.

Standard 2.8 Judicial Orientation Training

Judicial orientation training for all newly appointed judges should be extended and provide a combination of required and elective courses.

1. All newly appointed Superior, County, Juvenile and Domestic Relations and County District Court judges who have no prior judicial experience should be provided with the equivalent of at least three weeks of judicial orientation training.
2. All newly appointed Municipal Court judges who have no prior judicial experience should be provided with at least seven days of judicial orientation training.
3. Newly appointed judges should attend orientation training prior to assuming the responsibilities of the bench. In any event, a judge must receive orientation training within six months of the judge's appointment.
4. Judicial orientation training should include a series of required courses for each judge and a series of elective courses to allow judges to study intensively subjects in which they have limited knowledge.

Standard 2.9 Establishment of National Level Education Programs

The Administrative Office of the Courts (AOC) or a State Judicial College should sponsor national judicial education programs in New Jersey to provide greater convenience for local judges and economy. The programs should be aimed at exposing large numbers of New Jersey judges to the experiences, outlooks and methods of judges from other court systems throughout the country. As an alternative to developing national education programs by AOC or a judicial college, national associations, centers and academies should be encouraged to foster education programs in New Jersey.

Standard 2.10 Judicial Education Curriculum

The Administrative Office of the Courts or a State Judicial College should develop an educational curriculum for judges which covers the areas of judicial practice, the social sciences and law. All courses should be oriented directly toward the judicial function.

Standard 2.11 Individualized Education Methodology

Lecture- and discussion-oriented judicial education should be supplemented with a series of education methodologies which enable individual judges or groups of judges to study subjects indepth and at their own pace. The Administrative Office of the Courts or a State Judicial College should develop the following education methods and resources:

1. An automated legal research resource to provide judges, prosecutors and defense attorneys at terminals throughout the State with up-to-date access to statutes, court rules and court decisions.
2. Video and audio tapes for self-teaching which provide individual judges and groups of judges with lectures and discussions on law, procedure and social science relating to the judicial function.
3. Manual or computer self-administered programmed instruction.
4. Workbooks to accompany lecture and discussion presentations.
5. A program of sabbatical leave for the purpose of enabling judges to pursue studies and research relevant to their judicial duties.

Standard 2.12 Judicial Education, Planning and Evaluation

A comprehensive research and evaluation effort should form the basis for planning judicial education. The Administrative Office of the Courts or a State Judicial College should perform research and evaluation tasks:

1. Research should include identification of the necessary skills and knowledge required of judges and judicial problem areas which may benefit from education programs. Such research should be based on surveys of police, court, public defender, prosecution and correctional personnel and the general public.
2. Evaluation of judicial education programs should include continual critique of training programs by both training staff and judges.

Commentary

The Committee, after carefully considering the ABA, NAC and New Jersey State Bar Association recommendations for the creation of a judicial nominating commission to assist the Governor in selecting judges, rejects the concept in favor of the present system with some modifications. Although the judicial nominating commission is considered a model by many experts, it is still open to damaging political influence and provides no greater protection against abuse than the New Jersey system of selecting judges. The Committee, therefore, recommends a series of proposals for correcting the shortcomings of the present system rather than creating a potentially expensive new State bureaucracy.

A major aim of judicial selection standards is to change the present voluntary merit selection system into a true merit system. To achieve this, one of the Committee's recommendations is that the Governor's authority to appoint judges be limited to only those individuals who are recommended and approved by the Judicial Selection and Appointments Committees of the State and county bar associations.

The Committee further recommends that the bar associations continue to improve the criteria for selecting potential judicial nominees and evaluating their qualifications. Present criteria, which are based on the Cannons of Judicial Ethics, are considered too narrow to be used to assess whether a candidate has appropriate knowledge to fulfill judicial functions. It is also recommended that the State Bar Association sponsor a research effort to identify the knowledge and skills necessary for an individual to perform the judicial functions.

The Committee has decided that judicial candidates should be psychologically sound but no recommendation has been proposed for a mechanism to measure psychological fitness. The members concluded that if the system for judicial removal functions adequately, psychologically unfit judges would be removed from office.

Standards recommend that the bar associations include representatives of the lay public on the Selection and Appointments Committees. Lay public, it is concluded, has as much an interest in an effective judiciary as the legal profession. While the legal skills of a candidate can probably be determined readily by attorneys, other qualifications such as concern for people, justice and humanism can be determined as well by laypeople who are potential litigants or consumers of the justice system. Lay representatives can also counter undue deference to certain candidates resulting from friendship or professional association.

Judicial representatives on the Selection and Appointments Committees appointed by the Chief Justice are recommended because the judiciary has an interest in ensuring that its future collegues are highly qualified. Although the present Committees include participation of judges, unless appointed to the Committees by the judiciary, they may not be considered as representatives of the judiciary.

To facilitate the work of the Selection and Appointments Committees the Advisory Committee recommends that the bar associations either obtain staff assistance or be provided with staff assistance on at least a part-time basis. No recommendations have been made to improve the role of the State Police in

investigating the backgrounds of nominees because the present procedures appear to be adequate.

In order to prevent appointment of judges to positions where there is neither enough cases, support personnel nor facilities to enable them to operate on a full-time basis, the Committee recommends that the managerial feasibility of appointments be determined prior to new appointments. This assessment should be based on a previously determined proper ratio of support personnel to each judge which will enable the courts to process cases efficiently and effectively.

The limits of the Senate's role of advice and consent over judicial appointments are defined by the Committee. It has determined that the tactic of blocking the nomination of a judicial candidate from moving to the floor of the Senate through senatorial courtesy* is an abuse of the Senate's authority of advice and consent. Failure to move a nomination to the floor of the Senate is in effect a failure to execute that Constitutional mandate. Senatorial courtesy is not grounded in the State Constitution or in the internal rules of the Senate. To the extent that senatorial courtesy is in conflict with the stated goal of judicial appointment by merit its practice should be abolished. To ensure the integrity of the decision making process the standards are aimed at raising the visibility of the decision making process.

In the area of judicial training the Committee concluded that New Jersey is in accord with and surpasses some elements of the NAC and ABA standards. In other areas the Committee has expanded significantly upon the national standards.

*Senatorial courtesy is the process whereby the Senate accedes to the veto of a single member where a nomination from his or her district is

Although the Administrative Office of the Courts recently created a State Judicial College which is in accord with the national standards, some elements of the College proposed by the Governor's Advisory Committee have yet to be implemented. These elements include establishment of a year-round comprehensive program of education offered at regional facilities and instructed by an interdisciplinary faculty.

The Committee recommends significant expansion of the judicial orientation training programs for new judges and the overall judicial education curriculum in order to transmit knowledge from the social science and administrative fields that is critically important for effective and efficient adjudication.

Recognition that the transition from attorney to judge represents a significant change in role led to the recommendation that judicial orientation and continuing education should be mandatory. Although participation in some of the current training programs may be high it is recognized that the popularity of the programs may be a key factor and that programs of the future, which may be less popular and yet of critical importance, may be avoided.

Current attendance of judges at national level education programs is expensive. To date approximately 20% of New Jersey's upper court judges have attended the programs. A much lower percentage of Municipal Court judges have attended national judicial education programs. For these reasons the Committee recommends that national level education programs be developed in New Jersey to expose large numbers of local judges to the experiences, outlooks and methods of judges throughout the country.

The Committee recognizes that educational needs vary among judges depending upon their individual educational and work experience backgrounds. Therefore, it recommends the development of individualized training methodologies and research to identify specific training needs. The methodologies which would allow individual judges or groups of judges to progress at their own pace in specific areas of educational need include: an automated legal research system, video and audio tapes, manual or computer assisted programmed instruction and sabbatical leave.

The Detention and Shelter Care of Juveniles

Introduction

The purpose for detaining juveniles prior to adjudication or disposition is to assure their appearance in court and to reduce any possible threat their release may have to community safety. It is also expected that while a youth is detained, detention staff should take advantage of the opportunity to provide or make available needed short term social, medical and psychiatric services. In addition, detention centers and shelters have an obligation to continue the youth's education which is interrupted by removal from home.

There is growing concern that many youth are unnecessarily detained while others who should be detained are released. In addition, it is becoming more difficult for those youth who require detention or shelter care to benefit from the experience, due to several critical and long-term problems which have plagued the detention/shelter care system since its inception. The root of these problems can be traced to the absence of clearly defined detention criteria and guidelines and the alternatives to detention or shelter care.

Clearly defined criteria are needed to assist in detention and release decisions while ensuring their appropriateness. Structured, workable guidelines are necessary to reduce inconsistency in the handling of juveniles, the nature of programs and available services. Alternatives to confinement would result in the elimination of unnecessary detention and overcrowding and, thus, allow improvements in existing detention/shelter care facilities. There is a need to organize and integrate a variety of

detention/shelter care and alternative programs into a coherent, integrated whole if the goal of delinquency reduction is to be achieved.

Problem Assessment

Criteria for Detention

A juvenile's experiences in detention or shelter care will have long lasting influences on his or her attitudes toward society, self and the legal system. Detention can raise a juvenile's status in the eyes of peers and thus reinforce delinquent behavior. It may compound feelings of rejection and deteriorate already low self concepts. Moreover, the temporary nature of detention and shelter care discourages the development of needed services in such facilities. The lack of appropriate programming has equated detention with enforced idleness and has reduced the possibility of any beneficial outcome. As a result, the potential for harmful aftereffects to the juvenile and indirectly to the community is high.[1] Consequently, detention decisions and practices should be closely and carefully scrutinized to ensure no juvenile is inappropriately placed in detention or shelter care.

The use of detention or shelter care in New Jersey varies widely from county to county. During 1975, the statewide average for secure detention

[1]Institute of Judicial Administration and American Bar Association Joint Commission on Juvenile Justice Standards, "Information Packet on Juvenile Justice Standards Project," New York, December 22, 1975, p. 67.

rates (number of juveniles admitted to detention centers divided by the number of delinquency complaints filed in court) was 16.3%. In Warren County last year, 226 juveniles were admitted to the detention home and 630 delinquency complaints were filed in court, reflecting a secure detention rate of 35.9%, the highest for any county. During the same time period, Essex and Camden Counties reflected secure detention rates of 14%; Bergen County, 7.7%; Union County, 12.6%; Hudson County, 20.1%; Mercer County, 28.0%; and Burlington County, 29.7%. Cape May County indicated the lowest secure detention rate of 6.1%.[2] In comparison, the National Council on Crime and Delinquency (NCCD) and the President's Commission on Law Enforcement and the Administration of Justice recommend detention rates not exceed 10%.

During 1975, combined secure and non-secure shelter detention rates varied from a high of 50.6% in Burlington County to a low of 5.6% in Cape May County. The statewide average for 1975 was 19.8%. Of the major counties, Union, Camden, Essex and Bergen reflected rates lower than the statewide average whereas Atlantic, Cumberland, Hudson, Mercer, Ocean, Passaic and Warren Counties reflected detention rates in excess of the statewide average.[3] The latitude of variance suggests the need to

[2]Figures computed from the Report of the Status of the Calendars for each month of 1975, Administrative Office of the Courts, Trenton, New Jersey; Status Report on Shelter Programs for Juveniles in Need of Supervision, Task Force on the Juvenile Code, Department of Institutions and Agencies, Trenton, New Jersey, 1975; and other statistics generated by the Task Force on the Juvenile Code.

[3]Ibid.

examine the criteria for and application of detention.

One reason for such variances may be attributed to the juvenile law itself. New Jersey statutes and court rules permit the detention (secure) or shelter care (non-secure) holding of juveniles as indicated below.[4]

For detention of youth charged with delinquency offenses:

1. Detention is necessary to secure the presence of the juvenile at the next hearing.
2. The nature of the conduct charged is such that the physical safety of the community would be seriously threatened if the juvenile were not detained.

For shelter care:

1. There is no appropriate adult custodian who agrees to assume responsibility for the juvenile and the release on the basis of a summons is not appropriate.
2. Shelter care is necessary to protect the health or safety of the juvenile.
3. Shelter care is necessary to secure his or her presence at the next hearing.
4. The physical or mental condition of the juvenile makes immediate release impractical.

These criteria are designed to be flexible and thus leave room for discretionary interpretation. The desires of local communities, as reflected in police and judicial discretion, may influence the detention of juveniles,

[4] N.J.S.A. 2A:4-56 and R. 5:8-6(e).

causing detention practices to become an outgrowth of local attitudes and tradition.[5] Disparity in detention rates may indicate that the chance of detention may be based more upon where the juvenile is taken into custody than the nature of the offense charged or any other factor. Inconsistencies may also suggest criteria are perhaps overly broad and vague.

Consistent with the recognized purposes of detention, one of the most frequent statutory provisions for the detention of youth as well as adults is that it is necessary to secure appearances in court. However, numerous studies of adult criminal defendants and actual bail/release projects have demonstrated that most defendants can be released pending trial solely on their own promise to appear. Bail reform projects have also proven that if properly administered, release alternatives other than bail are effective in ensuring the presence of adult defendants at trial. Unlike adults, juveniles generally are not independent beings who can be freely mobile. For the most part, they are dependent upon parents, family or other adults for life's necessities and, hence, it may be more difficult for a youth to abscond than it is for an adult defendant.

The development and use of alternatives to confinement for juveniles similar to adult release programs could provide additional means for assuring appearances in court. Aside from research on adult defendants, some studies have shown that most juveniles are not likely to flee. A

[5]Rosemary C. Sarri, "The Detention of Youth in Jails and Juvenile Detention Facilities," Juvenile Justice, November, 1973, p. 10.

1973 Louisville court study indicated that only 2.7% of the juveniles released pending court action failed to appear when required.[6] A home detention demonstration project in St. Louis indicated no instances of a youth failing to appear.[7] In another study, those juveniles released from detention shortly after being admitted and those not admitted upon screening rarely failed to appear for a court hearing.[8]

Another criterion for detaining juvenile defendants is that it is necessary for the protection of the community. Detaining the accused for the reason that it will prevent additional criminal activity on their part while awaiting trial has traditionally been considered by many to be a legitimate function of pretrial confinement. Grounds for such preventive detention are usually based upon the seriousness of the offense and the accused's prior record of offenses. If there is a good chance the defendant will commit another crime or in some way harm witnesses while awaiting trial, it may be in the community's best interest to keep the defendant confined during that period. Notwithstanding this argument, courts have recently held that the detention of adults for preventive reasons violates constitutional principles. Thus, in New Jersey, the release of an adult defendant pending trial can only be denied if it can be demonstrated that there are no conditions which will adequately ensure his or her appearance when required.[9]

[6]Ibid., p. 13.

[7]Paul Keve and Casimir Zantek, "Final Report and Evaluation of the Home Detention Program, St. Louis, Missouri," RAC - CR - 64, McLean, Virginia, Research Analysis Corporation, October, 1972.

[8]Walter G. Whitlatch, "Practical Aspects of Reducing Detention Home Population," Juvenile Justice, August, 1973, p. 26.

[9]State v. Johnson, 61 N.J. 351, 364 (1972).

For adult defendants, then, protection of the community is no longer a legitimate criterion for detention.

The courts have not carried this restriction against preventive detention to juvenile practices. The juvenile justice system, traditionally more liberal in its allowance of detention of juveniles prior to any finding of guilt, continues to detain juveniles where their release may be a danger to the community. The parens patriae doctrine of juvenile courts is the justification for this preventive detention.

Several arguments have been advanced against preventive detention, a major argument being that it is inconsistent with the presumption of innocence. Premises underlying preventive detention are considered by many to be questionable since it is difficult to determine with any certainty the future conduct of an individual. The usual result in juvenile detention decisions is that the offense charged becomes the chief determining factor. Some hold that the seriousness of the offense charged, by itself, is not necessarily a sound basis for detention decisions since the screening process often goes no further once the charge is learned. Unnecessary detention may result and continue unchallenged.[10] Clearly defined criteria applied to detention screening and determinations as well as the availability of alternatives to detention or shelter care would assist in the elimination of arbitrary or unnecessary detention of youth. It is unfortunate, however, that the lack of alternatives to detention contributes to the persistent use of frequent and unnecessary detention.

[10]Whitlatch, "Practical Aspects of Reducing Detention Home Population," p. 23.

Alternatives to Detention and Shelter Care

Few states have implemented detention alternatives for either juveniles or adults. Where the use of alternatives is allowed, they are used far less for juveniles than for adults.[11] It has been found that many metropolitan areas have lagged in the development of alternatives, possibly because of the availability and convenience of detention facilities. There is a direct correlation between detention populations and available detention facilities. It has been verified that where new detention space is constructed or otherwise made available, there is a tendency to detain more children and to keep them confined for a longer period of time.[12] A nationwide comparative analysis of detention home capacities and average daily populations indicated that larger homes tend to be overcrowded while smaller ones are not.[13] This supports the conclusion that where detention space is limited, courts have been forced to rely upon alternatives to detention and/or to set stricter criteria for the detention of youth.

[11]Sarri, "The Detention of Youth in Jails and Juvenile Detention Facilities," p. 13.

[12]National Advisory Commission on Criminal Justice Standards and Goals, Report on Corrections, Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 260.

[13]Ibid., p. 258.

In the adult system, release on bail is the most frequently used alternative. However, bail is rarely used for juveniles. States are presently divided on the issue of whether juveniles have a right to bail. As of 1973, the National Advisory Commission (NAC) found that nine states expressly allowed bail for juveniles and three had provisions that imply bail is applicable to juveniles. Bail is expressly denied to youth in three states whereas eight states did so by implication. The remaining states were silent on this point. In New Jersey, juveniles do not have a right to bail. The court rules provide, however, that if the juvenile or the adult in whose custody he or she is released resides out of state, the court may require bond to be posted in an amount deemed reasonably necessary to ensure appearance when required (R. 5:8-6(e)(a)).

There has been no U.S. Supreme Court determination or delineation of a right to bail for juveniles although other courts have dealt with the issue. Several cases have been decided in support of a right to bail for juveniles. State v. Franklin, 12 So. 2d 211 (La. 1943) held that prior to a finding of delinquency a juvenile is entitled to bail. In another case involving a juvenile, it was held in Trimble v. Stone, 187 F. Supp. 483 (D.D.C. 1960) a right to bail before trial is guaranteed by the Eighth Amendment which is self-executing and no statute is necessary for its implementation.

Many cases which have not supported a right to bail for juveniles have usually held that the nature of the proceeding is "determinative of the issue of a right to bail."[14] Fulwood v. Stone, 394 F. 2d 939 (D.C. Civ. Ct.

[14]Wisconsin Council on Criminal Justice, Juvenile Justice Standards and Goals, Madison, Wisconsin, 1975, p. 167.

1967); Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969); and In Re M, 473 p. 2d 737 (Cal. 1970) have all held it is unnecessary to decide the issue of a right to bail in juvenile cases since the juvenile system has an adequate substitute for bail; namely, release to the custody of a parent or guardian.

In addition to court litigation, much has been written regarding the benefits and drawbacks of bail for juveniles. The NAC, during both its original tenure and its present continued effort recommends the prohibition of bail or any other financial conditions on release for juveniles. This is based primarily on the demonstrated inadequacies of adult bail practices and the undesirability of replicating an unsuccessful and discriminatory adult practice in the juvenile justice system. The pursuit of other release alternatives is favored.

The issuance of a summons to the juvenile in lieu of his or her continued detention following the taking into custody is another alternative which would help reduce unwarranted detention. New Jersey court rules presently provide this alternative indicating that a police officer may dispense with a release in custody if he or she considers the issuance of a summons to the juvenile sufficient to ensure the juvenile's appearance in court (R. 5:8-2). This alternative, however, is rarely used.

The Detention Hearing and the Issue of Probable Cause

There is almost universal support for and belief in a juvenile's right to a hearing to determine the appropriateness of detention. Such hearings

held within a reasonable time period are considered necessary to protect against unwarranted or improper detention. There is some disagreement, however, as to what constitutes a reasonable time period. The NCCD and the U.S. Department of Health, Education and Welfare's Model Acts for Family Courts and State - Local Children's Program recommend detention hearings within 24 hours of admission. The NAC, President's Commission on Law Enforcement and the Administration of Justice and the Handbook for New Juvenile Court Judges recommend a hearing within 48 hours of placement. New Jersey court rules presently provide for a hearing within 24 hours of placement and if counsel is not present at this initial hearing, another hearing is scheduled with counsel within two court days (R. 5:8-6 (d)).

Disagreement and difficulty increase when an attempt is made to define what constitutes a detention hearing and what rights are applicable at this hearing. Much legal opinion is of the view that the detention of youth must be based on reasons which can be substantiated and that there can be no substantiated basis without a concurrent determination that there is probable cause to believe a crime has been committed and that the juvenile has committed it.[15]

Based upon the Fourth Amendment's prohibition against unreasonable seizures, many believe a detention hearing must include an inquiry into

[15]See Cooley v. Stone, 414 F. 2d 1213 (D.C. Civ. 1969); T.K. v. State, 126 Ga. App. 269, 190 S.E. 2d 588 (1972); In Re R., 60 Misc. 2d 355, 359, 303 N.Y.S. 2d 406, 410 (Fam. Ct. N.Y. 1969); Moss v. Weaver, 383 F. Supp. 130 (1974); Gerstein v. Pugh, 95 S. Ct. 854 (1975).

probable cause. Constitutional rights which are applicable to a determination of probable cause in the juvenile process have received less attention from the courts and thus have not been defined.[16] Hence, what safeguards must govern the inquiry into probable cause remains a controversy. In any event, the determination of probable cause not only protects the juvenile but also helps to eliminate unnecessary or fruitless prosecutions and hearings, thus conserving resources already strained by high caseloads.

The New Jersey court rules have only recently been revised effective March 29, 1976 to require the making of a probable cause determination no later than two court days following the initial detention hearing. Rule 5:8-6(d) now provides that where a juvenile has been charged with delinquency and has been placed in detention, there must be a probable cause determination which shall be made at the second detention hearing, where such a hearing is necessary and which shall be made in all other cases within two court days.

Aside from the issue of probable cause, the purpose for a detention hearing remains the determination of whether detention is, in fact, necessary. Prior to any such decision, however, all possible alternatives to detention or shelter care should be carefully reviewed and considered in an effort to ensure only those juveniles who cannot be released remain in detention and shelter care. Again, difficulties with this procedure are directly related to one of the central problems of the juvenile detention system - the lack of alternatives to confinement.

[16]The New York Supreme Court, however, has held in People ex rel. Guggenheim v. Mucci, 360 N.Y.S. 2d 71 (1974) that under due process and equal protection considerations, hearsay evidence may not be used at a preliminary hearing to show probable cause to detain a juvenile since there is no justification for denying juveniles the same rights offered adults at a preliminary hearing.

Rights of Detained Juveniles

As reforms and due process requirements began to be held applicable to juvenile courts, the rights of juveniles involved in the juvenile justice system emerged as a priority consideration in defining processes and developing programs. In spite of this, the rights of detained juveniles have been essentially ignored. Much progress has been made, however, in defining the rights of adult prisoners during both pretrial and post conviction stages. Only recently have the courts begun to shed light on the issue of the rights of confined juveniles, particularly those held in detention prior to any court action.

The purpose for detaining adult defendants prior to trial is, by law, limited to ensuring the accused's presence at trial. Consequently, any restrictions placed on an adult defendant should be reasonably related to accomplishing this limited purpose. Prior to conviction, the application of programs with objectives of deterence, punishment, retribution or even rehabilitation is inconsistent with the presumption of innocence and any such program is not a legitimate function of pretrial detention. Hence, regulations which are not reasonably related to ensuring the accused's presence at trial are an infringement upon the detainee's constitutional rights. In reality, however, defendants in many jails awaiting trial suffer similar if not worse treatment as those confined serving sentences.

The court held in Brenneman v. Madigan, 343 F. Supp. 128 (N.D. Cal. 1972) that the proper focus in determining the appropriateness of restrictions placed on pretrial detainees is whether the conditions are necessary for prison security and are related to the reason the individual is being detained. It has also been held that where such conditions amounted to

punishment, punishment being inconsistent with the purpose of detention, such punishment was without due process of law. Courts have also held that only those conditions necessary to the security aspect of short-term detention could be imposed on those who could not afford bail (and hence were detained).[17]

It is generally accepted that adults and juveniles should not be subject to worse conditions prior to adjudication than that which they might potentially receive after disposition. At the very minimum then, pretrial detainees are entitled to no less rights than convicted offenders. To advance this notion, various courts throughout the nation have recognized that pretrial detainees, who under the law are presumed to be innocent, are entitled to more rights than convicted offenders.[18] If juveniles are to enjoy equal protection under the law then they, too, should be included in this fundamental axiom. Juveniles deprived of their liberty prior to any determination of guilt should be accorded the same rights as adult pretrial detainees and, at minimum, should enjoy the same rights as juveniles and adults adjudicated guilty and incarcerated in correctional institutions.

Post-Dispositional Detention and Shelter Care

One of the most difficult situations affecting the present practice of juvenile detention in New Jersey is the lack of noncorrectional dispositional

[17]See Collius v. Schoonfield, 344 F. Supp. 257 (D. Md. 1972); Brenneman v. Madigan, 343 F. Supp. 128 (N.D. Cal. 1972); Rhem v. McGrath, 326 F. Supp. 681 (S.D.N.Y. 1971); Osborn v. Manson, 359 F. Supp. 1107 (D. Conn. 1973); Davis v. Lindsay, 321 F. Supp. 1134 (S.D.N.Y. 1970).

[18]See, for example, Jones v. Wittenberg, 323 F. Supp. 92 (N.D. Ohio 1971); Anderson v. Nosser, 438 F. 2d 183, 190 (5th Cir. 1971).

placements which results in lengthy periods of post-dispositional stays. Although no juvenile should be held in detention or shelter care once his or her matter has been disposed of by the court, many juveniles remain in such facilities long after they have been adjudicated guilty and given dispositions involving noncorrectional placement. Ideally such juveniles should be immediately placed so that treatment and rehabilitation can be effected without delay. In practice, locating appropriate foster home or residential placements for many juveniles has proven difficult and time consuming. Often, juveniles are forced to wait months in detaining facilities which are designed for short-term stays and consequently lack the necessary resources for long-term treatment. A potential risk which may develop from this situation is an increase in dispositions involving correctional commitments, not because the circumstances of the offense and juvenile warrant it, but because lengthy post-dispositional stays in detention without access to treatment is even more undesirable.

The problem of post-dispositional detention cannot be corrected without the strengthening of probation and other community treatment services, development of community resources, the expansion of residential placements and streamlining of the present placement system.

An added difficulty in New Jersey is that it is unclear what level of government is responsible for providing and financing post-dispositional care. Detention and shelter facilities in New Jersey are the responsibility of the counties which must provide financial support for their operation. Many are of the opinion that once a juvenile is adjudicated and given a disposition involving correctional or residential placement, the responsi-

bility for such a juvenile shifts to the State. A Supreme Court decision on pending litigation, Board of Chosen Freeholders of the County of Union v. Anne Klein, Commissioner, Dept. of Institutions and Agencies (docket number L-33110-74, filed April 30, 1975), may help resolve this issue. In the interim, many juveniles must remain in county detention and shelter facilities without timely access to needed post-dispositional services.

Detention and Shelter Care Programs, Staff and Facilities

Although specific detention criteria and the availability of alternatives to detention would eliminate unnecessary detention, there will remain juveniles who require detention or shelter care. Thus, it is important to ensure that these facilities are capable of maximizing potential benefit and providing positive experiences for such youth. Presently, however, many of the facilities and programs comprising the detention/shelter system are in need of modernization and improvement. Although much has been written to support the need for the provision of a wide range of services to juveniles held in detention or shelter care, the lack of sufficient programming in many facilities remains a serious problem. In addition, there is much disparity in New Jersey detention/shelter procedures and programming. Studies undertaken in 1974 by the State Law Enforcement Planning Agency and the Citizens Committee for Children in New Jersey revealed inconsistency among detention staff handling of juveniles and the nature of programming. Steps are being taken to eliminate this lack of uniformity as well as upgrade the level of services in such facilities.

As indicated earlier, detention and shelter programs should provide juveniles with positive experiences and services. Although the detention atmosphere generally is not conducive to treatment, courts have held that the purposes of the juvenile court provide a foundation for establishing the juvenile's legal right to treatment while detained in accordance with need.[19] Although it has been concluded that juveniles in detention and shelter facilities have a right to treatment, treatment itself has never been recognized as a legitimate goal and cannot be condoned as grounds for such placement.

Under the mandate of right to treatment, it is necessary to develop activities and services which satisfy the needs of youth who are detained. A special emphasis toward group activities may prove beneficial in salvaging bruised self concepts. It has been said that populations in detention facilities should be tailored to the program rather than the program tailored to a population of improper admissions.[20]

A program of particular importance for detained juveniles is education. When juveniles are detained, their schooling is necessarily interrupted. While some facilities in New Jersey have extensive educational programs and support services, many offer only minimal services. Traditional methods of teaching and schoolroom settings have seldom proven effective in detention facilities. Children bring to the detention or shelter classroom

[19]See Creek v. Stone, 379 F. 2d 106 (D.C. Cir. 1967); Martarella v. Kelley, 349 F. Supp. 577 (S.D.N.Y. 1972); Fulwood v. Stone, 394 F. 2d 939 (D.C. Cir. 1967); Hamilton v. Love, 328 F. Supp. 1182 (E.D. Ark., 1971).

[20]James M. Jordan, "The Responsibility of the Superintendent to Maintain the Function of Detention," Juvenile Court Judges Journal, 1968.

"years of bitter resistance to school, rooted in frustration and failure."[21] The National Council on Crime and Delinquency suggests the aims of detention education programs should be to provide daily structure, offer positive learning experiences in contrast to years of negative learning, replace failure patterns with achievement and interpret school problems and needs to the courts and the child's own school.[22] According to the State Law Enforcement Planning Agency, which has awarded substantial funds for the improvement of detention education, the past experience of such programs indicates that a program which transcends a traditional academic approach and which uses a learning process based on individual experience appears to be an appropriate teaching method in short-term holding facilities.

In some shelter facilities in New Jersey, juveniles may continue attending their own regular school or may attend schools in the surrounding community. Most, if not all, detention and shelter facilities operate some type of an internal education program, with varying degrees of effectiveness. Many lack needed remedial instruction and related support services. In addition, coordination between the facility program and the juvenile's regular school program is not always possible. Uniform statewide guidelines for such programs would help identify inadequacies and improve present programs.

[21]National Probation and Parole Association, (NPPA), Standards and Guides for the Detention of Children and Youth, New York, New York, 1958, p. 54, (NPPA now NCCD).

[22]Ibid.

A serious impediment to the implementation of educational programs complete with the necessary remedial instruction, individualized attention and supportive services is the lack of finances and the absence of any clearly defined responsibility for ensuring the necessary funds are provided. Legislation has been introduced (Assembly Bill 1306) which would, if passed, clarify responsibilities and ensure effective educational programs are provided in detention and shelter facilities. The bill assigns the State Department of Education the responsibility for developing guidelines for such education programs; the boards of chosen freeholders the responsibility for developing and implementing such programs; and the local sending school districts the responsibility for paying the costs for such education. At present, however, the issue remains unsettled and the problems still exist.

The physical conditions of many detention and shelter facilities in New Jersey are inadequate or in need of improvement. Many facilities are old buildings, some of which were originally designed for other, perhaps incongruous, purposes. When such buildings are transformed into detention centers and shelters, the resulting physical environment may inhibit necessary program elements such as group interaction. Environmental settings are also important in dealing with juveniles. Many facilities are located in large cities. Since urban areas often increase security problems and risks, there is a tendency on the part of administrators to restrict movement to and from facilities in such locations. As a result, the potential for participation in community activities may be reduced even though programs may be nearby. Thus, facilities located in nonurban areas, which

do not have the same security requirements, are able to be more flexible. On the other hand, a facility location that is too remote may help increase a detained juvenile's sense of alienation and separation from family.

There is also a tendency in detention center construction and planning to place a heavy emphasis on security and to depend upon hardware for its achievement.[23] Where security is derived through physical means, opportunities for individuality and flexibility decrease. The NAC advocates resolving security problems through open communications and a combination of adequate staffing patterns, technology and, lastly, physical means. In addition to these concerns, many facilities in New Jersey are plagued by overcrowding, thereby placing a greater restriction on operations and services.

Where detention and shelter facilities are beseiged with operational difficulties such as overcrowding, substandard conditions or limited funds, the possibility of high employee turnover may result. Of paramount importance in this situation is the negative influences on juveniles detained under such conditions.

Whether detention or shelter care experiences are ultimately positive or negative depends to a great extent upon the imagination, resourcefulness and professional soundness of detention and shelter staff. Frequently, personnel considerations receive a low priority in relation to the many issues surrounding juvenile detention. Training for detention and shelter personnel

[23]National Advisory Commission, Report on Corrections, p. 260.

like that of most juvenile justice system staff, is sporadic. There are no regular education or training programs. Occasional training sessions have only begun to meet the needs of system personnel. Presently, line officers in detention centers and shelter staff need possess only minimal educational qualifications. Responsibilities of the job are enormous although salaries are low. Staff training and orientation programs are essential for the care programs. As training and responsibilities increase, salaries would also warrant upgrading. In addition, detention and shelter facilities should have the benefit of community workers, volunteers and professional counseling and testing personnel, even if only on a part-time basis. Continued education and training on the special needs of juveniles should also be made available to such personnel.

Recent Developments in Detention and Shelter Care

Several major advances in the detention process have occurred in recent years. Presently, a clear definition of "detention" embodying secure or physically restricting facilities, which is distinquished from "shelter care" or non-secure, non-physically restricting facilities, has been generally accepted around the country. A distinction has also been drawn between juveniles who are charged with delinquency offenses (acts which if committed by an adult would constitute a criminal offense) and those who are charged with status offenses (acts which are peculiar to juveniles and which would not be a crime if committed by an adult, e.g. truancy, running away, incorrigibility). Juveniles who are charged with

status offenses are referred to as persons in need of supervision (PINS) or, as in New Jersey, juveniles in need of supervision (JINS).

In March, 1974, New Jersey became one of an increasing number of states to adopt legislation which differentiates between delinquents and status offenders and mandates certain procedures for their handling. Although many states have recognized the difference between delinquency and status offenses and offenders, this difference is not translated into differential handling. New Jersey's revised juvenile code prohibits the placement of a JINS in any secure detention facility, during either the pre-adjudication or post-dispositional stage. Thus, differential handling of JINS and most delinquents is required. In addition, the new code provides for the creation of a shelter care system to facilitate the placement of JINS in non-secure facilities while awaiting court action.

Another important change is the prohibition of holding any juvenile in a jail or lockup facility. Previous statutory law permitted the holding of youth age 16 and over in county jails. The revised juvenile code also provides that juveniles charged with status offenses (JINS) cannot be committed to an institution maintained for the rehabilitation of delinquents.

The revised juvenile code does not, however, mandate the complete separation of JINS and delinquents. Although JINS cannot be held in detention facilities, juveniles charged with delinquency offenses may be held in shelter care if the only reason for their holding is the lack of a suitable adult custodian to ensure the juvenile's appearance when required. Although JINS cannot be committed to a correctional institution, they are not segregated or treated differently from delinquents who receive any of the other possible dispositions.

One of the most difficult problems in implementing the revised juvenile code was the establishment of the mandated juvenile shelters. The counties have utilized various arrangments to comply with the legislative requirement of shelter care. Litigation is pending involving counties which have not met the Department of Institutions and Agencies mandates regarding shelter care. The outcome of such litigation will undoubtedly influence New Jersey's system of detention and shelter care.

With the emergency of court intake units, the capability to screen detention decisions prior to placement has enlarged. Court intake staff, operating under judicial approval, are able to determine the appropriateness of detention and shelter care in individual cases on a 24-hour basis. When intake units become operational in all counties, the possibility for statewide uniformity in detention and shelter care decisions will be high.

New Jersey's Status in Comparison With the National Standards*

Several national efforts have been undertaken to develop standards for the detention of juveniles. The NCCD has promulgated detention standards and recommendations in Standards and Guides for the Detention of Children and Youth, 1958; Standard Juvenile Court Act, 1959; and Standard Family Court Act, 1959. The President's Commission on Law Enforcement and the Administration of Justice in Task Force Report on Juveniles and in Challenge of Crime in a Free Society as well as the National Advisory Commission's Report on Courts and Report on Corrections have articulated many standards relating to juvenile detention. The U.S. Department of Health, Education and Welfare in its Model Acts for Family Courts and State - Local Children's Programs has also touched upon the subject. A Juvenile Justice Standards Project which includes standards for the interim status (detention) of juveniles is currently being completed by the Institute of Judicial Administration and American Bar Association (IJA/ABA) Joint Commission on Juvenile Justice Standards. Standards for interim status have been approved in general but have not yet been disseminated. The newly invoked NAC is also reconsidering juvenile justice standards, including detention standards.

Efforts have also been undertaken in New Jersey to develop standards and guidelines for detention and shelter facilities. The Task Force on the

*The Ohio State University, Program for the Study of Crime and Delinquency, Standards and Goals Comparison Project, Vol. II, Columbus, Ohio, 1974, was utilized extensively in the preparation of this section.

New Juvenile Code, Department of Institutions and Agencies, completed and promulgated a Manual for Shelters Accepting Juveniles Awaiting Court Action which was revised in January, 1975. A similar manual for detention centers is currently being drafted. Compliance with these manuals is required.

Criteria for Detention

The NAC in Courts Standard 14.2, as well as all other national efforts, support the concept that police should be insulated from the detention decision and that only the court, either through the judge or an intake official operating under the authority of the judge can make a determination to detain a juvenile.[24] New Jersey court rules provide that where a juvenile is not released by a police officer, and every attempt has been made to notify an appropriate adult custodian, the officer shall take the juvenile to the appropriate facility and complete a detention report (R. 5:8-2(c)). There is no requirement that the police officer contact the court for authorization to admit a juvenile to a detention or shelter facility. In many jurisdictions, however, police are

[24]National Council on Crime and Delinquency (NCCD), Guides for Juvenile Court Judges, NCCD, New York, New York, 1957, pp. 36-37; U.S. Children's Bureau, Standards for Juvenile and Family Courts, Washington, D.C., U.S. Gov't. Printing Office, 1966, p. 53; National Council of Juvenile Court Judges, "Handbook for New Juvenile Court Judges," Juvenile Court Judges Journal, 23, Winter, 1973, pp. 21-22; Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," pp. 67-68.

instructed to contact the intake unit for such clearance on a 24-hour basis. In those jurisdictions where there is no intake unit, this procedure is not possible.

All model standards and guides advocate the release of juveniles in the custody of their parents or guardian wherever possible. Where such release is not possible, only those juveniles who meet certain criteria for detention may be detained.[25] New Jersey criteria for detaining juveniles are similar to criteria recommended by the Department of HEW, NAC, NCCD and IJA/ABA. All include provisions for the preventive detention of juveniles (see N.J.S.A. 2A:4-56 and R. 5:8-6(e)). The IJA/ABA Joint Study Commission also recommends the mandatory release of juveniles arrested for a crime which in the case of an adult would be punishable by a sentence of less than one year.[26]

The NAC in Courts Standard 14.2, U.S. Children's Bureau and NCCD recommend that no juvenile be held in detention for more than 24 hours unless a petition or complaint is filed with the court.[27] New Jersey court rules provide that when a juvenile is taken into custody the officer or

[25]National Advisory Commission, Report on Corrections, pp. 264, 267; National Council on Crime and Delinquency, Standards and Guides for the Detention of Children and Youth, NCCD, New York, New York, 1961, pp. 23-25, 15-17; William H. Sheridan, Herbert Wilton Beaser, Model Acts for Family Courts and State - Local Children's Programs, Department of Health, Education and Welfare, Washington, D.C., May, 1974, pp. 88-89; Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 68.

[26]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 70.

[27]U.S. Children's Bureau, Standards for Juvenile and Family Courts, pp. 61-62; National Council on Crime and Delinquency, Standard Juvenile Court Act, NCCD, New York, New York, 1959, p. 39.

his or her superior must "forthwith" file a complaint with the court (R. 5:8-2(e)).

The NAC in Corrections Standard 16.9, NCCD, and IJA/ABA recommend detention only for delinquency offenses.[28] As stated previously, New Jersey statutes and court rules prohibit the placement of juveniles charged with status offenses in secure detention facilities (N.J.S.A. 2A:4-56 and R. 5:8-6(e)). Most national efforts and NAC Corrections Standards 16.9 and 8.2 recommend prohibiting the detention of juveniles in facilities used for adults.[29] New Jersey is consistent with these recommendations (N.J.S.A. 2A:4-57(c); R. 5:8-6).

Alternatives to Detention

All of the national efforts to upgrade juvenile detention practices promote the use of alternatives to detention and shelter care. The IJA/ABA Joint Study Commission suggests that the least necessary interference with the liberty of the juvenile should be favored over more intrusive

[28]National Council on Crime and Delinquency, Standards and Guides for the Detention of Children and Youth, p. 11; Institute for Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 67.

[29]President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, Washington, D.C., U.S. Gov't. Printing Office, 1967, p. 87; National Council on Crime and Delinquency, Standards and Guides for the Detention of Children and Youth, pp. 15-17; Council of State Governments, Interstate Compact on Juveniles, Article 14, n.p., 1955.

alternatives. The Commission also recommends that the state bear the burden of proving restraints on liberty are necessary and that no less intrusive alternative is appropriate.[30] New Jersey provides that if the judge finds at the detention hearing that detention or shelter care is not necessary, the court shall order the juvenile's release and may place such conditions, if any, upon release as considered appropriate (N.J.S.A. 2A:4-58 (d)). It would appear that New Jersey does not place as strong an emphasis upon the use of alternatives to detention and shelter care as recommended by many of the national standards.

The IJA/ABA Joint Study Commission also encourages the use of a summons as an alternative to detention.[31] As discussed earlier, New Jersey provides for the issuance of a summons to the juvenile by a police officer if the officer considers the issuance of a summons sufficient to ensure the juvenile's presence in court (R. 5:8-2). Both IJA/ABA and NAC recommend prohibiting the use of bail for juveniles.[32] New Jersey statutes and court rules do not enunciate a right to bail for juveniles although juveniles who

[30]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 68.

[31]Ibid., p. 71.

[32]Ibid., p. 68 and National Advisory Commission, Report on Corrections, p. 259.

reside out of state, or whose parent or guardian resides out of state, may be released upon the posting of a bond (R. 5:8-6(e)(a)).

The Detention Hearing and the Issue of Probable Cause

Most national standards and study efforts support the requirement for an automatic hearing to determine the propriety of detaining a juvenile.[33] The NAC in Courts Standard 14.2 and the President's Commission on Law Enforcement and the Administration of Justice recommend that such a detention hearing be held within 48 hours of admission. The National Council of Juvenile Court Judges recommends a detention hearing be held within 24 hours of placement but no later than 48 hours. The Department of Health, Education and Welfare recommends a hearing within 24 hours of the filing of a petition and IJA/ABA recommends a hearing within 24 hours after admission to a detention facility. Similarly, NCCD recommends that detention not be continued beyond 24 hours unless a court order has been signed for continued detention. A different opinion is expressed by the U.S. Children's Bureau which believes routinely scheduled detention hearings should be avoided as they might tend to encourage detention.[34] New Jersey provides for an initial detention hearing to be held within 24 hours of

[33]President's Commission on Law Enforcement and the Administration of Justice, Challenge of Crime in a Free Society, p. 87; National Council of Juvenile Court Judges, Juvenile Court Judges Journal, pp. 21-22; Sheridan and Beaser, Model Acts for Family Courts and State - Local Children's Programs, p. 95; Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 70; National Council on Crime and Delinquency, Standard Juvenile Court Act, p. 39.

[34]U.S. Children's Bureau, Standards for Juvenile and Family Courts, pp. 61-62.

placement in a detention or shelter care facility. If counsel is not present at this hearing, another hearing is scheduled with counsel within two court days (R. 5:8-6(d)).

Only IJA/ABA recommends that, at the detention hearing, the state should be required to demonstrate that there is probable cause to believe a crime has been committed and that the juvenile has committed it. If the state fails to establish probable cause, IJA/ABA recommends the juvenile be released.[35] In response to a report by the New Jersey Supreme Court Committee on Juvenile and Domestic Relations Courts, court rules were revised effective March 29, 1976 to provide that no juvenile may be held in a detention center for more than a reasonable period of time unless from the evidence it appears that there is probable cause to believe that the juvenile has committed an act of delinquency (R. 5:8-6(f)). Since March, a determination of probable cause must be made at the second detention hearing where such a hearing is necessary or in all other cases within two court days for all juveniles held in detention centers (R. 5:8-6(d)).

The revised court rule, however, does not define what constitutional safeguards are applicable to this determination of probable cause. A minority report of the Committee on Juvenile and Domestic Relations Courts suggested that, to offset the lack of bail in the juvenile justice system, the imposition of adversary safeguards such as confrontation and cross-examination at a probable cause determination is critical. In addition,

[35]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," pp. 71-72.

adversarial safeguards would enhance the reliability of such a determination.[36]

Rights of Detained Juveniles

Most national standards and study efforts have not articulated rights of detained juveniles, although the rights of adult pretrial detainees have been delineated. In Corrections Standard 4.8, the NAC recommends that pretrial detainees be accorded the same rights as persons convicted of a crime. Numerous procedures are recommended which provide for the protection of rights of due process, freedom from cruel and unusual punishment, free communication and access to the courts, privacy and personal appearance, medical care, political rights and protection against religious and racial discrimination. Discipline and grievance procedures are also recommended. It is generally agreed that many, if not most, of the detention and shelter care facilities in New Jersey do not provide protections for rights as envisioned by NAC.

Post-Dispositional Detention and Shelter Care

There are few national standards proposed for the post-dispositional detention of juveniles. Detention is primarily designed for the pre-

[36] "Report of the Supreme Court's Committee on Juvenile and Domestic Relations Courts," 99 N.J.L.J. 406 (1975).

adjudicatory holding of juveniles. Once a disposition is entered, it is assumed that such dispositions will be effected immediately. Thus, most national efforts which promote the ideal do not anticipate the occurrence of post-dispositional detention. To discourage the use of detention facilities during the post-dispositional stage, the IJA/ABA Joint Study Commission recommends restricting the time limit of post-dispositional detention to 15 days. This time limit may be extended to 30 days if certain conditions are present. Upon the expiration of such time limits, however, IJA/ABA recommends the charges against the juvenile be dismissed with prejudice.[37] In New Jersey, there is no limit as to how long a juvenile may remain in detention or shelter care awaiting disposition or placement. As previously mentioned, litigation is pending which, when decided, may define a time limit.

Detention and Shelter Care Programs and Facilities

In Corrections Standard 8.3 the NAC recommends that detention facilities be designed with maximum capacities of 30 juveniles. Most other national efforts recommend similarly sized facilities. The IJA/ABA recommends that facilities be designed for capacities of only 12.[38] In New Jersey, as of June, 1976, capacities for shelter range from four in Warren County to 25 in Camden and Hudson Counties and capacities for deten-

[37]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 72.

[38]Ibid., p. 74.

tion centers range from four in Somerset County to 150 in Essex County. Hudson County has the second largest detention facility with a capacity of 126. Most shelters are designed to accommodate 10 to 20 juveniles whereas most detention center capacities are around 20 to 25.

Many study efforts discourage the construction of new detention facilities. The IJA/ABA Joint Study Commission recommends a moratorium on the construction of new facilities.[39] The NCCD considers the construction of new detention facilities is rarely justified and is against such construction prior to the development of detention alternatives. The Council also prefers regional centers to smaller local facilities.[40]

Also in Corrections Standard 8.3, the NAC recommends several principles which should be considered when planning renovations or new construction. The NAC suggests facilities should be located in residential areas and should provide for small living areas, individual occupancy and be coeducational. A full range of supportive programs should be provided including education, recreation, a library, entertainment, arts and crafts and cultural activities. LEAA recommendations parallel many facets of NAC's Standard.[41] LEAA likewise advocates locations in residential areas, stresses the importance of small individual groupings and suggests recreation

[39]Ibid., p. 75.

[40]National Council on Crime and Delinquency, Standards and Guides for the Detention of Children and Youth, pp. 107-108.

[41]U.S. Department of Justice, Law Enforcement Assistance Administration, Planning and Designing for Juvenile Justice, Washington, D.C., U.S. Gov't. Printing Office, 1972, pp. 83-86.

is essential. NCCD also recommends the provision of a wide range of services.[42] In regard to education, IJA/ABA recommends juveniles should be afforded access to the school they normally attend or to equivalent tutorial programs.[43] As previously discussed, New Jersey facilities are deficient in many of these areas.

IJA/ABA also offers several recommendations governing the use of phones, mails and visits.[44] New Jersey's Manual of Standards for Shelters Accepting Juveniles Awaiting Court Action and the draft Manual of Standards for Detention Centers Accepting Juveniles Awaiting Court Action recommend procedures for access to the public which differ in several respects to the provisions recommended by IJA/ABA. Generally, the IJA/ABA standards are more liberal and afford easier access to the public.

In regard to personnel, the NCCD provides the most extensive treatment of the subject in its Standards and Guides for the Detention of Children and Youth.[45] To summarize, the NCCD suggests that staff be of sufficient size, be removed from political influence, be promoted on a merit basis

[42]National Council on Crime and Delinquency, Standards and Guides for the Detention of Children and Youth, p. 107.

[43]Institute of Judicial Administration and American Bar Association, "Information Packet on Juvenile Justice Standards Project," p. 74.

[44]Ibid.

[45]National Council on Crime and Delinquency, Standards and Guides for the Detention of Children and Youth, pp. 41-57.

and be offered salaries higher than comparable positions in other children's institutions. Personnel should be carefully selected on the basis of their suitability for working with children. In addition, staff development and training programs should be regularly scheduled. NAC Corrections Standard 8.4 recommends similar provisions. LEAA suggests there be no separation of custodial and treatment roles.[46] Most staff in New Jersey detention and shelter care facilities are Civil Service employees and are hired and promoted on the basis of Civil Service Commission regulations. There has been criticism of New Jersey's Civil Service system and the issues are too involved to be discussed here. It can be said, however, that all of the attending problems with Civil Service procedures are common to many juvenile detention and shelter care facilities throughout the State.

[46]U.S. Department of Justice, Planning and Designing for Juvenile Justice, pp. 35-36.

Standards for the Detention and Shelter Care of Juveniles

Standard 3.1 Police Procedures Relating to the Detention or Release of Juveniles

Each police department should include as part of its juvenile manual written regulations governing release procedures to be utilized where a juvenile has been taken into custody and a complaint has been or will be filed. Wherever possible, juveniles should be released with a summons when the juvenile officer considers the issuance of a summons sufficient to ensure the juvenile's presence in court. Where such release is not possible, juveniles should be released in the custody of a parent, guardian or other adult custodian upon his or her assurance to assume responsibility for the juvenile's presence in court.

1. The juvenile officer shall have the following duties in regard to the interim status of an accused juvenile:
   a. The officer shall advise the juvenile of his or her constitutional rights. Where English is not the juvenile's principal language, the officer shall, prior to any questioning, provide the necessary information in the juvenile's native language, or provide an interpreter to inform the juvenile of his or her rights.
   b. The juvenile officer shall make all reasonable efforts to contact immediately the juvenile's parent, guardian or other adult custodian during the period between the taking into custody and the presentation of the juvenile in court or at any detention or shelter facility. The officer shall inform the parent, guardian or custodian of the juvenile's rights.

c. Except in unusual circumstances, a juvenile's right to counsel should not be considered waiverable without advice of counsel.

2. A juvenile shall not be held in any prison, jail or lockup. Where necessary to allow release to a parent, guardian or custodian or detention/shelter facility, a juvenile may be held for a brief period in a police station in a place other than one designated for the detention of prisoners and apart from any adult charged with or convicted of crime.

3. A juvenile's release or transfer to the appropriate juvenile facility should be made within a reasonable time period. Under no circumstances should a juvenile be held in a police facility overnight pending release or transfer.

Standard 3.2 Criteria for the Interim Detention or Shelter Care of Juveniles

Where a juvenile officer determines immediate unconditional release is not appropriate or where efforts to locate a juvenile's parent, guardian or an adult custodian fail, the officer should contact the court or intake unit so that a detention or shelter admission or conditional release decision can be made in accordance with Pre-Adjudication Alternatives Standard 2.12.

Where unconditional release is deemed inappropriate, the judge or an intake official operating under the authority of the judge should first consider and determine whether any other form of control or conditional release is appropriate to secure the presence of the juvenile in court or reduce any serious threat to the physical safety of the community. Alternatives enumerated in Standard 3.3 should be considered. If no conditional release alternative is appropriate, the judge or intake official should state in writing the reasons for rejecting the use of any release alternative.

It should be the policy of the court that all juveniles charged with delinquency or alleged to be in need of supervision are to be released pending adjudication and dispositional hearing to a parent, guardian or other appropriate adult custodian upon written assurance that such person will accept responsibility to ensure the juvenile's presence when required.

Juveniles should not be detained or placed in shelter care unless statutory criteria are met. No juvenile should be admitted to a detention or shelter care facility without the prior approval of the judge or an intake official. Once a juvenile has been brought to a juvenile shelter or detention facility, the responsibility for maintaining or changing

interim detention or shelter status rests entirely with the court. If the only reason for the holding of a juvenile is the unavailability of a parent, guardian or adult custodian, the juvenile should be placed temporarily in shelter care and the shelter facility should make every attempt to locate an appropriate custodian.

A written record should be retained by the intake unit of the incidence, duration and reasons for the detention and shelter care of juveniles. Such records should be made available to the prosecutor, the court and defense counsel. Records should be continuously monitored to ascertain the emergence of patterns that may reflect misuse of release/detention standards and guidelines, the inadequacy of release alternatives, or the need to revise standards.

Standard 3.3 Alternatives to Detention and Shelter Care

The unconditional release of juveniles pending a court hearing and/or disposition should be the preferred course of action for most juveniles. Whenever an accused juvenile cannot be unconditionally released, conditional or supervised release which results in the least necessary interference with the liberty of the juvenile should be favored over more intrusive alternatives. In determining the appropriateness of release, factors as outlined in Standard 3.6(4) should be considered. Release alternatives to be considered include the following:

1. Release on own promise to appear at next hearing.
2. Release to parents, guardian or custodian upon written assurance to secure the juvenile's presence at the next hearing.
3. Release into the care of a custodian or organization reasonably capable of assisting the juvenile to appear at the next hearing.
4. Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the juvenile.
5. Imposition of any other restrictions other than detention or shelter care reasonably related to securing the appearance of the juvenile.
6. Release with required participation in a home detention program.
7. Partial detention, with release during certain hours for specified purposes.

Where approved by the court, juveniles in detention and shelter care should be allowed to participate where appropriate in the following programs:

1. Release during certain hours for employment, school, recreation and other community activities.
2. Release for purposes of day, weekend and/or holiday visits to the home of their parents, foster family, adult relatives, legal guardian or other approved individual.

Each juvenile released from the facility for purposes of participating in such release programs should be escorted to and from the facility by either the person he or she is visiting, a facility staff member or a volunteer specifically appointed for this purpose.

Standard 3.4 Use of a Summons in Lieu of an Arrest Warrant or in Lieu of Continued Detention Following Custody

A judge may issue a summons rather than an arrest warrant in every case in which a delinquency complaint has been filed against a juvenile not already in custody and where it appears from the complaint that there is probable cause to believe that a delinquency offense has been committed and that the juvenile has committed the offense.

A summons should take the form as specified by the Rules of Court and should be served in the same manner as a civil summons except that a summons should not be served on an accused juvenile while in school or at a place of employment.

Upon taking a juvenile into custody, a police officer should release the juvenile with a summons if the officer considers the issuance of a summons to the juvenile sufficient to ensure his or her appearance in court.

Standard 3.5 Detention and Shelter Admission Process

Juveniles should not be admitted to a detention or shelter care facility without court authorization. After obtaining authorization the police officer accompanying the juvenile should, upon arrival at the facility, complete a detention report pursuant to the Rules of Court to include the reasons for detention or shelter care, nature of conduct charged and efforts made by the officer to notify a parent, guardian or adult custodian.

The admission process should be governed by the following:

1. Emphasis should be given to prompt processing which allows the juvenile to be aware of his or her circumstances and avoid undue anxiety. Detention and shelter admission staff should be sufficient to allow for the initiation of admission processing immediately upon arrival.
2. The admission process and orientation should be conducted in a private area designated for this purpose. The atmosphere should be non-threatening and conducive to reducing fear or apprehension.
3. Intake processing should include a hot water shower with soap, the option of issuing fresh clothing similar to outside wear and proper checking and storage of personal effects.
4. All personal property and effects taken from the juvenile upon admission should be recorded and stored and a receipt issued to the juvenile. The detaining facility is responsible for these items until they are returned to the juvenile.
5. The admission process should include an interview which allows for the sharing of information between the juvenile and the admission staff. Interviews should be conducted by a counselor,

social worker or other program staff member immediately after reception. The interviewing area should be private and furnished with reasonable comfort. Emphasis should be directed toward individualizing the interview process.

a. Data to be obtained during the intake interview and recorded in the juvenile's file should include the following: name and vital statistics; a brief personal, social and occupational history; and visible physical condition.

b. Each facility should develop and publish a manual to include all facility rules and regulations, fire exits and procedures, the facility programs, the juvenile's rights and responsibilities and grievance and disciplinary procedures. A copy of this manual should be furnished to each juvenile upon admission and should be fully discussed and explained during the intake interview. Copies of the manual should be provided and the manual should be explained in the juvenile's native language. Manuals should be updated periodically and any revised material should be furnished to each juvenile.

c. Information obtained during the initial intake interview and recorded on file should not be released without a court order.

6. A routine medical examination of each juvenile should be conducted by a physician within 24 hours of admission. Action constituting a routine medical examination should be clearly defined by the court and any additional medical testing should not be undertaken without judicial approval. Medical examinations are conducted only for the welfare of the juvenile and protection of the facility, especially where the possibility of contagion or necessity for medical attention exist.

a. Immediate medical and psychiatric attention should be available in emergency situations. Working agreements must be established with local hospitals to permit the use of hospital emergency rooms where necessary.

b. All medical information should be included in the juvenile's file and any release of such information shall be governed by confidentiality safeguards.

7. Immediately upon arrival, a juvenile should be allowed to telephone his or her parents or relative, guardian, custodian, probation officer, caseworker or other similar person involved with the juvenile and his or her attorney. Upon arrival, the juvenile may be visited by such persons. Subsequent visits and telephone contacts should conform to facility visiting and telephone regulations.

Standard 3.6 The Detention Hearing and Continued Review of Detention Decisions

When a determination is made to detain a juvenile in a detention or shelter care facility pending an adjudicatory hearing, a detention/shelter care hearing shall be scheduled and held within 24 hours of detention. Notice of the hearing should be given to the accused juvenile, his or her parent, guardian or custodian and their attorney(s) upon the determination that the juvenile will be detained.

1. If the notification fails to produce the juvenile's parent, guardian or custodian, the hearing should take place in the absence of such a person.
2. If counsel is not present at the initial detention/shelter care hearing, a second hearing should be held with counsel within two court days.
3. No waiver of any constitutional or statutory right of the juvenile should be considered valid unless made in writing by the juvenile and his or her counsel.
4. At the detention/shelter care hearing, all relevant and material evidence helpful in determining the need for detention or shelter care may be admitted by the court. The judge, in determining the appropriateness of release should consider the following factors:
   a. The nature and circumstances of the offense charged;
   b. The weight of evidence against the juvenile;
   c. The juvenile's ties to the community;
   d. The juvenile's record of adjudications, if any;

e. The juvenile's record of appearance at previous court proceedings or of flight to avoid court action.

5. The juvenile and his or her attorney and parent, guardian or custodian should have full access to all information and records upon which the judge relies in refusing to release the juvenile from detention or shelter care, or in imposing release conditions or supervision.

In matters involving delinquency complaints, the burden shall be on the State to demonstrate that there is probable cause to believe that an act of delinquency has been committed and that the juvenile has committed the act. Release by the court shall be mandatory where the State fails to establish probable cause.

1. Where a juvenile has been detained, a hearing as to probable cause should be held within two court days.
2. Where a juvenile has not been detained, a hearing as to probable cause should be held within a reasonable time period.
3. Whenever possible, the judge who presides at the detention or probable cause hearing should not preside at the adjudicatory hearing.

If a juvenile remains in detention or shelter care after an initial detention/shelter care hearing, an intake officer should explore the appropriateness of alternatives to continued detention. A report on these investigations as well as any information which the juvenile's attorney may wish to add should be presented to the court at a detention/shelter care review hearing to be held within 14 days of the initial hearing. Continued detention or shelter care review hearings should be automatically scheduled at intervals not to exceed 14 days.

Adjudicatory hearings should be scheduled and held within 30 days if a juvenile is detained or placed in shelter care. A detained juvenile who, through no fault of his or her own or counsel, has not had a hearing within this time period should be released pending court action.

Standard 3.7 Post-Dispositional Detention/Shelter Care

Wherever possible, juveniles who have been adjudicated delinquent or in need of supervision should be released in the custody of a parent, guardian or custodian pending disposition. Immediately upon disposition the State should be responsible for providing post-dispositional care for those juveniles necessitating residential placement. Legislative funding should be provided to enable the State to assume this responsibility.

1. Juveniles receiving dispositions involving residential placements should be immediately placed.
2. Where placement cannot be effected immediately, juveniles should, whenever possible, be held in the custody of a parent, guardian or adult custodian.
3. Where immediate placement or release to a parent, guardian or custodian is not possible, the State shall be responsible for developing alternative interim arrangements.
4. Juveniles who receive dispositions involving non-correctional placement should not be held in detention pending such placement.
5. Diagnostic and treatment resources should be available to juveniles upon disposition.
6. Where a juvenile has been adjudicated delinquent or in need of supervision and a non-correctional residential placement is contemplated, the Division of Youth and Family Services or other appropriate authority should be notified of the matter upon adjudication so that a recommendation for disposition can be made.
7. Court liaison positions should be established between the Division of Youth and Family Services or other appropriate authority and each Juvenile and Domestic Relations or Family Court.

Standard 3.8 Rights of Detained Juveniles

Each Juvenile and Domestic Relations or Family Court jurisdiction and all facilities for the detention or shelter care of juveniles should immediately adopt policies and procedures to ensure that the rights of juveniles detained while awaiting a court hearing or awaiting disposition are observed. Juveniles so detained should be entitled to the same rights as those juveniles released pending a hearing or disposition except where the nature of confinement requires modification. These rights include but are not limited to the following:

1. The right to have access to the court to present any issue cognizable therein, including challenging the legality of their confinement and seeking redress for illegal conditions or manner of treatment while detained.
2. The right to have access to legal materials and assistance, through counsel with problems or proceedings relating to their custody, control, management or legal affairs while detained.
3. The right to be free from personal abuse by facility staff or other juveniles.
4. The right to a healthful place in which to live.
5. The right to adequate medical care to include emergency medical treatment on a 24 hour basis.
6. The right to an adequate education.
7. The right to be free from illegal searches and seizures.
8. The right not to be subjected to discriminatory treatment based on age, race, religion, nationality, sex or other such factors.

Each detention and shelter care facility immediately should adopt policies and procedures to ensure proper redress where a juvenile's rights as enumerated above are abridged. Administrative remedies, not requiring the intervention of court, should include but not be limited to the following:

1. Procedures allowing a juvenile to seek redress where he or she believes rights have been or are about to be violated. Such procedures should be consistent with Standard 3.12, "Grievance Procedure."
2. Policies of inspection and supervision to assure periodic evaluation of institutional conditions and staff practices that may affect the juvenile's rights.
3. Policies which provide for the following:
   a. Assure wide distribution and understanding of the rights of juveniles among both juveniles and facility staff.
   b. Provide that the intentional or persistent violation of juvenile's rights is justification for removal from office or employment, of any staff member.

Standard 3.9 Responsibilities of Detained Juveniles

Each juvenile and domestic relations or family court jurisdiction and all facilities for the detention or shelter care of juveniles should immediately adopt policies and procedures to encourage juveniles to accept certain responsibilities while awaiting court hearing or disposition. Juveniles detained should have the same responsibilities as those juveniles released pending a hearing or disposition except where the nature of confinement requires modification.

Each detention or shelter care facility shall develop a statement of juveniles' responsibilities to be included as part of its orientation manual provided to juveniles at admission and to staff upon hiring. This statement shall be subject to judicial approval and review prior to utilization.

The responsibilities of detained juveniles should include:

1. To recognize and respect the rights of others.
2. To know and abide by the rules and regulations of the institution.
3. To maintain neat and clean living quarters.
4. To conduct oneself in a proper manner.
5. To participate actively in the positive growth of the institution.
6. To accept a degree of responsibility for planning for one's life outside the institution and for the future.

Standard 3.10 Access to the Public

Each detention and shelter facility should develop and implement policies and procedures to fulfill the right of juveniles to communicate with the public through correspondence, visits and telephone calls. Policies and procedures should incorporate the following guidelines:

1. Juveniles should have the right to communicate or correspond with persons or organizations and to send and receive letters, packages, books, periodicals and any other material that can be lawfully mailed.
   a. Detention and shelter authorities should not limit the volume of mail to or from a juvenile under their jurisdiction.
   b. Detention and shelter authorities should have the right to inspect incoming mail in the presence of the juvenile solely for the purpose of examining for contraband and enclosures of funds. Funds may be removed from incoming mail and credited to the juvenile in accordance with facility regulations. If contraband is discovered, it shall be removed.
   c. Incoming and outgoing mail should not be read by detention and shelter authorities.
   d. Outgoing mail should not be opened by authorities. If there are compelling reasons to believe that mail may contain contraband, it should be examined only in the presence of the juvenile.
   e. Juveniles should receive a reasonable and equitable postage allowance to maintain community ties.

2. Juveniles should have the right to make and receive a reasonable and equitable number of telephone calls in order to encourage and maintain family and other relationships.
   a. Telephone calls may be limited in duration but not in content or the parties contacted, except as specifically designated by the court.
   b. Schedules should be devised that assign specific times for the use of telephones.
   c. Under no circumstances should phone calls be monitored.
   d. All outgoing telephone calls made by juveniles should be collect calls. Costs for incoming calls to juveniles should be borne by the person placing the call.
3. Juveniles should have the right to communicate in person with individuals of their own choosing.
   a. The number of visitors a juvenile may receive at any one time should not be limited except in accordance with physical restrictions.
   b. The number of visits a juvenile may have during any visiting period or the length of any visit during regular visiting periods should not be limited.
   c. Only those individuals restricted from visiting with the juvenile by the court should not be allowed to visit.
   d. Visiting schedules should not be limited to Saturdays, Sundays and holidays and should provide for evening visitation periods.

e. All regulations concerning visitors and visiting hours should be subject to judicial review.

f. The detention or shelter agency may supervise the visiting area in an unobtrusive manner but should not eavesdrop on conversation or otherwise interfere with the participants' privacy.

g. Detention and shelter authorities should facilitate and promote visitation of juveniles by the following acts:

(1) Providing transportation for visitors from terminal points of public transportation. In some instances, the agency may wish to pay the entire transportation costs of family members where the juvenile and the family are indigent.

(2) Providing appropriate rooms for contact visits that allow ease and informality of communication in a natural environment as free from institutional or custodial attributes as possible.

(3) Making provisions for family visits in private surroundings conducive to maintaining and strengthening family ties.

4. Juveniles should be allowed to have contact with the communications media.

a. Juveniles have the right to send uncensored letters and other communications to the media.

b. Juveniles should be allowed to publish articles or books on any subject and display and sell original creative works.

c. Juveniles should be entitled to receive any lawful publica-

tion and, during appropriate hours, any radio or television broadcast.

Standard 3.11 Searches of Juveniles

Each detention and shelter facility should immediately develop and implement policies and procedures governing searches and seizures to ensure that the rights of juveniles under its authority are observed and that the security of the facility is maintained through methods other than routine searches wherever possible.

1. Each detention and shelter facility should develop and present to the presiding Juvenile and Domestic Relations or Family Court judge for approval a plan for searches of the facility and juveniles confined in the facility. This plan should provide for the following:
   a. The chief executive officer of the facility shall have the sole responsibility for authorizing searches. In the absence of the chief executive officer, emergency searches should be carried out only by his or her specified designee.
   b. Avoidance of undue or unnecessary force, embarrassment or indignity for the juvenile.
   c. Use of non-intensive sensors and other technological advances instead of body searches whenever feasible.
   d. Conducting searches no more frequently than reasonably necessary to control contraband in the facility or to recover missing or stolen property.
   e. Respect for a juvenile's rights in property either owned or under his or her control.
2. Upon judicial approval, the plan for searches should be published and incorporated into the facility manual.

Standard 3.12 Rules of Conduct and Disciplinary Procedures for Juveniles in Detention or Shelter Care

Each detention and shelter facility should promulgate rules of conduct and regulations for juveniles under its jurisdiction. These rules and regulations should be published in English and appropriate foreign languages as part of the facility manual and made available to all juveniles and staff. Upon arrival at the facility, each juvenile should be provided with a copy of all rules and regulations and such material should be fully explained to the juvenile in easily understandable language or in his or her native language during the admission interview. Such rules and regulations should:

1. Be designed to effectuate or protect an important interest of the facility or program for which they are promulgated.
2. Be the least drastic means of achieving that interest.
3. Be specific enough to give juveniles adequate notice of what is expected of them.
4. Be accompanied by a statement of the range of sanctions that can be imposed for violations. Such sanctions should be proportionate to the gravity of the rule and the severity of the violation.
5. Be promulgated after appropriate consultation with juveniles, staff and other interested parties.
6. Be periodically reviewed and updated where necessary. Copies of all revised rules and regulations should be distributed to all juveniles and staff and included in the facility manual.

Detention and shelter agencies in promulgating rules of conduct should not attempt generally to duplicate criminal law. Where an act is

covered by administrative rules and statutory law the following should govern:

1. Acts of violence or other serious misconduct should be referred to court and not be the subject of administrative sanction.
2. Where a complaint has been filed as a result of such action, disciplinary action should be deferred.
3. Where a complaint is dismissed, the detention or shelter authority should not take further punitive action.

Each detention and shelter facility immediately should adopt disciplinary procedures consistent with constitutional requirements for due process for juveniles residing therein. Minor violations of rules of conduct are those punishable by no more than a reprimand, or loss of commissary, entertainment or recreation privileges for not more than 24 hours. Rules governing minor violations should provide the following:

1. Prescribed sanctions cannot be imposed by staff without the prior approval of the supervisor and without informing the juvenile of the nature of his or her misconduct and giving him or her a chance to explain or deny it.
2. If a report of the violation is placed in the juvenile's file, a copy should be furnished to the juvenile.
3. The juvenile should be provided with the opportunity to appeal the appropriateness of staff action to an impartial discipline or hearing board.
4. Where the appeal decision finds that the juvenile did not commit the violation, all references to the incident should be removed from the juvenile's records.

Rules governing major violations should provide for the following:

1. An investigation of the charges should be conducted by staff at the supervisory level prior to the scheduling of a hearing.
2. A disciplinary hearing should be held no later than 48 hours after the charges are made.
3. The hearing should be held before an impartial board composed of at least three staff members, one drawn from the custodial staff and two or a majority from the medical, administrative, social work, educational or treatment staff.
4. Advance written notice of the charges should be given to the juvenile no less than 24 hours prior to the hearing.
5. The juvenile should be allowed to designate a representative of his or her own choosing to provide assistance at the hearing. The representative should be given time to speak with the juvenile and prepare an adequate defense.
6. The juvenile should be allowed to present evidence and witnesses on his or her own behalf and to confront and cross-examine witnesses against him or her.
7. The hearing board should be required to find substantial evidence of guilt before imposing a sanction.
8. The hearing board should be required to render its decision in writing setting forth its findings as to controverted facts, its conclusion and the sanction imposed. A copy of the decision is to be given to the juvenile.

9. If the hearing board finds that the juvenile did not commit the violation, all references to the charge are to be removed from the juvenile's records.

Rules governing major violations should provide for the automatic internal review of the hearing board's decision by the chief executive officer. The reviewing authority should be authorized to accept the decision, order further proceedings or reduce the sanction imposed but may not increase the sanction. The juvenile should be allowed to appeal the decision to the Department of Institutions and Agencies.

1. The following sanctions should be expressly prohibited:
   a. Corporal punishment.
   b. The use of physical force by facility staff except as necessary for self-defense, protection of another person from imminent physical attack, or prevention of riot or escape.
   c. Any deprivation of clothing, bed and bedding, light, ventilation, heat, exercise, balanced diet, or hygienic necessities.
   d. Any act or lack of care, whether by willful act or neglect, that injures or significantly impairs the health of any juvenile.
   e. Infliction of mental distress, degradation, or humiliation.
2. The temporary restriction or isolation of a juvenile should not be used as a punitive measure but may as a last resort be used as a process for the removal of an individual from a group for the purpose of restoring and maintaining safety and the protection of all persons within the facility.
   a. Temporary restriction should be instituted according to

explicit regulations and should not extend beyond two hours duration.

b. Juveniles temporarily restricted should be under constant supervision for the duration of that restriction.

c. Juveniles temporarily restricted should be visited immediately after such restriction by a counselor or other professional staff member.

d. Whenever a juvenile is so restricted, the facts of the incident should be recorded and filed.

Standard 3.13 Grievance Procedure for Juveniles in Detention or Shelter Care

Each detention and shelter agency should develop and implement a grievance procedure consistent with constitutional requirements for due process. Written grievance procedures should be furnished to all juveniles and staff as part of the rules and regulations manual of the facility. Grievance procedures should have the following elements:

1. Each juvenile under the authority of the facility should be entitled to report any grievance and should not be subject to any adverse action as a result of filing the report.
2. Grievances should be transmitted without alteration, interference or delay to the board or committee designated as responsible for receiving and investigating grievances and recommending action.
3. The grievance board or committee should be composed of at least three staff members, one drawn from the custodial staff and two or a majority drawn from the medical, administrative, social work, educational or treatment staff.
4. Promptly after receipt, each grievance should be investigated by the grievance authority. Investigations are to include an interview of the juvenile. Upon the completion of investigation, the grievance authority should submit to the chief executive officer of the facility a report which sets forth the findings of the investigation and a recommendation. A copy of the report is to be furnished to the juvenile reporting the grievance. The chief executive officer should respond to each such report, indicating what disposition will be made in the matter. A written response should be provided to the juvenile reporting

the grievance. If the juvenile is not satisfied with the reply, he or she may request an internal hearing and/or may file an appeal to the Department of Institutions and Agencies.

Standard 3.14 Detention and Shelter Care Education Programs

Juveniles held in detention or shelter care should be afforded access to the educational institution they normally attend or, where this is not possible, to an equivalent educational program either in the community or within the facility.

The board of chosen freeholders of any county in which there is located a detention or shelter facility should establish and implement an educational program to provide each juvenile placed in such a facility with educational opportunities to include tutorial, remedial, vocational and counseling services, in accordance with guidelines to be promulgated by the Department of Education.

1. Educational programs should provide the following:
    a. Educational opportunities and services to meet the need of each juvenile based on his or her age, level of ability, previous educational experience, length of placement in such facility and reason for placement in such facility.
    b. Afford appropriate credit and certification for the successful completion of particular courses or activities. Credits earned during a juvenile's stay in detention or shelter care should be transferred to his or her regular school.
    c. Utilize the services of educators and the facilities of public and nonsectarian private schools in the local community, where appropriate.
    d. Provide for the maintenance of records concerning each juvenile's educational program.

e. Juvenile involvement in in-house school programs other than home instruction for at least the minimum time prescribed by law.

f. Compliance with all county and State academic requirements pertaining to juveniles.

g. Aid and assist in the re-entry of juveniles in the school they normally attended upon release from detention or shelter care without any loss in academic standing.

h. Maintenance of a facility library adequately stocked with appropriate reference materials and books, magazines and recordings of interest to juveniles.

2. The boards of chosen freeholders should be authorized to assess the board of education of the school district of any juvenile placed in a detention or shelter facility for the cost of such educational services.

The State Department of Education should be responsible for promulgating program guidelines for the implementation by the boards of chosen freeholders of educational programs within detention and shelter facilities. Such guidelines should include but not be limited to curriculum offerings, time devoted to instruction, qualifications of teachers, teacher-pupil ratios and requirements for facilities, equipment, materials and supplies.

Standard 3.15 Visits to Detention and Shelter Facilities

In acknowledgement of the joint responsibility of juvenile justice system components to alleviate the volume, duration and negative conditions of juvenile detention, the following visits are recommended:

1. Each juvenile or family court judge should visit each detention and shelter facility under his or her jurisdiction within 60 days of appointment and twice every year thereafter.
2. The prosecutor and every assistant prosecutor assigned to juvenile matters should visit each detention and shelter facility in his or her jurisdiction within 60 days of appointment or assignment to the juvenile section and twice every year thereafter.
3. Defense counsel should visit each juvenile client once every 14 days to review the well-being of the juvenile and conditions of the facility. Reports of visits should be retained in case files.

Standard 3.16 Juvenile Detention and Shelter Personnel Planning

Each jurisdiction should re-examine its personnel policies and procedures for detention and shelter personnel and make such adjustments as may be indicated to ensure that they are compatible with and contribute toward the goal of reintegrating juveniles into the community without any unnecessary involvement with the juvenile justice system.

Personnel policies and procedures should reflect the following considerations:

1. There should be no discriminatory employment practice on the basis of age, race, religion, sex or national origin.
2. All personnel should be removed from political influence and promoted on the basis of merit.
3. Specific job descriptions and specifications should be prepared for all personnel. Said job descriptions and specifications should be as detailed and as specific as possible, and should require experienced, specialized professionals. Relevant testing guidelines with respect to filling said positions should be established. The Department of Civil Service should be required to solicit and give consideration to job descriptions, duties and qualifications of personnel and testing recommendations from practitioner organizations directly connected with detention and shelter operation and/or supervision.
4. All personnel should receive salaries commensurate with their education, training and experience and comparable to the salaries of administrative and governmental positions requiring similar qualifications.

5. Job functions and spheres of competency and authority should be clearly outlined.
6. Staffing patterns should provide for the use of professional personnel, administrative staff, indigenous community workers and counselors.
7. Particular care should be taken in the selection of line personnel whose primary function is the delivery of programs and services. Personnel should be selected on the basis of their capacity to relate to youth and to other agencies and their willingness to cooperate with them.
8. The employment of rehabilitated ex-offenders, paraprofessionals and volunteers should be actively pursued.
9. All new employees should be provided with an extensive orientation program to include familiarization of the facility's purpose and objectives, programs, procedures, grievance and disciplinary procedures, plan for searches and the rights and responsibilities of juveniles including procedures for safeguarding juveniles' rights. New staff members should receive a copy of the facility manual upon assuming employment.
10. In-service staff development and training programs should be provided on a periodic basis. In addition to youth behavior, counseling and crisis intervention, regularly scheduled training programs should cover constitutional rights, protections and other legal issues to keep policies and procedures current with new developments and legal requirements.

Standard 3.17 State Inspection of Juvenile Detention/Shelter Facilities

The State Department of Institutions and Agencies should, periodically and at least every six months, conduct announced and unannounced inspection visits of each juvenile detention and shelter facility. Written reports should be filed within 30 days of each inspection. All such reports should be compiled on a periodic basis and submitted to the appropriate governing authority and made available to the public.

1. Inspection of facilities should ensure compliance with promulgated standards and requirements. At minimum, the following should be subject to inspection:
   a. Administrative area, including record keeping procedures;
   b. Health and medical services;
   c. Juveniles' leisure activities;
   d. Juveniles' employment, if any;
   e. Juveniles' education, work, recreation and other such programs;
   f. Juveniles' housing;
   g. Food service;
   h. Observation of rights of juveniles.
2. All books, records, accounts and reports of each facility should be available for review. Inspectors shall also observe and interview juveniles.
3. Should any facility fail to comply with any rules, regulations or standards, notification should be given citing violations. Such violations should be corrected and approved within 60 days.

4. If violations are not corrected as required or if severe violations are found to exist, specification should be withdrawn and no new commitments should be made.

5. Once specification is withdrawn, presently detained juveniles should be relocated to facilities that meet established standards, rules and regulations until a new or renovated facility is available or until conditions are corrected and specification is restored.

Standard 3.18 Juvenile Detention and Shelter Facility Planning and Evaluation

Each jurisdiction should take the following principles into consideration in evaluating present detention and shelter facilities and in planning renovations or new construction.

1. Detention and shelter facilities should be located in the community, and should be easily accessible to court and community resources. Facility planning and locations should:
   a. Develop, maintain and strengthen juveniles' ties with the community. Convenient access to work, school, family, recreation, professional services and community activities should be maximized.
   b. Increase the likelihood of community acceptance, the availability of contracted programs and purchased professional services and attractiveness of volunteers, paraprofessionals and professional staff.
   c. Afford easy access to the courts and legal services to facilitate intake screening, pre-disposition investigations, post-dispositional programming and pre-hearing detention and shelter care.
2. Under no circumstances should a shelter facility be part of any detention center, adult jail or lockup or other restrictive, secure facility. Detention centers shall not be part or adjacent to any adult jail, lockup or other restrictive, secure facility.

3. A spatial "activity design" should be developed.
   a. Planning of sleeping, dining, counseling, visiting, movement, programs and other functions should be directed at optimizing the conditions of each.
   b. Unnecessary distance between staff and resident territories should be eliminated.
   c. Transitional spaces should be provided that can be used by "outside" and inmate participants and give a feeling of openness.
4. Security should not be viewed as an indispensable quality of the physical environment but should be based on a combination of staffing patterns, technological devices and physical design.
5. Facility programming should be based on investigation of community resources with the contemplation of full use of these resources, prior to determination of the facility's in-house program requirements.
6. Detention and shelter facilities should have access to a full range of supportive programs, including education, library, recreation, arts and crafts, music, drama, writing and entertainment. Outdoor recreational areas are essential.
7. Citizen advisory boards should be established to pursue development of in-house and community-based programs and alternatives to detention.
8. No new facility for detaining juveniles awaiting court action should be constructed and no new funds should be appropriated or made available for such construction until an inventory of existing facilities has been completed and assessed.

9. A quota of available beds should be determined for each facility and should serve as a mandatory ceiling on the number of juveniles who can be held in detention or shelter care at any one time.

10. An inventory of juvenile detention and shelter facilities in each county should be conducted and published annually to assist in detention and shelter planning and evaluation. Such inventory should include the following elements:

    a. Places of secure and nonsecure detention and capacities;

    b. Average daily population and turnover;

    c. Annual number of admissions;

    d. Range of duration in detention and shelter care;

    e. Annual number of juvenile days in detention and shelter;

    f. Costs of detention and shelter care;

    g. Trial status of those in detention and shelter care;

    h. Reasons for termination of detention and shelter care;

    i. Disposition of detention and shelter care cases;

    j. Correlation of detention and shelter care to post-adjudication dispositions.

Commentary

In its investigation of juvenile detention, the Advisory Committee considered the efforts of several national studies which have promulgated standards for the detention of youth or are in the process of doing so. The Committee achnowledges such efforts and shares many of the concepts and philosophies expressed in these studies but did not elect to accept in its entirety the recommendations of any one report. The Committee also acknowledges the work of the Task Force on the Juvenile Code, Department of Institutions and Agencies, which has promulgated a Manual of Standards for Shelters Accepting Juveniles Awaiting Court Action which outlines procedural requirements for such shelters. In order to be eligible to receive juveniles in residence, a shelter must demonstrate to the satisfaction of the Department of Institutions and Agencies that it complies with the rules and regulations described in the manual. Specification* may be withdrawn at any time should the shelter fail to comply. A draft Manual of Standards for Detention Facilities Accepting Juveniles Awaiting Court Action is under development by the Task Force on the Juvenile Code. When this manual is approved and promulgated, compliance by detention facilities will be required.

While there are many similarities between the standards proposed by the Advisory Committee and the Task Force, the standards presented herein take a broader perspective and offer recommendations regarding detention not only for the facilities themselves but also for police, court, prosecution

*Before a facility is allowed to receive juveniles in residence, it must be inspected by the Department of Institutions and Agencies which, according to the type of facility, specifies it as adequate to receive a certain number of residents.

and defense components. Many legal issues were explored and incorporated into these recommendations, which represent a comprehensive collection of standards dealing with juvenile detention and shelter care.

One of the principal aims of the Advisory Committee in recommending these standards is to encourage uniformity in procedures relating to decision-making. Most decisions regarding the detention of youth fall appropriately under the aegis of the court, the most crucial decision being whether to detain or release. Although this is solely a court determination, it is recognized that, in virtually all cases, police officers must decide initially if such a decision is warranted and whether the court's decision must be sought. Law enforcement officers presently have the discretion to release a juvenile, either unconditionally or in the custody of an adult, or to request that the court determine the appropriateness of release. The Advisory Committee recommends the promulgation of written departmental guidelines to structure this discretionary decision. Where detention is not warranted, officers should make every attempt to locate a parent, guardian or other adult custodian to assume custody for the child.

In addition to custodial release it is recommended that, wherever possible, police officers release juveniles with a summons when the issuance of a summons is considered sufficient to ensure a juvenile's presence in court. Presently, New Jersey police officers are authorized to issue summonses to juveniles but the practice is very rare. Adult criminal justice system practices are placing a greater reliance upon the use of summonses, and the Advisory Committee feels its use whenever possible should be encouraged in juvenile matters. Since the use of a summons is intended to reduce any stigma associated with arrest and custody which may be detrimental to the person upon whom it is served, the Committee finds it necessary to

prohibit the serving of a summons on a juvenile at school or a place of employment. To do otherwise may create a potential for accomplishing more harm than good.

In addition to guidelines outlining discretionary authority, several standards are recommended to structure police procedures relating to the holding of juveniles. It is proposed that, prior to questioning, police officers advise a juvenile of all applicable constitutional rights. Where the juvenile's knowledge of English is limited, these rights must be preserved through communication in his or her native language or through an interpreter. The Committee does not believe a juvenile can knowledgeably and intelligently waive the right to counsel and hence, supports the opinion that a juvenile's right to counsel is nonwaiverable. Although a juvenile may have knowledge of his or her rights, he or she will not be aware of all of the implications of waiver and thus requires the effective assistance of counsel. A dilemma occurs where a juvenile desires to remain silent and the parent(s) demand his or her submission to questioning. Can a juvenile be coerced into waiving his or her rights?

The Committee supports present statutes which prohibit the holding of a juvenile in any adult prison, jail or lockup and emphasizes this restriction in Standard 3.1, "Police Procedures Relating to the Detention and Shelter Care of Juveniles." The Committee desired to strike a balance between holding a juvenile in a police station for a lengthy period and immediately transporting a juvenile to a detention or shelter facility simply because the parents cannot be reached or will not return home for several hours. Here, discretion must again be relied upon; however, the holding of a juvenile in a police facility overnight is prohibited.

Guiding the Advisory Committee's development of detention and shelter care standards is the principle that the purpose for detaining juveniles must be rigidly defined and any procedures or policies which are not in accord with this purpose cannot be tolerated. In practice, the purpose for detention/shelter care can best be gleaned from criteria advocated by statute or court rule for the holding of juveniles. Currently such criteria allow for detention where the juvenile's appearance at the next hearing is doubtful or where the nature of the conduct charged is such that the physical safety of the community would be seriously threatened if the juvenile were not detained. Shelter care is permissible for these same reasons and also where there is no appropriate adult custodian to assume responsibility, where it is necessary to protect the juvenile's health or safety and where his or her physical or mental condition makes immediate release impractical. Generally speaking, the purpose for detention of juveniles in New Jersey can be defined as two-fold: to assure the juvenile's presence in court and to protect the community by precluding the possibility of any misconduct. The Committee struggled with the issue of recommending criteria, especially in regard to the elimination or retention of the present criterion of the need for preventive detention. Unanimous agreement could not be reached although most members support the continuation of present statutory criteria. The majority opinion is reflected in the standards, however, a dissenting view follows this report.

Although the Committee advocates the detention of youth where community interests warrant, it is aware of the difficulties in determining when a juvenile is or is not a threat to the community. Since there is no common

definition of "threat to the community," detention on this basis may at times be purely subjective. The Committee cannot offer an exact definition, however it does propose in Standard 3.6, "The Detention Hearing and Continued Review of Detention Decision," several factors to be considered in determining whether detention is warranted. The application of these factors will help identify those youth who may be considered a threat to the community or who run the risk of nonappearance.

Release options which parallel those available in the adult criminal process should also be made available for juveniles. The least intrusive alternative which will satisfy the court that detention is unnecessary should be favored over more intrusive alternatives. Recommended options range from release on own promise to appear or with a summons, to the imposition of a variety of restrictions and to participation in home detention or partial detention programs. In several counties, release programs are operating successfully in shelter and detention environments. The Committee advocates the development of such programs and recognizes that court approval and cooperation is a necessary ingredient for their achievement.

The Advisory Committee concurs with present court policy to release as many juveniles as possible into the custody of their parent, guardian or custodian pending adjudication or disposition. If the only reason for holding a juvenile is the unavailability of an adult to assume responsibility, it is recommended that the juvenile be temporarily held in shelter care, which is consistent with present statutes and court rules. The Committee does not consider the complete isolation prior to adjudication of juveniles charged with status offenses from those charged with delinquency offenses as necessarily advantageous or wise. Many states which have operated under

such a system have developed facilities for status offenders which differ in name only from facilities for delinquents and thus have not accomplished any real benefit. Under the present New Jersey law, only juveniles charged with delinquency can be held in detention and juveniles charged with status offenses cannot. This does not preclude the holding of alleged delinquents and juveniles in need of supervision in shelter facilities, especially where the reason for holding relates to the unavailability of a custodian.

The Rules of Court have only recently mandated that "where a juvenile has been charged with delinquency and has been placed in detention, there must be a probable cause determination which shall be made at the second detention hearing where such a hearing is necessary, and which shall be made in all other cases within two court days." (R. 5:8-6(d). In addition, the Rules provide that "no juvenile may be held in a detention center for more than a reasonable time period, unless, from the evidence, it appears that there is probable cause to believe that the juvenile has committed an act of delinquency" (R. 5:8-6(d). Prior to this revised court rule, effective March 29, 1976, there had been no requirement that a probable cause determination be made.

The revised court rule leaves many issues unsettled and, thus, the Committee finds it necessary to recommend procedures which go beyond the scope of the revision. It is agreed that, where a juvenile is detained, a probable cause hearing should be held within two court days of detention. This determination may naturally be combined with the detention hearing. Where a combined procedure is followed, a determination of probable cause is advised prior to any examination of the need for detention; and if probable cause is not substantiated, the juvenile should be released. Where a juvenile

has not been detained, the Committee suggests it remains necessary to determine the existence of probable cause; however, a standard of "reasonable time period" in such cases is sufficient.

The judge who presides at the detention or probable cause hearing will, necessarily, learn about the juvenile's background. Such knowledge may be prejudicial to the juvenile in a hearing on the matter and for this reason, it is recommended that the judge who presides at the detention or probable cause hearing not preside at the adjudicatory hearing. Of course, difficulties arise where there is only one or a few judges assigned to hear juvenile matters. Alternating assignments or a system of rotation may be necessary to implement this standard.

It is commonly accepted that the length of a juvenile's stay in detention or shelter care has serious implications upon his or her future. An important component of detention standards is the establishment of regulartory procedures which limit the amount of time a juvenile can remain in detention or shelter care. Court rules currently provide that, where a juvenile is detained, an adjudicatory hearing is to be scheduled within 30 days. Although agreed that a time limit is necessary, the Committee could not reach a unanimous opinion regarding the length of such a time period. A dissenting view follows. Some considered 15 days a more appropriate and ideal time span, but, with practical realities, a perhaps doubtful possibility. A compromise was reached at 30 days, which is considered a reasonable time period to dispose of juvenile matters. Most jurisdictions presently comply with this standard except where difficult or complex cases such as homicide are involved. To assure total compliance, however, it is also recommended that any juvenile who, through no fault of his or her own or counsel, has not had a hearing within this time period should be released pending a hearing on conditions he or she is able to meet. A dissent was registered to this

"try or release" recommendation on grounds that such a requirement would infringe upon the court's discretion.

Whether the detention or shelter experience is ultimately beneficial or detrimental to a juvenile depends to a great extent upon the admission process and the method of treatment while confined or housed. It is essential that the rights of juveniles be closely guarded and protected during this period. The admission process should commence immediately upon arrival and be undertaken with all due respect for personal rights and privacy. It is proposed that detention and shelter facilities provide incoming juveniles with the option of wearing fresh clothing to be issued upon admission. The issuance of a uniform or any clothing that is identified as institutional wear or property, however, is not advocated. Since there is a need to retain individuality, especially in an institutional setting, clothing that does not distinguish the juvenile from other youth in the community yet allows for individual preference is advised.

The Committee also recommends an initial medical evaluation, to include both a recording of medical history and an examination, be integrated into the admission process. The urgency of medical screening is most important in local level facilities such as detention centers and shelters since admissions are received directly from the street. It is recommended that a routine medical examination be conducted by a licensed physician within 24 hours of admission. The purpose for such an admission procedure is two-fold. First of all, it protects the facility from any liability in situations where medical attention and treatment are necessary or, in cases involving communicable diseases, where widespread contagion may result. Secondly, it is

also a protection for the juvenile and may be one of the few opportunities for the juvenile to receive a complete medical evaluation. The types of tests which many considered appropriate for a routine medical examination command much argument. To ensure the protection of the facility and individual rights of privacy, it is recommended that action constituting a routine medical examination be defined by the court and adhered to; and any additional or supplementary testing, especially if it invades the privacy of the juvenile, should not be undertaken without judicial approval. Where parental and child consent for medical testing or treatment are at odds, such determinations are best left up to the judge. The Committee also recommends that any information learned from the medical examination or evaluation or during the course of medical treatment be protected by confidentiality safeguards.

In addition to initial medical screening and possible treatment, the availability of immediate medical and psychiatric attention in emergency situations is also a necessity. All too often, a juvenile in need of immediate attention has been deposited at a detention or shelter facility which cannot provide such care. Unfortunately, many hospitals and psychiatric facilities are unwilling or refuse to admit a juvenile, and have refused to do so, especially where a psychological or emotional problem is suspected. For this reason, the Advisory Committee urges the development of working agreements with local hospitals and other medical facilities to provide for emergency care on a 24-hour basis. The Committee also feels this situation deserves the attention of the medical profession which should cooperate in working out solutions to this problem.

The Advisory Committee proposes that adults and juveniles detained prior to any determination of guilt are entitled to, at the very minimum,

the same rights as those adjudicated and confined. Pretrial detainees, whether adult or juvenile, should not be subject to worse conditions than that which they might potentially receive after disposition. In recommending rights of detained juveniles, the Advisory Committee followed case precedents involving pretrial detainee rights as well as rights of adult prisoners. The proposed standards embody many basic elements of such decisions. Of particular interest to the Committee was the definition of rights regarding access to public, searches and disciplinary and grievance procedures. It is recommended that codes of conduct accompanied by the range of possible sanctions be included in the facility manual which should be distributed to all staff and juveniles upon admission. Such material should be fully explained to the juvenile in easily understandable language or where necessary in the juvenile's native language. Vague codes of expected conduct not only contribute to problems of managing juveniles but they also violate one of the basic concepts of due process: advance notice. The United States Supreme Court held in Wolf v. McDonald 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974) that inmates charged with serious misconduct require certain due process protections whenever the penalties which could be imposed would tend to affect the inmate's release or parole date or have a major change in the conditions of confinement. New Jersey law and correctional institutions procedures have been modified to comply with the Supreme Court decision. Recommended standards for New Jersey's detention and shelter care system are also reflective of this decision and are patterned in part after correctional system procedures which are mandatory for the Prison Complex, Youth Correctional Institution Complex, Correctional Institution for Women and the Training School for Boys, Jamesburg.

The New Jersey Supreme Court determined in Avant v. Clifford, 67 N.J. 496 (1975) that the "rightness and fairness" standards now firmly established in New Jersey law would be better satisfied if two (of the three) members of the correctional institution Adjustment Committee which decides disciplinary action for major violations were not selected from the correctional officer staff. To conform to Avant, the Advisory Committee recommends an impartial disciplinary hearing board be composed of at least three staff members, one drawn from the custodial staff and two or a majority from the medical, administrative, social work, education or treatment staff. An identical composition is recommended for the board or committee designated as responsible for receiving and investigating grievances and recommending action.

To protect the rights of juveniles and ensure the security of the facility is maintained, it is proposed that detention and shelter facilities immediately develop and implement court-approved search and seizure procedures. Of prime importance is the development of a plan for searches which must be approved by the court prior to implementation and included in the agency manual. This requirement would provide dual protection for the juvenile and for the institution. The Committee is cognizant that if searches are restricted, institutional authorities may become more security conscious and as a result become more restrictive in their policies regarding release for purposes of participation in community activities. As outside contact increases, so do security risks. The successful operation of community release activities depends in part upon the institution of effective security techniques necessary to maintain court and community confidence in such programs. Without this confidence, release programs may not be

allowed. Establishing this need, however, does not justify capricious searches of juveniles and their property. Since the risk is predictable and ongoing, facility authorities have ample opportunity to evaluate security requirements and implement counter measures.

One of the most perplexing issues facing New Jersey's present detention/shelter care system is post-dispositional detention. Immediately upon disposition, juveniles who have received correctional or residential placement dispositions should naturally be transferred to the institution, home or facility to which they have been ordered. Currently, the youth correctional system, which is operating at below capacity, can accommodate a juvenile upon disposition. However, most residential programs do not have openings for new juveniles and consequently, juveniles are forced to wait in detention and shelter care for want of other facilities until such time as they can be accommodated. As previously discussed, detention facilities are designed for short term, pre-adjudicatory stays and lack the necessary resources required for the rehabilitation of juveniles. Thus, the intentions of judges who order residential treatment are at times thwarted. The Advisory Committee supports the position that upon the ordering of a residential disposition, the State assumes full responsibility for the juvenile. This particular standard will perhaps be one of the most costly for the State to implement.

Recognizing the necessity to provide an adequate educational program in the detention or shelter environment and the difficulties in doing so, the Advisory Committee advocates the recommendations proposed in Assembly Bill 1320 to rectify this situation. The Committee believes it is a responsibility of the county, through the board of chosen freeholders, to guarantee

educational programs are established in detention and shelter care facilities. Educational programs should be developed in accordance with guidelines promulgated by the Department of Education and local sending school districts should be responsible for educational expenses.

A contributing factor to unnecessary detention and shelter care is a lack of understanding regarding juvenile detention practices on the part of other justice system components. The Committee believes all branches of the juvenile justice system have a joint responsibility to alleviate the volume, duration and negative conditions of juvenile detention and shelter care. Since this can only come about through knowledge, the Committee recommends each juvenile and domestic relations or family court judge, county prosecutor and every assistant prosecutor assigned to juvenile matters should visit detention and shelter facilities in his or her jurisdiction within 60 days of appointment or assignment to juvenile matters. Additional visits should be scheduled twice yearly thereafter. In addition, defense counsel, both public and private, should visit each juvenile client every two weeks. Visits should be designed to review the well-being of juveniles held in detention or shelter care and the conditions of the facilities.

The key to success or failure of detention programs, according to the National Advisory Commission, always will remain with the staff. To ensure success, personnel practices must concentrate on obtaining and retaining competent, qualified staff who enjoy and are capable of working with youth. Specialized training programs are also needed to maximize staff potential. Subjects relating to youth behavior, counseling and crisis intervention are advised, especially for those line personnel who have direct and continuous contact with resident juveniles. Professional staff

members should be encouraged to attend special workshops or conferences to improve their skills. To complement in-service training, it may be desirable to develop college training programs for detention and shelter staff as well as other system personnel.

DISSENTING VIEWS

Dissenting Opinion Regarding Standard 3.2 of the Recommended Standards for the Detention and Shelter Care of Juveniles

Willis O. Thomas

Standard 3.2 sets forth the "Criteria for the Interim Detention of Shelter Care of Juveniles." Very appropriately, this standard stresses the desirability of various alternatives to the physical detention or shelter of juveniles. The main focus of this dissent is on the two criteria set forth governing release or detention/shelter. These criteria are: (1) to secure the presence of the juvenile in court and (2) to reduce any serious threat to the physical safety of the community. I am against the enforced custody of children motivated through fear of potential threat to the community.

Strictly on the basis of equal rights and safeguards for juveniles, there should be no provision for detaining a child accused of an offense except for the purpose of assuring his presence in court. This is the only valid reason established for the pretrial detention of adults accused of crime, and even then, adults have the right to bail - juveniles do not.

To lock up people because they "might" commit a crime is a fundamental departure from American legal tradition - the presumption of innocence until proven guilty. Worse yet, there is no scientific evidence that accurate predictions can be made of future behavior. The Federal Justice Department was asked a few years back to cooperate in an experiment under which a small number of defendants judicially predicted to engage in nonviolent crimes would be released on a random basis and followed up to determine the accuracy of the predictions. The Department turned down the proposal on the basis that it did not want to experiment with the safety of its citizens. Do we in New Jersey want to experiment with the liberty of accused juveniles on the basis of untested predictions

as to their danger to society? It is bad enough to restrict the liberty of children on untested theories "after" they have been adjudicated by the courts, but it is reprehensible to do so before guilt has been established.

One of the basic thrusts of these standards is to reduce inappropriate or unnecessary detention and shelter placements. To ensure that, these standards being established for New Jersey should be as free of vagueness as possible. Yet, nowhere in this document is it recommended how judgments should be made concerning the "physical safety of the community." In fact, everything else in these standards is geared to the need to secure the presence of the juvenile in court. If, in spite of the arguments presented in this dissent, it is felt that detention/shelter of juveniles should be based on a "serious threat to the physical safety of the community," then some specific standards should be set forth for establishing that such a threat exists. If threat to public safety cannot be measured, then it should not be advocated as a legitimate criterion for detention or shelter care.

Dissenting Opinion Regarding Standard 3.6 of the Recommended Standards for the Detention and Shelter Care of Juveniles

Willis O. Thomas

In allowing a child to be detained up to 30 days prior to the adjudicatory hearing, Standard 3.6 provides for too much leeway for the court and prosecution. In its failure to provide any limits on the time a child may be detained between the adjudication hearing and the final court disposition, this standard is remiss and leaves the door open for extended detention stays.

Thirty days is much too long a period to allow a child to be detained awiating adjudication. In fact, 30 days is much too long a time to allow as a standard for the completion of the court process through to final disposition.

I recommend these standards establish, in cases where children are in custody, a time limit of 21 days from date of admission to detention to final court disposition. The present two-day time limit from admission to detention to the detention hearing, although not ideal, is not opposed.

There are at least two important reasons why detention stays prior to completion of the court process should be kept to a minimum. The first has to do with the fairness of the process and the welfare of the children detained; the second with economics.

On the issue of fairness and welfare of children, we need to consider the precept that no one is guilty until guilt is proven. Thus, it is not rational to allow children to be deprived of their freedom by being kept in detention for unlimited or excessive periods of time. This is especially unfair when it is a matter of not providing adequate numbers

of staff to process cases more quickly. Further, when a person, juvenile or adult, is in an accused status, they are experiencing a tension-filled period of anxiety pending a finding as to the allegations and a possible sentence to confinement if found guilty. This period should be as short as possible, commensurate with the protection of the rights of the accused to (1) a speedy trial; and (2) a proper defense. If matters are delayed by the defense, there should be no question of a mandatory release from custody, but if defense is able to proceed with trial, it stands to reason that the prosecution should be even more ready, having had, as it were, a head start through the investigation leading to the charging and detaining of the individual.

From the standpoint of economics, secure detention of juveniles is a very costly proposition. Not only is it costly to build detention facilities, but the daily cost per child of operating a detention home is higher than most any other type of residential facility.

Most recent construction cost estimates for secure detention in the East run from a minimum of $40,000 per bed to somewhere around $80,000. Operational costs, even for poor detention homes, run around $25.00 to $30.00 per day per child.

For whatever reason, a "maximum" placed on allowable detention stays tend to be the usual rather than the exception. If this were to prove true in New Jersey, the difference between a "usual" stay of 21 days and a "usual" stay of 30 days per child admitted to detention would amount to a significant cost factor. For example, assume that 1,200 children would

be admitted to detention on a yearly basis. At a stay of 21 days each, a total of 25,200 child care days would be given, but at 30 days each the number of child care days jumps to 36,000. At a minimum of $25.00 per child care day the 30 day stays would cost $270,000 a year more than the 21 day stays. Approximately 37 more detention beds would be needed to accommodate the 30 day stays, and if these beds had to be obtained through new construction at $40,000 per bed, the total additional cost for bed space would be $1,480,000.

Police Personnel

Introduction

Police recruitment, selection, training and promotion are interdependent processes central to effective policing. A breakdown of any one of these processes can seriously cripple the efficiency and effectiveness of a police agency.

The various functions, pressures and responsibilities associated with police work places a great burden upon the selection, training and promotional processes. Police officers are not only law enforcers but function as mediators of community and family disputes, social workers, medics and counselors. The authority to arrest and use lethal force gives officers power over life, death and the destinies of many people. These factors combined with danger place stress on officers experienced by few others in society. Selection, training and promotion therefore, should ensure that police officers are capable of handling the duties and pressures of their positions.

An objective of recruitment and selection programs should be to select and recruit individuals possessing high levels of maturity, intelligence, common sense and motivation as well as being representative of the communities to be policed. A further objective of the selection process should be that of screening out through testing, interviewing, investigating and supervising, those individuals who lack the appropriate characteristics.

Training and education alone cannot compensate for a deficient selection process. Once selected, police officers should receive a comprehensive training program to provide skills and knowledge necessary to

perform their duties effectively. Training should not only deal with technical aspects of the position but include dynamics of human behavior, social subcultures, interpersonal communication and community relations.

The promotional system is as integral to effective policing as the other factors. Officers of superior rank make up 27% of police personnel forces in New Jersey and generally determine how the other 73% perform their duties. Just as the selection and training processes for the patrol force can determine its quality, so too, the quality of superior rank officers can be determined by the processes of promotion and specialized training. The decisions of command officers affect not only the daily activities but also the future effectiveness and efficiency of police agencies.

Problem Assessment

A. Recruitment of Police Officers

Ensuring equal opportunities for ethnic minorities and women in the ranks of sworn police officers is a problem in New Jersey as well as throughout the United States. Recent studies reveal that women and ethnic minority persons have particular skills, attributes and knowledge which are beneficial to police performance and are equally competent at performing many law enforcement duties as white male police officers.

The most comprehensive study of female police officers was performed in Washington, D.C. in which newly appointed female officers and male officers were compared on a number of performance criteria. The study revealed both positive and negative findings. The positive findings include:

1. New women obtained results similar to those of comparison men* in handling angry or violent citizens.
2. New women and comparison men showed similar levels of respect and general attitude toward citizens.
3. New women and men were given similar performance ratings in several patrol skills.
4. Comparison men were more likely than new women to have been charged with unbecoming conduct.
5. Citizens showed similar levels of respect and similar general attitudes toward new women and comparison men.
6. Citizens interviewed about police response to their calls for assistance expressed a high degree of satisfaction with both male and female officers.

*"New women" refer to newly appointed female police officers and "comparison men" refer to newly appointed male police officers.

7. Citizens who had observed policewomen in action said they had become somewhat more favorably inclined toward policewomen.

8. Citizens and trained observers rated new women about the same as comparison men in handling threatening behavior.

9. Patrolwomen felt that their patrol skills were as good as patrolmen's in most cases.

10. Women were better at questioning a rape victim and there was no difference between men and women in skill at arresting prostitutes.[1]

There were some negative findings of the study which included the following:

1. There was little change in the attitudes of patrolmen toward policewomen between the start and the conclusion of the experiment.

2. Patrolwomen felt that police supervisors were more critical of patrolwomen than of men. Patrolmen felt there was no difference.

3. Police officials in an anonymous special survey gave new women lower ratings than comparison men on ability to handle domestic fights and street violence and on general competence. Women were rated equal to men in handling upset or injured persons.

4. Patrolmen doubted that patrolwomen were the equal of men in most patrol skills.

5. Patrolmen, patrolwomen and police officials agreed that men were better at handling disorderly males.

6. Citizens believed that men and women were equally capable of handling most patrol situations, but they were moderately skeptical about the ability of women to handle violent situations.[2]

[1]Peter B. Block and Deborah Anderson, Policewomen on Patrol: Final Report, Police Foundation, Washington, D.C., 1974, pp. 5-7 and 18.

[2]Ibid., pp. 5-7.

The representation of women compared with men in the ranks of sworn police officers is extremely disproportionate. During 1974, there were only 299 sworn women police officers out of the 22,387 full-time sworn police officers in New Jersey.[3]

Several national and State studies, resulting in part from the civil disorders of the 1960's, have recommended increasing the number of black and Hispanic Americans in the ranks of sworn police officers. The Governor's Select Commission on Civil Disorders, State of New Jersey, recommended that greater efforts be made to recruit police officers from black and Spanish-speaking communities and that qualified black lieutenants and captains be placed in operational command positions, including precinct commands.[4] The President's Commission on Law Enforcement and Administration of Justice revealed that the policing of black and Spanish-American communities by only white police officers has created a feeling among residents of discriminatory and unjust law enforcement by an army of occupation. The Commission further stated that minority officers policing minority neighborhoods can improve police/community relations and result in better policing since the officers have a better understanding of the culture, mores and language of the community.[5]

[3]State of New Jersey, Division of State Police Uniform Crime Reporting Unit, Crime in New Jersey - 1974: Uniform Crime Reports, Table 24, "Violent and Non-Violent Crime Region and County 1973-1974," n.p., 1974, p. 129.

[4]Governor's Select Commission on Civil Disorders, State of New Jersey, Report for Action, Trenton, New Jersey, 1968, p. 163.

[5]President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police, Washington, D.C., U.S. Gov't. Printing Office, 1967.

Ethnic minority representation continues to be a problem in New Jersey. Although the Department of Civil Service received a grant from the State Law Enforcement Planning Agency from 1973 to 1975 to develop procedures for actively recruiting minority members for such positions as municipal police officers and State correction officers, those activities produced poor results evidenced by the fact that only 15% of the applicants were from minority groups.[6] Presently, there are no Department of Civil Service programs designed for the recruitment of minorities. As of 1974, 27% of the population of New Jersey 16 years of age and over was composed of non-white, minority residents including blacks, Spanish-Americans and other races.[7]

A recent survey of municipal police departments indicates that the precentage of blacks is significant in some large departments (as shown in Table 1) but in none of the departments surveyed was the proportion of blacks on the police force close to the proportion of blacks in the community.

[6]New Jersey Department of Civil Service, Improvement in the Recruitment and Selection of Criminal Justice Personnel, A final evaluation report to the State Law Enforcement Planning Agency for grant number A-21-74.

[7]New Jersey Department of Labor and Industry, Division of Planning and Research, 1974 Affirmative Action Technical Notes, October, 1975, Table 1, p. 3.

Table 1

	Police Department Census[8]				1970 Municipal Census[9]			
	% White	% Black	% Hispanic	% Other	% White	% Black	% Hispanic	% Other
Atlantic City	73	26	1	-	55	44	-	1
Camden	76	22	2	-	60	39	-	1
East Orange	67	31	1	-	46	53	-	1
Elizabeth	94	4	-	2	83	16	-	1
Jersey City	92	6	2	-	72	21	6*	1
Newark	77	20	2	-	44	54	-	1
Paterson	89	8	3	-	72	27	-	1
Trenton	87	13	<1	-	61	38	-	1

The 1970 U.S. Census did not differentiate between whites and Spanish-speaking or Hispanic people, thus making a comparison between the percentage of Hispanic police officers and the Hispanic population difficult.

A survey of smaller police departments indicates that in many municipalities there is little or no ethnic minority representation on police departments even though the community or surrounding communities have significant minority populations. Table 2 for example, includes figures comparing the ethnic composition of police departments and city populations in Hudson County.

[8]Survey by Standards and Goals and Planning Sections of SLEPA, April-May, 1976.

[9]Bureau of the Census, U.S. Department of Commerce, 1970 Census of Population: New Jersey, Washington, D.C., U.S. Gov't. Printing Office, 1971.

*The 1970 U.S. Census did not separate Hispanic data from the white category, however, Hudson County did.

Table 2[10]

	Police Department Census				1970 Census Figures			
	% White	% Black	% Hispanic	% Other	% White	% Black	% Hispanic	% Other
Bayonne	96	3	<1	-	92	4	3	<1
East Newark	100	-	-	-	88	-	12	<1
Guttenberg	100	-	-	-	89	<1	10	<1
Harrison	100	-	-	-	92	<1	7	<1
Hoboken	91	3	6	-	62	4	32	2
Jersey City	92	6	2	-	69	21	9	1
Kearney	100	-	-	-	97	<1	2	<1
North Bergen	100	-	-	-	92	<1	8	<1
Secaucus	100	-	-	-	97	1	1	<1
Union City	95	2	2	-	58	1	40	1
Weehawken	100	-	-	-	78	<1	20	1
West New York	100	-	-	-	56	1	42	1
Hudson County Police Dept.	95	2	2	-	74	10	15	1

Data from Atlantic, Camden, Ocean, Monmouth and Passaic Counties reveals a similar although less significant trend with many departments composed 100% of white officers or a low percentage of minorities. Many of the police departments with a low percentage of minorities, however, are located in communities with a very low percentage of black and Hispanic populations.

A problem which may conflict with the goal of increasing the proportion of minority representation in police departments is that of raising the education levels of new recruits. Presently, only nine of the 170

[10]Information sent to the New Jersey State Law Enforcement Planning Agency from William J. Downey, Jr., Criminal Justice Planner, Office of the County Prosecutor, Hudson County, April 29, 1976.

municipalities in New Jersey which are under the jurisdiction of the Department of Civil Service require formal education beyond the high school level, such as 45 or 60 hours of college credits.[11]

The NAC and ABA standards recommend that the education level of police officers be increased. Some of the reasons for increasing the education level include:

1. The education level of the general public will soon surpass the high school level.
2. A college or university education may provide knowledge about human behavior and social problems that will be useful to officers in the performance of their duties.
3. A college or university education may broaden an individual's understanding and thus increase his tolerance of minorities and subcultures in the community by exposing students to differing philosophies, values, cultures and opinions.

Although such knowledge will help a police officer to understand, tolerate and communicate effectively with people possessing differing backgrounds, some of the skills required to perform police work cannot be learned in the classroom or academy. James Q. Wilson states:

> The patrolman is neither a bureaucrat nor a professional, but a member of a craft. As with most crafts, his has no body of generalized, written knowledge nor a set of detailed prescriptions as to how to behave -- it has, in short neither theory nor rules. Learning in the craft is by apprenticeship, but on the job and not in the academy...the members of the

[11] County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey, March, 1976, 5-4 and New Jersey Police Training Commission personnel interviewed by telephone by Standards and Goals Staff, SLEPA, March 26, 1976.

> craft, conscious of having a special skill or task, think of themselves as set apart from society, possessors of an art that can be learned only by experience and in need of restrictions on entry into their occupation.[12]

Whether or not a college can provide knowledge that will be beneficial to a patrol officer may need to be decided in the future. Nevertheless, as Egon Bittner stated in a lecture at the Federal Bureau of Investigation Academy, police departments will be more likely to find motivated, intelligent and gifted recruits in the colleges:

> The man on whom my life may depend who has no body of knowledge to fall back on is recruited from a continuously contracting base of high school graduates. Larger and larger segments of the more talented, aspiring, wise and gifted individuals are going to college. The wisest and most gifted individuals should be policemen not because there exists a body of technical knowledge that is difficult to master but precisely because there is no body of knowledge. Police officers must learn much of their job by themselves, on the job.[13]

Personnel from the New Jersey Office of the Public Advocate indicate that as of this date there have been no court decisions suggesting that police departments which require police applicants to possess an associate degree are discriminating against minority applicants. They further stated that should a suit charging discrimination be filed against a

[12]James Q. Wilson, Varieties of Police Behavior: The Management of Law and Order in Eight Communities, Massachusetts, Atheneum, Murry Printing Company, 1968, p. 283.

[13]Egon Bittner, lecture at Police Community Relations Institute, Federal Bureau of Investigation Academy, Quantico, Virginia, Spring, 1973.

police department, the police department may have to demonstrate statistically that police work requires more than a high school degree. Recently, however, a large percentage of police candidates (46%) entering police academies had at least some college credits, of whom 11% had bachelor degrees and four percent associate degrees.[14]

This trend, although significant, does not meet the NAC Police standards which recommend that all police recruits have at least 30 college credits. The Police Training Commission (PTC) states that:

> If the policing system in our state is beginning to attract better educated individuals, it is by accident and not by design. Current economic problems have enabled police agencies to benefit from a pool of more highly educated applicants. As the economy improves, the caliber of police applicants might very well decline, unless positive steps are taken to ensure high quality applicants.[15]

One of the means by which individuals with special expertise or higher education can be attracted to police work is through salary levels which enable police agencies to compete successfully with other employers seeking individuals of the same age, intelligence, abilities and education. The NAC recommends that entry level salaries "should be at least

[14] New Jersey Police Training Commission, Div. of Criminal Justice, Dept. of Law and Public Safety, 13th Annual Activities Report, 1974-1975, p. 14.

[15] New Jersey Police Training Commission, Div. of Criminal Justice, Dept. of Law and Public Safety, Planning to Determine the Future Role of the Commission, November 15, 1974, p. 26.

equal to any minimum entry level salary set by the state."[16] Salaries for police officers in New Jersey vary substantially with many municipal police departments offering salaries considerably less than the State. Salary levels for State Police troopers range from $14,345 per year for new recruits to a maximum of $17,985 per year.*

A recent survey of over 500 police agencies throughout New Jersey revealed that starting salaries for patrol officers range from below $6,999 per year to over $13,000 per year. The highest salary paid to patrol officers ranges from below $7,999 per year to over $15,000 per year. Generally, smaller, rural and less affluent communities offer salaries substantially less than the State Police.

[16] National Advisory Commission on Criminal Justice Standards and Goals, Report on Police, Standard 14.1, Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 354.

*These salaries include $2,850 in taxable maintenance allowance.

Table 3

Salary Ranges of Police Officers in New Jersey[17]

# of Police Depts.		Starting Salary	# of Police Depts.		Highest Salary
1975	3	Below 6,999	1975	10	Below 7,999
1974	1	7,000-7,999	1975	12	8,000-8,999
1975	9				
1974	3	8,000-8,999	1974	2	9,000-9,999
1975	35		1975	23	
1974	12	9,000-9,999	1974	1	10,000-10,999
1975	97		1975	36	
1974	6	10,000-10,999	1974	5	11,000-11,999
1975	76		1975	56	
1975	29	11,000-11,999	1974	15	12,000-12,999
			1975	93	
1975	8	12,000-12,999	1974	5	13,000-13,999
			1975	88	
1975	1	13,000-13,999	1975	55	14,000-14,999
1975	0	14,000 & Over	1975	10	15,000 & Over

NOTES: Negotiations over salaries caused delay in the adoption of 1975 salary ordinances in numerous communities. Therefore, 1974 salaries are given in some instances. Starting salaries were not given for 131 departments.

As Table 3 illustrates, most police departments offer salaries that are substantially less than the State Police. In addition, most police departments pay maintenance allowance for police officers which ranges from $100 to $600 per year. The higher allowances are usually paid to plainclothes officers, while uniformed officers either receive a 100%

[17]This table was compiled by the Planning and Standards and Goals Staffs, SLEPA, from the New Jersey Municipal Salary Report, New Jersey State League of Municipalities, New Jersey, October, 1975, pp. 39-77.

reimbursement for the costs and cleaning of uniforms or $100 to $150 per year for uniforms.[18]

Providing pay incentives for people with college education to enter police service or for active police officers to attend college is another mechanism for increasing the educational level of police officers. During the 1974-1975 academic year, 4,512 law enforcement officers (representing 20% of the police officers in New Jersey) were enrolled in one of 24 New Jersey colleges and universities providing criminal justice programs.[19] Many police departments and the State Police, however, do not provide educational incentive pay to encourage officers to attend college. According to a recent survey of over 500 police agencies, about 25% provide incentive pay for officers who attend or graduated from a college or university.[20]

B. Selection of Police Officers

New Jersey has made significant progress in developing procedures for the selection of police officers. The State Department of Civil Service, through a sophisticated research process, has developed a valid and

[18] Data on maintenance allowances obtained from a survey by the New Jersey State Lodge of the Fraternal Order of Police, June, 1976.

[19] New Jersey Police Training Commission, 13th Annual Activities Report, 1974-1975, pp. 12, 13.

[20] New Jersey League of Municipalities, New Jersey Municipal Salary Report, pp. 39-77.

reliable mental ability examination and a physical performance test for ranking police applicants. The objectives in developing the mental ability examination were to develop an examination which measured those mental attributes considered necessary for adequate on-the-job police performance and to eliminate any questions which discriminated against racial minority applicants so that it would be consistent with the Federal Equal Employment Opportunity Commission guidelines. The development of the mental abilities examination involved a five step process:

Step 1: Job Analysis - Interviews were conducted with police incumbents and their supervisors for the purpose of determining job duties and identifying worker characteristics related to job success.

Step 2: Test Development - An examination based on the job analysis information was developed. Content validity was established at this point.

Step 3: Criterion Development - Criterion measures were developed in order to evaluate the incumbent's job performance. Individuals in a department were asked to rate each incumbent on 23 performance traits.

Step 4: Administration - The examination was given to a sample of job incumbents representative of the typical candidate population. Criterion information was gathered on these incumbents.

Step 5: Data Analysis - The data were statistically analyzed in

order to determine the job-relatedness of the test.[21]

Those items found to be non-job-related or racially discriminatory were eliminated from the examination. The resulting examination includes three subtests which are aimed at measuring the major attributes considered necessary for adequate on-the-job police performance. These subtests are: a police forms completion subtest, designed to measure the ability to complete and interpret actual police forms; a discretionary situations subtest, designed to measure common sense or judgment and their related knowledge, skills and abilities; a public relations subtest, designed to measure those knowledge, skills and abilities necessary for successful interpersonal relationships.[22]

The Department of Civil Service utilized a similar process for developing a physical performance test which was designed based on a job analysis study to determine the physical activities a police officer must be prepared to perform. The resulting physical performance examination eliminated many elements of previous physical examinations that either discriminated against women or were non-job-related which included such elements as sit-ups, squat thrusts, chin-ups, gripping strength and a

[21]Robert H. Faley, A Concurrent Validation Study of a Prototype Examination for the Selection of Police Officers in New Jersey, New Jersey Department of Civil Service, Division of Examinations Test Validation and Staff Development Unit, February, 1975, pp. 2 - 31.

[22]"Information for Future Police Officer Applicants," sent to the New Jersey State Law Enforcement Planning Agency from the New Jersey Department of Civil Service, March, 1976.

lifting and running test. The present exam consists of four events: 1) Dummy drag (rescue, handling drunks); 2) Agility dodge run (pursuit); 3) Wall scale (surmounting obstacles) and 4) Running broad jump (clearing open areas). The skills required to perform these events successfully are those used on the job by experienced police officers. Each candidate must attain a 70% average on the entire exam. The following is a breakdown of the minimum passing scores for each event:

1) Dummy drag - 12.0 secs. 2) Agility dodge run - 50.6 secs.

3) Wall scale - 09.0 secs. 4) Broad jump - 7 feet [23]

Despite the efforts by the Department of Civil Service to develop entrance examinations for police officers which are job-related and consistent with equal employment guidelines, there are a number of problems with the standards and procedures for the selection of police officers in New Jersey.

One problem is that present standards for the selection of police officers have not developed progressively with the increasing complexity of police work and the resulting demands on police officers. There has been no significant change in the statutory entrance requirements for police officers in New Jersey since 1945.[24]

[23] "Information for Future Police Officer Applicants," from Department of Civil Service.

[24] New Jersey Police Training Commission, Planning to Determine the Future Role of the Commission, p. 26.

There are no statutory requirements in New Jersey that mandate a background investigation on police applicants. The lack of uniform statewide standards has resulted in extreme variations in quality and thoroughness of background investigations.[25]

The Special Investigations Unit of the New Jersey State Police has developed a comprehensive program for evaluating the backgrounds of State Police applicants, their families and associates. The background surveys require approximately 35 to 40 hours to complete and include investigations of the applicant's character, military history, past and present residences, employers and fellow employees and the criminal history and financial status of the applicant and family. The cost of such investigations is high and therefore prohibitive for most law enforcement agencies in New Jersey. The State Police, however, allocate funds to do a comprehensive background investigation because the return in the quality of manpower outweighs the expense of the investigation. Presently the Special Investigations Unit has 12 personnel: two administrators and 10 investigators. During 1973, 1974 and 1975 the Unit averaged 758 background investigations per year. The State Police do not perform background investigations for municipal police department candidates.

The lack of definition of present State standards relating to what is an acceptable background for police applicants poses another problem. The only statutory guidelines are found in N.J.S.A. 40A: 14-22 which states:

[25] Ibid.

> No person may be appointed as a member of a police department unless he '...is of good moral character, and has not been convicted of any criminal offenses involving moral turpitude.'

The above statement is too broad and does not define what is good moral character and what offenses involve moral turpitude. As a result, local appointing authorities must apply their own subjective interpretations which vary from municipality to municipality.[26]

A related problem is the manner in which police candidates should be tested to determine whether they are emotionally mature, healthy and balanced as well as to predict later job performance so that those who are not suited for police work can be screened out for consideration for police positions.

Presently many psychological techniques and tests lack the validity to predict future job performance and are limited in their usefulness to screening out applicants with severe emotional disorders.[27] Candidates with marginal emotional disorders and who may break down under pressure may not be screened out. Due to the highly technical nature of psychological tests the results are subject to misinterpretation by untrained personnel. The Medical Review Board of the State Department of Civil Service, composed of a psychologist, psychiatrist and representative of the Department of Civil Service, reversed 98 (57%) of 169 cases in which local appointing authorities had declared that applicants were rejected

[26] New Jersey Police Training Commission, Planning to Determine the Future Role of the Commission, p. 32.

[27] Ibid.

for employment for psychological and/or psychiatric reasons.[28]

There are no statutes requiring that a police applicant be examined for emotional stability by a licensed psychologist or psychiatrist prior to appointment to a county or municipal police position. N.J.S.A. 52: 17B-71(c) (Police Training Act) permits the Police Training Commission (PTC) to "prescribe psychological and psychiatric examinations for police recruits" while in a PTC-approved training school. The PTC, however, does not prescribe psychological examinations because it is waiting until such examinations are validated through intensive research. Department of Civil Service personnel confirmed the need for such validation.

According to a recent survey by the County and Municipal Government Study Commission, approximately one-third of the police departments with 50 or more officers employ psychologists. It is not known how many of these psychologists are used to administer psychological tests but it is apparent from this data that a large number of New Jersey police departments do not utilize psychologists for administering psychological tests.[29]

[28]New Jersey Department of Civil Service, Improvement in the Recruitment and Selection of Criminal Justice Personnel, a final evaluation report to the State Law Enforcement Planning Agency for grant # A-17-73.

[29]County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey, March, 1976, 2-7, and New Jersey Police Training Commission Personnel interviewed by telephone by Standards and Goals Staff, SLEPA, March 26, 1976.

Another problem is the lack of uniform standards operating in non-Civil Service police departments in New Jersey for testing a police applicant's mental and physical abilities. Presently 287 of the 457 municipal police departments are not under Civil Service jurisdiction and are free to set their own standards, consistent with statutory restrictions.[30] Most of these municipalities require a passing grade on a written and physical examination.[31] Many of these police departments are small and may not be able to afford the cost of validating the job-relatedness of the written and physical examinations to ensure that they are consistent with Federal Equal Employment Opportunity Commission guidelines. It was only after extensive research that the Department of Civil Service was able to develop validated job-related mental and physical examinations without racial and sex biases.

C. Police Training

New Jersey can be regarded as a leader in police officer training. Ten of the 15 Police Training Commission's approved regional police academies provide over 400 hours of basic training which ranks favorably with the rest of the nation. In addition to the basic training programs the PTC has the responsibility for establishing a minimum curriculum for

[30] N.J.S.A. 40A:14-122.

[31] County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey, March, 1976, 5-4.

the academies and certifying instructors. The Police Training Commission is also involved in upgrading future basic training programs through the integration of research findings and training modules from at least four major training programs developed in various parts of the country. Despite these advances in police training in the State, a number of problems have been revealed through research.[32]

One problem is that newly appointed police officers perform all the duties of a permanent police officer for a period of time up to 18 months without having to complete and pass the minimum police basic training requirements.[33] Many of the duties performed by police officers require a high level of judgment concerning "when" and "how" force should be applied. The authority to use force should not be entrusted to an untrained recruit. The potential for making mistakes is high for trained police officers and increases proportionately for police officers who have received less training. Many of the police/community relations problems,[34] as well as deaths and injuries to police officers and civilians, have resulted from overreactions and/or use of improper police procedures which are sometimes due to a lack of training. Suits have been filed against municipalities in which untrained police officers have injured a civilian.[35]

[32]The following problems were identified through interviews with authorities on New Jersey police training and in those references cited herein.

[33]N.J.S.A. 52:17B-69 extends the time within which an officer must complete training to 18 months under prescribed circumstances.

[34]Governor's Select Commission on Civil Disorder, State of New Jersey, Report for Action, Trenton, New Jersey, February, 1968.

[35]See McAndrew v. Mularchuk, 33 N.J. 172 (1960).

Police department policy in some municipalities prohibits using untrained officers on routine patrol but in other departments untrained officers are utilized for patrol with the authority to use firearms and exercise the powers of arrest.[36] Effective police work requires more than knowledge in the use of firearms. Present police training academies require recruits to complete an average of 408 hours of training which include procedures for handling domestic disputes and decision making; criminal law and procedure for investigating crimes and taking suspects into custody; and a broad range of human behavior skills such as community relations, ethics, group behavior, personal communication and youth relations. Several extensive studies of New Jersey law enforcement agencies which have recognized the importance of pre-service training have recommended that all law enforcement personnel be required to complete basic training before being authorized to exercise police authority.[37] The NAC states that:

> The public will not permit a doctor, lawyer, teacher, barber, or embalmer to practice until he successfully completes a specified training program...Only a few states...require that training be completed prior to exercising police authority...the powers of arrest and the potential for injury and death are too great to allow policemen to practice their profession without adequate training.[38]

[36]County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey, March, 1976, 5-9.

[37]The Commission to Study the Causes and Prevention of Crime in New Jersey, A Survey of Crime Control and Prevention in New Jersey, Trenton, New Jersey, March, 1968, and County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey: Findings and Conclusions, October, 1975, 2-18.

[38]National Advisory Commission, Report on Police, p. 385.

The large number of untrained and armed special police officers who are exercising police authority is a related problem. N.J.S.A. 40A:14-146 states that the governing body of a municipality may appoint special police officers for terms not exceeding one year, with no limitation on the number of separate consecutive appointments of an officer. Special police officers exercise "the same powers...as may be exercised by a municipal policeman pursuant to law..."[39]

In 1975 the Police Training Commission sent a questionnaire to municipalities throughout the State requesting information on the use of special police officers. The 542 municipalities that responded indicated there were a total of 4,445 special police officers compared with 16,489 regular officers. Of the 495 municipalities that have police departments, 384 of them (77.6%) utilize special police officers. The survey showed that 3,206 special officers were employed on a year-round basis and 20% of the municipalities with police agencies used special police for more than 20 hours a week. Fifty-two police agencies worked special police for more than 40 hours per week.[40]

The PTC survey also revealed that of most municipalities responding, 48% of the special police officers received 40 hours or less training and 7.3% received no training. This is substantially less than the minimum 280 hours mandated for regular officer basic training and the average number of hours provided by the State's 15 PTC-approved training academies,

[39] N.J.S.A. 40:37-95.13.

[40] Police Training Commission, Results of Statewide Survey of Special Police Officers, March, 1976, pp. 7-10. The questionnaire instructions specifically excluded from the category of special police officers such auxiliary personnel as traffic guards, civil defense auxiliary police and bank guards.

which is 408 hours. The County and Municipal Government Study Commission stated the main reason for use of special police officers as:

> ...financial; it costs more money to hire, train and maintain a person full-time than part-time. Another reason, far less supportable, is evasion of State training requirements.[41]

Another problem with police training in New Jersey is the lack of in-service training for police officers. Presently, there is no State requirement for in-service training. Since 1967 the PTC has had legislative authority to establish standards and minimum curriculum requirements for in-service training,[42] but funds have not been appropriated to the PTC for this purpose.

The importance of in-service training cannot be overstated. The present average number of hours for basic training given by the 15 PTC-approved academies is only 408 hours, which is equivalent to one semester of college study.[43]

The NAC states that:

> Keeping the good police officer up to date requires continual instruction. Most of it can be accomplished by in-service training given during the normal routine of service.

[41]County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey, March, 1976, 2-14.

[42]N.J.S.A. 52: 17B-71(a).

[43]County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey, March, 1976, 5-8.

> This report recommends that each police officer receive at least 40 hours of in-service training a year. This training should be more than a mere formality. It should be recorded in the police officer's personnel record and taken into consideration for promotion and specialized assignment. In large agencies, decentralized training should be available at each police station. One police officer should be given responsibility to oversee in-service training.[44]

A questionnaire by the County and Municipal Government Study Commission revealed that only 54% of the responding departments, primarily the larger departments, had some form of in-service training program. Many departments, especially small departments, have limited manpower which makes it difficult to take officers off the street for in-service training.

A 1974 PTC survey of in-service training programs in New Jersey found that two-thirds of the in-service training was administered within the municipal police departments and 194 police agencies (46.7% of those responding to the survey) indicated the designation of departmental training officers. Of this 194, however, no more than 53 (27.3%) have received Police Training Instructor training and certification by the PTC.[45]

Upon assessing the types of training provided, the PTC determined that present training is basically skill-oriented and there is a serious

[44]National Advisory Commission, Report on Police, p. 382.

[45]New Jersey Police Training Commission, Division of Criminal Justice, Department of Law and Public Safety, The New Jersey In-Service Training Report, December 9, 1975, p. 9.

lack of in-service training in several key areas that affect the efficiency of police operations. In a planning report the PTC stated:

> There is a discernable lack of courses in administration, supervising and management. In other words, little in-service training is provided for those in superior ranks who account for approximately 27% of the police population and who directly affect the other 73%.[46]

The following quote best summarizes the findings on New Jersey's in-service training:

> ...the lack of uniformly high quality in-service training opportunities for all local police officers is a serious detriment to effective local law enforcement service. Every police officer, from the newest patrolman to the veteran chief of police, should not only have the chance, but the obligation, to keep abreast of new knowledge, skills and techniques, by taking regular courses in areas especially pertinent to his duties.[47]

The lack of training for police officers in crisis intervention and conflict management procedures and methods also poses a problem. A good portion of police work involves intervention in interpersonal or group conflicts. Analysis of citizens' requests for police service indicates that approximately one in every five police cars is dispatched to an interpersonal conflict such as a quarrel between family members or friends, disturbance between teenagers and an irate resident, a landlord-tenant or

[46] New Jersey Police Training Commission, Planning to Determine the Future Role of the Commission, p. 120.

[47] County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey: Findings and Conclusions, October, 1975, 2-16.

consumer-merchant dispute, a disturbing the peace complaint, a labor strike or public demonstration.[48] These situations ordinarily do not involve a violation of the law, but the procedures and methods used by police officers in handling them can determine whether a peaceful settlement or a violent and destructive escalation of hostilities results. Very little training is provided in New Jersey that aids police officers to mediate effectively group and interpersonal conflicts.

In many communities across the country the benefits resulting from intensive conflict management and crisis intervention training include reductions in assaults and crimes between citizens, reductions in assaults between citizens and police and improved police/community relations.[49] There is a variety of methods for implementing crisis intervention training but the key element is the same; to provide officers with alternatives to the authoritarian approach to police work. Police officers are taught:

1. How properly to interpret behavior;
2. How to deal with concepts of authority and self-esteem in conflict situations;
3. How to understand their own feelings in dealing with other people;
4. How to utilize conciliatory and non-authoritarian methods for calming situations and providing alternatives to conflict.[50]

[48]Robert Wasserman, et. al., Improving Police/Community Relations, U.S. Dept. of Justice, Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 49.

[49]Morton Bard, Training Police as Specialists in Family Crisis Intervention, Washington, D.C., U.S. Gov't. Printing Office, 1970.

[50]Ibid.

The National Institute for Law Enforcement and Criminal Justice utilized the experiences of police departments throughout the country to develop an intensive conflict management training package for use by any police department.[51]

The potential benefits of implementing crisis intervention and conflict management training in New Jersey are significant. In 1974 there were 3,178 assaults on police officers, 28.5% of which occurred while officers were responding to family fights, tavern disorders and other disturbances. One percent occurred in handling mentally deranged persons and 2.8% while responding to civil disorders.[52] Other studies indicate that 40% of the time lost by line duty police officers results from injuries received while responding to disturbance calls.[53]

Another problem is that most of the police training academies operate on a part-time basis, as needs arise. Five of the 15 academies do not have full-time administrative staff and practically all of the academies do not employ full-time professional teaching staffs. Most of the instructors are working law enforcement officers on loan from their regular jobs.[54] In addition, the under-utilization of the resources and physical plants in which the county academies are located is not cost-effective and wastes

[51] Ibid.

[52] State of New Jersey, Crime in New Jersey - 1974: Uniform Crime Reports, pp. 147-149.

[53] Bard, Training Police as Specialists in Family Crisis Intervention.

[54] County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey: Findings and Conclusions, October, 1975, 2-12, 13.

already limited financial resources. Authorities on police training in New Jersey indicate that the quality of training and standards of performance expected of trainees vary greatly among the academies and is lower at the regional academies than at the State-run residential academy at Sea Girt.[55]

The primary reason for having regional academies is that they enable police recruits to be trained close to home by local instructors familiar with local needs. The analysis to date, however, suggests that given the present level of training in New Jersey from a cost and quality standpoint the number of academies should be reduced to facilitate the hiring and training of full-time instructors and optimum use of training facilities. If there is a significant increase in in-service training on the other hand, such a reduction may not be needed.

The fact that most police departments in New Jersey do not have designated departmental training officers who are responsible for educating police personnel as to departmental policies and procedures and specific community problem areas is another problem. The function of a departmental training officer should be to bridge the gap between the training received at the regional academy and local differences in police responsibility. Only 28% of the agencies responding to a PTC survey indicated that they conducted in-service training programs within their agencies while 72% relied on other agencies to conduct in-service training.[56]

[55]County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey, March, 1976, 5-11.

[56]The New Jersey Police Training Commission, The New Jersey In-Service Training Report, p. VI.

A related problem is the need to improve field training for newly assigned officers who have just finished basic training. Basic training is aimed at providing police recruits with training in proper methods for performing police duties. After the academy the key to effective training is the field training officer. One of the tasks of the field training officer is to show officers how to apply what they have learned in the academy to field situations. Authorities on police administration in New Jersey frequently state, however, that field training officers negate some of the methods learned by officers in the training academies. Some field trainers do not exemplify proper police procedure in their daily work while others are not interested in being trainers. In some cases the field trainers may never have learned to perform their duties according to proper police procedure or they find it easier to utilize other methods.

In some New Jersey communities work contracts mandating that assignments be based on seniority inhibit using the best patrol officers as field trainers. Recruits are usually assigned night duty and the most experienced officers are permitted to select only day shifts if they so desire. The lack of incentives for officers to remain on patrol results in some of the best qualified leaving patrol assignments for other more rewarding work. Higher salaries and other factors encourage many of the best officers to seek promotion to higher ranks and speciality areas while

many of the less effective patrol officers remain in the patrol ranks, often left with the responsibility of training new officers.

The NAC points out the importance of field trainers in the following statement:

> The most important element of an effective basic police field training program is the field training officer or coach. The development of the new officer is in this man's hands. The selection, training and continued preparation of the coach are crucial. The best field officer will not necessarily become the best coach. While operational performance is one criterion, the ability to convey essentials of the job to others and the desire to develop new employees are at least as important.
>
> Once the coach has been selected he must be trained. He must be kept up-to-date on the subjects he is teaching. A coach can nullify much of the basic training given a new employee or he can greatly reinforce that same training.[57]

To develop effective field trainers the NAC states that departments should offer incentives in the form of increased salaries, promotions and a distinct uniform patch to encourage qualified officers to seek out field training positions. They should also be trained in subjects such as the supervisor's role, supervision and human behavior, personnel evaluation, problem-solving techniques, teaching methods, counseling and partner relations.[58]

[57] National Advisory Commission, Report on Police, p. 396.

[58] Ibid., pp. 396, 397.

Another problem is that there is very little evaluation of training programs through the observation of on-the-job police officer performance and academy instructor classroom performance. Data from such observations should be gathered and analyzed to determine what improvements can be made in academy training.

A complaint of some police officers is that academy training does not always reflect the realities and problems of actual police work. Although the PTC initially certifies academy instructors there is no effective mechanism for determining instructor quality and thus providing feedback to instructors on whether their performance is relevant, or for improving instructor training and recertifying instructors. Presently the PTC does not have the resources to provide this function and the administrators of the training academies do not necessarily possess the appropriate skills with which to evaluate instructor performance. In addition, there are limits to the ability of students to evaluate effectively an instructor's qualifications.[59]

The need for additional Police Training Commission staff with knowledge in modern teaching and management/administrative techniques is another problem. According to interviews with PTC staff, implementation of several of the NAC training standards require personnel with experience in modern teaching techniques such as role playing, programmed learning and situation simulation. Each of these techniques has been proven very effective in police departments throughout the country for teaching certain types of

[59]New Jersey Police Training Commission, Planning to Determine the Future Role of the Commission, p. 120.

knowledge to police trainees. The PTC also needs diversified personnel with knowledge and experience in modern management and administrative techniques to facilitate the development of in-service management and supervision training programs. A management expert could also assist the PTC administrative service bureau which provides management consulting services to police agencies.

D. Promotion and Selection of Police Officers for Specialized Assignment

As a result of surveys of over 80 police departments in New Jersey, the Police Training Commission found that many police departments have inadequate supervision and management capabilities. Many of the police agencies are poorly organized; manpower is not used efficiently; supervision and administration is inadequate; and data collection and record keeping is insufficient for effective management and deployment of personnel. The PTC has identified some of the inadequacies as follows:

1. Patrol manpower is seldom deployed in proportion to workload. Shifts are usually staffed with equal manpower, even though, according to PASB* experience, approximately 22 percent of the workload occurs on the midnight to 8 a.m. shift, 33 percent on the 8 a.m. to 4 p.m. shift and 45 percent on the 4 p.m. to midnight shift. As a result, some shifts are badly overworked and others are underutilized.

2. Many departments employ an excess of superior officers assigned to duties that are not commensurate with their ranks. They are used to perform clerical and other auxiliary duties that should be performed by civilian personnel.

3. In many of the smaller agencies, special police officers are used to perform the regular patrol function. In most instances, these special police officers have received little or no training.

*Police Administrative Services Bureau, Police Training Commission.

4. Many departments do not provide adequate field supervision over patrol officers.

5. Both short- and long-range planning are lacking in many departments. Problems that arise are resolved on a crisis basis.

6. Many departments operate under outdated, incomplete rules and regulations.

7. Most departments do not have effective department orders systems. Policies and procedures are seldom clearly defined in written orders.[60]

Part of the problem of inadequate supervision and administration stems from the system used for selecting police officers for promotion to management, supervisory and administrative positions. According to the PTC and other police authorities, promotion is not strictly based on merit but significantly based on non-job-related criteria such as seniority.[61]

The promotional system implemented by most police departments and the Department of Civil Service falls considerably short of the NAC standards in that job-related promotional tests and methods for ranking an officer's qualifications have not been developed. The rankings of a police officer's qualifications for promotion should balance each prospective candidate's education and training achievements, years of police experience, scores on promotional tests and performance ratings. Currently the Department of Civil Service provides a 70% to 30% weighted balance

[60] Ibid., pp. 177 - 181.

[61] Ibid.

between the promotional test score and seniority respectively, but does not account for education and training achievement and performance ratings.

Supervisory, management and administrative training for newly promoted police officers is limited. Many officers do not receive such training prior to or after promotion. According to a recent survey by the PTC there were approximately 4,315 police superiors (excluding detectives) in New Jersey during 1974 which include sergeants, lieutenants, captains, deputy chiefs and chiefs of police. Only 798 police officers, however, participated in management, supervision and administration training programs during 1974.[62] In the words of the PTC, "little in-service training is provided for those in superior ranks who account for approximately 27 percent of the police population and who directly affect the other 73 percent."[63]

[62]Some of the officers may have participated in more than one management, supervision and administration course - thus inflating this total. New Jersey Police Training Commission, The New Jersey Training Report, pp. 7, 18.

[63]New Jersey Police Training Commission, Planning to Determine the Future Role of the Commission, p. 120.

New Jersey's Status in Comparison with the National Standards

A. Recruitment of Police Officers

The National Advisory Commission (NAC) Police Standards 13.3 and 13.6 recommend that law enforcement agencies develop programs to recruit large numbers of minority group members and women into positions as sworn police officers and that no barriers - cultural or institutional - are employed to discourage qualified individuals from seeking employment. The New Jersey Department of Civil Service conducted a program from 1973 to 1975 which was aimed partially at the recruitment of minority group members into police work, but the program has been discontinued. Department of Civil Service personnel indicated that the present high unemployment rate in New Jersey has resulted in large numbers of minority group members applying for police positions. Data from a Standards and Goals survey however, reveals that many police departments in communities with large numbers of blacks and Hispanics have not achieved proportional representation (See Problem Assessment for actual data, pp. 159-160).

Uniform Crime Reports indicates that in 1974 only 299 of the 22,387 police officers in New Jersey were females. Research by Standards and Goals staff has not found significant efforts in New Jersey to recruit women as sworn police officers; in fact some resistance by police officers in regard to the concept has been found.

Upgrading the education level of police officers by establishing programs to actively recruit college students and graduates and provide incentives for them to seek employment as police officers is recommended in NAC Police Standards 13.2 and 15.2. Currently only nine out of 170

municipalities under the jurisdiction of the Department of Civil Service require police applicants to have 30 to 45 college or university credits. Although 46% of a recent class of police recruits attending police academy basic training have some college credits, this appears to be a result more of high unemployment rather than a concerted effort to recruit individuals with college education. A program from 1973 to 1974 sponsored by the Department of Civil Service which was aimed in part at recruiting college students or graduates into police work, in actuality did very little college recruiting according to a final evaluation report.

Many police departments do provide financial and other incentives, such as scheduling patrol shifts, to encourage police officers to attend college. According to a 1973 survey by the New Jersey League of Municipalities approximately 25% of the police agencies provide financial incentives to police officers for credits successfully completed at a college or university. During the 1974-1975 academic year, approximately 20% of the law enforcement officers in New Jersey were enrolled in a college or university.

In order to enable police agencies to compete successfully with employers in the private and public sector for individuals of the same age, intelligence, abilities, integrity and education, NAC Police Standard 14.1 recommends that salaries be at least equal to salaries set by the State. Some of the variables to be considered in setting police salaries include specific functions to be performed by the agency, the economy of the area to be served by the agency and the availability of qualified applicants in the local labor market.

The salary of State Police troopers in New Jersey ranges from $14,545 per year to a maximum of $17,985 per year.* Data from a survey by the New Jersey League of Municipalities reveals that very few police agencies in New Jersey offer salaries which are competitive with those of the State Police. The median starting salary range of local police agencies for patrol officer is $9,000 - $9,999 per year and the median maximum salary range for patrol officer is $12,000 - $12,999 per year. (See Table 3 p. 165 for the municipal patrol officer's salary breakdown in New Jersey.)

B. Selection of Police Officers

The National Advisory Commission Police Standard 13.4 recommends that every state enact legislation establishing a state commission composed of representatives of local law enforcement agencies, other members of the criminal justice system and local government officials to develop and enforce state minimum mandatory standards for the selection of police officers. The commission should certify as competent to exercise police authority only those police officers who have met mandated standards relating to age, physical performance, character, emotional and psychological health, education and mental ability. New Jersey does not have a commission consistent with this recommendation. The State Department of Civil Service has established standards consistent with NAC Police Standards

*The salaries include a $2,850 taxable maintenance allowance.

13.4, 20.1 and Recommendation 13.1 relating to age, physical performance and mental ability, but these standards do not apply to the 287 municipal police agencies not under the jurisdiction of Civil Service These NAC standards and recommendation suggest that mental ability and physical performance examinations be validated based on research identifying the knowledge, mental skills, aptitude and physical skills required of a police officer for effective performance of police duties. There are no uniform statewide minimum standards for character, emotional and psychological health and education of police applicants consistent with the NAC standards.

According to National Advisory Commission Police Standard 13.4, the state commission should establish minimum standards that incorporate compensating factors such as education, language skills or experience in excess of that required if such factors can overcome minor deficiencies an applicant may have in relation to physical requirements such as age, height or weight. In New Jersey there are no height or weight restrictions and police applicants may seek special legislation if they do not fall within the 18 to 35 age requirement.

Every police agency, states NAC Police Standard 15.1, should require as a condition of employment the completion of at least 60 semester credits at an accredited college or university. The standard states that by 1978 every police agency should require that police applicants complete 90 college credits and by 1982, 120 credits. Those individuals who do not satisfy this requirement may be employed with a condition that college credits be obtained within a specified period of time.

In New Jersey there are presently no statutes requiring a minimum education level. N.J.S.A. 40A:14-22 mandates that police applicants be able to read, write and speak the English language well and intelligently. The Department of Civil Service and most police departments not under Civil Service jurisdiction require police applicants to have a high school diploma or G.E.D. certificate. Approximately ten of the 170 municipal police departments under Civil Service jurisdiction require police applicants to have 30 to 45 college or university credits. From January, 1974 to June, 1975 about 46% of the new recruits attending PTC-approved training academies had attended college: 31% had some college credits, four percent had associate degrees and 11% had bachelor degrees. During the 1974-1975 academic year, 4,512 law enforcement officers (up 12.6% from the previous year) were enrolled in one of the 24 New Jersey colleges and universities providing criminal justice programs. These 4,512 represent 21% of the 21,099 sworn officers in New Jersey, as of 1974.

NAC Police Standard 13.5 recommends that every police agency measure an applicant's mental ability through the use of job-related mental ability or aptitude tests which meet requirements of the Federal Equal Employment Opportunity Commission (FEEOC) guidelines. As described in the problem assessment, the Department of Civil Service has developed a job-related mental ability test which it administers to police applicants for positions in 170 police departments, representing 67% of the municipal police officers in New Jersey. Most of the 287 municipal police departments not utilizing the police selection services of the Department of Civil Service require a passing grade on some form of written examination. The monetary cost and

need for a sample of police officers large enough to validate statistically an ability test preclude the development by most police departments of job-related tests consistent with FEEOC guidelines.

NAC Police Standard 13.5 recommends that each police agency retain the services of a qualified psychologist or psychiatrist to conduct psychological testing of police applicants in order to screen out those who have mental disorders or are emotionally unfit for police work. The standard suggests that psychological tests should also be used to predict which applicants would have the best potential as an effective police officer. According to a recent survey approximately one-third of the police departments with 50 or more officers use psychologists. Although the NAC standards recommend psychological or psychiatric examinations of police applicants, many authorities indicate that most psychological tests have not been validated as adequate predictors of job performance. The National Advisory Commission recognizes this fact when it states that psychological tests should be utilized "when scientific research establishes the validity and reliability of such a predictor" (NAC Police Standard 13.5).

Background investigations of police applicants should be conducted by every police agency and personal interviews and polygraph examinations used where appropriate (NAC Police Standard 13.5). Rejection of a candidate should be for job-related reasons and not based on an applicant's arrest or conviction record alone without consideration of circumstances and dispositions. As indicated in the problem assessment, there are extreme variations in the quality and thoroughness of background investigations in New Jersey. The thoroughness depends on the amount of resources

a police department can expend and the training of the background investigator. Many police departments are too small to afford the expense of a comprehensive background investigation. The use of polygraph examinations as an employment screening device is illegal pursuant to N.J.S.A. 2A:170-90.1. N.J.S.A. 40A:14-22 states that no person may be appointed as a member of a police department unless he "...is of good moral character, and has not been convicted of any offense involving moral turpitude." The statute, however is vague and lends itself to the interpretation of the appointing authority regarding what constitutes "good moral character" and what offenses involve moral turpitude.

C. Police Training

The following information has been synthesized from the New Jersey Police Training Commission's report entitled Planning to Determine the Future Role of the Commission and the County and Municipal Government Study Commission's Aspects of Law Enforcement in New Jersey.

New Jersey is consistent with several of the National Advisory Commission standards on police training. The establishment of the New Jersey Police Training Commission, the make-up of its membership and its statutorily mandated functions are consistent with National Advisory Commission Police Standard 16.1. The only major element missing relating to Standard 16.1 is that the State does not reimburse police agencies for 100% of the salary

or provide State-financed incentives for every police employee's satisfactory completion of State mandated training. N.J.S.A. 52:17B established the Police Training Commission (PTC) which develops minimum curriculum requirements for the mandated training of police; prescribes standards; approves and issues certificates of approval to existing regional, county, municipal and police chief association police training schools; consults and cooperates with colleges and universities within the State for the development of specialized courses of study for police officers in police science and administration; and appoints an executive secretary to perform general administrative functions. The PTC is composed of 10 members: two citizens appointed by the Governor; the president or representative of; the New Jersey State Association of Chiefs of Police, the New Jersey State Patrolman's Benevolent Association, Inc., the New Jersey League of Municipalities, the New Jersey State Lodge, Fraternal Order of Police; the Attorney General; the Superintendent of State Police; the Commissioner of Education and the Special Agent in Charge of the State of New Jersey for the Federal Bureau of Investigation.

NAC Police Standards 16.1, 16.2 and 16.3 recommend that minimum basic training of 400 hours in duration be established for sworn police personnel prior to exercising the authority of their position. Without defining its terms the standards recommend that basic training be of sufficient duration and content to prepare police officers for the functions and tasks of their positions. The Police Training Commission mandates a minimum of 280 hours of training for police officers. As of January 1, 1975 the median number of course hours for the 15 training academies in the State was 419 hours, with the number of training hours among them ranging from 294 to 554

hours. The PTC is updating its training methodology based on major research efforts aimed at determining the roles, duties, tasks and performance objectives of police officers. N.J.S.A. 52:17B-69 permits newly appointed police officers to exercise the authority of their position up to 18 months before having to complete basic training. There is no similar New Jersey law regarding the training of special police officers, even though they may have the authority of arrest and exercise other police powers.

Provisions for choosing electives in subjects in addition to the minimum mandated training, additional training during the first year of employment and additional training in areas such as instruction in law, psychology and sociology relating to interpersonal communication, police role and community relations are recommended in NAC Police Standards 16.2 and 16.3. The PTC curriculum provides 41 hours for electives but the actual number varies from academy to academy. Additional formal training for full-time sworn police employees during the first year of employment is not mandated in New Jersey. The Police Training Commission requires subjects related to the areas mentioned above in the basic training course, including but not limited to: 20 hours of criminal law; 22 hours covering arrest, search and seizure; two hours on constitutional law and 30 hours of human relations training. The training in human relations covers such areas as ethics, group behavior, mentally and physically handicapped people, personal communications and youth relations.

It is further suggested in NAC Police Standard 16.3 that additional training methods should include self-paced training material, documentation of employee performance in specific field experiences, periodic

meetings between the field trainer, employee and training academy staff and a minimum of two weeks' additional training six months following the completion of basic training. New Jersey's academies do not utilize self-paced correspondence materials as a training method and there does not appear to be very much evaluation of training through the observation of employee performance. There is very little feedback from trainees, their immediate supervisors, agency administrators and elected officials and presently there is no mandated in-service training offered at the academies.

For individuals who are deficient in their training performance but demonstrate potential for satisfactory performance NAC Police Standard 16.3 advises remedial training. The PTC prescribes procedures for trainees who fail an exam or firearms qualification through coaching and re-examination. If the trainee fails the second test the subject must be repeated. The sending or appointing police agency must pay for repeat courses and therefore has the option to dismiss a trainee.

NAC Police Standard 16.3 recommends that training be provided by every agency so that employees assigned to a specialized task can perform it acceptably. Academies in New Jersey do offer specialized training; however, it is the responsibility of the individual departments to ensure that promoted officers are trained in specialized assignments. There is no centralized control over specialized training efforts and no mandated specific training requirements for specialists. New Jersey also lacks minimum requirements for supervisory and management training for promoted officers.

The development and improvement of interpersonal communications skills of all officers and programs that bring together officers, personnel from other elements of the criminal justice system and the public to discuss the role of the police officer is advised by NAC Police Standard 16.4. Few police agencies or schools use police officers who are professionally trained in interpersonal communications. Three hours in personal communication are presently mandated by the Police Training Commission. In addition, several other PTC mandated courses provide training which includes some aspects of interpersonal communications such as community relations, youth relations, report writing and patrol practices. Many police departments, especially those with police/community relations officers, develop programs (through a speaker's bureau program) that bring the public, criminal justice system personnel and police officers together to discuss roles and mutual problems.

NAC Police Standard 16.5 suggests every police agency provide 40 hours of annual formal in-service training. Currently there is no State mandated requirement that police officers must complete in-service training. A survey conducted by the PTC in 1974 indicated that in-service training and participation has increased. There is a serious lack of training for police officers functioning in supervisory and management positions. In 1971, the Police Training Commission distributed an "In-Service Directory" (presently being updated) which listed those programs offered by non-police agencies. Currently five colleges offer baccalaureate degree programs in criminal justice and the State University offers master and doctorate degrees in criminal justice. This is in agreement with NAC Police Standard 16.7.

According to NAC Police Standard 16.6, every police agency should provide training programs that emphasize student-oriented instruction methods. The NAC recommends the training sessions include student involvement in training through instructional techniques such as role playing, situation simulation, group discussions, reading and research projects and utilization of individual trainee response systems. The PTC instruction methods course that each instructor must take before being certified does not include the teaching methods described above. Presently, lectures are the most widely utilized method of instruction with role play, situation simulation, research projects and response systems used on a very limited scale. The use of team teaching, preconditioning materials, programmed instruction and computer assisted instructions, all of which are recommended by the National Advisory Commission, are not being utilized in New Jersey.

Every police training academy and police agency should, according to NAC Police Standard 16.6, ensure that all its instructors are certified by the State by requiring certification for specific training subjects based on work experience and educational and professional credentials. The PTC does not certify instructors for specific training subjects, however requirements for regular instructor certification include a minimum of two years of law enforcement experience, a high school diploma or equivalent and completion of an instructor's training course. Certification is achieved by filing an application with the Police Training Commission that is approved by the police chief, endorsed by the academy director and renewed and approved by the PTC. Last year 629 instructors were certified as instructors, 74 of whom were certified as special instructors.

The current instruction methods course that must be completed prior to certification consists of 30 hours as compared to the minimum 80-hour instructor training program recommended by the NAC. PTC Rule 13:1-3.6 states that regular instruction ceritification will be renewed by the Police Training Commission at the beginning of the year which is partially consistent with NAC Police Standard 16.6. Renewal of certification, however, is not based on evaluation of the instructor's performance by the training academy or Police Training Commission.

In relation to the certification of all police training academy and police agency instructors, NAC Police Standard 16.1 recommends that all sworn police officers who have satisfactorily completed basic training should be certified. N.J.S.A. 52:17B-71(e) states that the PTC is empowered to certify all police officers who successfully complete basic police training.

The National Advisory Commission Police Standard 16.7 suggests that certification of a police basic training program require training facilities to operate nine months of the year and, where appropriate, establish cooperative training academies and strategically located criminal justice training centers. The State-operated academy provides seven basic training cycles a year, each 10 weeks in duration.* Ten other academies operate nine months of the year. The State-operated academy is the only residential academy in operation year-round. Presently there are 15 PTC-certified police academies operating in the State. There are no criminal justice training centers in New Jersey.

*Some of these cycles run concurrently.

The evaluation of each police training instructor should be accomplished through periodic monitoring of their presentation (NAC Police 16.6) and an advisory committee should review and evaluate training programs (NAC Police 16.2). New Jersey has no uniform program of instructor evaluation. Nine of the 15 academies have some form of an advisory committee which reviews the training programs but evaluations of procedures and techniques of academy staff need significant improvement. New Jersey's State Police Academy currently utilizes the technique of having the trainee critique the training programs six months following graduation. The Academy acknowledges these critiques by making the appropriate changes.

Rotation of police training instructors through operational assignments to keep them current with the problems and needs of police officers, use of outside instructors whenever their expertise and presentation methods can be used and the assessment of the workload of each instructor are recommended in NAC Police Standards 16.6 and 16.3. Many departments utilize rotation as a method of gaining exposure in a variety of police functions. The majority of instructors in New Jersey are sworn police personnel who are part-time instructors in most cases, which obviates the need for rotation back into police assignments. Instructors who are not police officers, but who have expertise in specialized areas are also certified and utilized primarily by county academies. Sea Girt and the city academies use outside instructors only when full-time staff do not have the expertise in certain subjects. Each training director is responsible for managing his respective academy, but it is not known if assessments are made concerning the workload of instructors.

NAC Police Standard 16.6 recommends that each training academy restrict formal classroom training to a maximum of 25 trainees for more efficient learning. New Jersey's training classes exceed the recommended maximum of 25 students. In fiscal year 1974 the average class size was 47 whereas the average class size from 1969 to 1974 was 45.

Each police station should be provided with a certified training instructor, audio visual equipment and home study materials states NAC Police Standard 16.5. A PTC survey reveals that 194 municipal police departments (42%) have designated training officers, some of whom are certified. Approximately 68% of the local police departments have less than 25 officers which raises questions regarding the feasibility of full-time training officers. The Police Training Commission has provided each training academy with audio-visual equipment which included a sight-sound projector, film strip projector, phonograph, overhead projector, screens, easels and IACP Program material for use in the sight/sound program. A film library of approximately 60 titles is maintained by the PTC and administered by the Division of Motor Vehicles. Home study or correspondence training materials are not utilized by the training academies.

D. Promotion and Selection of Police Officers for Specialized Assignment

According to NAC Police Standards 17.1 and 17.3 every police agency should develop a merit system for the promotion of police officers which considers the employee's job performance, training, education and scores

on job-related mental aptitude tests. Non-job-related bonus points for seniority, military service and heroism should not be considered in ranking officers for promotion according to the NAC standards. It is recommended by NAC Police Standards 17.1 and 17.2 that each police agency establish a program of continuous evaluation of employee performance and qualifications in order to identify those who are suitable for advancement and guide them toward achieving their full potential by providing education and training opportunities.

Formal evaluation of an officer's potential or qualifications for promotion is delayed frequently until a promotional test is completed. Promotion in police agencies under the Department of Civil Service jurisdiction is primarily based on the score achieved on a promotional test and seniority. Individuals can score lower on the test than others and still be promoted over the latter if they have enough seniority. Criteria such as educational and training achievement and job performance ratings do not appear to be primary considerations in promotional decisions.

NAC Police Standard 9.2 recommends that every police agency establish minimum requirements for police officers to be considered for assignment to specialized functions. These requirements should include length and diversity of work experience, formal education, specialized skills and aptitude. The primary criteria for appointment to the majority of specialized assignments in New Jersey appear to be approval of the Chief of Police and seniority.

Police Personnel Standards

Standard 2.1 General Principle of Police Personnel Standards

The objective of a police agency is not only to enforce the law but to maintain order. Order maintenance requires an officer to possess the ability to manage conflict rather than suppress it. Effective conflict management* is facilitated when police officers are properly educated, selected, trained and rewarded for performance.

Effective and efficient police work requires police officers who are emotionally stable, intelligent, representative of the community to be policed, of good character and who possess an understanding of:

1. The dynamics of human behavior.
2. The cultural characteristics of groups living and working within the community.
3. The social and psychological needs of people.
4. Human emotions in a time of crisis.

*Conflict management is the application of non-authoritarian police techniques during interpersonal and group conflicts which results in reductions of hostilities and provides disputants with alternatives to conflict rather than an escalation to violence, assault, injuries, death and/or arrests.

Standard 2.2 Authority to Establish Uniform Statewide Personnel Standards for Police Officers

Legislation should be enacted to expand the authority of the Police Training Commission (PTC) to encompass the establishment of uniform statewide standards for the recruitment, selection, education, training and promotion of police personnel which should be implemented by the Department of Civil Service and all police agencies. The expanded PTC will hereon be referred to as the Police Personnel Standards Commission (PPSC). The legislation authorizing expansion of the PTC to the PPSC should mandate that:

1. The membership of the Police Personnel Standards Commission (PPSC) should at least include representatives of local law enforcement agencies to ensure responsiveness to local police needs; the New Jersey Association of Chiefs of Police; Police Administrators of the State of New Jersey; minority groups; women groups; two public groups; the Attorney General; the Superintendent of State Police; the New Jersey State Patrolman's Benevolent Association, Inc.; the New Jersey State League of Municipalities; the New Jersey State Lodge of the Fraternal Order of Police; the Departments of Education and Higher Education; and the New Jersey Association of Criminal Justice Planners.

2. The PPSC should have (or utilize the services on a contract basis of) qualified staff with experience in police selection theory and practice, psychiatric and psychological testing, mental ability and physical ability testing, modern personnel administration, behavioral science and research methods, education and training, recruiting, modern management and administration technology and personnel with police experience.

3. The PPSC and all the personnel standards contained herein should apply to all police agencies presently covered under the Police Training Act.*

4. The PPSC should establish and periodically update statewide uniform standards for recruitment, selection, education, training and promotion of police officers which are job-related and consistent with Federal Equal Employment Opportunity Commission (FEEOC) guidelines.

5. The PPSC should validate, through the use of proven research methods, the recruitment, education, selection, training and promotion standards to ensure that they are job-related and consistent with FEEOC guidelines.

6. The PPSC should validate or assemble a group** to validate physical, mental ability and psychological tests for determining the qualifications of police applicants which have been developed by nationally funded study groups. When valid tests cannot be found, the PPSC should develop or commission to be developed validated tests for use by police agencies throughout the State. (See Standard 2.9.)

7. The PPSC should validate or assemble a group** to validate nationally developed ability and aptitude tests for determining the qualifications of police officers for promotion and selection for specialized functions. If nationally developed tests cannot be found the PPSC should develop or commission a study group to develop validated ability and aptitude tests for use by all police agencies in New Jersey. (See Standard 2.22.)

*All police agencies not covered under this Act should endeavor to meet these standards.

**The Department of Civil Service could be commissioned to validate

8. The PPSC should develop or assemble a study group* to develop for use by all police agencies in the State a valid scoring system based on physical, mental, psychological background and achievement characteristics to be used in ranking the qualifications of police applicants. (See Standard 2.8.)

9. The PPSC should develop or assemble a study group* to develop job-related scoring systems for ranking the qualifications of police officers for promotion or assignment to specialized functions. (See Standard 2.21.)

10. The PPSC should expand the technical assistance services of the PTC to local police agencies to include aid and assistance for implementing standards for recruitment, education, selection, training, promotion and management.

11. The PPSC should ensure that the standards are met by inspecting for local compliance and certifying as competent to exercise police authority only those police officers who have met mandated selection and training standards.

12. Funds should be appropriated to enable the PPSC to acquire the needed staff and provide technical assistance and financial incentives for implementation of standards established by the PPSC.

The legislature should abandon its practice of passing special legislation which waives selection requirements for individual police applicants who do not meet minimum selection standards. All police agencies

*The Department of Civil Service could be commissioned to validate tests and develop scoring systems for use by all New Jersey police agencies.

should meet or exceed the police personnel standards established by the Adult and Juvenile Justice Advisory Commission on Criminal Justice Standards and Goals and the PPSC.

Standard 2.3 Financial Incentives to Police Agencies for Compliance with Police Personnel Standards and State Financing of Police Academies

The State of New Jersey should, by 1980, reimburse every local police agency which meets the minimum recruitment, selection, education, training and promotion standards for at least 25% of the total funds expended by the agency in payment of all salaries for a period of at least two years after initial compliance is determined.

Every police agency should be reimbursed by the State of New Jersey for 100% of the salary of police officers while attending training academies or be provided with appropriate financial incentives for every police employees' satisfactory completion of any State mandated and approved police training program.

Every police agency should be reimbursed or provided by the State of New Jersey with start-up funds for implementation of recruitment, selection and promotional standards for a period not to exceed two years unless it is demonstrated that the program requires more than two years for implementation.

Standard 2.4 General Police Recruiting

Every police agency should ensure the availability of qualified applicants to fill police officer vacancies by aggressively recruiting applicants.

1. The police agency should administer its own recruitment program.
   a. The agency should assign to specialized recruitment activities employees who are thoroughly familiar with the policies and procedures of the agency and with the ideals and practices of professional law enforcement.
   b. Agencies without the expertise to recruit police applicants successfully should seek expertise from the Department of Civil Service or form cooperative personnel systems with other police agencies that are likely to benefit from such an association: every police agency, however, should retain administrative control of its recruitment activities.
2. The police agency should direct recruitment exclusively toward attracting the best qualified candidates. In so doing it:
   a. Should make college-educated applicants a target of recruitment efforts.
   b. Should concentrate recruitment resources according to the agency's need for personnel from various ethnic backgrounds.
   c. Should concentrate recruitment resources on attracting females into applying for positions as sworn police officers.

d. Should seek individuals with an ability to speak a language spoken by a sizable portion of the community or who are familiar with the people and culture of the community acquired by living in the community.

3. Every police agency immediately should ensure that it presents no artificial or arbitrary barriers - cultural or institutional - to discourage qualified individuals from seeking employment or from being employed as police officers. Affirmative action programs that seek to recruit minorities should be developed regardless of the ethnic make-up of the community and should at least attempt to provide an ethnic make-up in each police agency which reflects the ethnic composition of the community to be served. Every police agency should support minority recruitment efforts by:

a. Ensuring that hiring, assignment and promotion policies and practices do not discriminate against minority group members.

b. Continually evaluating the effectiveness of specialized minority recruitment methods so that successful methods are emphasized and unsuccessful ones discarded.

The PPSC should provide technical assistance to police agencies in the development of affirmative action programs. The affirmative action program should ensure an adequate pool of qualified minority applicants.

4. Every police agency should immediately ensure that there exists no agency policy that discourages qualified women from seeking employment as sworn or civilian personnel or prevents them from realizing their full employment potential.

5. To facilitate the recruitment of women and minorities police agencies should ensure that:

a. Selection, training, promotion and salary policies are not discriminatory.

b. Career paths for women and minorities should allow each individual to attain a position classification comensurate with his/her particular degree of experience, skill and ability.

c. Separate police organizational entities composed solely of women should be abolished except those which are identified by function or objective, such as a female jail facility within a multi-unit police organization.

6. Where the pool of college educated, ethnic and female applicants does not elicit qualified applicants, intensified recruitment programs should be implemented to create larger pools of such applicants.

7. The police agency and Department of Civil Service should seek professional assistance - such as that available in advertising, media and public relations firms - to research and develop increasingly effective recruitment methods.

8. The police agency and Department of Civil Service should evaluate the effectiveness of all recruitment methods continually so that successful methods may be emphasized and unsuccessful ones discarded.

Standard 2.5 Police Salaries

Local government should establish and maintain salaries that attract and retain qualified sworn personnel. Police salaries should reward the productivity of police officers on an individual basis.

1. Every local government should establish an entry-level sworn police personnel salary that enables the agency to compete successfully with other employers seeking individuals of the same age, intelligence, abilities, integrity and education.
2. Every local government should establish a wide salary range within its basic occupational classification, with the maximum salary sufficient to retain qualified personnel by providing them with the opportunity for significant salary advancement without promotion to supervisory or management positions.
3. Every local government should establish a salary review procedure to ensure the automatic annual adjustment of police salaries to to reflect the prevailing wages in the local economy and to meet the competition from other employers. The criteria applied in this annual salary review procedure should not be limited to cost of living increases, average earnings in other occupations or other economic considerations which, applied in isolation, can inhibit effective salary administration.
4. Every local government should establish a sufficient salary separation between job classifications to provide promotional incentives and to retain competent supervisors and managers.

5. Every local government should provide its police agency's chief executive with a salary that is commensurate with the responsibility of the office.

6. Every local government should establish within its salary structure a merit system that rewards demonstrated excellence in the performance of assigned duties.

Standard 2.6 Police Selection Standards

The PPSC should establish and periodically update statewide uniform standards for the selection of police officers. The Department of Civil Service and all police agencies should implement those standards. Selection standards should be job-related and consistent with Federal Equal Employment Opportunity guidelines. The standards should cover the following criteria:

1. Character, with consideration given to the responsibilities of police officers; the need for public trust and confidence in police personnel; contemporary conceptions of acceptable behavior and mores of differing communities; activities of police candidates prior to application for police service which would indicate potential weaknesses in character which may be exploited by criminal elements or predispose a candidate to participate in illegal or unethical conduct; defining N.J.S.A. 40A:14-22 by listing the types of crimes for which candidates should be disqualified under the moral turpitude provision and illucidating what is considered good moral character.
2. Personality profile, with consideration given to the need for personnel who are psychologically healthy and capable of enduring emotional stress.
3. Education, with consideration given to the mental skills and knowledge necessary to perform the police function properly.

The PPSC should validate the selection standards through the use of proven research methodologies.

Standard 2.7 The Selection Process

Legislation should be enacted mandating every police agency to employ or utilize other agencies or departments to employ a formal process for the selection of police officers which meets minimum uniform statewide standards established by the Police Personnel Standards Commission (PPSC). This process should include a written test on mental ability and aptitude, an oral interview, a physical examination, a psychological examination or test and an in-depth background investigation prior to appointment.

1. All tests and examinations should be job-related and consistent with Federal Equal Opportunity Commission guidelines.
2. Police departments that can allocate manpower and resources to a comprehensive police selection process should administer these tests and examinations under the supervision of qualified personnel. If a police department cannot allocate resources for a comprehensive selection process, examinations and tests should be administered on a regional basis by an agency with statewide jurisdiction such as the Department of Civil Service or by police training academies. Similarly, background investigations should be performed by the county prosecutor's office only if the police agency does not have sufficient resources.
3. All personnel who administer and interpret examination results should be trained and certified for this function by the PPSC or the Department of Education.
4. A random sample of tests and examinations which require interpretation should be annually audited to ensure proper interpretation of results and provide feedback on the performance of test adminis-

trators for the purpose of identifying needs for future training of test administrators and their recertification.

5. Scoring systems for ranking the qualifications of each police applicant should include characteristics such as test scores, educational achievement, ability to communicate with a sizable portion of the community and knowledge of the community's culture.

Standard 2.8 Development and Validation of a Selection Scoring System

The PPSC should assemble a competent group of police practitioners in cooperation with the Department of Civil Service, behavioral scientists and personnel administrators to validate nationally funded selection scoring systems or research, develop and validate a selection scoring system which balances physical, mental, psychological and achievement characteristics and background factors that are reliable and valid predictors of police officer performance for use by all appointing authorities responsible for selecting police officers. Background factors should include the ability to communicate with a sizable portion of the community and knowledge of the culture, mores and people in the community to be policed gained by living in the community. This group:

1. Should identify those characteristics that are valid and reliable predictors of a police applicant's value - to self, the police agency and the public - as a police officer.
2. Should determine the relative values of characteristics such as education level, aptitude test scores, psychological test scores and background factors and levels within characteristics, as predictors of police officer performance and should develop a system for representing these values numerically and combining them to arrive at a score.
3. Should recommend for various types of police agencies operating under various conditions the minimum qualifying scores that validly and reliably predict performance that warrants hiring and provide any technical assistance necessary for the agency to validate these scores and the criteria on which they are based.

Standard 2.9 Development of Job-Related Ability and Personality Inventory Test for Police Applicants

The PPSC should assemble a competent group of police practitioners and behavioral scientists to validate nationally developed psychological tests and personality profile inventories for use by all police agencies or the Department of Civil Service for screening police applicants. The Department of Civil Service should continue to expand the criteria included on Civil Service tests for measuring the mental abilities and aptitude of police applicants. The application of nationally developed police applicant mental ability and aptitude tests should be studied by the Department of Civil Service and/or the PPSC and a competent group of police practitioners to determine their validity in testing New Jersey police applicants. New Jersey should develop mental ability and psychological tests only if national studies have been proven to be invalid. The tests and personality profile inventories should be job-related and consistent with FEEOC guidelines.

1. The research should identify the personality profile, mental skills, aptitude and knowledge necessary for successful performance of various police tasks. The research should include a random sample of minority and female police officers as well as a random sample of the police population as a whole.
   a. The functional complexity of the police mission should be defined specifically, following a comprehensive analysis of the police tasks which involves police officers and a random sample of the civilian population of New Jersey in the process;
   b. Various mental skills, knowledge levels and personality

profiles should be defined and matched to the police function.

2. Based on results of this research, tests or test models and personality profile norms should be developed and validated to determine reliably whether an applicant is qualified to perform the tasks of the position applied for.

Standard 2.10 Psychological Testing, Examinations and Observations

Legislation should be enacted mandating that all police applicants be psychologically screened to determine whether they are emotionally stable and capable of performing under stress. The process of psychological screening should include the following elements:

1. Every police department must utilize the services of a qualified psychologist* certified to examine police candidates prior to appointment. The New Jersey Board of Psychological Examiners should determine which psychologists are qualified to psychologically examine and test police applicants and certify only those psychologists to perform psychological screening of police applicants. It is preferred that psychological organizations, institutes or clinics administer psychological examinations on a regional basis. Psychological examiners should be periodically recertified based on performance evaluations by the PPSC.
2. The PPSC should periodically determine the effectiveness of psychological screening by comparing the recommendations of psychological screeners with data provided by police agencies concerning the performance of police officers who have been screened. The PPSC should query police agencies concerning the effectiveness of psychologists in examining police candidates and pass this information on to the New Jersey Board of Psychological Examiners.

*The definition of a qualified psychologist is a psychologist licensed by the New Jersey Board of Psychological Examiners. To be licensed, a psychologist must have a Ph.D. in psychology, two years of supervised training and take a written and oral examination.

3. As an alternative to each police agency hiring its own psychologists, a pool of qualified psychologists should be provided at regional centers by the State on an as-needed-basis.
4. In those cases where a psychologist rates a candidate as marginal or possessing potential emotional problems which may surface under acute or chronic stress, the candidate should be examined independently by another psychologist and a joint evaluation filed.
5. Psychological tests can be administered and scored by laypeople if purely objective in nature but all interpretations of tests and examinations should be performed by qualified, certified psychologists.
6. Psychological tests and examinations for police officers which are validated and job-related should be used on a uniform basis throughout the State, but until such tests and examinations are developed existing tests and examinations should be used.
7. Psychological tests should be administered while police recruits are attending police academies.
8. During a police recruit's probationary period of employment, which should be at least one year, field training officers and supervisors should rate recruits on their ability to handle emotional stress and their general behavior and demeanor while performing police duties.
9. Every police agency should establish procedures and guidelines for evaluating a recruit's ability to perform under stress and general behavior and demeanor while performing police duties or

utilize procedures and guidelines developed by the Police Personnel Standards Commission.

10. Police recruits who are rated as having potential psychological problems during the probationary period of employment or while attending a police academy should be re-examined by a qualified psychologist.

11. Police applicants, trainees or probationary recruits who are not certified by the Police Personnel Standards Commission as qualified to perform police work for psychological reasons, should have the right to appeal the decision to the Department of Civil Service's Medical Review Board or a similarly composed board.

12. Funds should be appropriated to reimburse each police agency for the cost of psychological examinations.

Standard 2.11 Oral Interviews

Every applicant for a position as a law enforcement officer should be subjected to an oral interview by a panel of three individuals prior to appointment. Interview panels should be frequently reconstituted and composed of a representative of the community to be policed, the police agency and local government. Oral interviewers should receive at least two hours of training in proper interview technique and procedure prior to taking part in oral interviews. The panel should rate the candidate on a number of factors and issue a recommendation to the employer for hiring or not hiring the applicant.

The PPSC should develop and promulgate a standardized process and series of questions to be used by all police agencies to elicit responses which will enable oral review panels to rate a candidate on several characteristics which cannot be discovered by testing and background investigations. The characteristics to be reviewed and questions asked by oral review panels should be consistent with FEEOC guidelines. The PPSC should define those characteristics and include those which are appropriate in the standardized interview process.

Standard 2.12 Background Investigation

Legislation should be enacted mandating that the background of all applicants for positions as sworn police officers be investigated. Each applicant after initial physical performance, mental ability and psychological testing who is being seriously considered for a position as sworn police officer, should receive a comprehensive background investigation. The background investigation should determine whether applicants have character consistent with the following criteria: honesty, reliability, adaptability, industriousness, motivation, respect for authority and contemporary morality.

Background investigations should involve the following procedures:

1. A questionnaire completed by applicants covering their personal, social, marital and familial relationships; financial, educational, residential, criminal, health, employment and military history; and their citizenship.
2. Information on the questionnaires should be verified through personal and telephone interviews with the applicant and people associated with the applicant such as employers, classmates, teachers, neighbors and landlords.
3. Personal records should be presented by the applicant such as birth and marriage certificates, annulment and divorce papers, unemployment records, military discharges, driver's license and automobile registration.
4. Fingerprints should be obtained and checked with local, State and federal law enforcement agencies to verify criminal history.
5. All applicants should have access to the complete record of a background investigation within ten days after it is requested.

Applicants should receive only one background investigation regardless of the number of New Jersey law enforcement agencies they apply to for employment. Information obtained through background investigations should be stored by the police agency that performed the investigation for a period not to exceed five years. The information should not be placed in computer form.

The names of all applicants on whom background investigations have been performed and the agency that administered the investigation should be maintained in a file by the PPSC. Before a police agency investigates the background of an applicant it should contact the PPSC to determine whether an investigation has been conducted in order to avoid duplication. Each agency seeking to obtain the record of a background investigation should update the record.

Comprehensive background investigations should be administered by police departments only when they can allocate sufficient manpower to expend an average of 40 hours per applicant for investigation. Agencies for which adequate resources do not exist for administering comprehensive background investigations should utilize the services of the County Prosecutor's Office.

All personnel involved in investigating backgrounds of police applicants should receive training in:

1. Procedures and standards for investigating police applicant's backgrounds.
2. Skills and techniques of interviewing.

Standard 2.13 Review of Selection Decisions

Every police agency should select the best qualified applicants for positions as police officers. Applicants should not be disqualified for a position as police officer on the basis of non-job-related factors such as race, color, creed, sex, religion, national origin or political affiliation.

Every police agency should develop written policy to be disseminated to the public concerning standards and procedures for selecting police officers. The policy should include a procedure for informing police applicants concerning the reasons for which they were not hired and methods for appealing selection decisions.

1. Police applicants who are rated as qualified or unqualified for employment for any reason should be notified in writing. Those who are rated as unqualified should be notified as to the reasons for disqualification within ten days of disqualification.
2. The applicant should be afforded the opportunity to appeal the decision if the applicant determines that the decision was based on incorrect information or discrimination.
3. Appeals should be reviewed by an impartial three member board composed of a representative from the PPSC, local police agencies and the public sector.
4. The appellant should have the opportunity to be represented by counsel and present evidence and testimony concerning the candidate's qualifications at a review hearing.
5. The review board should decide on the merits of each case and make a recommendation to the hiring agency. The decision should not be binding but advisory.

Standard 2.14 Preparatory Training for Police Officers

For the safety of the public and the individual police officer, legislation should be enacted mandating every sworn police officer in New Jersey to complete successfully the State mandated minimum basic training prior to being authorized to exercise police authority.* No appointment to positions as sworn police officers should be made until the individuals have been accepted into a specific police academy class. Police agencies should make appointments coincide with entrance of a recruit into a police academy. Temporary certification should be issued to police recruits following the successful completion of basic training. This certification should be made permanent upon the successful completion of field training and a one year probationary period (which should commence with appointment of the police officer).

*Police authority as referred to herein includes enforcing the laws and ordinances of the State and municipality, keeping the peace, carrying a weapon and using force if necessary to fulfill these duties.

Standard 2.15 Private Security Guards

Legislation should be enacted mandating all private security guards who are authorized to carry a firearm to receive firearms training, qualify with the weapon and be trained as to the laws and proper procedures for the use of firearms and force at a PPSC-approved academy. The expense of the training should be assumed by the organizations utilizing private security guards.

Standard 2.16 Selection, Training and Assignment of Special Police Officer Reserves

Every community with a need to supplement the regular police force to meet seasonal or emergency needs should organize special police officers into a reserve system. Special police reserve officers should only be assigned on a full-time basis when increases in population significantly overburden a police agency. Part-time special police officers should only be used to supplement a police agency's manpower needs during emergencies, to correct unique deployment problems or to meet manpower shortages until full-time police officers can be hired and trained.

Every police agency should consider a special police reserve system as a potential career development program. Individuals who successfully perform the duties of a special police officer should be given the opportunity if qualified to obtain additional training and join the ranks of sworn police officers.

To realize the maximum benefit from special police officer reserve programs legislation should be enacted mandating that every police agency:

1. Should establish recruitment and selection standards equivalent to those for regular sworn personnel except that the reserve specialist should be selected on the basis of those limited duties which will be performed.
2. Should provide reserve generalist training equivalent to that provided regular sworn personnel if the duties are the same as regular police officers and should provide reserve specialist training required by the specialty to which the reservist will be assigned.

3. Should ensure that the reserve training program meets or exceeds State standards that regulate the training of regular, part-time or reserve officers.

4. Should assign the reserve generalist to supplement regular police personnel in the day-to-day delivery of police services and assign the reserve specialist to perform services within a particular field of expertise.

5. Should establish a reserve in-service training program equivalent to that for regular sworn personnel.

6. Should furnish the generalist reserve officer with the same uniform and equipment as a regular sworn officer only upon the completion of all training requirements. Until all reserve generalist training requirements is completed, uniforms should readily identify as a reserve officer, and reserve officers should perform duties only under the direct supervision of a regular sworn officer.

The Police Personnel Standards Commission (PPSC), in cooperation with the police academies and law enforcement agencies, should be authorized by legislation to develop a minimum basic training course for special police officers that is feasible to implement given the short term, part-time nature of special police assignments. Where appropriate, special police trainees should be permitted to substitute college level police science courses for basic training. Such substitution should be approved by the PPSC. Firearms training should be provided at PPSC-approved police academies. Special police trainees should successfully pass a job-related test and qualify with firearms prior to being authorized to exercise police authority.

Where possible, special police officers should be assigned to narrowly defined duties in which specific training has been obtained. Special police who are hired to work as traffic guards, watchmen, dispatchers, parking attendants, clerks, meter maids or school crossing guards should not be assigned to patrol duties unless they have received patrol training.

Standard 2.17 Probationary Period and Field Training for Police Recruits

Legislation should be enacted mandating every police agency to provide newly appointed police officers with coached field training immediately upon completion of the police academy basic training course and extend the probationary period to one year. The probationary period should commence upon the recruit's appointment.

Newly appointed police officers should not be assigned to patrol duties without having received field training from a police officer trained and certified as a field trainer. The field training program should include the following elements:

1. A minimum of four months of field training with a sworn police employee who has been certified as a training coach.
2. Rotation in field assignments to expose the employee to varying operational and community experiences.
3. Documentation of employee performance in specific field experiences to assist in evaluating the employee and to provide feedback on training program effectiveness.

Only police officers with the ability to convey essentials of the job to others and the desire to develop new employees should be selected as field trainers.

Training for field trainers should include but not be limited to the following:

1. The supervisor's role.
2. Supervision and human behavior.
3. Personnel evaluation.
4. Problem solving techniques.

5. Teaching methods.

6. Selection processes.

7. Counseling.

8. Partner relations.

Field trainers should be responsible for bridging the gap between what is learned at the training academy and the realities, problems and ordinances of each individual community.

Standard 2.18 In-Service Training

The Police Personnel Standards Commission (PPSC), in cooperation with police academies and police agencies in New Jersey, should define and annually review/update a multi-topic, job-related, in-service training curriculum for patrol officers, officers performing specialized functions and superior officers as determined by surveys of training needs. Legislation should be enacted mandating every police agency to require all available officers to participate in annual in-service training. The number of hours of training for each officer should be determined on the basis of the curriculum developed by the PPSC.

The in-service training curriculum should include a combination of courses to be provided at the training academies and within each police department. In-service training should be designed to maintain, update and improve the necessary knowledge and skills of each position. Where feasible, training officers for each police agency should attend statewide in-service training programs designed for generalist police officers and return to their respective agencies to pass on the skills and knowledge obtained during those programs instead of sending large numbers of officers to expensive out-of-house training programs.

Training for newly promoted officers and officers newly assigned to specialized functions should occur within six months of the new assignment. Every police agency should ensure that the information presented during annual and routine training is included, in part, in promotion examinations and that satisfactory completion of training programs is recorded in the police employee's personnel folder in order to encourage active participation in these training programs.

Every police training academy serving more than one police agency should enable the police chief executives of participating agencies to choose for their personnel, elective subjects in addition to the minimum mandated training. Every police agency should be required to submit an in-service training plan annually for the approval of the PPSC. The plan should include the projected in-house and out-of-house training programs for the coming year.

Standard 2.19 Instruction Quality Control

Every police training entity should immediately develop quality control measures to ensure that training performance objectives are met. Every training program should ensure that the instructors, presentation methods and training materials are the best available. Every police training academy and every police agency providing training should ensure that all its instructors are qualified by experience, education and training. All trainers should be certified as qualified by the PPSC.

Standard 2.20 Planning and Evaluating Training Programs

Every police academy and agency should recognize the importance of evaluation for determining the effectiveness of training and in planning future training. Evaluation of police training should include the following:

1. Every police academy and agency providing training should establish specific objectives and a curriculum for each in-house training program.
2. Every police agency providing training should ensure that its training programs meet the needs of the community as well as the police.
3. The Police Personnel Standards Commission (PPSC) should monitor all basic and in-service training programs through periodic review of the objectives, curricula and instructor performance. Reports should be prepared by the PPSC outlining the training performance of each training academy and agency with recommendations for improvements.
4. Each training academy and police agency should periodically evaluate the quality of instructors.

Standard 2.21 Development of Job-Related Scoring Systems for Selecting Personnel for Promotion and Specialized Assignment

The Police Personnel Standards Commission should authorize a professionally recognized task force to develop a scoring system for objectively ranking the qualifications of personnel for promotion and specialized assignments. The organization study group should involve a competent body of police practitioners, behavioral scientists and personnel administrators in the development process. The scoring systems should be developed for applicability to the Department of Civil Service and/or police agencies throughout New Jersey.

The scoring systems should assign a numerical weight to each of the following factors:

1. Educational achievement level.
2. Training achievement level.
3. Number of years of experience in police work.
4. Scores of job-related promotional and specialty tests.
5. Annual performance evaluations.
6. Oral interviews.

Those individuals with the highest total score should be considered for promotion.

Standard 2.22 Development of Job-Related Tests for Selecting Officers for Specialization and Promotion

The Police Personnel Standards Commission should authorize a professionally recognized organization or study group to develop job-related tests for use in selecting police officers for promotion and specialized assignments. The organization or group should involve in the process of test development a competent body of behavioral scientists with experience in the development of aptitude and ability tests and police practitioners.

Tests should measure candidates on their knowledge and aptitude directly related to each type of specialty and superior position. The tests should be based on research which: (1) Identifies the specific role, task and performance objectives for each position. These perceptions should be compared with actual practice. (2) Clearly establishes the knowledge and skill requirements for each position. Candidates for promotion and specialized assignment should be informed in advance of the subjects on which they will be tested and the sources of information on those subjects such as books, reports, training and education programs.

Standard 2.23 Model Standards for the Promotion, Training and Education of Officers of Superior Rank

The Police Personnel Standards Commission (PPSC) should develop model standards to be used by police agencies and communities throughout the State for determining whether an officer has appropriate qualifications for promotion. The standards should be flexible and provide a balance between varying levels of education and training achievement with work experience. An officer who has successfully completed an extensive range of job-related educational and/or training should qualify for promotion after fewer years of police experience than an officer who has not obtained higher education or training. (See Appendix G for a model developed by the PTC for determining when an officer is qualified to seek promotion to supervisory, middle management and executive rank). By 1981 all police officers seeking promotion should be required to achieve the minimum qualifications.

The PPSC should establish a minimum job-related training curriculum for officers of superior rank which is consistent with the level of responsibility and functions of the position. Officers should receive and successfully complete at least 100 hours of job-related training or the educational equivalent and one year on probation prior to promotion. If an officer fails to be promoted upon completion of these requirements, he or she should be allowed to appeal the decision to the independent review board described in Standard 2.15.

Superior officers should be required to participate and successfully complete 20 hours of job-related in-service training or the educational equivalent every year. The PPSC should identify educational courses which

can be substituted for the training curriculum.

Educational and training requirements for supervisory, middle management and executive positions should be based on research which identifies specific roles, tasks and performance objectives of superior level positions as well as supervisory, managerial and administrative needs of New Jersey police agencies.

The minimum training or education equivalent for police superiors should include but not be limited to:

1. Traditional and modern organization theory.
2. System analysis of organizations.
3. Managerial behavior.
4. Managing organizational change.
5. Planning, evaluation and control for programs and organizations.
6. Supervisory techniques and role.
7. Manpower allocation and distribution.
8. Policy and procedure development.
9. Personnel management.
10. Record keeping and simplification of reports.
11. Planning, programming and budgeting systems.
12. Motivation in organization.
13. Criminal justice system cooperation and coordination.

Training and education programs for police superiors should, whenever possible, combine sound police management subject matter with modern business and public administration techniques.

Standard 2.24 Model Standards for Selection for Specialized Assignment

The Police Personnel Standards Commission (PPSC) should develop model standards to be used by police agencies and communities throughout the State for determining whether an officer has appropriate qualifications for assignment to each specialized function. Based on the model standards for each specialized area every police agency should establish written policy defining specific criteria for the selection and placement of specialist personnel so that they are effectively matched to the requirements of each specialty. The PPSC should determine, through research, whether the model standards are appropriate and make any necessary adjustments.

By 1981 all police agencies should develop standards which are consistent with the PPSC model standards.

1. Every police agency should disseminate agency-wide written announcements describing anticipated specialist position openings. These announcements should include:
   a. The minimum personnel requirements for each position; and
   b. The specialized skills or other attributes required by the position.
2. Every police agency should establish written minimum requirements for every specialist position. These requirements should stipulate the required:
   a. Length and diversity of experience;
   b. Formal education; and
   c. Specialized skills, knowledge and experience.
3. Every police agency should establish written training requirements for each specialty. These requirements may include:

a. Formal preassignment training; and

b. Formal on-the-job training.

4. Every police agency should require satisfactory completion of an internally administered internship in any specialist position before regular assignment to that position.

Standard 2.25 Educational Incentives for Police Officers

Every police agency should immediately adopt a formal program of educational incentives to encourage police officers to achieve a college-level education. Colleges and universities, particularly those providing educational programs expressly for police personnel, should schedule classes at a time when police officers can attend.

1. When it does not interfere with the efficient administration of police personnel, duty and shift assignments should be made to accommodate attendance at local colleges; any shift or duty rotation system should also be designed to facilitate college attendance.
2. Financial assistance to defray the expense of books, materials, tuition and other reasonable expenses should be provided to a police officer when:
   a. Enrolled in courses or pursuing a degree that will increase, directly or indirectly, his or her value to the police service; and
   b. Job performance is satisfactory.
3. Incentive pay should be provided for the attainment of specified levels of academic achievement. Educational incentive pay should escalate with attainment of higher levels of education and higher ranks.
4. The State Board of Higher Education should require all colleges and universities, particularly those providing educational programs expressly for police personnel, to schedule classes at hours and locations that will facilitate the attendance of police officers.

a. Classes should be scheduled for presentation during the daytime and evening hours within the same academic period, semester or quarter;

b. When appropriate, colleges and universities should present classes at locations other than the main campus so police officers can attend more conveniently;

c. College level courses should not be presented in police departments or facilities.

Standard 2.26 Personnel Evaluation for Promotion and Advancement

Every police agency should immediately begin a periodic evaluation of all personnel in terms of their potential to fill positions of greater responsibility. The selection of personnel for promotion and advancement should be based on criteria that relate specifically to the responsibilities and duties of the higher position.

1. Every agency periodically should evaluate the potential of every employee to perform at the next higher level of responsibility.
2. Every agency should require that personnel demonstrate the ability to assume greater responsibility prior to promotion or advancement and should continue to observe employee performance closely during a probationary period of at least one year from the date of promotion or advancement.

Commentary

The Advisory Committee recognizes the interdependence of all elements of the police personnel system - recruitment, selection, training, promotion and compensation. Without an aggressive recruitment process and adequate compensation, the pool of qualified individuals from which police recruits are selected will be limited in quality and quantity. The selection process determines the level of intelligence, motivation, character, common sense, emotional stability and maturity of police officers. Police officers with high ratings in these factors have the potential to learn readily, perform duties effectively and efficiently and assume greater responsibilities upon promotion or assignment to specialized functions. A failure of any aspect of the personnel process would seriously cripple the efficiency and effectiveness of a police agency. The overall orientation of the community and police agency concerning the role of the police officers determines how they are recruited, selected, trained, educated and promoted.

Standards 2.1 and 2.2 are designed to provide a focal point from which the rest of the personnel standards emanate. The philosophy of the Committee concerning the police role and how it is related to personnel standards is described in Standard 2.1. In Standard 2.2 the Committee recommends that the membership, staff and functions of the Police Training Commission be expanded and a Police Personnel Standards Commission (PPSC) formed.

The Advisory Committee recommends the expansion of the Police Training Commission (PTC) into a Police Personnel Standards Commission for the following reasons. First, the PTC has done considerable research in recruitment, selection and promotional areas. Second, with the proper membership, financial resources and the addition of staff as recommended, the expanded Commission should be capable of taking on new functions. Third, the

philosophy of the Committee is that whenever possible the creation and multiplication of new State-level bureaucracies or the "creation of new wheels" should be kept at a minimum. Fourth, the interdependence of the recruitment, selection, training, education and promotion processes requires continuity and a high degree of coordination in the development of standards which is unlikely to occur if these functions were divided among several independent State-level bodies.

The PPSC should establish and validate uniform statewide standards for the recruitment, selection, training and promotion of police officers. To assist local police agencies and the Department of Civil Service in implementing a uniform job-related personnel process the standards recommend that the PPSC assemble study groups to validate nationally developed physical, mental ability and psychological tests for the selection of police officers or to develop them if valid tests cannot be found. A similar process is recommended for developing ability and aptitude tests and scoring systems for promoting or selecting officers for specialized assignment.

To facilitate implementation of personnel standards the Committee recommends that local law enforcement agencies be provided with financial assistance. This is to avoid in part the contradictory situation of the State establishing standards for which the local government must, and is often unable to, pay the cost.

In recognizing deficiencies in the results of police recruitment efforts the Committee recommends concentrating recruitment efforts on minority group members, women and college-educated individuals. The Committee does not intend that standards for recruitment be altered to facilitate this goal but that there is an adequate pool of qualified appli-

cants from these groups.

In regard to police salaries the Committee concluded that the State should not establish standards for police officer salaries because the cost of living and levels of police service vary significantly from one part of the State to another. The Committee therefore recommends that each community take into consideration a number of factors in establishing salaries which will attract and retain qualified personnel for police work.

Standards 2.6 through 2.13 are aimed at increasing the uniformity, consistency, visibility, objectivity and safeguards against abuse of the personnel selection standards and selection processes throughout New Jersey. The establishment of job-related selection standards by the PPSC and their implementation by the Department of Civil Service and all police agencies is a primary goal of these standards.

The Committee concluded that the process for selecting police officers is incomplete unless it includes the following: a job-related test on mental ability and aptitude, a job-related physical ability test, an in-depth background investigation, psychological tests or examinations prior to appointment, and an oral interview. Each of these steps provide a type of information not found through the others and in some instances serve as a check on the other.

Mechanisms for developing valid selection scoring systems, aptitude tests and psychological profiles to be used by all police agencies in selecting from police applicants are recommended by the Committee because the expense required to perform these tasks is prohibitive for all except the largest police agencies. The intent of the Committee is that the PPSC

assemble a group(s) of police officials that are responsive to the needs of local police agencies and behavioral scientists to validate nationally developed scoring and testing systems rather than duplicate the same process and thus waste resources.

Extensive discussions concerning the adequacy of existing mechanisms for determining the emotional stability of police applicants prompted the Committee to recommend a multi-phase psychological evaluation process. Two main problems were identified in Committee discussions of this topic: the extreme variations in interpretation of psychological examination results by different psychologists and the abuse by some police agencies and psychologists in subverting the objective of the process.

Oral interviews of police applicants can reveal many qualities that are hidden during the other elements of the selection process. The Advisory Committee found that most police agencies utilize the interview process for screening applicants but found broad disparities in the methods of utilizing it. The Committee recommends that the PPSC develop a standardized oral interview process for use by police agencies because of: the complex nature of characteristics to be observed during interviews; the potential of interviewers to purposely or inadvertently bias the results; and the difficulty in agreeing on what are the appropriate characteristics to consider. The inclusion of a representative of local government, the police agency and the community on oral interview panels is an attempt to balance the interests of these three groups in the selection process.

Mandatory background investigations of police applicants are recommended in order to identify factors in the background of candidates that can indicate potential weaknesses in character, emotional stability or economic

status which may be exploited by criminal elements or predispose a candidate to participate in illegal or unethical conduct. The background investigation can serve as a check on other elements of the selection process and identify potential problems which should be further investigated during oral interviews and psychological examinations.

The Committee recommends that police applicants be provided with a mechanism for challenging and further raising the visibility of selection decisions. If police applicants determine that they have been disqualified because of discrimination or misinformation, they should be able to appeal the decision to a review board independent of the police agency. It is not intended that the review board be judicial or appellate in nature but merely a fact-finding body. Recommendations by the board should not be binding on the hiring agency. It should be noted, however, that should a suit be filed by the applicant against the hiring agency because of discrimination, for example, the findings of the board could be used as supportive evidence.

Standards 2.14 through 2.16 are aimed at prohibiting police officers, private security guards and special police officers from exercising police authority or carrying a firearm prior to receiving appropriate training as defined by the PPSC and qualify with the weapon. The Committee concluded that in a profession where an individual's decision can mean life, death or injury, the decision maker should be trained in the proper use of force and decision making.

Standards 2.17 through 2.20 are recommended based predominately on information already discussed in the problem assessment and status sections of this report. They refer to ensuring that all police officers receive

field training prior to being assigned to one man patrol; expansion of the probationary period of employment for police officers to one year; a significant and mandatory expansion of in-service training for police officers; and mechanisms for improving the quality and planning for training programs. Although the Committee considered many proposals concerning the types of courses that should be offered and the emphasis of in-service training, it refrained from making extensive recommendations in this area because more research was required.

In order to increase the uniformity, visibility and objectivity of the processes for promoting and selecting police officers for specialized assignment, the Committee recommends Standards 2.21 through 2.26. It was recognized that institutions such as the Department of Civil Service and police unions were brought into the selection and promotional processes in part because of abuses by local government and/or police agencies in terms of favoritism, politics and discrimination. Even though these developments have occurred, in many respects the selction and promotion processes are still not job-related and objective. The standards recommend, therefore, that scoring systems for rating each officer's qualifications be expanded to include educational achievement, training, performance evaluations and oral interviews as well as test scores and years of experience.

Promotional tests should be similarly improved to measure the applicant's knowledge of information that will be useful in the position being applied for. Applicants should be apprised beforehand as to how and where to find that knowledge.

The Committee recommends that the PPSC develop model standards which can be used by police agencies throughout the State in determining whether an officer has appropriate qualifications for promotion. Such standards should provide a balance between educational and training achievements and experience. It is also recommended that officers successfully complete promotional training and a probationary period on the new assignment prior to being appointed because of the difficulty of demoting an officer for failure to perform the new tasks.

Although the Committee recognized the importance of higher education for increasing the effectiveness and efficiency of a police agency, it refrained from recommending higher education standards for new police applicants. Even though there is a general belief that higher education can be beneficial to all police officers, significant statistical evidence to support this claim is not available. The lack of evidence does not mean that the concept is wrong.

A number of reasons for the lack of evidence had been proposed. Colleges may not be gearing their courses to meet the needs of police officers or some professors may lack adequate knowledge of line police work. On the other hand, there may be resistance of noncollege-educated police officers to accept the ideas presented by college-educated officers. Evaluations of the effectiveness of police officers are often done by noncollege-educated officers.

Whether or not college education is beneficial for the patrol officer the Committee does find significant evidence in the deficiencies of police administration and management to suggest that command level administrative and specialized functions can be performed much better by officers who

receive job-related education in subjects such as public or business administration, system analysis and the social and physical sciences. The Committee, therefore, recommends a series of methods by which police agencies can encourage officers to attain higher education.

Trial Preparation

Introduction

The expeditious processing of criminal cases must always be tempered by constant concern for the rights of the accused and the needs of society. This balancing of goals is a recurrent theme in the administration of criminal justice. Prompt and efficient processing of cases requires an effective screening mechanism to determine whether trial is warranted as well as procedures for the review and disposition of cases through pleas of guilty.

Although the constitutional guarantee of the right to a speedy trial is fundamental to our system of justice, the majority of criminal cases are disposed of without trial. It is commonly asserted that the public has a right to a speedy determination of the issues and the definition of "speedy" must be suitable to both the defendant and the public.

The existence of two duplicative processes for determining reasonable cause, grand jury and probable cause hearings, contributes to the delay in bringing cases to trial. This duplication has been the source of much concern and criticism. Many believe the grand jury indictment process has outlived its usefulness, is cumbersome and subject to undue prosecutorial influence and control, whereas others contend the probable cause hearing as it presently operates is not truly an effective screening mechanism. Some hold that the grand jury-probable cause hearing process as it now operates, provides the necessary safeguards and should not be changed.

Central to adequate preparation for plea negotiation and trial is the exchange of information intended for use at trial (discovery) concerning the nature of positions by the prosecution and defense. It is generally conceded that liberal discovery is the best way to ensure preparedness for trial or plea negotiations and preclude those continuances which are prompted by the surprises sprung by the opposition. Broad discovery practices also facilitates early disposition of those cases which, for one reason or another, need not or should not go to trial.

Since New Jersey has pioneered in the pursuit of liberal discovery procedures, it is unnecessary to draft new standards in this area. The New Jersey court rule on discovery meets the national recommendations.

The need to conserve resources and protect the rights of defendants provides a rationale for joinder and severance. Joinder and severance is the process by which defendants, cases or charges are brought together or divided into separate proceedings. New Jersey case law and court rules on this subject cover exhaustively these considerations. It is therefore unnecessary to draft new standards in this area.

Another mechanism to balance the conservation of resources with the defendant's and society's best interests is plea negotiation. Its advantages and prevalence notwithstanding plea negotiation remains a controversial practice. On the one hand, plea negotiations can obviate the need for a public trial in those cases when a trial is undesirable, unnecessary or the facts are not in dispute. On the other hand, critics of plea negotiations argue that the process yields disproportionately differential treatment of defendants, primarily because constitutional safeguards designed to guarantee equal treatment under law are superseded.

Problem Assessment

A. The Grand Jury*

Predecessors to the present grand jury system date back as far as eighth century England.[1] Closer origins are associated with the promulgation of the Assize of Clarendon in 1166 which permitted a body of 12 men from each hundred to present under oath the names of those believed guilty of criminal offenses.[2] At that time, the accusers were also permitted to judge, however within 100 years the grand and petit jury functions were separated.[3] Accusations originated with members although accusations from outsiders gradually came to be considered.[4] As improvements were realized in English criminal procedure during the fourteenth and fifteenth centuries, the role of grand juries also modernized. Informations (formal statements filed by the prosecutor which include all of the essential elements of an indictment) were allowed as an alternative to grand jury indictment. Reform continued and in 1695, William and Mary granted subjects for the first time the right to review their indictments prior to trial.[5]

[1] Holdworth, A History of English Law, 1922, p. 312, as cited in The Grand Jury: A Blueprint for Reform, New Jersey Supreme Court Criminal Practice Committee, 1976, p. 1.

[2] National Advisory Commission on Criminal Justice Standards and Goals, Report on Courts, Washington, D.C., U.S. Gov't. Printing Office, 1973, p. 74.

[3] New Jersey Supreme Court Criminal Practice Committee, The Grand Jury: A Blueprint for Reform, p. 8.

[4] National Advisory Commission, Report on Courts, p. 74.

[5] New Jersey Supreme Court Criminal Practice Committee, The Grand Jury: A Blueprint for Reform, p. 10.

*As of this writing, the Supreme Court Committee on Criminal Practice Subcommittee report entitled, The Grand Jury: A Blueprint for Reform referenced herein has not yet been approved by the Supreme Court and as such does not necessarily represent the opinion of the Supreme Court.

Criticism of the English grand jury began to mount during the nineteenth century resulting in the enactment of statutes to limit grand jury powers. In 1933, English grand juries were abolished when it became apparent that they had "outlived their usefulness."[6]

The history of American grand juries generally follows the development of the colonies. Methods for selecting jurors as well as juror qualifications varied. History indicates that colonial grand juries were "ineffectual, ignored or shared complicity in many prosecutions of, from a modern viewpoint, doubtful justice."[7] During the Revolutionary War, for example, many grand juries served the American cause for freedom by indicting British authorities, Tories and other anti-revolutionaries for political reasons.[8]

New Jersey's first grand jury was impaneled in 1676. Prosecution by information, although greatly abused, was common during the eighteenth century. Criminal informations were abolished in 1795 and in 1844 the State Constitution authorized indictment as the only method of initiating prosecution. However, the investigative and presentment functions of New Jersey's grand jury system have remained essentially unchanged since 1676.[9]

[6]National Advisory Commission, Report on Courts, p. 75.

[7]New Jersey Supreme Court Criminal Practice Committee, The Grand Jury: A Blueprint for Reform, p. 18.

[8]Ibid., p. 19.

[9]Ibid., p. 21, 22, 23.

Traditionally, the grand jury has acquired two distinct functions - to initiate investigations of suspected criminal activity and to act as a buffer between the State and the citizenry by weighing evidence to determine if a trial is warranted. This buffer function is implicit in the Fifth Amendment which provides that "no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury." This requirement has never been held by the U.S. Supreme Court to be binding on the states as decided in Hurtado v. California, 110 U.S. 516 (1884). Less than half of the states currently require prosecution to be initiated by indictment in all cases. Most states allow the initiation of prosecution through the use of informations.

The grand jury indictment process has been the source of much contention among criminal justice system practitioners and the public. Many commentators have concluded that the indicting grand jury process no longer serves a useful purpose in today's system of criminal justice. It has been characterized as inefficient and cumbersome. The great mass of cases prepared and presented to a grand jury, especially in states such as New Jersey which do not authorize the use of informations, often precludes careful review and consideration of each case by both the prosecutor's staff and the grand jury.[10] The Advisory Commission on Intergovernmental Relations proposed

[10]Ibid., p. 128.

in 1971 that the indictment by grand jury requirement be eliminated while the investigatory function be retained.[11]

Criticism of the grand jury indictment process centers around the observation that it is ineffective as a buffer between the prosecution and one accused of a crime. Concern has been expressed regarding possible prosecutorial domination of and influence on the grand jury proceedings.[12] Many believe the process serves only as a rubber stamp approval of the prosecutor's request for indictment. In addition, several characteristics of the indictment process, such as the absence of rights for defendant and attorney appearances and cross-examination of witnesses, may create a potential for abuse.[13] A court management study of the Baltimore courts concluded that the grand jury has a negligible effect, other than delay, on the criminal process. The National Advisory Commission on Criminal Justice Standards and Goals found that in most cities across the nation where the grand jury is utilized for indictment purposes, it eliminates less than 20% of the cases presented.[14] Although similar statistics on a State level are not available for New Jersey, the Criminal Practice Committee Subcommittee to Study the Grand Jury found that in Essex County, where each case is presented to the grand jury, approximately 40%

[11] Ibid.

[12] New Jersey Supreme Court Criminal Practice Committee, The Grand Jury: A Blueprint for Reform, p. 162.

[13] Ibid., p. 113.

[14] National Advisory Commission, Report on Courts, p. 75.

are "no billed." In Atlantic and Mercer counties, where prosecutorial administrative dismissal is utilized, approximately 20% and ten percent respectively are "no billed."[15]

Another criticism of the use of indicting grand juries is that impaneling and servicing a grand jury is becoming more costly in terms of time, personnel and finances. Many have argued that the indictment process is unnecessary and duplicative of the preliminary or probable cause hearing since both determine the existence of probable or sufficient cause. The Special Committee on Crime Prevention and Control concluded the preliminary hearing is a more effective screening device than the grand jury process.[16] The National Advisory Commission has concluded that "any benefits to be derived from a requirement that all offenses be charged by grand jury indictment are outweighed by the probability that the indictment process will be ineffective as a screening device, by the cost of the proceeding and by the procedural intricacies involved."[17] The Commission therefore recommends grand jury indictment not be required for initiation of any criminal proceeding and that, if it is utilized for a particular case, a preliminary hearing should not be available (NAC Courts Standard 4.4).

[15]New Jersey Supreme Court Criminal Practice Committee, The Grand Jury: A Blueprint for Reform, p. 3.

[16]National Advisory Commission, Report on Courts, p. 75.

[17]Ibid.

Notwithstanding the arguments to remove the indictment requirement and rely on probable cause hearings as the sole determiner of cause for most cases, there is wide support for the reverse position. Past experience of prosecution and defense parties indicates the probable cause hearing serves principally as a means of discovery rather than a determination of sufficient cause. Recent statistics are unavailable, although statistics compiled by the Public Defender in certain northern counties show that from July 1, 1967 to December 31, 1970 a total of 39,137 cases were handled, 1064 or 2.7% of which resulted in findings of no probable cause by the Municipal Court.[18] The Supreme Court Special Committee on Calendar Control-Criminal, which in 1971 recommended the elimination of probable cause hearings, considered such a small percentage as hardly warranting "perpetuation of a practice which in essence duplicates the function of the Grand Jury."[19]

It is frequently argued that the probable cause hearing, as structured, invites procedural jockeying. Responding to the Supreme Court Special Committee recommendations, a New Jersey Law Journal editorial, which acknowledged certain deficiencies of a probable cause hearing yet considered it worthy of retention, stated the following:

[18]"Report of the Supreme Court Special Committee on Calendar Control-Criminal," 94 N.J.L.J., Index p. 198 (1971).

[19]Ibid.

> Prosecutors often bypass [the probable cause] hearing, complaining of its inutility and its misuse by defendants; defense counsel often use the hearing for purposes other than to determine probable cause, and allege deprivation of the defendant's rights if the hearing is bypassed. Acrimony appears with frequency, and what usefulness there is in the hearing evaporates. ... Rule 3:4-3 provides that the court "shall" conduct a hearing as to probable cause "within a reasonable time" unless the defendant waives the hearing or an indictment is returned prior to the hearing; yet a defendant who demands a hearing can be frustrated by a simple adjournment of the hearing until the Grand Jury indicts. If a defendant obtains a hearing, the prosecutor can render it meaningless by simply electing not to present any evidence at the hearing, and thereafter seeking an indictment at his convenience. And even if at the hearing the defendant is successful in having the complaint dismissed, he remains subject to indictment on the charge.[20]

Albeit these deficiencies, it has been posited that the hearing has certain potential which should be tapped rather than abandoned. First, the probable cause hearing can give a defendant in custody an early opportunity to challenge that custody. Second, it gives the defendant, whether detained or released, the opportunity to confront and dispel a criminal charge which has been made against him or her and on which no prompt action has been taken by the State. Third, it provides an early adversary meeting at which, in the interests of both parties, review and disposition of charges can be effected before unnecessary expenditure of time and funds is made by either side. With the proper revisions in procedure, the probable cause hearing could function effectively and efficiently as a screening methanism to remove unwarranted cases from

[20]Ibid., p. 212.

prosecution.

There is still another stream of thought which contends neither the probable cause hearing nor the indictment process should be eliminated but should perhaps be refined. This position is taken on the grounds that each proceeding is yet another step which serves to protect the rights of the defendant and acts as a check on the system. Thus, both should be retained and utilized to their fullest potential.

Regardless of whether indictment is required for criminal prosecution, many believe the grand jury can play a valuable role in the criminal justice system and should not be entirely eliminated. Most practitioners recognize the necessity to retain the grand jury's investigative function. It is especially desirable in cases involving official corruption and organized crime. Such allegations should be investigated by an independent authority to preserve impartiality and avoid any charges of "cover-up" or "whitewash" where charges are not substantiated.[21] In addition, it is generally accepted that the grand jury indictment process should be retained for exceptional cases such as those which are politically sensitive, involve numerous defendants or where the need for secrecy exists.[22]

The grand jury system in New Jersey has recently been the subject of extensive scrutiny by two respected groups. In April, 1975, the President of the New Jersey Bar Association formed a special committee to review New Jersey's grand jury process. The Special Committee on Grand Jury

[21] National Advisory Commission, Report on Courts, p. 76.

[22] New Jersey Supreme Court Criminal Practice Committee, The Grand Jury: A Blueprint for Reform, p. 129.

Review has undertaken a comprehensive study of the grand jury process and it is anticipated that a report will be completed in Fall, 1976. The Supreme Court Criminal Practice Committee has also formed a Subcommittee to Study the Grand Jury which submitted an inclusive report in March, 1976. The Subcommittee report reviews in depth the historical background of the grand jury and present practices in New Jersey and the remaining 49 states. The range of alternatives to the indictment process is also examined. Several proposals for reform are suggested, however the Subcommittee declined to recommend the adoption of system changes until the outcome of the Bar Association's review. To avoid duplication of effort, this Standards and Goals report leans heavily on the research undertaken by the Subcommittee and suggestions offered by the Subcommittee were considered in the promulgation of standards for the grand jury system.

B. Speedy Trial

Court congestion and delays in processing cases continue to plague the administration of criminal justice. For the 1974-1975 court year, 27,567 criminal cases were filed in court and 23,260 were disposed of, leaving 26,555 cases pending which include backlog.[23] These figures represent, in comparison with 1973-1974 figures, a 14.1% increase in cases

[23]Administrative Office of the Courts, Report of the Status of the Calendars for the Month of January, 1976, Trenton, New Jersey, p. 4.

filed, a 4.8% decrease in cases disposed and a 19.4% increase in cases pending at the end of the court year. These figures are illustrative of the increasing case backlog which has generally occurred since 1948 and which hinders New Jersey's system of criminal justice.

Continuing and increasing pressures upon available resources has made it difficult to dispose of criminal cases promptly, thus resulting in lengthy delays prior to trial. The March, 1974 Criminal Time Interval Study,[24] undertaken by the Administrative Office of the Courts, indicated that the total time period from indictment or accusation to commencement of trial for those trials commencing in March, 1974 ranged from 23 days in Camden County to 71 months, one day in Passaic County. The average time period for the State was five months, five days. For incarcerated defendants, time limits ranged from 24 days in Bergen County to 35 months, 17 days in Passaic County. The statewide average time limit for incarcerated defendants was three months, 17 days.

Delay in processing criminal cases has raised serious questions regarding a defendant's constitutional right to a speedy trial. Lengthy pretrial delay can be prejudicial to a defendant especially if he is confined and cannot or finds it difficult to preserve his defense. On the

[24]Administrative Office of the Courts, Annual Report of the Administrative Director of the Courts, 1973-1974, Trenton, New Jersey, 1974, pp. 114-126.

other hand, delay is not an uncommon defense tactic which, among other things, enables a defendant to manipulate the system through pretrial maneuvers such as plea negotiation and judge shopping. It has been argued that society also has a right to a speedy disposition of criminal cases and thus has a legitimate interest in seeking prompt resolution. If there is delay between the commission of a crime and punishment, the possibilities of deterrence and rehabilitation may diminish. Such delay may be considered detrimental to society's interest.

The Sixth Amendment to the U.S. Constitution guarantees that defendants have a right to a speedy trial although precise limits which define that right are not clear. If speedy trial rights are defined in terms of a specific time interval, it is important to identify the point at which counting time for trial begins. It is equally important to determine what periods, if any, should be excluded. It is generally accepted that allowing time extensions solely in response to trial docket pressures is undesirable and should not be practiced. Continuances should be restricted.

Notwithstanding a predetermined time interval, many states including New Jersey have traditionally required a defendant to demand his right to a speedy trial to commence the running of time. The American Bar Association (ABA) has rejected the requirement of demand for a variety of reasons, one being that it is inconsistent with the public interest in prompt dispositions.[25] There may also be situations where it is unfair to require a demand. According to the ABA, delay prior to trial should not be tolerated merely because

[25] American Bar Association Project on Standards for Criminal Justice, Standards Relating to Speedy Trial, New York, New York, May, 1967, p. 17.

a defendant does not consider it in his best interest to seek a speedy trial.

The controversial issue of appropriate consequences for the denial of speedy trial remains largely unsettled. Most states which designate acceptable time periods for bringing a case to trial provide for the release of detained defendants upon expiration of such a time limit. The American Bar Association takes the position that "the only effective remedy for denial of speedy trial is absolute and complete discharge."[26] The ABA explains that the right to speedy trial would be meaningless if the prosecution were free to commence prosecution again for the same offense.

The necessity for specified time limits and the demand requirement in defining one's right to a speedy trial has become questionable in light of recent court rulings. The U.S. Supreme Court, in Barker v. Wingo, 407 U.S. 514 (1972) rejected inflexible approaches such as fixed time periods in defining one's right to a speedy trial. It also rejected the necessity for a defendant to demand a speedy trial. The court concluded in its decision:

> A defendant's constitutional right to a speedy trial cannot be established by any inflexible rule but can be determined only on an ad hoc balancing basis, in which the conduct of the prosecution and that of the defendant are weighed.

The U.S. Supreme Court, in Barker, listed four factors which should be considered in determining if the right to a speedy trial has been denied:

[26]Ibid., p. 40.

length of delay, reason for delay, defendant's assertion of his right and prejudice to the defendant. Thus, the Court placed the primary burden, to assure that cases are promptly brought to trial, upon courts and prosecutors. It prescribed a balancing test in which the conduct of both the prosecution and the defendant are weighed.

The New Jersey Superior Court has held in State v. Cappadona, 127 N.J. Super. 555, 558 (App. Div. 1974) and State v. Smith, 131 N.J. Super. 354 (App. Div. 1974) that the denial of speedy trial cannot be answered by the sole reference to lapse of a specific amount of time between indictment and trial or lack of trial. Factors identical to those outlined in the Barker decision were offered as determinants of speedy trial denial. In State v. Smith, the Superior Court stated that prejudice for the defendant is not confined to the inability or lessened ability to defend on the merits but it can also be found from "employment interruptions, public obloquy, anxieties concerning court and unresolved prosecution, a drain of finances" and the like. Applying the balancing test prescribed in Barker, the Superior Court in State v. Szima, 133 N.J. Super. 469 (App. Div. 1975), determined a delay of nearly two years in the bringing of an indictment was, in the absence of an explanation, "grossly inordinate" and concluded there had been an unconstitutional denial to the defendant of his right to a speedy trial.

Aside from the issue of defining the right to speedy trial, many authorities agree criminal defendants should be given speedy trials, not only as a matter of constitutional right, but as a means of assuring effective law enforcement. The issue of speedy trial, which has been a subject of concern in New Jersey and other states for many years, has acquired renewed interest since Governor Brendan Byrne delivered his

State of the State Address in January, 1976. Governor Byrne recommended dealing with the alarming rise in violent crime by providing certainty and swiftness of punishment. In his message, the Governor called for action which would bring the accused violent criminal to trial within 90 days of indictment.

Many believe the court system could be equipped to provide prompt trials but, with present manpower and financial limitations and ever increasing backlogs, it is not possible. At the end of the 1974-1975 court year, over 4,000 cases were pending ranging in age from six months to one year; over 1200 were 12 to 18 months old; 493 were 18 to 24 months old and 576 had been pending for two years or longer.[27] Solutions for the court's criminal case backlog problems are by no means simple. For example, many fear increased attention to the criminal calendar without any additional judgeships may cause a backlog in the civil calendar.

Part of the solution to reduce court backlog and, in turn, assure speedy trials lies in reducing the number of cases requiring trial through methods such as screening, diversion, negotiated guilty pleas or decriminalization of certain victimless crimes. Removing cases by these means could allow more time to be devoted to dealing with defendants charged with violent crimes.

Any method or program which can improve efficiency and maximize available resources would benefit prompt case processing; however, it is argued that the objective of speedy trial cannot be reached without new appropriations for all components of the system. An effective program of

[27]Administrative Office of the Courts, Report of the Status of the Calendars for the Month of October, 1975, Trenton, New Jersey, p. 8.

bringing defendants, especially those charged with violent crimes, to trial within 90 days of indictment would require the addition of more judges, courtrooms, prosecutors, public defenders, probation officers and other supporting staff. Even if present vacancies were filled, many doubt that the backlog can be overcome and speedy trials provided, given the high number of cases added to the calendar each day.

In spite of all the difficulties in establishing a speedy trial requirement, prompt disposition of criminal matters remains a worthwhile goal. The setting of a time limit, such as 90 days from indictment to trial as recommended by the Governor, would enable the system to measure its success in providing prompt trials although time limits are recognized as unnecessary in defining a defendant's constitutional right to speedy trial. An interim measure aimed at satisfying the public's interest is the scheduling of cases involving violent crimes on a priority basis in addition to jail cases. Regardless of what immediate steps are taken, policy decisions and standards are needed to provide a framework for speedy trial considerations.

C. Plea Negotiations

The court is generally thought to be the single most important and critical institution in the entire system of criminal justice. It is this hub which determines priorities and practices for the rest of the system. Arrest procedures, police conduct, legal strategy and correctional

practices, for example, are all shaped by court decisions and regulations.[28]

The court's putative function is to ascertain the guilt or innocence of the accused. Our judicial system, with its stress on adversary procedures and complex rules of evidence, operates on the assumption that courts resolve questions of culpability. However, in the preponderance of cases, especially in the busier courts, the major decision pertains, not to whether the defendant has committed a crime, but rather to what crime he has committed or how many. A small fraction of cases are adjudicated in a full scale trial. From 87% to 94% of criminal convictions are obtained by the defendant's own guilty plea.[29] In many cases, a guilty plea is brought about through a negotiating process[30] between the prosecutor and the defendant and his lawyer. When the bargaining takes place the defendant is offered an inducement to plead, in the form of a reduced charge or recommendation, for a reduced sentence.

[28]President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, Washington, D.C., U.S. Gov't. Printing Office, 1967, p. 125; for examples see: Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961); Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2nd 799 (1963); Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2nd 694 (1966); Mallory v. U.S., 354 U.S. 449, 77 S. Ct. 1356, 1 L. Ed. 2nd 1479 (1957); Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2nd 889 (1968); McNabb v. U.S., 318 U.S. 332, 63 S. Ct. 608, 87 L. Ed. 819 (1943).

[29]Administrative Office of the Courts, Annual Report of the Administrative Director of the Courts, 1973-1974, p. 156; James Q. Wilson, Thinking About Crime, New York, Basic Books, Inc., 1975, p. 163; Ramsey Clark, Crime in America, New York, Simon and Schuster, Inc., 1971, p. 186; National Advisory Commission, Report on Courts, p. 42; President's Commission on Law Enforcement, The Challenge of Crime in a Free Society, p. 4.

[30]Often called "plea bargaining." Many prosecutors consider this word emotionally charged and prefer to refer to the procedure as negotiating and to the result as the plea agreement. We shall generally follow their practice.

The common types of agreements may be divided into the following categories:

1. Recommendations that separate indictments or counts of the same indictment be dismissed in return for specified guilty pleas.
2. Recommendations for specified maximum exposure less than the statutory maximum.
3. Recommendations that the crimes charged be downgraded to lesser included offenses, either indictable or disorderly.[31]

Until recently, English and American courts actively discouraged the guilty plea. For centuries, litigation was thought to be the "safest test of justice."[32] A plea of guilty which issued from negotiations between prosecutor and defense and was part of a bargain between them was, in most American jurisdictions, an illegal plea. Everyone involved might know that the plea had been made in return for a dismissal or reduction of certain charges, or some other leniency, but this knowledge could not be openly avowed.

Over the last decade, the U.S. Supreme Court rendered this unnecessary, giving its approval to plea negotiations provided that the defendant has "full understanding of what the plea connotes and of its consequences" and that the judge assembles an "affirmative record" of the proceedings, so

[31]Paper presented at the 1976 New Jersey Prosecutor's Convention in Atlantic City, entitled Serious Crime: A Criminal Justice Strategy, p. 26.

[32]Albert W. Alschuler, "The Prosecutor's Role in Plea Bargaining," in The U. Chi. L. Rev., Volume 36: 1968, pp. 50, 51.

that the agreement is officially recorded.[33] The U.S. Supreme Court also decided:

> ...the disposition of criminal charges by agreement between the prosecutor and the accused...is an essential component of the administration of justice. Properly administered, it is to be encouraged. If every criminal charge were subjected to a full scale trial, the States and the Federal Government would need to multiply by many times the number of judges and court facilities.[34]

The Supreme Court of New Jersey gave recognition to plea negotiations by stating:

> ...there is nothing unholy in honest plea bargaining between the prosecutor and defendant and his attorney in criminal cases. At times, it is decidedly in the public interest, for otherwise, on occasion the guilty would probably go free...[35]

Notwithstanding the prevalence of negotiations, judicial endorsements and the weighty considerations in its favor, there are formidable objections to plea negotiations. It remains one of the most controversial and suspect practices in the criminal justice system.[36]

The practice of plea negotiating is generally explained, and often justified, in terms of the overburdened court system and prosecutorial

[33]Jessica Mitford, Kind and Usual Punishment: The Prison Business, New York, Vintage Books, 1972, p. 85.

[34]Santabello v. New York, 404 U.S. 257, 269 (1971).

[35]State v. Taylor, 49 N.J. 440, 445 (1967).

[36]President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, Washington, D.C., U.S. Gov't. Printing Office, 1967, p. 9.

offices. An article in Newsweek stated that if all the defendants in any one city ceased to offer pleas and instead insisted on their right to trial by jury, "the entire criminal justice system would stand still for a moment and then collapse."[37] In Manhattan one prosecutor was quoted as saying "our office keeps eight courtrooms extremely busy trying 5% of the cases. If even 10% of the cases ended in trial, the system would break down...."[38]

A major justification offered by prosecutors in support of plea negotiations is that it enables them to maximize the number of convictions and the severity of punishment by bargaining in those cases where conviction is less than certain. The weakness of their case was noted as an important reason for negotiating by 85% of the prosecutors surveyed by the University of Pennsylvania Law Review.[39] Prosecutors have also argued that by bargaining they can better adapt the charge and ultimately the sentence to the peculiar circumstances of the case: the social status of the defendant, previous record and perhaps activities which are not on record, apparent state of mind when committing the crime and after arrest and so on. On the other hand, prosecutors may feel they understand the community's values better than the legislator; they may "grant concessions because the law is 'too harsh', not only for this defendant but for all defendants."[40]

[37]"Justice on Trial," Newsweek, March 8, 1971, pp. 22, 29.

[38]Alschuler, "The Prosecutor's Role in Plea Bargaining," p. 55.

[39]Ibid., p. 53.

[40]Ibid.

The prime objection to plea negotiation is a constitutional one. As it is generally practiced, negotiation places enormous pressure on defendants, whether guilty or not, to forego their constitutional rights.

The pressures can be extreme. Since trial dockets are congested, the defendant who insists upon trial can expect a long period of uncertainty, often under circumstances which might make it impossible to keep a job or get another one. If the defendant does not qualify for bail or is not able to raise it, the situation is even worse. The bargain offered often involves substituting a misdemeanor charge for a high misdemeanor and/or dropping several charges. If the bargain is at all tempting then, it will be because the possible penalties, if trial is insisted upon, are substantially more severe than they would be for the offense to which a defendant agrees to plead; and the differential is often further increased by the fact that, even for the same offense, a guilty plea may be rewarded with a lighter sentence.

Defenders of plea negotiation should not take refuge in the claim that an innocent person rarely pleads guilty. Accurate statistics are not available, since it is seldom possible for a researcher to find out for sure whether the defendant is, in fact, guilty. But paradoxically, the innocent defendant is often under greater pressure to plead guilty than is the guilty one.[41] It is reportedly so because the prosecutor may offer a better bargain, the weaker the case and the better the bargain, the more

[41]Ibid., p. 60.

the defendant risks by insisting on trial.[42] A case is reported by Benjamin M. Davis, San Francisco attorney, in which a man was charged with kidnapping and forcible rape. Davis investigated the case and stated that his client was innocent. Davis was confident of acquittal. The prosecutor, no doubt feeling that his case was weak, offered to accept a plea of simple battery. This would have meant at most a 30-day sentence, and probably only probation. When David reported the offer to him, emphasizing that he would probably be acquitted if they went to trial, the defendant said "I can't take that chance."[43] Assuming the truth of the anecdote, this case illustrates that an individual may be forced to plead guilty to a minor offense, even though innocent, in order to avoid severe penalties if found guilty.

It is true that a very different result also occurs, in that people whom the police know to be guilty of serious crimes (which they may be unable to prove) frequently can bargain their way to inordinately weak charges and sentences; but this does not invalidate the previous point.

[42]"The overwhelming majority of prosecutors view the strength or weakness of the state's case as the most important factor in the task of bargaining....If tactical considerations are not the most important factor in bargaining, at least they are the factor that prosecutors are most ready to avow." Ibid., pp. 58, 59.

[43]Ibid., p. 61; New York Times, February 9, 1971, col. 3, p. 38.

Indeed, it reinforces it in that both guilty pleas by the innocent and convictions on minor charges of serious offenders tend to undermine confidence in the administration of justice.

Aside from the pressures defendants face, their rights may also be jeopardized. The rights in question are those of the Fifth Amendment, against self-incrimination and of the Sixth, to confront one's accusers, to compel the appearance of favorable witnesses and to stand trial by jury.[44] It should not need to be argued that the protection of such rights is important; but they take on a special poignance in the context of plea negotiations, given that it is often, as one public defender put it, "trial by trick and deceit."[45] It depends heavily on the bluffing abilities of opposing counsel. One must suppose that many defendants plead guilty who, if they had insisted on the exercise of the rights mentioned above, would have been acquitted or seen their cases dismissed.

Another problem with plea negotiations as it is now practiced is that it strains that fundamental concept of 'equal treatment under the law.' The rich and sophisticated have high priced lawyers whom they can immediately call. Hardened criminals know how to manipulate the system. It is the poor, the ignorant and the inexperienced who are the most vulnerable

[44]"The Unconstitutionality of Plea Bargaining," Harvard L. Rev., Volume 83, 1970, p. 1395.

[45]Mitford, Kind and Unusual Punishment: The Prison Business, p. 85.

to the inducements of a plea negotiation.[46] Furthermore, the prosecutor's decision to bargain one case rather than another is often shaped by factors which have no connection at all with the demands of justice, the probable welfare of the community or the correctional needs of the defendant. The chief factors are the current state of the prosecutor's caseload and the length of time which a trial is likely to take.[47] Radical disparities of treatment may be contingent on administrative convenience. Prosecutors must work in a context of limited resources and indeed, have to worry about how best to allocate their resources. A practice which encourages such inequities and infringements of constitutional protections should not be accepted without stringent monitoring.

The heart of the constitutional question would seem to be whether it is lawful, on grounds primarily of administrative convenience, to apply extreme pressure on defendants not to exercise several related constitutional rights. It has been argued that the U.S. Supreme Court has implicitly answered this question in the negative.

> In recent cases where the government sought to elicit information from its employee or licensee in order to determine his qualifications, the Supreme Court refused to allow any burden on the right. Garrity v. New Jersey held that incriminating evidence secured under the threat of discharge was not admissible in a later trial.

[46]Clark, Crime in America, pp. 186, 187. This injustice may be compounded because these are also the ones unlikely to be able to raise bail--and so are under added pressure not to wait until they can be heard by a jury.

[47]Katz, Litwin, Bamberger, Justice is the Crime: Pretrial Delay in Felony Cases, p. 197.

> A companion case, Spevack v. Klein, held that an attorney could not be disbarred for failure to produce records and testify in a judicial inquiry if he had not been offered immunity from later criminal prosecution.[48]

The Harvard Law Review points out that the burden involved in plea bargaining, which is often a threat of confinement for an extra period of years, is at least as heavy as the price in Garrity; the loss of a job.

> Thus, even under a narrow reading of the Garrity principle, plea bargaining should be held unconstitutional because it places the accused in the dilemma of having to forfeit either his privilege against self-incrimination (by acknowledging his guilt through a plea of guilty) or his chance for a shorter sentence or reduced charge....Since the very purpose of plea bargaining is to prosecute and convict the defendant by pressuring him to plead guilty, the practice will always violate the Fifth Amendment.[49]

There is, moreover, room for scepticism concerning the primary rationale for the practice. Alschuler reports that an expedited trial system in Pennsylvania's largest cities has greatly reduced the pressure for negotiated pleas. "In Philadelphia, only about one-fourth of the defendants convicted of crime plead guilty and in Pittsburgh, only about one-third of all convictions are by pleas."[50] He remarks also on the fact

[48] Garrity v. New Jersey, 385 U.S. 493 (1967); Spevack v. Klein, 385 U.S. 511 (1967); "The Unconstitutionality of Plea Bargaining," Harvard L. Rev., p. 1398.

[49] "The Unconstitutionality of Plea Bargaining," Harvard L. Rev., p. 1400.

[50] Alschuler, "The Prosecutor's Role in Plea Bargaining," p. 61.

that, the best way for the defense to obtain a good bargain is to take (or threaten to take) the prosecution's time by going to trial. Far from freeing the court, therefore, the possibility of bargaining has a marked tendency to clog the court machinery. "Attorneys commonly go to the point of impanelling a jury in an effort to make their threat to the court's time credible. A string of pretrial continuances may also be useful, partly because each continuance consumes the court's time"[51] and errodes the prosecution's case. He adds that pretrial motions are also great assets to the defense especially in jurisdictions where it is the practice of prosecutors to prepare written briefs in response to procedural and constitutional claims. If trial actually begins, defense counsel has the same sort of motive for producing as many witnesses as possible and otherwise maximizing delay. If defense counsel's threat of a long trial does not succeed, if a suitable negotiation does not take place, he or she will tend to make good the threat, if only for the sake of preserving credibility for the next fight.[52] In these several ways then, negotiation tends to exacerbate the problem of overloading rather than relieving it.

Despite these objections, plea negotiating seems to be here to stay. Although, as we have noted, there are ways in which it gums the machinery, its net effect probably is to grease it; and in an austere era, economically

[51]Ibid., p. 56.

[52]Ibid., pp. 56-58.

such a benefit looms large. Moreover, negotiating is not simply an administrative expedient. "It provides a means by which a defendant may acknowledge his guilt and manifest a willingness to assume responsibility for his conduct."[53] It seems appropriate to have some mechanism whereby a defendant can enter a plea of guilty or non vult when the facts are not in dispute. It has been suggested, moreover, that this device may tend to make more significant the adjudication procedures that are relied upon when facts are disputed and restore to its proper hallowed place in our value system the notion of the presumption of innocence.

Once this is accepted, the problems which beset the institution of plea negotiation are seen to be the same ones that plague all other discretionary procedures. They are problems which strict monitoring alone can help check. This is only possible where the process is visible, public and subject to rigid guidelines.

[53]Paper presented at the 1976 New Jersey Prosecutor's Convention in Atlantic City, entitled Serious Crime: A Criminal Justice Strategy, p. 22.

New Jersey's Status in Comparison with the National Standards

A. The Grand Jury

As previously stated, the National Advisory Commission recommends that grand jury indictment should not be required in any criminal prosecution, and if it is utilized, a probable cause hearing should not be made available (NAC Courts Standard 4.4). The American Bar Association does not touch upon this particular issue although standards are recommended for the quality and scope of evidence for informations* and grand jury presentment and for prosecutorial relations with the grand jury (ABA Prosecution Function Standards 3.5, 3.6, 3.7). As part of its research, the Criminal Practice Committee Subcommittee to Study the Grand Jury undertook an extensive national survey of state laws concerning the modes of initiating criminal prosecutions and the role of the grand jury in investigating official misconduct. The Subcommittee found that only 21 states, including New Jersey, require indictments for all offenses. Most states utilize both indictments and informations; 29 states permit the use of informations only for noncapital felonies with 24 states permitting all offenses to be prosecuted by information.

The New Jersey grand jury system serves two distinct functions - to initiate investigations of suspected criminal activity or official misconduct and to present indictments where appropriate. The indictment process usually is initiated with the filing of a complaint although an indictment can be filed without a complaint. If a complaint charges the defendant with an indictable offense, the defendant is informed, usually at the first appearance, of the right to a hearing as to probable cause and of the

*Formal statements filed by the prosecutor which include all of the essential elements of an indictment. Informations are currently not permitted in New Jersey.

right to indictment by the grand jury and trial by jury. If the offense charged may be tried upon waiver of indictment, the defendant is so informed (R. 3:4-2).

Court rules provide that if indictment and jury trial are not waived but a probable cause hearing is waived, or if indictment and trial by jury are waived but the judge is not an attorney, the defendant is bound over to await final determination of the cause. If the defendant does not waive a probable cause hearing and an indictment has not yet been returned, a probable cause hearing is held. At this hearing, the defendant may cross-examine adversarial witnesses. If probable cause is substantiated, the court will bind the defendant over to await final determination of the cause. If probable cause is not substantiated, the defendant is discharged and the prosecuting attorney so notified (R.3:4-3).

If the right to indictment by grand jury is not waived by the defendant, or if the defendant has not been charged and is under investigation, preparations begin for grand jury presentment. The prosecuting attorney presents the evidence for the grand jury to consider during its inquiry and deliberations. The grand jury must consider the elements of the offense charged and the evidence presented and determine whether the facts are sufficient to support a conviction. The grand jury is not limited to receiving only evidence which is admissible at trial.[54] In addition, the prosecuting attorney is not currently required to present all exculpatory

[54]New Jersey Supreme Court Criminal Practice Committee, The Grand Jury: A Blueprint for Reform, pp. 144-145.

evidence to the grand jury. Witnesses may be subpoenaed by the grand jury to appear and give testimony. Such witnesses do not have the right to be accompanied by counsel.[55] The defendant does not have the right to testify before the grand jury and is not present unless subpoenaed or invited to appear by the grand jury. Grand jury proceedings operate under the "veil" of secrecy and all persons other than witnesses who are participants in the grand jury process are required to take an oath to that effect (R. 3:6-7).

An indictment may be found only upon the concurrence of 12 or more jurors and it is returned in open court to the assignment judge or, in his absence, to the appropriate superior court judge (R. 3:6-8). If no indictment has been found, the matter is deemed a "no bill" (R. 3:6-8b). The return of a "no bill," however, does not preclude the prosecuting attorney from presenting the case to another grand jury.[56]

One of the principal purposes of an indictment is to inform the defendant of the nature of the charges so that an adequate defense may be prepared. An indictment consists of a written statement of the facts constituting the offense(s) charged and includes the statute(s) violated. It must conclude that the offense was committed "against the peace of this State, the government and dignity of the same" (R. 3:7-3).

[55]Ibid., p 153, 157.

[56]Ibid., p. 163.

If the indictment is not sufficiently specific to enable the defendant to prepare his defense, a bill of particulars is ordered upon application (R. 3:7-5).

In fulfillment of its investigative function, New Jersey grand juries act as watchdogs on public officials. After investigation and presentation of evidence and upon the concurrence of at least 12 jurors, a presentment may be returned by a grand jury in open court to the assignment judge for examination. Although public officials may be presented for mismanagement, no further action may proceed from the presentment.[57] However, if it appears that a crime has been committed for which an indictment may result, the assignment judge may refer the presentment back to the grand jury for consideration (R. 3:6-9). The official may be suspended and eventually convicted and removed from office. A public official may also be censured if the proof is conclusive that the matter is "inextricably related to noncriminal failure to discharge his public duty" (R. 3:6-9(c).

Grand juries in New Jersey were selected, prior to 1969, through the "key man" system. Under this system, grand jury commissioners utilized discretion in devising methods to select the grand jury venire and usually solicited names of prospective jurors from civil organizations, churches, labor unions and the like.[58] After much criticism, the New Jersey Supreme Court in 1969 directed the random selection of grand jurors. Voter registration lists are utilized as decided in State v. Rochester, 54 N.J. 85 (1969).

[57] Ibid., p. 4.

[58] Ibid., p. 135.

Traditionally, grand juries consist of 23 members. New Jersey court rules and statutes do not require a grand jury to consist of 23 individuals but only require that they do not exceed 23 jurors (N.J.S.A. 2A:73-1, R. 3:6-1). The grand jury serves until discharged by the assignment judge, but no longer than 20 weeks unless so ordered. Grand jurors, as well as petit jurors, receive a per diem allowance of $5.00 and travel expenses at the rate of two cents per mile (N.J.S.A. 22A:1-1).

B. Speedy Trial

The National Advisory Commission (NAC) in Courts Standard 4.1 recommends that the period from arrest to trial in felony or high misdemeanor prosecutions should not exceed 60 days. For misdemeanor offenses, it generally should not exceed 30 days. The NAC did not purport to define the defendant's right to a speedy trial but took the position that the objective of court processing reform should be the implementation of procedures which would make it possible to process cases within the suggested time limits.[59] The American Bar Association (ABA) takes a stronger position by recommending a defendant's right to speedy trial be expressed by rule or statute in terms of a time limit (Speedy Trial Standard 2.1, Trial Courts Standard 2.51) and recommends criminal trials be held within 90 days

[59]National Advisory Commission, Report on Courts, 1973, p. 68.

of arrest or summons and 60 days from arraignment on the charge (Trial Courts Standard 2.52). No such time limits are expressed or implied in New Jersey rules and statutes. New Jersey Court Rules do provide, however, for the implementation of the right to speedy trial in two situations: delay between indictment and trial (R. 3:25-2) and delay between the initial complaint and the return of an indictment by the grand jury (R. 3:25-3). Rule 3:25-2 provides that at any time following the return of an indictment or accusation, the assignment judge may, on his or the defendant's motion, direct that the trial be moved upon a specified day. Rule 3:25-3 permits dismissal for unreasonable delay in submitting the case to a grand jury or in filing an accusation, either on the defendant's or the judge's motion.

In its standards relating to speedy trial, the ABA recommends priorities for scheduling criminal cases. Specifically, it recommends that the trial of criminal cases be given preference over civil cases and that trials involving incarcerated defendants or those released and believed to present unusual risks should be given preference over other criminal cases. In New Jersey, Rule 1:2-5(1) provides that preference be given to criminal and certain other matters in the scheduling of cases for trial, hearing or argument. Most courts in New Jersey generally give priority scheduling to those cases involving incarcerated defendants.

The ABA also recommends that control over the trial calendar be vested in the court (Speedy Trial Standard 1.2). This standard also requires the prosecuting attorney to file, as a public record, reasons for delay in requesting trial for cases. The prosecuting attorney should also advise the court of facts relevant in determining the order of cases on the calendar. It is further recommended in ABA Trial Courts Standard 2.50 that

the court supervise and control the movement of all cases on its docket from the time of filing through final disposition. One of the duties of New Jersey's assignment judges, as outlined in Rule 1:33-3, is the supervision and expeditious movement of criminal trial calendars of the superior and county courts. Rule 1:33-4 provides that each judge, or the presiding judge if one has been appointed, is responsible for the orderly administration of the court which includes the supervision of the court calendars. Prosecutorial reports as recommended by the ABA are not required.

Both the NAC and ABA suggest continuances be granted only upon a showing of good cause and only for so long as is necessary (NAC Courts Standard 4.12, ABA Speedy Trial Standard 1.3, ABA Trial Courts Standard 2.56). The ABA further states that the granting of continuances should take into account not only the request or consent of the prosecution or defense, but also the public interest in prompt disposition of the case. In New Jersey, judges are required to dispose of the business of the court with promptness (Code of Judicial Conduct 3A(5). Case law has held that the granting of continuances are within the discretion of the trial court. State v. Telenko, 133 N.J. 385, 391 (E. and A. 1945). The trial court's exercise of discretion should not be upset "unless it appears from the record that the defendant suffered manifest wrong or injury" (State v. Lamb, 125 N.J. Super. 209, 213 (App. Div. 1973).

In Speedy Trial Standard 2.2, the ABA recommends time for trial should commence to run generally from the date the charge is filed or the defendant is held to answer, thus eliminating the necessity for demand. The NAC prefers to set time limits from arrest, receipt of summons, or filing

of indictment, information or complaint, whichever comes first[60] (NAC Corrections Standard 4.10). New Jersey court rules provide that at any time following the return of an indictment or the filing of an accusation the assignment judge may direct that a trial be moved upon a specified day (Rule 3:25-2). If there is unreasonable delay in presenting a charge to grand jury or filing an accusation, or if there is unreasonable delay in the disposition of an indictment or information, the assignment judge may dismiss the matter on his or the defendant's motion (R. 3:25-3). Failure of a defendant to demand trial is one of four factors to be evaluated in determining whether his right has been violated.

The national standards, in recommending time periods, also suggest certain time periods be excluded in computing the time for trial (NAC Corrections Standard 4.10, ABA Speedy Trial Standard 2.3). The ABA standard is more explicit and specifies excluded periods which involve such considerations as continuances and absence or unavailability of the defendant. New Jersey law specifies neither particular time periods nor factors to be excluded in computing time.

In developing standards relating to speedy trial, the ABA also outlined special procedures for defendants who are serving a term of imprisonment. Speedy Trial Standard 3.1 recommends a rule, statute or interstate compact be enacted to provide that if the prosecuting attorney knows a defendant is serving a term of imprisonment he must promptly undertake

[60]See complete standard for a description of commencing time for trial for varying circumstances. National Advisory Commission, Report on Corrections, p. 138.

to obtain the defendant/prisoner's appearance or cause a detainer to be filed to advise the defendant his appearance is sought and that he has a right to demand trial. The prosecuting attorney, as recommended, must promptly seek to obtain the presence of the defendant for trial.

New Jersey has enacted the Interstate Agreement on Detainers, N.J.S.A. 2A:159A-1; however, the agreement does not pertain to defendants who are wanted for trial and are incarcerated in New Jersey. For such defendants, general rules designed to prevent delay are relied upon. New Jersey rules and statutes do not require a prosecutor to take prompt action to obtain a prisoner for trial or to file a detainer as recommended by ABA.

N.J.S.A. 2A:159A-3 requires that the official having custody of a prisoner promptly inform the prisoner of the source and content of the detainer and of the right to request a final disposition. The person having custody is required to notify all appropriate prosecuting attorneys and courts to which the request for final disposition is being sent. The statute also provides that an out-of-state prisoner who has caused a request for final disposition to be served is entitled to a trial within 180 days. If the request by the appropriate prosecuting attorney is pursuant to N.J.S.A. 2A:159-4, there is a 30-day period after the request to permit the Governor of the sending state to refuse to deliver the prisoner. The prisoner is entitled to contest the legality of his delivery except that he cannot contest it upon the ground that the executive authority of the sending state has not consented to or ordered such delivery. If the prisoner has requested a final disposition, that request

is considered a waiver of the right to contest extradition.

The ABA also recommends that the time for trial of a prisoner whose presence for trial has been obtained while he is serving a term of imprisonment should commence running from the time his presence for trial has been obtained, subject to the same excluded periods as other defendants. The Interstate Agreement on Detainers, as enacted by New Jersey, (N.J.S.A. 2A:159-3) provides that a prisoner who has caused a request for final disposition to be served is entitled to trial within 180 days. N.J.S.A. 2A:159-4 provides that when the appropriate prosecuting authority requests temporary custody the prisoner is entitled to trial within 120 days of his arrival within the receiving state. State v. Chirra, 79 N.J. Super. 270 (Law Div. 1963) holds that where a prosecuting attorney has unreasonably delayed, after a request for temporary custody has been made, the indictment must be dismissed.

The ABA recommends that the only acceptable consequence of denial of speedy trial should be absolute discharge. Failure of the defendant to move for discharge prior to trial or entry of a plea of guilty should constitute waiver of the right to speedy trial (ABA Speedy Trial 4.1). New Jersey, as well as the U.S. Supreme Court, has not concluded that absolute discharge is the only effective remedy. Court rules do provide, however, that defense or objections capable of determination without trial be raised before trial and that defense motions should be made within 30 days after the initial plea (Rules 3:10-1, 3:10-5). Defenses may not be raised after a plea of guilty State v. Brunetti, 114 N.J. Super. 57 (App. Div. 1971).

If a shorter time limitation is applicable to defendants held in custody, the ABA recommends that the completion of this time result in the release of the defendant on his own recognizance (ABA Speedy Trial 4.2). New Jersey has no rule providing shorter time limits for defendants in custody. Rule 3:26 does provide that if a person detained for a crime "punishable by death" is not indicted within three months he may, for good cause shown, be admitted to bail. A defendant may also be released upon his own recognizance, for good cause shown, if an indictment or accusation is not moved within six months after arraignment. The Supreme Court Criminal Practice Committee is currently considering the development of a court rule to provide that whenever a defendant has been detained 90 days and trial has not commenced, upon the defendant's motion, he should be released upon conditions he is able to meet. This time period is to commence running from the date of the defendant's initial incarceration upon the charge.

C. Plea Negotiations

The National Advisory Commission concluded that the practice of plea negotiating should be abolished. In recognition of a likely delay in that coming about, they proffered some standards for use in the interim.

The ABA standards on Pleas of Guilty and the NAC Courts standards on the negotiated plea require the concurrence of the prosecutor for plea negotiations to proceed but the process is not based upon his application.

In New Jersey the prosecutor initiates the plea negotiation (R. 3:25A-1). Both NAC Courts Standard 3.7 and ABA Pleas of Guilty Standard 1.5 regard a plea as unacceptable unless it has been established that the plea is voluntary, knowledgeable and accurate. New Jersey Court Rule 3:9-2 concurs and requires that the court address the defendant personally for the purpose of inquiry. The court then can determine, on the basis of the personal interview, whether or not the defendant understands the consequences of the plea, entered it voluntarily and if the facts of the case are in accord with the plea. NAC seems to require more than existence of a factual basis. Rule 3:21-1 does not require a claim of innocence but such a claim would be a factor in the court's exercise of discretion. Rule 3:9-2 also states that the defendant be informed of the consequences of his plea which is in accord with ABA Pleas of Guilty Standard 1.4(b) and NAC Courts Standard 3.7.

Rules 3:4-1 and 3:4-2 require that a person be informed of the right to counsel and the right to have counsel provided if indigent. N.J.S.A. 2A:158A-5 provides that any indigent defendant "formally charged" with the commission of an indictable offense be appointed counsel. The New Jersey rule is in accord with ABA Pleas of Guilty Standard 3.1 in accepting as a justification for plea negotiations, considerations of administrative effectiveness. The NAC does not agree on this point. New Jersey and the ABA have considered pleas of guilty "probative of factors relevant to sentence " (State v. Poteet, 61 N.J. 493 (1972).

Standards for Trial Preparation

Standard 2.1 Limitation of Grand Jury Function

The function of the grand jury should be limited to investigative purposes and indictment in exceptional circumstances. Indictment should not be required in any other criminal prosecution and a constitutional amendment should be adopted to that effect.

If a direct grand jury indictment is issued in a particular case, no probable cause hearing should be held.

Standard 2.2 Probable Cause Hearing

A consolidated centralized court should be established having jurisdiction over all offenses. Probable cause hearings should be held under the jurisdiction of this court.

A probable cause hearing should be held within two weeks following the commencement of proceedings and should be held in addition to or, wherever possible, as part of the detention hearing referred to in Standard 1.4, "First Appearance." Evidence received at the probable cause hearing should be limited to that which is relevant to a determination that there is probable cause to believe a crime has been committed and that the defendant has committed it. Upon a finding of probable cause, no further charging document should be required.

Standard 2.3 Speedy Trial Time Limits

Resources should be made available to permit the disposition of all criminal cases within appropriate time limits. Given the necessary resources, all criminal cases involving incarcerated defendants should come to trial within 90 days of arrest and all other trials should be held within six months of filing of the first charging document. Failure to meet these goals should not require dismissal unless it has been determined that there was unnecessary delay in reaching a disposition. An incarcerated defendant who through no fault of his own has not been brought to trial within 90 days of his arrest should be released on conditions he is able to meet.

Standard 2.4 Propriety of Plea Discussions and Plea Agreements

1. In cases in which it appears that the interest of the public in the effective administration of criminal justice would thereby be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. He should engage in plea discussions or reach a plea agreement with the defendant only through defense counsel, except when the defendant is not eligible for or does not desire appointment of counsel and has not retained counsel.

2. The prosecuting attorney, in reaching a plea agreement, may agree to one or more of the following, as dictated by the circumstances of the individual case:

   a. To make or not to oppose favorable recommendations as to the sentence which should be imposed if the defendant enters a plea of guilty or non vult.

   b. To seek or not to oppose dismissal of the offense charged if the defendant enters a plea of guilty or non vult to another offense reasonably related to defendant's conduct; or

   c. To seek or not to oppose dismissal of other charges or potential charges against the defendant if the defendant enters a plea of guilty or non vult.

Standard 2.5 Acceptability of a Guilty Plea

The court should not accept a plea of guilty or non vult without first determining that the plea is voluntary, knowledgeable and accurate.

1. As to the voluntariness of the plea, the following means of coersion render the plea unacceptable:
   a. Charging or threatening to charge the defendant with offenses for which the admissible evidence available to the prosecutor is insufficient to support a guilty verdict.
   b. Charging or threatening to charge the defendant with a crime not ordinarily charged in the jurisdiction for the conduct allegedly engaged in by him.
   c. Threatening the defendant that if he pleads not guilty, his sentence may be more severe than that which ordinarily is imposed in the jurisdiction in similar cases on defendants who plead guilty.
   d. Failing to grant full disclosure before the plea discussions of all exculpatory evidence material to guilt or punishment.
2. In ascertaining the knowledgeability of the plea, the court should be satisfied that the defendant understands the nature of the charge and the full consequences of his plea.
3. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as may satisfy it that there is a factual basis for the plea.

Standard 2.6 Responsibilities of the Trial Judge

1. The trial judge should not participate in plea discussions.
2. If a tentative plea agreement has been reached which contemplates entry of a plea of guilty or non vult in the expectation that other charges before that court will be dismissed or that sentence concessions will be granted, upon request of the parties the trial judge may permit the disclosure to him of the tentative agreement and the reasons therefore in advance of the time for tender of the plea. He may then indicate to the prosecuting attorney and defense counsel whether he will concur in the proposed disposition if the information in the presentence report is consistent with the representations made to him.
3. When a plea of guilty or non vult is tendered or received as a result of a prior plea agreement, the trial judge should give the agreement due consideration, but notwithstanding its existence he should reach an independent decision on whether to grant charge or sentence concessions.

Standard 2.7 Pleading By Defendant; Alternatives

1. A defendant may plead not guilty, guilty, or non vult. A plea of guilty or non vult should be received only from the defendant himself in open court except when the defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer.
2. A defendant may plead non vult or guilty only with the consent of the court.

Standard 2.8 Representation by Counsel During Plea Negotiations

No plea negotiations should be conducted until a defendant has been afforded an opportunity to be represented by counsel. If the defendant is represented by counsel, the negotiations should be conducted only in the presence of and with the assistance of counsel.

Standard 2.9 Pleading to Other Offenses

Upon entry of a plea of guilty or non vult or after conviction on a plea of not guilty, the defendant's counsel may request permission for the defendant to enter a plea of guilty or non vult as to other crimes he has committed which are within the jurisdiction or coordinate courts of that State. Upon written approval of the prosecuting attorney of the governmental unit in which these crimes are charged or could be charged, the defendant should be allowed to enter the plea.

Standard 2.10 Plea Withdrawal

Prior to sentencing, the court should allow the defendant to withdraw his plea of guilty or non vult whenever the defendant proves that withdrawal is necessary to correct a manifest injustice. In the absence of a showing that withdrawal is necessary to correct a manifest injustice, a defendant may not withdraw his plea of guilty or non vult as a matter of right onee the plea has been accepted by the court. Before sentence, the court in its discretion may allow the defendant to withdraw his plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea.

After a defendant has been sentenced, any attempt to withdraw his or her plea of guilty should be made pursuant to those rules governing post conviction relief.

Standard 2.11 Effect of Withdrawn or Refused Plea on Subsequent Proceedings

A plea of guilty or non vult that is withdrawn or refused should not be admissible in evidence against the defendant at trial.

Standard 2.12 Consideration of Plea in Final Disposition

1. It is proper for the court to grant charge and sentence concessions to defendants who enter a plea of guilty or non vult when the interest of the public in the effective administration of criminal justice would thereby be served.

2. The court should not impose upon a defendant any sentence in excess of that which would be justified because the defendant has chosen to require the prosecution to prove his guilt at trial rather than to enter a plea of guilty or non vult.

Standard 2.13 Recording the Proceedings and the Agreement of Guilty Pleas

Where a guilty plea is offered, both the plea and any agreement upon which it is based should be placed on the record in open court and preserved. The record should include the court's advice to the defendant, the inquiry into the voluntariness of the plea and the inquiry into the factual basis of the plea.

Commentary

One of the chief goals of the Advisory Committee in recommending standards governing trial preparation is the reduction of pretrial delay. Proposed standards are designed to improve efficiency and eliminate duplication and waste of resources. The Committee envisions a system of justice where no complaint would be filed without the prosecuting attorney's review and approval. Once a complaint is filed it would be referred to a centralized court for a probable cause determination. If probable cause is found, arraignment is held at which time motions are made and a trial date is scheduled. This procedure would result in minimal delay from the time a defendant is held to answer for the charge to the holding of a trial.

To eliminate the present duplicative grand jury-probable cause hearing process, the Advisory Committee recommends that indictment should not be required to institute criminal proceedings and a State constitutional amendment should be adopted to that effect. The Committee discussed maintaining the present indictment requirement and eliminating the probable cause hearing. This solution would perhaps be easier but it was not considered the more effective remedy since the grand jury system itself is in need of reform. The determination of probable cause for most criminal cases can be handled adequately through the hearing mechanism. In cases involving multiple defendants or where the need for secrecy concerning the identity of witnesses or suspects is present, the determination of probable cause through the grand jury process would be necessary. For this reason, the Committee recommends the indictment process not be eliminated entirely but be used only in exceptional circumstances. The function of the grand jury should be limited primarily to investigative purposes. Where cases are best

handled through indictment, no probable cause hearing should be held.

It is recommended that hearings as to probable cause be held within two weeks following the commencement of proceedings through either arrest or the issuance of a complaint or summons. Whenever possible, this hearing should be combined with the detention hearing required in those cases where the accused is detained.

Limiting the grand jury function and placing a greater emphasis on the probable cause hearing cannot be recommended without also recommending a change in court organization. Currently, probable cause hearings are held in Municipal Courts which, for the most part, are part-time tribunals held one or two nights each week. If probable cause hearings were relied upon as the sole determiner of sufficient cause for most criminal proceedings, the part-time structure of Municipal Courts could not accommodate the demand for such hearings. Municipal Court re-organization and consolidation is advantageous; however, it is recognized that, at the present time, such a proposal may be politically unfeasible. The Committee declines to favor a particular course of implementation, but whatever avenue is eventually chosen, it must have jurisdiction over both indictable and disorderly person offenses.

It is hoped that the enactment of the Committee recommendations regarding the use of the grand jury and probable cause hearing would result in a reduction of pretrial delay and thus help ensure a defendant's right to a speedy trial and the public's right to a speedy disposition. It is envisioned that an adversarial probable cause hearing would result in a greater

number of cases being resolved prior to trial either through administrative disposition or negotiation and guilty pleas.

Any recommendations regarding the right to a speedy trial would not be complete without the designation of a time limit. The Committee concurs with the ABA suggestion of 90 days from arrest to trial which is similar to Governor Byrne's request for a speedy trial program to bring defendants charged with violent crimes to trial within 90 days and all other criminal defendants within six months. Ideally, resources should be provided to enable all criminal cases to be disposed of as quickly as possible. Given these resources it is recommended that all criminal cases involving detained defendants proceed to trial within 90 days of arrest and all others within six months of filing of the first charging document. When these time limits are exceeded, the Committee does not advocate any violations of these limits be coupled with automatic dismissal unless it has been determined that there was unnecessary delay in reaching a disposition. Instead, the Committee concurs with the Supreme Court Committee on Criminal Practice recommended court rule that where a defendant has been detained 90 days and trial has not commenced, the defendant should be released on conditions he or she is able to meet.

As to the standards relating to plea negotiation and pleas of guilty, the Advisory Committee accepts the conclusions of the American Bar Association about the efficacy of disposition by means of plea agreements. The Committee subscribes to the prevailing opinion that the criminal justice system would be intolerably burdened without the alternative to trial of disposition through pleas of guilty arrived at through the negotiating process. It

concurs, moreover, with the ABA that values other than expediency are served by the disposition of many criminal cases without trial. Among the commonly held values are the acknowledgment of guilt and acceptance of responsibility which can be brought about through plea negotiation and pleas of guilty. Such an approach seems especially appropriate and logical when the facts of the case are not in dispute.

The distinction was made between negotiated pleas and guilty pleas where no negotiation takes place. Though it is an important distinction to make, the Committee assumed that guilty pleas not involving negotiations should be subject to the same safeguards and regulations. This would especially be true with respect to entry and preservation of the plea on record.

There was also consensus on the salient issues of plea negotiations. The Advisory Committee recommends that for a plea to be accepted it should meet the criteria of voluntariness, knowledgeability and accuracy. These qualifications serve to reinforce Rule 3:9-2 which provides that a court may refuse to accept any plea of guilty and must not accept a plea of guilty unless it first addresses the defendant personally and determines by inquiry of the defendant and others, in the court's discretion that (1) there is a factual basis for the plea; (2) that the plea is made voluntarily and is not the result of any threats or promises or inducements which are not disclosed on the record; and (3) that the plea is made with an understanding of the nature of the charge and the consequences of the plea. This rule also provides for the court to require a defendant to complete, insofar as is applicable, and sign the appropriate form prescribed by the Administrative Director of the Courts.

Regarding the last two criteria, knowledgeability and accuracy, the Committee recognized certain difficulties. Knowledgeability, for instance, is a conceptually complex notion. Opinions differ as to whether the term should be broadly or narrowly defined. As noted in the juvenile section on "Judicial Process," several court decisions have dealt with this issue. It was held almost four decades ago in Johnson v. Zerbst, 304 U.S. 458, 464, 58 S. Ct. 1019, 83 L. Ed. 1461 (1938) that a defendant who enters a plea waives certain constitutional rights and for this waiver to be valid, it must be an intentional relinquishment or abandonment of a known right or privilege. That decision notwithstanding it cannot illuminate the concept of knowledgeability to say that the defendant must intentionally waive "known rights or privileges" if the whole issue of knowledgeability rests on the question of what it is to "know" rights and precisely what rights it is crucial to know. Some say that for a plea to be knowledgeable the defendant must completely understand all possible ramifications of the plea, including how a plea may affect the parole hearings and how soon he or she could be considered for parole if conviction is brought about by trial. Given the complexities, knowledgeability is difficult to ensure and it might be problematic trying to prove a plea was or was not knowledgeable. It seems reasonable to suppose that even with the best intentions on the part of all concerned some misunderstandings could go undetected by the court that rules on the plea.

The assistance of counsel is crucial to a reasoned plea. However, on the issue of knowledgeability the Committee did not make explicit stipulations concerning the conduct of the defense attorney with his client. It was agreed that spelling out this relationship might create more problems than it solves.

Furthermore, there was opposition to a standard which would require the judge to inform the defendant of the implications of his plea such as maximum sentence for a guilty plea or the realities of parole violation and multiple offender status. The attempt on the part of the judge to spell out all the conceivable consequences of a guilty plea was thought to create more problems than would be alleviated. Though Rule 3:9-2 provides for the question, with others, "do you understand that for all offenses above the court could impose a sentence totalling not more than _____ years or fines totalling not more than $_____ or both?" Nevertheless, the failure of a judge to disclose the maximum sentence does not invalidate a guilty plea according to State v. Smith, 109 N.J. Super. 9 (App. Div.), Certif. Den. 56 N.J. 473 (1970). The members of the Committee felt it was better not to draw the strings too tight in this area. Nor did the Committee feel that the judge should be required to set forth the information which contributed to his decision to refuse a guilty plea.

There is also a problem in determining the accuracy of the plea. Since the court is not an investigative agency it is not equipped to carry out a thorough enough investigation to determine whether the facts of the case are consonant with those presented to the court. In cases where the degree of difference was considerable and obvious, of course the court should not accept the plea.

In the case of plea withdrawal, the Advisory Committee agreed that a plea can be withdrawn only prior to sentencing except to correct a manifest injustice. A withdrawn plea may not be used as evidence against the defendant nor should his retraction be reflected in a harsher sentence. Any plea change after sentencing should be covered under post-conviction relief.

As noted, the Advisory Committee held generally to the American Bar Association recommendations but tended to deal with the relevant matter in a more general manner, recognizing that the realities of the New Jersey criminal justice system make closing off options both unfeasible and unwise. The discussion consistently reflected the conviction that in the area of plea negotiations there must be discretion and adequate latitude to allow individual treatment in each case.

It was the consensus of the subcommittee during deliberations on the subjects of joinder and severance and discovery that New Jersey Court Rules are in compliance with and in some instances exceed national recommendations. The Committee therefore, deemed it unnecessary to develop standards in these areas. For more information on these topics refer to Court Rules 3:15, "Joinder and Severance" and 3:13 "Pretrial; Dispositions; Discovery."

Bibliography

Administrative Office of the Courts, Annual Report of the Administrative Director of the Courts, 1973-1974, Trenton, New Jersey, 1974.

Administrative Office of the Courts personnel interviewed by telephone by Standards and Goals Staff, SLEPA, January, 1976.

Administrative Office of the Courts, Report of the Status of the Calendars for each month of 1975, Trenton, New Jersey.

Administrative Office of the Courts, Report of the Status of the Calendars for the Month of October, 1975, Trenton, New Jersey.

Administrative Office of the Courts, Report of the Status of the Calendars for the Month of January, 1976, Trenton, New Jersey.

Advisory Commission on Intergovernmental Relations, State - Local Relations in the Criminal Justice Systems, Washington, D.C., U.S. Gov't. Printing Office, 1971.

Alschuler, Albert W., "The Prosecutor's Role in Plea Bargaining," in The U. Chi. L. Rev., Volume 36: 1968.

American Bar Association Commission on Standards of Judicial Administration, Standards Relating to Court Organization, Chicago, Illinois, 1974.

American Bar Association Commission on Standards of Judicial Administration, Standards Relating to Joinder and Severance, Chicago, Illinois, 1974.

American Bar Association Commission on Standards of Judicial Administration, Standards Relating to Trial Courts, ABA, 1975.

American Bar Association Project on Standards for Criminal Justice, Standards Relating to Speedy Trial, New York, New York, May, 1967.

American Bar Association Project on Standards for Criminal Justice, Standards Relating to the Administration of Criminal Justice, ABA, 1974.

Ariessohn, Richard M., and Gordon Gonion, "Reducing the Juvenile Detention Rate," Juvenile Justice, May, 1973.

"Bar Committee Opposes Senatorial Courtesy," 98 N.J.L.J., March 20, 1975.

Bard, Morton, Training Police as Specialists in Family Crisis Intervention, Washington, D.C., U.S. Gov't. Printing Office, 1970.

Baum, Major William, Special Investigations Unit, New Jersey State Police, interviewed by telephone by Standards and Goals Staff, SLEPA, March 10 and 26, 1976.

Bittner, Egon, lecture at Police Community Relations Institute, Federal Bureau of Investigation Academy, Quantico, Virginia, Spring, 1973.

Block, Peter B. and Deborah Anderson, Policewoman on Patrol: Final Report, Police Foundation, Washington, D.C., 1974.

Bureau of the Census, U.S. Department of Commerce, 1970 Census of Population: New Jersey, Washington, D.C., U.S. Gov't. Printing Office, 1971.

Clark, Ramsey, Crime in America, Simon and Schuster, Inc., New York, 1971.

Council of State Governments, Interstate Compact on Juveniles, Article 14, n.p., 1955.

County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey: Findings and Conclusions, October, 1975.

County and Municipal Government Study Commission, Aspects of Law Enforcement in New Jersey, March, 1976.

Data obtained from a survey by the New Jersey State Lodge of the Fraternal Order of Police, June, 1976.

Division of Correction and Parole Personnel, interviewed by Standards and Goals Staff, SLEPA, August 6, 7 and 14, 1975 and September 17, 1975.

Faley, Robert H., A Concurrent Validation Study of a Prototype Examination for the Selection of Police Officers in New Jersey, New Jersey Department of Civil Service, Division of Examinations Test Validation and Staff Development Unit, February, 1975.

Fox, Sanford J., Modern Juvenile Justice, West Publishing Company, St. Paul, Minn., 1972.

Goldstein, Abraham S., The Insanity Defense, New Haven, Yale University Press, 1967.

Goldstein, Leo, Supervisor, Test Validation Unit and Tom Cassidy, Principal Personnel Technician, both of the Dept. of Civil Service, interviewed by Standards and Goals Staff, SLEPA, March 23, 1976.

Governor's Select Commission on Civil Disorder, State of New Jersey, Report for Action, Trenton, New Jersey, February, 1968.

Hays, Daniel, "Senatorial Courtesy Survives Challenge," The Star Ledger, February 2, 1976.

"Information for Future Police Officer Applicants," sent to the New Jersey State Law Enforcement Planning Agency from the New Jersey Department of Civil Service, March, 1976.

Information sent to the New Jersey State Law Enforcement Planning Agency from William J. Downey, Jr., Criminal Justice Planner, Office of the County Prosecutor, Hudson County, April 29, 1976.

Institute of Judicial Administration and American Bar Association Joint Commission on Juvenile Justice Standards, "Information Packet on Juvenile Justice Standards Project," New York, December 22, 1975.

Jaffe, Herb, "Hughes Wants End to Senatorial Courtesy," The Star Ledger, June 1, 1975.

Jordan, James M., "The Responsibility of the Superintendent to Maintain the Function of Detention," Juvenile Court Judges Journal, 1968.

"Judicial Vacancies and Executive Clemency," 98 N.J.L.J., November 27, 1975.

"Justice on Trial," Newsweek, March 8, 1971.

Katz, Lewis, Lawrence Litwin and Richard Bamberger, Justice is the Crime: Pretrial Delay in Felony Cases, Case Western Reserve University Press, 1972.

Keve, Paul and Casimir Zantek, "Final Report and Evaluation of the Home Detention Program, St. Louis, Missouri," RAC -CR-64, McLean, Virginia, Research Analysis Corporation, 1972.

McConnel, Edward B., "A Blueprint for the Development of the New Jersey Judicial System," 92 N.J.L.J., June 5, 1969.

Mitford, Jessica, Kind and Unusual Punishment: The Prison Business, Vintage Books, New York, 1972.

"Multiple Criminal Offender," Wis. L. Rev., Volume 1961.

Nagel, Stuart, "Comparing Elected and Appointed Judicial Systems," American Politics Series, Sage Publications, California, 1973.

National Advisory Commission on Criminal Justice Standards and Goals, Report on Corrections, Washington, D.C., U.S. Gov't. Printing Office, 1973.

National Advisory Commission on Criminal Justice Standards and Goals, Report on Courts, Washington, D.C., U.S. Gov't. Printing Office, 1973.

National Advisory Commission on Criminal Justice Standards and Goals, Report on Criminal Justice System, Washington, D.C., U.S. Gov't. Printing Office, 1973.

National Advisory Commission on Criminal Justice Standards and Goals, Report on Police, Washington, D.C., U.S. Gov't. Printing Office, 1973.

National Conference of Commissioners on Uniform State Laws, "Rule 471, Joinder or Dismissal of Offenses Upon Defendant's Motion," Uniform Rules of Criminal Procedure: Proposed Final Draft, West Publishing Co.

National Council of Juvenile Court Judges, "Handbook for New Juvenile Court Judges," Juvenile Court Judges Journal, 23, Winter, 1973.

National Council on Crime and Delinquency, Guides for Juvenile Court Judges, NCCD, New York, New York, 1957.

National Council on Crime and Delinquency, Standards and Guides for the Detention of Children and Youth, NCCD, New York, New York, 1961.

National Council on Crime and Delinquency, Standard Juvenile Court Act, NCCD, New York, New York, 1959.

National Probation and Parole Association, Standards and Guides for the Detention of Children and Youth, New York, New York, 1958.

New Jersey Court Rule 3:15-1(a) and (b).

New Jersey Court Rule 5:8-6(e).

New Jersey Department of Civil Service and Police Training Commission personnel interviewed by telephone by Standards and Goals Staff, SLEPA, March 23, 25 and 26, 1976.

New Jersey Department of Civil Service, Improvement in the Recruitment and Selection of Criminal Justice Personnel, A final evaluation report to the State Law Enforcement Planning Agency for grant # A-17-73.

New Jersey Department of Civil Service, Improvement in the Recruitment and Selection of Criminal Justice Personnel, A final evaluation report to the State Law Enforcement Planning Agency for grant # A-21-74.

New Jersey Department of Labor and Industry, Division of Planning and Research, 1974 Affirmative Action Technical Notes, October, 1975.

New Jersey Police Training Commission, Div. of Criminal Justice, Dept. of Law and Public Safety, Planning to Determine the Future Role of the Commission, November 15, 1974.

New Jersey Police Training Commission, Div. of Criminal Justice, Dept. of Law and Public Safety, The New Jersey In-Service Training Report, December 9, 1975.

New Jersey Police Training Commission, Div. of Criminal Justice, Dept. of Law and Public Safety, 13th Annual Activities Report, 1974-1975, 1975.

New Jersey Police Training Commission personnel interviewed by telephone by Standards and Goals Staff, SLEPA, March 26, 1976.

N.J.S.A. 2A:4-56.

N.J.S.A. 40:37-95.13.

N.J.S.A. 40A:14-122.

N.J.S.A. 52:17B-71(a).

New Jersey State League of Municipalities, New Jersey Municipal Salary Report, New Jersey, October, 1975.

New Jersey Supreme Court Criminal Practice Committee, Report of the New Jersey Supreme Court's Committee on Criminal Practice, Part 1, March, 1976.

New Jersey Supreme Court Criminal Practice Committee, The Grand Jury: A Blueprint for Reform, 1976.

New Juvenile Law Center, Law and Tactics in Juvenile Cases, St. Louis University School of Law, 2d. 3d., 1974.

Office of the Public Advocate personnel interviewed by telephone by Standards and Goals Staff, SLEPA, May 6, 1976.

Ohio State University, Program for the Study of Crime and Delinquency, Standards and Goals Comparison Project, Vol. II, Columbus, Ohio, 1974.

Orfield, Lester B., "A Note on Joinder of Offenses," Oregon L. Rev., 1962.

Pappenfort, Donnell, Dee Kirkpatrick and Alma M. Kirby, Detention Facilities Vol. 7 of A Census of Childrens' Residential Institutions in the United States, Puerto Rico and the Virgin Islands, 1966, Chicago, University of Chicago, School of Social Science Administration, 1970.

People associated with judicial selection and training in New Jersey, interviewed by Standards and Goals Staff, SLEPA, during February and March, 1976.

President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, Washington, D.C., U.S. Gov't. Printing Office, 1967.

President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police, Washington, D.C., U.S. Gov't. Printing Office, 1967.

President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, Washington, D.C., U.S. Gov't. Printing Office, 1967.

"Report of the State Bar Committee on Court Modernization," 98 N.J.L.J., March 20, 1975.

"Report of the Supreme Court's Committee on Juvenile and Domestic Relations Courts," 99 N.J.L.J. 406 (1975).

Rosove, Perry E., The Impact of Social Trends on Crime and Criminal Justice, for Systems and Training Analysis of Requirements for Criminal Justice Participants (Project STAR), sponsored by the California Department of Justice Commission on Peace Officer Standards and Training, March 23, 1973.

Rudovsky, David, The Rights of Prisoners, The American Civil Liberties Union, Inc., New York, 1973.

Saks, Richard, Administrative Office of the Courts, Office of Judicial Education, interviewed by Standards and Goals Staff, SLEPA, January 22, 1976.

Sarri, Rosemary C., "The Detention of Youth in Jails and Juvenile Detention Facilities," Juvenile Justice, November, 1973.

Seiler, Margaret Gordon, "Judicial Selection in New Jersey," Seton Hall L. Rev., Vol. 5, Summer, 1974.

Serious Crime: A Criminal Justice Strategy, paper presented at the 1976 New Jersey Prosecutor's Convention in Atlantic City.

Sheridan, William H. and Herbert Wilton Beaser, Model Acts for Family Courts and State - Local Childrens' Programs, Department of Health, Education and Welfare, Washington, D.C., May, 1974.

Staff of the New Jersey Department of Civil Service interviewed by Standards and Goals Staff, SLEPA, March 23, 1976.

Staff of the New Jersey Department of Civil Service interviewed by telephone by Standards and Goals Standards and Goals Staff, SLEPA, June 4, 1976.

State Bar Association, "Judicial Appointments Committee Procedures," 98 N.J.L.J., November 13, 1975.

"State Bar Holds Discussion on the Selection of Judges," 97 N.J.L.J., Thursday, March 21, 1974.

State of New Jersey, Division of State Police Uniform Crime Reporting Unit, Crime in New Jersey - 1974: Uniform Crime Reports, n.p., 1974.

Survey by Standards and Goals and Planning Sections of SLEPA, April-May, 1976.

Task Force on the New Juvenile Code, Department of Institutions and Agencies, "A Manual of Standards for Shelters Accepting Juveniles Awaiting Court Action," January, 1975.

Task Force on the New Juvenile Code, Department of Institutions and Agencies, "A Manual of Standards for Detention Centers Awaiting Court Action," Final Draft, 1976.

Task Force on the Juvenile Code, Department of Institutions and Agencies, Status Report on Shelter Programs for Juveniles in Need of Supervision, Trenton, New Jersey, 1975.

The Commission to Study the Causes and Prevention of Crime in New Jersey, A Survey of Crime Control and Prevention in New Jersey, Trenton, New Jersey, March, 1968.

"The Unconstitutionality of Plea Bargaining," Harvard L. Rev., Volume 83, 1970.

Toffler, Alvin, Future Shock, Bantam Books, Random House, New York, New York, 1970.

U.S. Childrens' Bureau, Standards for Juvenile and Family Courts, Washington, D.C., U.S. Gov't. Printing Office, 1966.

U.S. Department of Justice, Law Enforcement Assistance Administration, Planning and Designing for Juvenile Justice, Washington, D.C., U.S. Gov't. Printing Office, 1972.

Wasserman, Robert, et. al., Improving Police/Community Relations, U.S. Dept. of Justice, Washington, D.C., U.S. Gov't. Printing Office, 1973.

Waugh, Alexander P., "Judicial Vacancies: A Statement by the Bar Institute of New Jersey," N.J.L.J., Thursday, January 4, 1973.

Whitlatch, Walter G., "Practical Aspects of Reducing Detention Home Population," Juvenile Justice, August, 1973.

Wiley, Stephen B., "Senatorial Courtesy," 97 N.J.L.J., January 31, 1974.

Wilson, James Q., Thinking About Crime, Basic Books, Inc., New York, 1975.

Wilson, James Q., Varieties of Police Behavior: The Management of Law and Order in Eight Communities, Massachusetts, Athenem, Murray Printing Company, 1968.

Wisconsin Council on Criminal Justice, Juvenile Justice Standards and Goals, Madison, Wisconsin, 1975.

Case Law

Anderson v. Nosser, 438 F. 2nd. 183, 190 (5th Civ. 1971).

Brady v. Maryland, 373 U.S. 83 (1963).

Brenneman v. Madigan, 343 F. Supp. 128 (N.D. Cal. 1972).

Collius v. Schoonfield, 344 F. Supp. 257 (D. Md. 1972).

Garrity v. New Jersey, 385 U.S. 493 (1967).

Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2nd 799 (1963).

Gutenkunst v. State, 218 Wis. 96, 259 N.W. 610 (1935).

Jencks v. United States, 353 U.S. 657 (1957).

Jones v. Wittenberg, 323 F. Supp. 92 (N.D. Ohio 1971).

Mallory v. U.S., 354 U.S. 449, 77 S. Ct. 1356, 1 L. Ed. 2nd 1479 (1957).

Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2nd 1081 (1961).

McAndrew v. Mularchuk, 33 N.J. 172 (1960).

McNabb v. U.S., 318 U.S. 332, 63 S. Ct. 608, 87 L. Ed. 819 (1943).

Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2nd 694 (1966).

Osborn v. Manson, 359 F. Supp. 1107 (D. Conn. 1973).

Rhem v. McGrath, 326 F. Supp. 681 (S.D.N.Y. 1971).

Santabello v. New York, 404 U.S. 257, 269 (1971).

Spevack v. Klein, 385 U.S. 511 (1967).

State v. Cox, 101 N.J. Super. 470 (App. Div. 1968) at 475, 476 as cited in State v. Gregory, 66 N.J. (1975).

State v. Johnson, 61 N.J. 351, 364 (1972).

State v. Taylor, 49 N.J. 440, 445 (1967).

Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2nd 889 (1968).