

P U B L I C H E A R I N G

before

SENATE STATE GOVERNMENT AND FEDERAL AND INTERSTATE
RELATIONS COMMITTEE

on

Assembly Bill 1409
(Establishing a Department of the Public Advocate)

Held:
April 15, 1974
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF THE COMMITTEE PRESENT:

Senator Eugene J. Bedell (Chairman)
Senator Joseph W. Tumulty
Senator Raymond Garramone
Senator Frank Davenport

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I N D E X

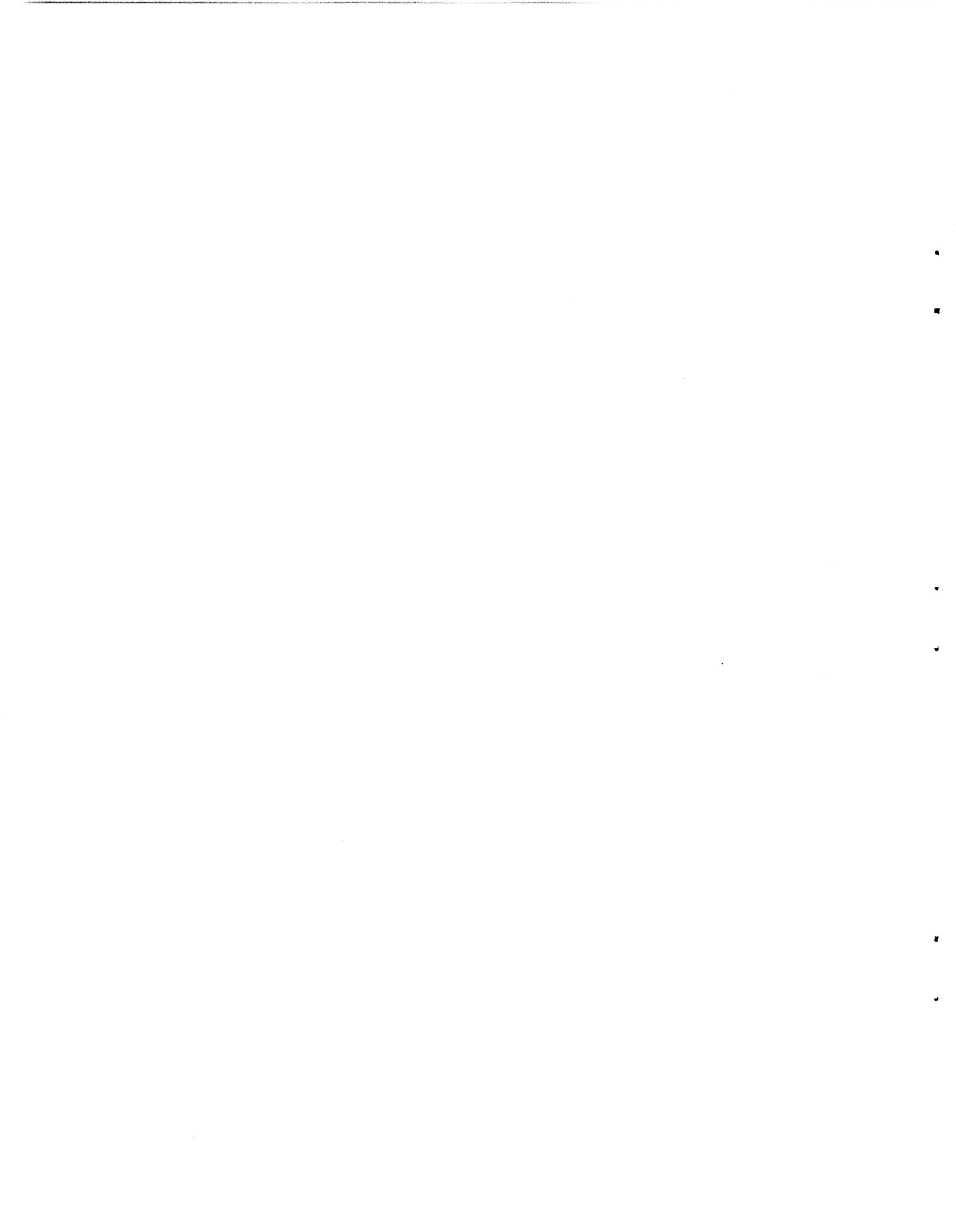
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[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 1409

STATE OF NEW JERSEY

INTRODUCED MARCH 18, 1974

By Assemblymen WOODSON, BAER and McMANIMON

Referred to Committee on State Government

AN ACT establishing and concerning a Department of the Public Advocate as a principal department in the Executive Branch of the State Government, allocating the Office of the Public Defender therein, revising part of the statutory law, and providing an appropriation therefor.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

ARTICLE I

1 1. Short title. This act shall be known and may be cited as the
2 "Department of the Public Advocate Act of 1974."

1 2. Establishment. There is hereby established in the Executive
2 Branch of the State Government a principal department which shall
3 be known as the Department of the Public Advocate.

4 As used in this act, unless the context clearly indicates otherwise,
5 the word "department" means the Department of the Public
6 Advocate established herein.

1 3. Commissioner; appointment; term; salary. The administrator
2 and chief executive officer of the department shall be a commis-
3 sioner, who shall be known as the Public Advocate and who shall be
4 a person qualified by training and experience to perform the duties
5 of his office. The Public Advocate shall be appointed by the
6 Governor, with the advice and consent of the Senate, and shall serve
7 at the pleasure of the Governor during the Governor's term of office
8 and until the appointment and qualification of the Public Advocate's
9 successor. He shall receive such salary as shall be provided by law.

10 The Public Advocate may in the discretion of the Governor con-
11 currently hold another position established in or allocated to the
12 Department of the Public Advocate, notwithstanding any require-
13 ment of law that he devote his entire time to the duties of one posi-

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

14 tion or the other. In such case the Public Advocate shall receive
15 only the salary provided for the Public Advocate, and not the salary
16 for such other position.

1 4. Power and duties of Public Advocate. The Public Advocate, as
2 administrator and chief executive officer of the department, shall:

- 3 a. Administer the work of the department;
- 4 b. Appoint and remove such officers, investigators, stenographic
5 and clerical assistants and other personnel as may be required for
6 the conduct of the department, subject to the provisions of Title 11
7 of the Revised Statutes, Civil Service, and other applicable statutes,
8 except as provided otherwise herein;
- 9 c. Adopt, issue and promulgate, in the name of the department,
10 such rules and regulations as may be authorized by law;
- 11 d. Formulate and adopt rules and regulations for the efficient
12 conduct of the work and general administration of the department,
13 its officers and employees;
- 14 e. Institute or cause to be instituted such legal proceedings or
15 processes consistent with the rules governing the courts of New
16 Jersey and the practice of law therein as may be necessary properly
17 to enforce and give effect to any of his powers or duties;
- 18 f. Prepare schedules of rates to be paid for services rendered
19 other than by the staff, taking into account the nature of the
20 services, the time involved, the skill and experience required and
21 other pertinent factors;
- 22 g. Make such reports of the department's operation as the
23 Governor or the Legislature shall from time to time request, or as
24 may be required by law;
- 25 h. Perform, exercise and discharge the functions, powers and
26 duties of the department through such divisions as may be estab-
27 lished by this act or otherwise by law;
- 28 i. Organize and coordinate the work of the department in such
29 divisions, not inconsistent with the provisions of this act, and in
30 such bureaus and other organizational units as he may determine
31 to be necessary for efficient and effective operation;
- 32 j. Integrate within the department, so far as practicable, all staff
33 services of the department and of the several divisions and other
34 agencies therein;
- 35 k. Maintain suitable headquarters for the department and such
36 other quarters as he shall deem necessary to the proper functioning
37 of the department;
- 38 l. Except as otherwise provided by law, appoint division directors
39 who are qualified by training and experience to direct, under the

40 supervision of the Public Advocate, the several divisions and offices
41 established pursuant to this act. Except for the Public Defender,
42 such division directors shall serve at the pleasure of the Public
43 Advocate who shall fix their compensation within the limits of avail-
44 able appropriations;

45 m. Solicit and accept grants of funds from the Federal Govern-
46 ment and from private foundations, and allocate or restrict the use
47 of such funds as may be required by the grantor; and

48 n. Perform such other functions as may be prescribed in this act
49 or by any other law.

1 5. Appointment of Assistant Public Advocate. The Public Advo-
2 cate may appoint an Assistant Public Advocate to serve at the
3 pleasure of the Public Advocate. Such appointment shall be in
4 writing and filed with the Secretary of State. The Assistant Public
5 Advocate shall have and exercise the powers and perform the
6 functions and duties of the Public Advocate during the absence or
7 disability of the Public Advocate. The Assistant Public Advocate
8 shall also have and exercise such of the powers and perform such
9 of the functions and duties of the Public Advocate as he shall be
10 authorized and directed by the Public Advocate. Any such autho-
11 rization and direction shall be in writing, signed by the Public
12 Advocate and filed with the Secretary of State, and shall include
13 a designation of the period during which it shall be and remain in
14 force. No such authorization and direction shall be deemed to
15 preclude the Public Advocate from himself exercising the powers
16 and the performance of the duties included in said authorization
17 and direction. In the event that the Public Advocate shall die,
18 resign or be removed from office, or become disqualified to execute
19 the duties of his office, or a vacancy shall occur in the office of the
20 Public Advocate for any cause whatsoever, the person then holding
21 the office of Assistant Public Advocate shall continue to hold such
22 office and shall have and exercise the powers and perform the
23 functions and duties of the Public Advocate until the successor of
24 the Public Advocate shall be appointed and shall qualify.

25 The Assistant Public Advocate shall receive such salary as shall
26 be provided by law.

1 6. The Public Advocate shall appoint deputy public advocates
2 and other expert assistants in such number as he shall require to
3 assist him in the performance of the duties of his office. Deputies
4 shall be attorneys-at-law of this State. Deputies and other expert
5 assistants shall serve at the pleasure of the Public Advocate and
6 shall receive such salaries as he shall from time to time designate.

1 7. Division of Administration. There is hereby established in the
2 Department of the Public Advocate the Division of Administration
3 to be under the supervision of the Director of the Division of
4 Administration.

1 8. It shall be the duty of the Division of Administration to pre-
2 pare a budget for the department, fulfill personnel requirements,
3 provide public information concerning department activities, con-
4 duct such research as the Public Advocate determines to be relevant
5 and necessary to the department's functions and to draft such
6 legislation as may from time to time be required.

1 9. Section 3 of P. L. 1967, c. 43 (C. 2A:158A-3) is amended to
2 read as follows:

3 3. There is hereby established in the Executive Branch of the
4 State Government the Office of the Public Defender. For the pur-
5 pose of complying with the provisions of Article V, Section IV,
6 paragraph 1 of the New Jersey Constitution, the Office of the Public
7 Defender is hereby allocated within the Department of [Institutions
8 and Agencies] *the Public Advocate*, but, notwithstanding said allo-
9 cation, the office shall be independent of any supervision or control
10 by the department or by any board or officer thereof.

1 10. Allocation of the Office of Public Defender to the Department
2 of the Public Advocate as provided herein shall not alter or change
3 the term, tenure of office, rights, obligation, duties or responsibilities
4 otherwise provided by law for the Public Defender.

1 11. Office of Inmate Advocacy: established. There is hereby
2 established in the Office of the Public Defender the Office of Inmate
3 Advocacy.

1 12. Inmate: defined. As used in this article, "inmate" shall
2 mean any person who is committed to or confined in a jail, prison,
3 lockup, penitentiary, reformatory, training school or other similar
4 facility within the State of New Jersey.

1 13. Office of Inmate Advocacy: duties. The Office of Inmate
2 Advocacy may represent the interests of prisoners in such disputes
3 and litigation, as will, in the discretion of the Public Defender, best
4 advance the interests of prisoners as a class on an issue of general
5 application to them, and may negotiate as representative of
6 prisoners with any principal department or other instrumentality of
7 State, county or local government.

1 14. Professional responsibilities. The primary duty of all staff
2 members and of others engaged by the department on a *[con-
3 tract]* *temporary* or case basis shall be to the individual client,
4 with like effect and to the same purpose as though privately en-

5 gaged by the client and without regard to the use of public funds
 6 to provide the service. This responsibility shall not preclude the
 7 designation or assignment of different individuals to perform
 8 various parts of the service from time to time, the duty in such
 9 cases to be the same as would exist in the case of a privately en-
 10 gaged law firm.

1 15. Attorney-client privilege. All communications between the in-
 2 dividual client and any attorney in or engaged by the Department
 3 of the Public Advocate shall be fully protected by the attorney-
 4 client privilege to the same extent and degree as though counsel has
 5 been engaged privately. This privilege shall in no way preclude the
 6 use by the department of material in its files, otherwise privileged,
 7 for the preparation and disclosure of statistical, case study and
 8 other sociological data, provided always that in any such use there
 9 shall be no disclosure of the identity or the means for discovering
 10 the identity of particular clients.

1 16. Standard of performance. In providing legal services to
 2 clients pursuant to this act, every attorney, whether a member of
 3 the staff or engaged by the department on a ***[contract]*** **tempo-*
 4 *rary** or case basis, shall adhere to the standards of performance
 5 established from time to time by the Supreme Court of New Jer-
 6 sey in the execution of its duty to supervise the practice of law;
 7 and the department shall furnish to such court materials and data
 8 as may be requisite to the measurement of the adequacy of the
 9 performance hereunder.

ARTICLE II

1 17. Division of Rate Counsel: established. There is hereby
 2 established in the Department of the Public Advocate the Division
 3 of Rate Counsel to be under the supervision of the Director of the
 4 Division of Rate Counsel.

1 18. Director, Division of Rate Counsel: staff. The Director of
 2 the Division of Rate Counsel shall be an attorney-at-law of this
 3 State and may employ such assistants on a full-time basis as are
 4 necessary to protect the public interest. When exceptional circum-
 5 stances arise, the Director of the Division of Rate Counsel, with
 6 the approval of the Public Advocate, may on a temporary basis
 7 retain such other expert assistants as are necessary to protect
 8 the public interest, pursuant to a reasonable fee schedule estab-
 9 lished in advance by the Public ***[Advocate]*** **Advocate**.

10 Cases shall be assigned to staff attorneys or to attorneys hired
 11 by case on a basis calculated to provide competent representation
 12 in the light of the nature of the case, the services to be performed,
 13 the experience of the particular attorney and other relevant factors.

1 19. Division of Rate Counsel: ***[duties]*** **jurisdiction**. The
2 Division of Rate Counsel shall represent and protect the public
3 interest as defined in section 31 of this act in proceedings before
4 and appeals from any State department, commission, authority,
5 council, agency or board charged with the regulation or control of
6 any business, industry or utility regarding a requirement that the
7 business, industry or utility provide a service or regarding the
8 fixing of a rate, toll, fare or charge for a product or service. The
9 Division of Rate Counsel may initiate any such proceedings when
10 the director determines that a discontinuance or change in a re-
11 quired service or a rate, toll, fare or charge for a product or ser-
12 vice is in the public interest.

1 20. Payment of expenses of Division of Rate Counsel. Whenever
2 the Division of Rate Counsel represents the public interest in a
3 proceeding initiated by application of a business, industry or utility
4 for authority to increase the rate, toll, fare or charge charged by it
5 for any product or service or to discontinue or change any required
6 service, the Director of the Division of Rate Counsel shall assess the
7 business, industry or utility $\frac{1}{10}$ of 1% of its revenues derived in the
8 calendar year last preceding the institution of such proceeding from
9 its intrastate sales of the product supplied or intrastate service
10 rendered, the rate, toll, fare or charge for which*,* is the subject
11 matter of such proceeding, or \$500.00, whichever is greater. The
12 assessment shall not exceed \$500,000, unless the compensation and
13 expenses of counsel, experts and assistants employed by the divi-
14 sion in such proceeding exceed \$500,000, in which case the director
15 shall send the business, industry or utility an itemized statement
16 setting forth the amount, as of the date of such statement, of the
17 compensation and expenses. Any and all amounts paid by the
18 business, industry, or utility pursuant to this act shall be deemed
19 to be operating expenses.

20 All assessments or statements of compensation and expenses
21 shall be paid by the business, industry or utility to the Department
22 of the Treasury within 30 days after the date of assessment.
23 The State Treasurer, upon receipt of any payment by the business,
24 industry or utility pursuant to the provisions of this act, shall cause
25 the same to be deposited in the General State Fund.

1 21. Transfer of powers and duties of Attorney General pertain-
2 ing to public utility rate hearings.

3 All the functions, powers and duties heretofore exercised by the
4 Attorney General pertaining to the employment, on a temporary
5 basis of legal counsel, experts and assistants to protect the public

6 interest pursuant to P. L. 1951, c. 357 (C. 48:2-31.1, et seq.) and all
 7 amendments and supplements thereto, are hereby transferred to and
 8 vested in the Division of Rate Counsel.

ARTICLE III

1 22. Division of Mental Health Advocacy: established. There is
 2 hereby established in the Department of the Public Advocate the
 3 Division of Mental Health Advocacy under the supervision of the
 4 Director of the Division of Mental Health Advocacy.

1 23. The Director of the Division of Mental Health Advocacy may
 2 employ such assistants on a full-time basis as are necessary. When
 3 exceptional circumstances arise, the Director of the Division of
 4 Mental Health Advocacy, with the approval of the Public Advocate,
 5 may on a temporary basis retain such other expert assistants as are
 6 necessary pursuant to a reasonable fee schedule established in
 7 advance by the Public Advocate.

8 Cases shall be assigned to staff attorneys or attorneys hired by
 9 case on a basis calculated to provide competent representation
 10 in light of the nature of the case, the services to be performed,
 11 the experience of the particular attorney and other relevant
 12 factors.

1 24. Indigent mental hospital admittee: defined. As used herein
 2 "indigent mental hospital admittee" means a person who has been
 3 admitted to and is a patient in a mental hospital, an institution for
 4 the care and treatment of the mentally ill, or a similar facility,
 5 whether public or private, State, county or local, or who is the
 6 subject of an action for admission as provided by R. S. 30:4-27 and
 7 who does not have the present financial ability to secure competent
 8 legal representation and to provide all other necessary expenses of
 9 representation.

1 25. Legal representation and medical consultation ***[sources for**
 2 **indigent mental hospital admittees]***. The Division of Mental
 3 Health Advocacy may provide such legal representation and medi-
 4 cal consultation as the director deems appropriate for any indigent
 5 mental hospital admittee in any proceeding concerning the ad-
 6 mittee's admission to, retention in, or release from confinement in
 7 such a hospital, institution or facility.

1 26. Class actions ***[on behalf of mental hospital admittees]***. The
 2 Division of Mental Health Advocacy may represent the interests of
 3 indigent mental hospital admittees in such disputes and litigation,
 4 as will, in the discretion of the Director of the Division of Mental
 5 Health Advocacy, best advance the interests of indigent mental

6 hospital admittees as a class on an issue of general application to
7 them, and may negotiate as representative of indigent mental
8 hospital admittees with any principal department or other instru-
9 mentality of State, county or local government.

1 27. Eligibility for services. Eligibility for the services of the
2 Division of Mental Health Advocacy shall be determined on the
3 basis of the need of the client. Need shall be measured according to
4 the financial ability of the client to engage and compensate compe-
5 tent private counsel and to provide all other necessary expenses of
6 representation. Such ability shall be recognized to be a variable
7 depending on the nature, extent and liquidity of assets and on the
8 disposable net income of the client on the one hand, and on the
9 nature of the case, the effort and skill required to gather pertinent
10 information, render advice, conduct trial or render other legal
11 services, and probable expenses to be incurred, on the other hand.
12 In the event that a determination of eligibility cannot be made
13 before the time when the first services are to be rendered, or if an
14 initial determination is found to be erroneous, the division shall
15 undertake the same provisionally, and if it shall subsequently
16 determine that the client is ineligible it shall so inform the client,
17 and the client shall thereupon with the approval of the court be
18 obliged to engage his own counsel and to reimburse the division for
19 the cost of the services rendered to that time.

1 28. Financial status of defendant; investigation. The Division of
2 Mental Health Advocacy shall make such investigation of the
3 financial status of each client as the circumstances warrant. The
4 division, pursuant to rules and regulations promulgated by the de-
5 partment for the purpose, may obtain information from any public
6 record, office of the State or of any subdivision or agency thereof on
7 request and without payment of the fees ordinarily required by law.

ARTICLE IV

1 29. Division of Public Interest Advocacy: established. There is
2 hereby established in the Department of the Public Advocate the
3 Division of Public Interest Advocacy under the supervision of the
4 Director of the Division of Public Interest Advocacy, who shall
5 be an attorney-at-law of this State.

1 30. Division of Public Interest Advocacy: jurisdiction. The Divi-
2 sion of Public Interest Advocacy may represent the public interest
3 in such administrative and court proceedings, other than those
4 under the jurisdiction of the Division of Rate Counsel pursuant to
5 Article II herein, as the Public Advocate deems shall best serve
6 the public interest.

1 31. Public interest: defined. As used in this act, public interest
 2 shall mean an interest or right arising from the Constitution,
 3 decisions of court, common law or other laws of the United States
 4 or of this State inhering in the citizens of this State or in a broad
 5 class of such citizens.

1 32. Decision to represent particular public interest. The Public
 2 Advocate shall have sole discretion to represent or refrain from
 3 representing the public interest in any proceeding. He shall con-
 4 sider in exercising his discretion the importance and the extent of
 5 the public interest involved and whether that interest would be
 6 adequately represented without the action of the department. If the
 7 Public Advocate determines that there are inconsistent public
 8 interests involved in a particular matter, he may choose to repre-
 9 sent one such interest based on the considerations in this section,
 10 to represent no interest in that matter, or to represent one such
 11 interest through the Division of Public Interest Advocacy and
 12 another or others through other divisions of the department or
 13 through outside counsel engaged on a case basis.

1 33. Division of Public Interest Advocacy: ***[powers]*** **juris-*
 2 *diction**. The Division of Public Interest Advocacy may represent
 3 and protect the public interest by:

4 a. Intervening in proceedings before any department, commis-
 5 sion, agency or board of the State leading to an administrative
 6 adjudication or administrative rule as defined in section 2 of P. L.
 7 1968, c. 410 (C. 52:14B-2).

8 b. Instituting litigation on behalf of a broad public interest.

ARTICLE V

1 34. Division of Citizen Complaints and Dispute Settlement.
 2 There is hereby established in the Department of the Public
 3 Advocate the Division of Citizen Complaints and Dispute Settle-
 4 ment under the supervision of the Director of the Division of Citizen
 5 Complaints and Dispute Settlement.

1 35. There is hereby established in the Division of Citizen Com-
 2 plaints and Dispute Settlement the Office of Citizen Complaints.

1 36. Definitions. a. "Agency" means and includes the State of
 2 New Jersey, and its principal departments, and any division,
 3 bureau, board, commission, agency, office, authority or institution
 4 of the Executive Branch of the State Government, and any officer,
 5 employee, or member thereof acting or purporting to act in the
 6 exercise of his official duties, except the Governor and his personal
 7 staff. "Agency" shall not include any portion of the legislative or
 8 judicial branches of government, or any unit of county or municipal
 9 government.

10 b. "Administrative act" means and includes any action,
11 omission, decision, recommendation, practice or procedure of an
12 agency, but does not include the preparation, presentation or in-
13 troduction of legislation.

1 37. Powers and duties. The office shall, under the direction and
2 supervision of the Director of the Division of Citizen Complaints
3 and Dispute Settlement, in addition to other powers and duties,
4 vested in it by this act, or any other law:

5 a. Receive and forward to appropriate agencies of the State for
6 determination complaints from any citizen relating to the admini-
7 strative action or inaction of agencies.

8 b. Investigate any complaint from any citizen relating to the
9 administrative action or inaction of any agency, whether or not such
10 action or inaction is final, where the complaint indicates that the
11 action or inaction may have been:

12 (1) Unreasonable, unfair, oppressive or discriminatory, although
13 in accordance with law;

14 (2) Unaccompanied by an adequate explanation;

15 (3) Performed in an inefficient manner.

16 c. Maintain records indicating the final disposition of any com-
17 plaint forwarded by the office to an agency.

1 38. Notice to complainant and agency***[**; investigation of com-
2 plaints**]***. The Office of Citizen Complaints shall determine whether
3 a complaint is or is not an appropriate subject for investigation
4 under section ***[38]*** *37* of this act, and shall inform the com-
5 plainant of that decision, stating its reasons therefor. If the office
6 decides to investigate a complaint, it shall also notify the affected
7 agency of its decision.

1 39. Procedure after investigation. If, after investigation, the
2 Office of Citizen Complaints finds that:

3 a. A matter should be further considered by the agency;

4 b. An administrative action or inaction should be modified or
5 canceled;

6 c. A statute or regulation on which an administrative action or
7 inaction is based should be altered;

8 d. Reasons or more complete reasons should be given for an
9 administrative action or inaction; or

10 e. Any other action should be taken by the agency;

11 it shall report its findings and recommendations to the Public
12 Advocate who may request the agency to notify him, within a
13 specified time, of the action taken on such recommendations. The
14 Public Advocate may refer the findings and recommendations of the

15 Office of Citizen Complaints to the Division of Public Interest
16 Advocacy, or if appropriate, to the Division of Rate Counsel.

1 40. Notice to the complainant. After a reasonable time has
2 elapsed, the Office of Citizen Complaints shall notify the com-
3 plainant of the action taken by the office and by the agency which
4 was the subject of the complaint.

1 41. Office of Dispute Settlement. There is hereby established in
2 the Division of Citizen Complaints and Dispute Settlement the
3 Office of Dispute Settlement.

1 42. The Office of Dispute Settlement may in the discretion of the
2 Public Advocate provide mediation, conciliation and other third
3 party services to community and civic groups, associations and
4 organizations, and to municipal and county governmental agencies
5 for the purpose of aiding such parties in resolving disputes which
6 involve the public interest, provided that such groups, associations,
7 organizations and governmental agencies request such services.

ARTICLE VI

1 43. References in laws, regulations, contracts to the Attorney
2 General. All the functions, powers and duties heretofore exercised
3 by the Attorney General pertaining to the appointment of special
4 counsel pursuant to P. L. 1944, c. 20 (C. 52:17A-13) are hereby
5 transferred to and vested in the Public Advocate.

6 With respect to the other functions, powers and duties hereby
7 transferred to the Department of the Public Advocate, whenever in
8 any law, rule, regulation, contract, document, judicial or administra-
9 tive proceeding, reference is made to the Department of Law and
10 Public Safety or to the Attorney General, the same shall mean and
11 refer to the Department of the Public Advocate and the Public
12 Advocate, respectively.

1 44. Applicability of "State Agency Transfer Act." This act shall
2 be subject to the provisions of the "State Agency Transfer Act,"
3 P. L. 1971, c. 375 (C. 52:14D-1, et seq.).

1 45. All acts and parts of acts inconsistent with any of the pro-
2 visions of this act are, to the extent of such inconsistency, super-
3 seded and repealed.

1 46. If any section, subsection, paragraph, sentence or other part
2 of this act is adjudged unconstitutional or invalid, such judgment
3 shall not affect, impair or invalidate the remainder of this act, but
4 shall be confined in its effect to the section, subsection, paragraph,
5 sentence or other part of this act directly involved in the contro-
6 versy in which said judgment shall have been rendered.

1 47. Appropriation. There is hereby appropriated to the Depart-
2 ment of the Public Advocate the sum of \$250,000.00, for the fiscal
3 year ending June 30, 1974.

1 48. P. L. 1951, c. 357 is *~~hereby~~ repealed.

1 49. Effective date. This act shall take effect 30 days after enact-
2 ment. Anticipatory action may be taken in advance thereof, in-
3 cluding the making of authorized appointments, and confirmation
4 or approval thereof, and; within the limits of funds available to the
5 department, the expenditure of funds for payment of salaries and
6 expenses incident thereto.

ASSEMBLY STATE GOVERNMENT AND FEDERAL AND
INTERSTATE RELATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1409

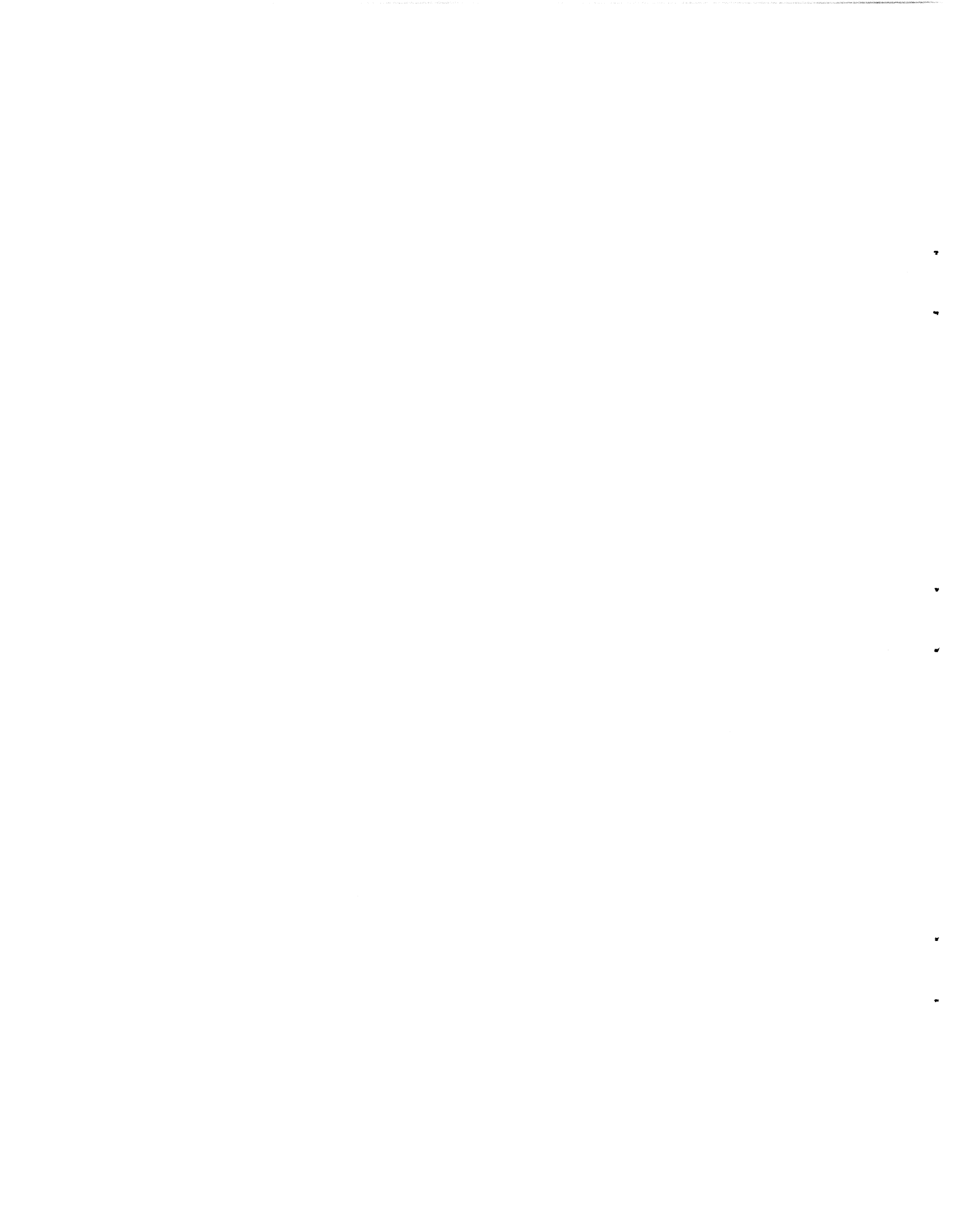
STATE OF NEW JERSEY

DATED: MARCH 21, 1974

This bill establishes a Department of the Public Advocate to represent the public interest in various proceedings, and provides for an appropriation of \$250,000.00 for fiscal year 1974.

This bill transfers the Office of the Public Defender, which is now in the Department of Institutions and Agencies, to the Department of the Public Advocate without in any way altering the rights or responsibilities of the Public Defender or of the Office of the Public Defender.

The Public Advocate may represent prison inmates as a class in order to modify rules relating to their treatment. The function of rate counsel, presently performed by private attorneys at public expense, is assumed by a full-time staff in the department. The Public Advocate may represent indigent persons being committed to mental institutions, and may represent such persons as a class in order to modify rules relating to their treatment. The Public Advocate may intervene in any administrative proceeding, and may institute litigation, in behalf of the citizens of New Jersey in order to ensure that important perspectives of the public interest, which would otherwise be unrepresented, will be brought to the attention of appropriate administrative agencies and courts. The department will also assume a role similar to that of an ombudsman by investigating citizen complaints related to the administration and functioning of State government and by making recommendations where appropriate. The department may also provide mediation and conciliation services to public and private bodies requesting the services in order to resolve disputes involving the public interest.



SENATOR EUGENE J. BEDELL (Chairman): I will call the public hearing before the Senate State Government and Federal and Interstate Relations Committee to order on Assembly Bill 1409, the Public Advocates Bill.

I would like to say that if anyone desires to speak and has a position paper, it would be appreciated if you would present it to Mr. James Carroll who is our staff assistant and is sitting over there, so we may have copies made.

I do not want to limit anyone's right to speak, but if your position paper is extensive, please summarize your paper so we can give everybody the same opportunity to be heard. Thank you very much.

The first speaker is the Senator from Mercer County, Honorable Joseph Merlino.

J O S E P H P. M E R L I N O: Thank you Senator Bedell and Senator Davenport. I want to commend the Committee for holding this hearing on the Public Advocate Bill, more formally known as Assembly Bill 1409. I think that it is proof that this new Legislature is serious about its responsibility for considering carefully any major policy legislation that is suggested to it from outside. I think it shows the value that the leadership of this Legislature places on the contributions that its rank-and-file members of both parties can make. And I think it demonstrates that this Legislature is finally claiming for itself the dignity and independence of judgment that have long been the hallmark of the Congress of the United States.

A-1409 offers us a major new initiative on public policy. For that reason I requested a public hearing on it by your committee. The bill had been carefully read by its Assembly committee, but it was not given the formality of a recorded public hearing. I think it will be useful for posterity to have the transcript of this hearing as proof that this Legislature was a creative partner in the

establishment of this new department.

As the bill's sponsor in the Senate, I of course strongly support its proposed creation of a new department of the public advocate. Today I will present to you a broad outline of the powers that the Legislature would be delegating to the new department and the responsibilities that we would be asking it to assume.

I do not intend to try to explain or justify every comma or semi-colon that appears in the bill; and I hope the Committee will direct its questions, if any, on such mechanical details to others who will be testifying today.

I know that there are some voices that say that this department should wait until ponderous study commissions have concluded that we need it. They point to the creation of the departments of higher education and transportation as precedents. But I think the circumstances here are very different. Those departments were created in response to certain very tangible needs. We needed more college spaces for our young people. We needed to create a balanced system of roads and rails and buses. Roads and buildings and student enrollments are concrete needs and can be measured and studied and documented.

That doesn't apply to the department of public advocacy. The need that this bill aims to meet is a crisis of the spirit. It's something you can't count up or cost out. It's something whose dimensions you can't really measure or document or submit to a blue-ribbon study commission. But it's something you can sense. Anyone with eyes to see and ears to hear must know of the deep disillusionment that people have for all our institutions in society.

This "crisis of the spirit" is most obvious, perhaps, in the disillusionment with the Church, which has lost much of her moral authority since the 1960's.

It is also apparent in the deep cynicism about our economic institutions, which now seem out of control, which bring us uncontrolled inflation and threaten our workers with unemployment, and which are so often accused of defrauding the consumer in the interest of bigger corporate profits.

And this crisis of confidence clearly extends now to our political system. Our people think that their elected officials surrender helplessly to the "big men", to the "fat cats", to concentrations of economic power. They see mayors and State officers bundled off to jail. They see the Nation's highest officials on trial. And they suspect that even those officeholders they think they can trust will not have the power to change the direction of the beast. The dead weight and the inertia of the system are just too great. Government seems to have lost the capacity to respond to the "widow's plight".

It seems that this is the age of the "rip-off". We see Nixon's tax rip-off, the oil companies' price rip-off, money lenders' interest-rate rip-off - rip-offs everywhere. And it shakes our confidence in our institutions and in each other.

We see huge corporations hiring armies of lawyer-mercenaries, at work every day probing the law, testing the law, to see what new benefits they can rip-off for their bosses. And we see the public's interest defended only haphazardly, by individual citizens and associations whose willingness to stand up for everybody else deserves our admiration.

There is a fundamental crisis of legitimacy in our society.

Obviously this bill before us today is not intended to solve the underlying crisis of faith in religious institutions; that is something that Popes and preachers like Howard Woodson must take the lead on. And this bill is not really designed to solve the crisis of cynicism toward business and financial institutions.

What it does seek to do is to introduce into government a new creative force on behalf of the people, and advocate of the public who will probe the law and test it to see what benefits and safeguards can be won for plain folks, for people who don't have hordes of lawyers in their pay. Should the public not have its advocate ready, and at work, while the big private interests have theirs quietly in the field?

This bill creates a department headed by the Governor with the advice and consent of the Senate - so he can't be a lunatic or crackpot or Yippie, as some people seem to fear. He serves at the pleasure of the Governor, so he can't become a lunatic after confirmation and go unchecked for very long. He is held accountable to the people through the customary process of representative government: appointment by elected authorities.

But unlike any other department head, he has no bureaucratic interests to safeguard. He himself needs only a skeleton staff. He does not have to run diverse agencies that have conflicting priorities. He does not have to appease or "cover" for a dozen different groups of subordinates.

His department embraces, first of all, a division of citizen complaints made against arbitrary or unfair behavior of government agencies. It provides a formal device for a thorough investigation of citizen complaints that we legislators may now do only haphazardly. Its precedent for quality and thoroughness of work is the Division of Civil Rights, which has a similar function on discrimination complaints. But it does not overlap the Civil Rights jurisdiction. The division also provides for mediation and conciliation of any disputes sparked by such complaints. It is only this section that resembles the "ombudsman" role to which many people are tempted to compare the principle of this advocacy bill.

The bill would also create a division of "public interest advocacy". This is perhaps the most exciting innovation of A-1409. The director of this division would be given the power to initiate or intervene in litigation in any case that has a public interest at stake. He would not have to wait for a complaint; he is given the freedom to take the initiative.

I think this freedom is important. Many issues in which the public has a vital interest now are never explored because they fall between the cracks of bureaucratic jurisdictions. This division would have the broad authority to pick up any issue and run with it.

The new department would also include a division of rate counsel to represent the public's interest when the utility companies try to get a rate increase from the PUC. This is not new, and the method proposed for financing the public's advocate in these proceedings is not new either. The Attorney-General now appoints rate counsel for this purpose and the expenses are paid the same way. This function would be transferred to the new division.

The second major area of innovation in the proposed department is the division of mental health advocacy. For the first time we will be offering patients in the custody of the State mental hospitals - to say they're in their "care" might be too generous an assessment - for the first time we will be offering these people some form of legal recourse. People who have been diagnosed as mentally ill in this State lose more of their rights, perhaps, than convicted felons. Their mental stability and their credibility are always in doubt; their sanity is suspect. Their recollection and their judgments are seldom taken seriously by the rest of us. These are people who are easily committed and easily forgotten. A-1409 gives these people a legal voice at last. It gives them some recourse against a structure that finds them all too easy to commit and forget.

This legislation shifts the Office of the Public Defender from the Department of Institutions and Agencies to the new department. The Office, as you all know, has brought legal counsel to poor people accused of criminal offenses. It guarantees that in our system of justice it's not just the rich man who will be adequately defended in court, but the poor man as well. Under the very able direction of Stanley Van Ness, New Jersey's office of the Public Defender has been a model for the nation. A-1409 properly transfers it to the department of the public advocate.

The bill also creates an office on inmate advocacy.

What Governor Byrne is saying when he asks the Legislature to create the proposed department and delegate to it certain powers and responsibilities is this: Let's put right within State government an agency that will keep us on our toes. Let's establish an office that will sting the bureaucratic giant whenever it becomes insensitive or unresponsive to the people that the Legislature created it to serve. What Governor Byrne is saying is that we have nothing to fear from this new department. If officials are doing the job that the Constitution and the laws that we enact require, they will never have any problems from the public advocate. If they are violating the laws or the Constitution, then surely they deserve to be called to account. We have nothing we want to hide.

The public has been inspired over the past decade by courageous individuals and public-interest groups who have zealously pursued the interests of the whole people against the pretenses and puffery and fraud and hypocrisy of entrenched private and bureaucratic interests. Ralph Nader stands out in the national consciousness. Harold Ruvoldt's challenge to legislative paralysis on tax and education financing reform makes him stand out in New Jersey. This is the zeal for the public good that the public admires, and this is what is seldom seen on the part of its government.

What this bill does is institutionalize this zeal, makes it part of government. It asks the State to institutionalize within itself the gadfly, the critic, the public's advocate against entrenched bureaucratic inertia.

It is possible that someday institutionalization may result in this department's becoming bureaucratized and routinized itself, losing its energy and

fire. When the salt loses its taste, discard it: if that should happen, a future legislature might well decide it's not serving its original purpose and repeal it.

But today it has promise. I urge the Committee to give it the chance it needs.

In keeping with some of the statements which I made, I would also like to suggest some amendments:

Public Interest and Inmate Advocates should be on a trial basis and the time should be fixed in this Bill so that these offices will extend to July 1, 1976, which would be a two year period. If, at that time, these two offices have proved themselves worthwhile, I think it is up to the Legislature to continue them. If not, they should be permitted to die.

The Public Advocate should have no special standing in Court or institute any new causes of action. This, I think, would allay the fears of many people that we would be opening up something which would perhaps devour - as they say - the entire State government, be it the Executive or the Legislative.

Number four - All advocates should be attorneys.

The bill provides for those advocates in the particular division should be attorneys but I don't find, anywhere, a provision in this bill that the public advocate himself should be an attorney. I think that he should be an attorney so there would be no question of just having an administrator there without a legal background - without the same background to direct those subordinates who will be working under him.

Another one, perhaps, which might raise some question with some people -- But I think that those who will be involved in this office in the public interest as the Public Advocate or the Public Interest, or Inmate Advocate, should be precluded from running for a Statewide public office for two years after leaving said office. I think this would, perhaps, dampen some overzealous person, appointed to that position, to use it as a spring-board for a public office, rather than to do the job which he is supposed to be doing in the public interest.

That, gentlemen, is my testimony.

SENATOR BEDELL: I want to thank you very much, Senator Merlino, for giving us your feelings on this legislation. I don't think

the Committee has any questions at this time, but I hope that you will make yourself available to the Committee when we are in consideration of the bill.

SENATOR MERLINO: When you're in consideration, I will be glad to appear.

I want to thank the Committee for taking me first, and I hope this allays the fears of those who thought when I called for a public hearing, that I was doing my best to torpedo this bill. I think it's a great one with a few changes. Thank you.

SENATOR BEDELL: Mr. John Kolesar, Center for the Analysis of Public Issues.

J O H N K O L E S A R:

Thank you, Mr. Chairman, for the invitation to appear before you today at your hearing on Assembly Bill No. 1409. At the outset, I must explain some limitations on my role here. I am director of the Center for Analysis of Public Issues, which is a tax-exempt, independent research organization. Under the Internal Revenue Service regulations we are prevented from attempting to influence specific pieces of legislation. Therefore, I will confine my remarks to only those portions of the legislation which involve issues that touch on our own research and experience. I cannot and do not express a view on the bill itself.

A large part of our work involves looking into the operations of government bureaucracy and measuring performance against standards set out in law. Quite often, we find that litigation would be an effective way to make executive performance live up to legislative intent. But because of limitations on us, both financial and legal, we are seldom able to engage in litigation.

In addition, we often receive letters and phone calls from private citizens who appear to have cause for complaint about the way government is treating

them. Again, we cannot help them very often. We have neither the staff nor legal standing to act as ombudsman for individual citizens. It is common for these people to have received a letter from a state agency informing them that nothing can be done about their problem and that their best course is to hire an attorney, if they think they have a just cause.

In all of these instances, there would seem to be a need for some place for the private citizen to turn to. A bureaucrat quoting impenetrable rules and regulations and supported by a full-time attorney simply overwhelms a private citizen in a controversy. It is small consolation to a taxpayer to be told that he can hire his own lawyer to press his grievance. When he wins, he winds up spending money to get what he should have had freely. Mostly, he gives up without a fight, carrying away a smoldering sense of injustice.

A possible recourse for the citizen is to complain to his legislative representative. But this might not be a completely satisfactory solution, even if New Jersey's legislators were equipped with considerably larger staffs than they have now. The executive bureaucracy seems to be growing both in size and complexity. At the same time, the legislature's own legislative duties are also growing. The result is that the legislature's ability to act as ombudsman for individual citizens shrinks while the complaints increase.

Creating another bureaucracy might seem an odd way to combat problems created by the bureaucracy, but it isn't as unreasonable as it sounds. Fighting fire with fire is a workable technique. In such areas as rate-making and administrative rule making, it often takes bureaucratic know-how and resources to have a chance of prevailing. In our experience, the availability of an agency to handle citizens' complaints and represent the public interest as professional

advocates would be useful in reducing resentment, frustration, and injustice.

Thank you.

SENATOR TUMULTY: Do you have any idea, sir, what the establishment of this department will cost?

MR. KOLESAR: Overall, no. The bill says \$250,000.00 to start up. I assume that means --

SENATOR TUMULTY: Do you have any idea as to how many attorneys it would be necessary to hire?

MR. KOLESAR: No, I don't. I haven't seen anything that lays out format for that. I imagine there is a wide-range of options.

SENATOR TUMULTY: Why -- are you in favor of that section of the bill which requires the creation of an Office of Rate Counsel?

MR. KOLESAR: My understanding is that that is pretty much a continuation of what we have now.

SENATOR TUMULTY: Don't we have that now?

MR. KOLESAR: Yes.

SENATOR TUMULTY: Well, doesn't this seem an unnecessary duplication and an unnecessary expense?

MR. KOLESAR: I don't know. My understanding was that it did not duplicate that it transferred and put the existing setup under a new kind of leadership, which I think might be an improvement.

SENATOR TUMULTY: Would you agree with me that this bill, more or less, establishes that the Public Advocate is sort of a super state?

MR. KOLESAR: Super state?

SENATOR TUMULTY: Yes.

MR. KOLESAR: No, I don't think so. I wouldn't like a super state.

SENATOR TUMULTY: Who checks on the Public Advocate?

MR. KOLESAR: I imagine the same people who check on all the other cabinet departments.

SENATOR TUMULTY: Who's that?

MR. KOLESAR: The Governor, the legislature --

SENATOR TUMULTY: He would be, more or less, super-imposed over the Attorney General here?

MR. KOLESAR: No, I don't think so. I don't see that he is over the Attorney General.

SENATOR TUMULTY: Don't his powers overlap those of the Attorney General?

MR. KOLESAR: I think the powers in this bill - depending on how the department is administered - could overlap, or at least be considered to overlap other departments, I imagine he will be dealing with issues that other departments deal with frequently. But I would guess from another viewpoint --

SENATOR TUMULTY: Well, now, let's see. A citizen has a complaint. Suppose it concerns the State Police. What is his present recourse?

MR. KOLESAR: Right now?

SENATOR TUMULTY: Yes.

MR. KOLESAR: Well, I think, I mentioned some of them. It depends on what kind of complaint he has.

SENATOR TUMULTY: He would complain to the Attorney General, wouldn't he?

MR. KOLESAR: He might. It depends on what kind of complaint he has.

SENATOR TUMULTY: Well, do you feel that the recourse that the average citizen has today, under the setup that we have at the present time, is inadequate?

MR. KOLESAR: Yes.

SENATOR TUMULTY: Why?

MR. KOLESAR: Because a lot of citizen's complaints which seem fairly just have no way of resolution.

SENATOR TUMULTY: Well, don't we have a Consumer Affairs Department in the State government now?

MR. KOLESAR: There are a lot of complaints that

don't fit into that category.

SENATOR TUMULTY: Well, tell me some of the kinds of complaints that cannot be covered, at the present time, that this bill would cover.

MR. KOLESAR: Do you want a very specific one?

SENATOR TUMULTY: Yes.

MR. KOLESAR: Well, one that has come to us recently is complaints about assignment of children who have, or should be classified, as emotionally or mentally handicapped; who, because of the way the regulations and laws are drawn, cannot get the special education that they are entitled to.

SENATOR TUMULTY: Can't that be remedied by legislation?

MR. KOLESAR: Yes, it could be remedied by legislation. In some cases, it can be remedied by litigation, right now. There is a strong indication that they are entitled to it right now.

SENATOR TUMULTY: You know, you say something in the concluding part of your statement which I agree with; of course, you qualify. You say, "Creating another bureaucracy might seem an odd way to combat problems created by the bureaucracy, but it isn't as unreasonable as it sounds". It seems to me that, in effect, this bill is going to create a further bureaucracy.

MR. KOLESAR: I don't think there is any doubt of that. It is an attempt to set up a bureaucracy to cure problems that are caused in the present bureaucracy.

SENATOR TUMULTY: You wouldn't have any idea of how much this -- you just have a rough estimate of \$250,000.00.

MR. KOLESAR: That's what the bill is appropriating.

SENATOR TUMULTY: How many lawyers do you think would be necessary to man this alone?

MR. KOLESAR: My own hunch is that no matter how many lawyers they put on, they will have cases that they cannot handle. No matter how many you put on, they'll all find something to do.

I think that is going to be a matter of judgment on the legislature's part as to how many lawyers to let them have.

SENATOR TUMULTY: Don't you think, also, that legislation like this is going to give rise to a wave of ungrounded complaints, too?

MR. KOLESAR: You mean complaints that this department would handle that were ungrounded?

SENATOR TUMULTY: Yes.

MR. KOLESAR: I think they will have to get some system for determining which ones are grounded and ungrounded, but I don't think it will cause any unfounded complaints. I think there are a lot of complaints now which are not taken care of, some that are well-founded and some that are unfounded. They just don't go anywhere at the moment. We find a lot of people who have just turned away. They try to make some headway between the agencies, and they get shuffled around. They wind up with a letter that tells them, "we're sorry, we can't handle your problem they can't handle your problem, nobody can handle your problem".

SENATOR TUMULTY: Well, people with a legal complaint have always had access to legal aid, have they not, if they needed a lawyer and couldn't afford one?

MR. KOLESAR: Oh, no. If you can't afford an attorney, yes.

SENATOR TUMULTY: And if you have a criminal complaint against you, you can get the Public Defender, you know.

MR. KOLESAR: Again, yes, if you're indigent. But if you're not indigent, you're then faced with prosecuting - sometimes quite expensive cases.

SENATOR TUMULTY: If you're not indigent, then why should the public pay the expense? Why shouldn't you hire a lawyer to fight your case?

MR. KOLESAR: That may be very well, except, if

it's going to cost you \$2,000.00 to fight a case which - first of all you may have a small risk of winning and may get you \$100.00 of satisfaction --

SENATOR TUMULTY: In other words, you think the taxpayers should pay the bill?

MR. KOLESAR: I think the taxpayer is the one who gets the benefit, too. Those are taxpayers who are getting turned off by this thing.

SENATOR TUMULTY: That's all.

SENATOR BEDELL: Thank you, sir. I'd like to say for yourself and for everyone present that many times the Committee will be asking questions that do not necessarily reflect the Committee's opinion of the bill or personal opinions of the bill, but we must play the devil's advocate on many occasions to try and draw as much information input as we possibly can.

Thank you very much.

MR. KOLESAR: Thank you.

SENATOR BEDELL: Mr. Frank Haines, New Jersey Taxpayers Association.

F R A N K H A I N E S: Senator Bedell, gentlemen of the Committee, my name is Frank Haines. I am the Executive Director of the New Jersey Taxpayers Association. The Taxpayers Association is a non-profit, non-partisan governmental research organization which has been working with the State of New Jersey since 1930.

At the outset I wish to commend you and your Committee for scheduling this public hearing today on Assembly Bill 1409. Your attitude is in contrast to that of your counterpart Assembly committee which rejected this Association's written proposal for committee hearings, as well as suggestions of minority members of the committee.

My testimony here today is of necessity brief -- for the reason that the New Jersey Taxpayers Association has taken no position on this important legislation. The reason

for the absence of a position is that our Executive Committee had insufficient information to enable it to arrive at a decision. Because of the lack of background information the Association urged a hearing such as this one you are scheduling today.

To an observer of State government for over 20 years, it is inconceivable that a measure proposing creation of a major department of the State government, particularly one with such potentially far reaching impact -- both on present operations of various departments and agencies, on the role of public citizens in relation to government and vice versa, and in the interpretation of the public vs. private rights, would be submitted to the Legislature and the public without any sort of an organizational or management study in support of the legislation.

NJTA has two principal concerns about this department as presently proposed:

1. There is no document indicating any public study on this matter which sets forth in detail information on the need, purposes, concept, organization, and cost.

Such studies preceded creation in 1966 of two other Executive departments -- the Department of Community Affairs and the Department of Higher Education, the latter which was separated from the Department of Education. Actually, the studies which preceded enactment of legislation creating those departments covered a period of over two years and various arguments for and against their existence were as extensively documented. The record shows that the first proposal for a Department of Community Affairs was made in a Preliminary Report to Governor Hughes in June 1962. The creating law was not signed until November 23, 1966. The first study that advocated a separate agency for Higher Education was the "Governor's Committee on New Jersey Higher Education", issued in May 1963. Several years and reports later, the new department was enacted December

14, 1966.

We can find no evidence of any such background study or document for this eighteenth department, the Public Advocate, in fact the only official document that to our knowledge has been available to the public is a descriptive statement on the bill.

2. NJTA is concerned about the fiscal impact of this proposed new department and questions whether it should be given a spending priority higher than numerous existing programs. Information from the Joint Appropriations Committee is that although the 1975 Budget will be balanced, it will utilize upwards of \$300 million surplus leaving a projected fiscal 1975 ending balance of under \$100 million. This means that funds for any further significant increases for education in fiscal 1975, or financing another \$300 million budget increase for fiscal 1976 will have to come from new taxes or increases in existing taxes.

New Jersey State Government has never had a system of assigned spending priorities, nor has it ever had a drastic spending reduction imposed. The Legislature has always added new or increased existing taxes to meet rising appropriations.

If the new department is considered by the Legislature to have higher priority than existing services, NJTA suggests that some of the lower priority programs be reduced or eliminated in order to insure funds for operating the new department in the 1975 fiscal year. This suggestion is made in view of the fact that there presently appears to be no funds provided in the 1975 Budget for its operation.

There are a number of concepts about this new department concerning which questions should be asked and, certainly, answers should be provided. For example, why should the responsibility for public rate counsel be transferred from the Office of the Attorney General which has historically been considered to be responsible for the role

of the Public Defender in rate cases?

Why is not the Division of Consumer Protection, one of the outstanding examples of an advocate agency, included in the new department?

Another question. Has the concept of Office of Citizen Complaints, described in the statement of the bill as representing the "ombudsman" function, been thoroughly reviewed by the Legislature? We call attention to the fact that the historical development of the ombudsman has been as an officer of the Legislature. While there have been developments in the United States to create ombudsman position as part of the Executive branch, taxpayers association urges that the two widely differing approaches be carefully considered before this legislation is enacted.

In a letter to the Assembly on March 22, NJTA raised a series of questions which ought to be answered in some sort of a background report or statement about the new department. Those same questions have been addressed to your committee in urging a public hearing. There is little this association can add by way of enlightenment on this bill since that basic information must originate in the Executive office from which the proposal emanates.

The New Jersey Taxpayers Association trusts that this bill will not be released from committee until some sort of a comprehensive statement or study is available so that there can be a better understanding about this measure.

We thank you again for scheduling this hearing and for the opportunity to appear before you.

SENATOR BEDELL: Thank you, Mr. Haines.

Are there any questions? Senator Tumulty.

SENATOR TUMULTY: Mr. Haines, thank you for your statement which was quite enlightening. My understanding is that there are presently about three states in the United States that have an office of Public Advocate. Do you know that? Are you familiar with that, rather?

MR. HAINES: I certainly know of Hawaii and, I think, Nebraska is another state. I'm not too intimately familiar with any of them except Hawaii because we've been collecting their annual reports and studying them.

SENATOR TUMULTY: You don't have any concept of how it is operated in those states?

MR. HAINES: Only Hawaii, sir, as an office of the legislature.

SENATOR TUMULTY: As an office of the legislature.

MR. HAINES: Yes, sir.

SENATOR TUMULTY: How long has it been so?

MR. HAINES: I think it's four years. This report-number four - covers 1972 and 1973. It is in its fifth year now.

SENATOR TUMULTY: And you have no idea of what a department of this kind would cost the State of New Jersey to operate?

MR. HAINES: We have no concept -- I think we have to look at it in terms of additional dollars. The agencies that would be transferred in, certainly, you know, you'll have those appropriations.

SENATOR TUMULTY: We don't have enough research as I understand it. That's your position.

MR. HAINES: That's our feeling. We know of no fiscal note -- and the \$250,000.00 appropriation would cover only the remainder of this year and, plus, carry over, presumably, any appropriations that were not expended. There is no organization chart of new positions. We assume that you would have to have a basic staff, service staff, like a budget officer, a personnel officer, accounting and so on. These standard functions are common to every department. And beyond that - in public relations and so on, but on that basic staff - there is no chart or anything that would give any concept of other than what is in the bill.

SENATOR TUMULTY: Now, other than your fiscal con-

cepts of this bill, do you have any other opinions about pro or con on the bill, other than the fiscal questions involved at this time.

MR. HAINES: Other than those which we've raised just as an aside because we rely - on any proposal like this - on the proponents to come forth with a specific document which we can then evaluate. Our whole testimony is addressed to the fact that there is no official document by which any evaluation can be made by organizations like ours.

SENATOR TUMULTY: Thank you, Mr. Haines.

SENATOR BEDELL: Mr. Haines, I might also add that the request from your Association is one of the reasons why we are holding this public hearing, so, at least you have been successful to that extent. One other point that might be of interest to your group is the fact that you mention in here - in talking about the budget for fiscal 1974,-1975 - that we will end up with a balance under \$100,000,000.00. That expected surplus - the end of the period now - is gaged at \$16,000,000.00. So, it's a lot better than --

MR. HAINES: We know that there are some differences of opinion , so we used the top level figure there, sir.

SENATOR BEDELL: Thank,you, sir.

MR. HAINES: Thank you for the opportunity.

SENATOR BEDELL: Mr. Steven Cicala, Wildwood, New Jersey. Do you have a statement prepared, sir?

S T E V E N M. C I C A L A: Yes, I do, sir.

Mr. Chairman, gentlemen of the Committee, I'd like to thank you very much for the opportunity to appear here this afternoon speaking on behalf of Assembly Bill 1409. My name is Steven M. Cicala of North Wildwood, New Jersey, and I am here today to testify in support of Assembly Bill No. 1409.

The basis of my testimony is my experience as a member of the Cape May County Municipal Utilities Authority which, in 1972, was entrusted with the responsibility of implementing a regional waste-

water treatment plan for the county. In 1973 service contracts were awarded to a consulting engineering firm, Pandullo, Chrisbacher and Associates, an ecologist firm, Jack McCormick and Associates, and legal counsel, John Mead.

The actions of the authority in the selection and awarding of the fee contracts led me to file a taxpayers suit in December 1973, asking that the contracts be invalidated. The suit further charged other improper actions which we considered were not in the public interest. The contracts run into millions of dollars and involve State and Federal funding of approximately 150 million dollars.

The scope and purpose of my testimony today is not to air the merits of the lawsuit, but rather to focus on a case history ideally suited to demonstrate the urgent need for the Public Advocate Department in matters such as I will describe.

On December 13, 1972 the Authority conducted interviews with various engineering firms and subsequently selected the Pandullo firm "subject to negotiations" of an acceptable fee. The selection was made with no independent investigation to ascertain their expertise or experience. No attempt was made to visit any of the previous work performed by this firm. A responsible evaluation and investigation would have revealed that the Authority had not selected the most qualified firm. I had hoped that this deficiency would be reflected in the ultimate fee but such was not the case. At no time did the relative expertise of this firm become a factor in awarding the ultimate contract.

At the initial interview the Pandullo firm admitted that they had never done any ocean outfall design work. Both the State and Federal Environmental Agencies had, six months prior to the interview, recommended the ocean outfall concept as a means of effluent disposal. The projected cost of these outfalls was set at approximately 40 million dollars- yet, on

March 21, 1973 a percentage contract was awarded to the Pandullo firm in spite of their tacit admission of lack of design experience in that field. The final contract could result in eventual payment of six to seven million dollars in engineering fees to Pandullo.

The entire problem of engineering fees is well documented in the publication "Blueprint For Scandal: The Engineering Business In New Jersey" - a report by the Center for Analysis of Public Issues of Princeton, New Jersey.

A review of this publication and its conclusions is contained in an article published in the Press, Atlantic City on February 19, 1974.

The draft of the McCormick contract was hand delivered to the other members of the Authority in the afternoon of March 21, 1973. I received my copy just prior to the meeting that evening at 8 o'clock, and had no knowledge of the contents. In spite of my vehement protests the contract for \$100,000 was awarded within an hour of the start of the meeting.

The informal approval for this contract was allegedly made at a meeting that never took place due to a lack of quorum and, for which no official minutes exist.

The legal services agreement with attorney John Mead was approved on November 21, 1973. The total fee contracted to be paid is based on a minimum and maximum percentage of the total project cost - a practice which, under certain circumstances, is considered improper and possibly illegal. Mr Mead's minimum fee was estimated at \$250,000 and a maximum of over a half million dollars at the time of signing the agreement. Since then the estimated costs of the project have skyrocketed from one hundred million to about one hundred forty million dollars - which means that Mr. Mead's maximum fee is automatically increased to a staggering three quarters of a million dollars.

Aside from the financial considerations involved in awarding these contracts what was more difficult to accept was the irresponsible manner in which the public interests were ignored. The Authority made every attempt to cover up its actions. No

advance information was made available to the public. Repeated demands for accountability were stifled with threats and personal villification.

The concerned citizens of Cape May county were subjected to the awesome arrogance and naked power of an autonomous body.

The public outcry finally reached a point where some action had to be taken. Active in the dissent were many civic groups, including the Izaak Walton League, the Avalon Homeowners Association, the Citizens Action Group and the Wildwood Crest Civic Association. On December 18, 1973 I, along with two other taxpayers, filed a suit in Superior Court. The complaint was prepared and filed by the law firm of Persky and Callinan of Wildwood, New Jersey, charging the Authority with abdication of its sworn public responsibility and asked the Court to void the consultant and legal service contracts already awarded. In January 1974 Judge Herbert Horn ordered Discovery proceedings

As of today we are still in that process. The costs have presented a serious problem to our continuing this burden of representing the taxpayers' interest. The defendant Authority members have openly stated that they will provide themselves with the best legal defense possible that money can buy, that is, at the taxpayers expense.

In the meantime we, as private citizens with limited funds, are hard pressed to meet our personal obligation to our attorney to continue the case. It is in this context of public interest that I feel that a Department of Public Advocacy could have a monumental effect.

While public apathy may be a factor in the unwillingness of citizens to take any direct action in matters such as we have experienced, it is more realistic to assume that the tremendous cost of bringing suit is a gigantic obstacle - no matter how righteous the cause.

For my efforts to bring about a measure of responsibility to the public in my sworn duties I was purged from the Authority on February 23, 1974.

To summarize, it is fair for us to conclude that the establishing of a department as proposed in this bill will have a profound effect on the future conduct of State business.

No longer will any aggrieved element of our citizenry have to live through the anguish and villification of the dictates of a power hungry 'authority' whose major accomplishment seemingly has been to satiate the financial appetite of its professional consultants.

The people of this State are entitled to the right of redress in any governmental action - without running the risk of personal financial loss. We are hopeful that that right is expressed through the Department of the Public Advocate.

On behalf of all concerned citizens we urge the passage of Assembly Bill No. 1409.

SENATOR BEDELL: Thank you, Mr. Cicala. Are there any questions of the Committee. Senator Tumulty.

SENATOR TUMULTY: Mr. Cicala, I heartily sympathize with you because I've been through these experiences coming from Hudson County, which county you have undoubtedly heard of, but did you make any effort - and I don't want to go into the merits of this case. I understand this is the reason why you support the bill, and I don't want to belabor the matter, but did you consult the prosecutor of the county regarding this matter?

MR. CICALA: At the time, we were made to understand that there is nothing criminal here to see the prosecutor. We were further made to understand that an autonomous body has the right to do most anything without accountability. At the moment, I am in no position to judge as to the value of getting a prosecutor involved in the criminal matter. I have not made that judgment.

SENATOR TUMULTY: Did you consult the Civil Division of the Attorney General's Office?

MR. CICALA: No, I did not, sir.

SENATOR TUMULTY: Would a civil division in the Attorney General's Office - if one were established to handle the matters of this kind - satisfy your need?

MR. CICALA: Well, to answer your question in a left-handed sort

of way, one of the groups that was mentioned here - The Citizens' Action Group in Cape May County - did write letters to the Attorney General. The President of this group received a letter from the Attorney General's Office stating that they were looking into the matter. But we have heard nothing as to any action taken. In the meantime, I might point out the sense of urgency that is involved here, in that inflationary costs escalate this program at the cost of \$1,000,000.00 per month. We felt; at the time - last December - that this should be brought to the public's attention so that it can be resolved as to what is going on so we can get determinations that if, in fact, these facts we allege were true, then we better look into further.

SENATOR TUMULTY: Supposing there were a public advocate when this thing happened, do you think the case would have moved any faster than what it has moved now with your taxpayer suit?

MR. CICALA: I don't know about moving any faster. I'm not quite acquainted --

SENATOR TUMULTY: You know the processes of law are agonizingly slow at times - and I say that to you as a member of the Bar - agonizingly slow, aggravatingly slow? Have you thought about that?

MR. CICALA: I've been made aware of that.

SENATOR TUMULTY: What would be the posture of your case if the public advocate were handling it rather than a private lawyer? Do you think it would move with more expediency?

MR. CICALA: No, the time factor is not the important thing that I'm addressing myself to decide.

SENATOR TUMULTY: The cost factor?

MR. CICALA: No. The time factor and the cost factor - as through the escalation through inflationary processes, that is not what I'm addressing myself to today. We had to make a decision in December that if, in fact, we did find that these

firms did lack the expertise to continue, we had better find out now rather than a year later. This is why we brought the suit.

SENATOR TUMULTY: Have you restrained the contracts?

MR. CICALA: We have attempted to do so, yes. However, we have had certain input from the Department of Environmental Protection as to whether or not the time frame would be disturbed insofar as the ultimate project is concerned.

SENATOR TUMULTY: Believe me, I think you're justifiably irate. I don't want you to think that I disagree with you.

MR. CICALA: The exact point here is that we had to make the judgment of whether to use our own funds to fight this thing. It was in the public interest, no question about it. Some other agency should have taken the ball at this point, that's just the point.

SENATOR TUMULTY: Thank you.

SENATOR BEDELL: Thank you, Mr. Cicala.

MR. CICALA: Thank you.

SENATOR BEDELL: Mr. Augustus Nasmith, Associated Railroads of New Jersey.

A U G U S T U S N A S M I T H: I apologize for not having a written statement. What I have presented to you, Mr. Chairman and members of the Committee, are proposed amendments which we believe should be incorporated into the bill if it is released. I would like to give our reasons for these five basic amendments which - by the way - relate to the Division of Rate Counsel which is what concerns us.

As preface, I should point out - which you probably already know - that as to intrastate freight rates, we are under the jurisdiction of the Board of Public Utility Commissioners. As to intrastate passenger fares and service, we are under the jurisdiction of the Department of Transportation through a commuter advisory agency which - in a sense - has public citizens on it as well as state officials. Basically, we suggest, in our first amendment, that the power of the Division

of Rate Counsel, to initiate proceedings, be deleted. We think this is a very broad power given and, to us, it's absolutely wrong in concept because, we believe - and we are limiting our argument to our own situation - that the Board of Public Utility Commissioners represents and does an effective job of representing the public interest in seeing that rates are reasonable. By the same token, we believe that the Department of Transportation and the Commuter Operating Agency are representing the public interest. Without belaboring the point, we see ~~no~~ reason to authorize a new roving ambassador, to initiate proceedings which we believe are being adequately and properly handled under the present system.

As a minor subheading of this point, our second proposed amendment is very limited. It would change the authority to assess the fees imposed under Section 20 from the existing bill provision which gives that authority outright to the director of the Division of Rate Counsel. Now, it doesn't say that the public advocate himself. It is giving this power to an officer which - as we read the bill - is appointed by the public advocate under Section 2 of the bill with no legislative review whatsoever as to his qualifications and, yet he is given the absolute authority to make these assessments in Section 20. Reverting, again, to our first point, may we point out that the power to initiate proceedings - which we think should be deleted - is given, not to the public advocate, but given to his subordinates; again, the Division of Rate Counsel.

My third proposed amendment - which is to insert a paragraph in Section 20 that relates to assessments or charges for Rate Counsel - deals, specifically, with intrastate railroad passenger service which, as you know, is being subsidized by the state under contract. We suggest specific language to take proceedings involving this contract service out of Section 20 entirely because it seems

to us rather ridiculous - if I might use the word - to have a railroad who, because of higher labor or fuel costs, for whatever reason, should come in for a fair increase, to have that railroad be charged for somebody from the public advocate's office, to come in and fight them, and then the railroad pays that, and immediately thereafter, it's part of the cost that the state picks up. So, we suggest that - at least at minimum - passenger fare cases, before the Commuter Operating Agency, should be taken out of this assessment procedure.

Our next amendment consists of -- I'm sorry, I omitted one which is a proposal - it is the third one listed - to modify or amend the provision of Section 20 to make it clear that when the assessment is made on intrastate revenues of the service involved in the proceeding, that the word "particular" be added to dispell any suggestion, for example, that if it was railroad freight rate increase before the Public Utility Commission that all intrastate revenues, freight and passenger could be included in the assessment. I do not think that is the intent, and we suggest - by adding the word "particular" - it might make it more clear.

Our last proposed amendment consisting of several paragraphs which I will not read or discuss at any length, except to point out that these paragraphs provide an appeal provision if there is a dispute as to the amount of the assessment of having Rate Counsel fight you. These provisions are not identical with, but I have taken them - almost verbatim - from a present provision regulating public utilities, which is R. S. 42:31-1. The only change has been what I thought were necessary modifications in language. But these provisions would give you a right to object, file exceptions to an assessment for charges, and would also make it clear that you have a right for judicial review. These are spelled out very specifically in the section governing public utilities.

I have nothing further to add. I've tried to be

specific. I think it is obvious that we don't believe this section - with respect to the Division of Rate Counsel - is necessary.

SENATOR BEDELL: Thank you very much.

Are there any questions? Senator Garramone.

SENATOR GARRAMONE: Just one question of information, Mr. Nasmith. Who are the railroads that are part of this Associated Railroads of New Jersey?

MR. NASMITH: Erie Lackawanna, Penn Central, Pennsylvania-Redding Seashore Lines, and the Lehigh Valley. We use to have ten, but the attrition of bankruptcies has reduced us, now, to four.

SENATOR GARRAMONE: How many of those railroads are solvent?

MR. NASMITH: They are all in bankruptcy, except for the Pennsylvania-Redding Seashore Line.

SENATOR GARRAMONE: I see, Thank you.

SENATOR BEDELL: Thank you.

Mr. Joseph Shanahan, South Hunterdon Taxpayers' Association.

J O S E P H F. S H A N A H A N:

Mr. Chairman, Members of the Committee: I am Joseph F. Shanahan of Lambertville, N.J. representing the South Hunterdon Taxpayers Association, a non-partisan organization of working taxpayers who are opposed to Assembly Bill 1409 on the basis that the estimated appropriations are not realistic and that the actual expenditures will be much greater and further, that the legislative safeguards are not sufficient to control the great empire-building potential inherent in this bill. The Federation of New Jersey Taxpayers and the Hunterdon County Taxpayers and Citizens Association have also indicated their concurrence. We are not opposed to the concept of a Public Advocate but we believe

the proper financial and philosophic restraints.

First, we are alarmed at the large expenditures which we know will be required to finance this new department - and this at a time when the administration is hard pressed to solve the financial dilemma being presented by the local school systems. From the amount appropriated for the rest of the fiscal year (\$250,000 to 30 June 1974) it might appear that an annual expenditure of some 3 million dollars could be expected. (approx. one month expenditures X 12) And perhaps that figure was in the minds of the Assemblymen who voted for it - a fairly reasonable amount to fund a new department. However a check of the State Budget 72/73 (pertinent pages attached hereto) discloses that the Office of Public Defender (alone) expended \$5,059,422 in the year ending 30 June 71.

When you consider that the bill calls for four similar agencies plus a department administration it would seem that a more realistic estimate of cost per year would be closer to 30 million than 3 million. In the area of the Rate Counsel we would like to direct your attention to the following sentence in the Statement attached to the bill,

"The function of rate counsel, presently performed by private attorneys at great public expense, is assumed by a full time staff in the department"

We were favorably impressed with the implied efficiency until we read the second sentence in Section 18, p. 5 of the bill which says,

"When exceptional circumstances arise, the Director of the Division of Rate Counsel, with the approval of the Public Advocate, may on a temporary basis retain such other expert assistants as are necessary to protect the public interest, pursuant to a reasonable fee schedule established in advance by the public Advocate."

Now we care not sure whether we are not right back with "the private attorneys at great public expense" - to some extent - only now we have a full time staff in addition.

In regard to this same sentence in the Statement we would like to call your attention to the fact that the wording in the Statement attached to the Official Copy Reprint is not exactly the same as in other Statements attached to other copies of the bill. We noted that the word, "great" so that it reads, "... presently performed by private attorneys at public expense.."

In the words of the current commercial, "We'd like you to know."

Next, we oppose the great centralization of power which the bill places in the hands of the Commissioner (Public Advocate) as being unnecessary and excessive; for instance as to his discretionary power, Sect. 32, p. 9 of the bill opens,

"The Public Advocate shall have sole discretion to represent or refrain from representing the public interest in any proceeding. .."

In view of the fact that the bill includes a definition of "public interest" in Sect. 31 and that the Division of Public Interest Advocacy has a Director, we feel that this discretionary power to oversee the Director is unnecessary.

Also, his power to appoint assistants, apparently without any objective guidelines as to number and salaries is ill-considered and excessive; Sect 6 p. 3 states in part,

"The Public Advocate shall appoint deputy public advocates and other expert assistants in such number as he shall require to assist him.....and shall receive such salaries as he shall from time to time designate."

We feel that the above excerpt speaks for itself.

On the assumption that the Department of Public Advocate will be established in the near future, and since we do not oppose the concept of such a department, we respectfully offer the following suggestions for your consideration"

1. That a Division of Taxpayer Advocacy be included - similar to the Office of Inmate Advocacy established by Sect. 13, p. 4 - which represents the interests of jail inmates. It seems only fair that the fellow who pays the bills should be assured of at least the same individual attention for his

class actions that convicted felons get.

2. That the number and salaries of deputy public advocates and other expert assistants be limited by some objective standards which are stated in the bill.

3. That the discretionary powers relating to the decision to represent the public interest or not be decentralized to the division concerned, based on the definition of "public interest" as listed in Sect. 31, pp 8,9.

In conclusion, we would like to thank the committee for its courtesy in affording us the opportunity to state our viewpoint on the bill.

Thank you.

SENATOR BEDELL: Are there any questions?

Senator Garramone.

SENATOR GARRAMONE: Yes. What exactly did you have in mind when you said Division of Taxpayer Advocate?

MR. SHANAHAN: Well, Senator Garramone, I can only explain by giving an illustration. For instance, in the County that I am from, we have a Board of Taxpayers Appeals. This Board holds meetings in the daytime and our taxpayers who have a legitimate - possibly, legitimate - appeal on the assessment, find it difficult to come in the daytime and lose a days pay to, possibly, get a \$40 or \$50 dollar decrease on their tax for the year, and chances are that they won't. So, in this respect, no effort has ever been made of a concerted legal nature to enforce it. Who is going to spend the money to hire a lawyer to save \$40.00 a year, we'll say. So, in this case, I foresee the possibility that there are many of these little infringements on a taxpayer's rights that he lets go by because he doesn't feel that he can afford to be a public advocate himself. Thank you.

SENATOR BEDELL: Senator Tumulty.

SENATOR TUMULTY: Good point, well made.

SENATOR BEDELL: Thank you very much. We appreciate the information your association has given us, and we hope

it will be part of our input in considering the bill.

MR. SHANAHAN: Thank you. That's the spirit in which it was offered.

SENATOR BEDELL: Mr. William Hodes, Education Law Center.

W. W I L L I A M H O D E S: Good afternoon. My name is W. William Hodes - H-o-d-e-s. I am from the Education Law Center of Newark, New Jersey, which is a Public Interest Law firm - as the name implies - in the Education field.

We have a brief statement here which I have copies of and will leave with the Senators. I would just like to read one paragraph from it so you can get our general view, then I'll get into some specific comments.

SENATOR BEDELL: May we have the statement now so we can follow it.

MR. HODES: The third paragraph says, "It is entirely fitting that New Jersey should be one of the first states to establish public advocacy as a matter of official state policy. Beginning with the landmark case of Hennigsen v. Bloomfield Motors, establishing the concept of a manufacturer's liability for the harm later caused by his products, New Jersey courts have consistently shown the way for the entire nation in insisting that individuals, with limited or no bargaining power of their own, need the assistance of government in working out problems. Indeed, the very point of those decisions is that the essential business of government is not only to provide protection for our homes and persons, and education for our children, but also to affirmatively lend a hand in solving our day-to-day problems".

I think there is another important reason for having a Division of Public Advocacy in the government itself, and, that is, because the field is such that individual's who are involved in public advocacy, sometimes, can get very nervous and wonder whether they're making the right choice about what

the public interest is. Now, I was not elected by anyone and I was not even appointed by anyone who was elected by someone, to determine what is the public interest or what is even a part of public interest. So that every time that the Education Law Center or a similar group - whether it be Ralph Nader or the Environmental Protectionists or whatever - makes a policy choice and says that we will take on this case; we will use our time and energy to try and represent this group of people. We are making a choice which we hope is right - and we assume is right - as often as possible. But I think you get an added bit of protection if you have the people making those decisions be people who have been, at least, appointed if not elected. I think the field is wide enough so that there is room for both kinds of people in this field. I think it is definitely a plus point.

Now, on the bill itself - and my comments are going to be limited to the public advocacy section and the citizen's complaints section. We think that the overall concept of the bill is good and, as our statement says, we welcome the State of New Jersey into the public interest law field. I'll make some comments on that, and at the end, I have a couple of very minor points, really a technical nature, on language and ways that it might be unclear as to exactly what is contemplated.

I think the key to this part of the bill that I'm discussing is the interaction between the two divisions, the Public Interest Advocacy Division on the one hand and the Citizen's Complaints Division on the other hand. I think if you had either of them by itself, it would be a step forward. It would be a good thing, and it would be able to accomplish things for people in individual cases. But I think the key to them is, that when put together in tandem they result in a system that is better than the sum of the two parts. They'll have a very beneficial effect, each on

the other. For this reason -- we'll take the citizen's complaints section first. If it, alone, acted in a pure ombudsman role and had power or jurisdiction or clout, whatever, only to receive these complaints and pick up the telephone or discuss in writing or even in person, with whatever agency or government official was involved, there would always be a tendency to have the ultimate solution of it put off and put off and too much procrastination, because in the end, in order to finally settle the case, you really need the possibility - even if it looms far off in the distant future - that there can be litigation that would involve either a court order or some kind of real coercive - if you will - action. We know this just in the ordinary law field. I don't know how many of the Senators here are lawyers, but the term of settling cases on the courthouse steps is one that I'm sure everyone is familiar with. Assignment Judges will insist that trial dates be kept and that the pressures for settlement increase as you get closer and closer to the trial date. Now, this is not to say that all of the cases that will come to the attention of the Citizen's Complaint Division will go to court. I think quite the contrary is true, that with this possibility - in the far off future - there will be action of this kind. The chances are that the vast majority of cases or incidents or what have you, will be settled over the phone or after correspondence of one or two or three or maybe even five letters. But the great majority will be settled this way. We say in our statement - beginning on the second page, I believe - that just the mere process of this investigation - when information flows back and forth, in very many cases - will result either in the public official discovering to his chagrin that he made an error and that he should be corrected, or possibly just as often, the citizen will realize that what he thought was an error or was an oversight, actually, was because of some-

thing else that he didn't know about and that action - to his satisfaction - is forthcoming shortly. So this whole process will speed things up and will lead to much better service at all levels of the state government and agencies. Now, if the Public Interest Advocacy Division were alone, its problem would be twofold. The first would be that it wouldn't be able to handle the volume of complaints that would be coming in because the vast majority of complaints would be likely to be of the nature discussed by the previous speaker. I think it would be so small that nobody would really want to hire a lawyer, yet, large enough so that they would loom large in any one person's life. Those - under the system that this bill sets up - would be referred in the first instance to the citizen's complaints section and would not even reach the public interest section, - in my view of it anyway - until it became clear in that division that the matter was not being resolved and that stronger measures were called for. I think the very fact that, under the bill system, the report or recommendations of the citizen's complaint section are sent to the public advocate shows that what the typical scheme will be is that the citizen's complaint section will be used as a screening device, it will make its recommendation and the implicit clout behind it is - first of all - just a moral suasion of this office but, second of all, that the public advocate - through his other divisions - will be keeping an eye over this. So that the benefit that the public interest advocacy section will get out of the citizen's complaint is, first of all, one of being a strainer on the volume of business. The second is the opposite, that by having an office like this available, the public interest division will have far more eyes and ears throughout the state. If there was only the public interest section, a lot of people might be reluctant to come forward in a slightly more formal or serious vein and bring their problems up to an agency like

this, and a lot of things that might well just be the tip of an iceberg - or what people would think would be only their individual problems - were actually more widespread and would get lost because people wouldn't see their relationship. With small complaints like that - going in the first instance to the Citizens' Complaint Section - there is a greater likelihood that more of these complaints would see the light of day and that, eventually, the truly significant ones - which didn't seem significant in the beginning - would be passed on to the Public Interest Section. Of course, the relationship is such, as I said, that the majority of cases will go from step 1 - will be settled there; if not, they will then go on to step 2.

Now, I have one or two technical comments about some of the things in the bill, on the section which starts with Section 29 and goes into the early 30's. The first is in Section 30. These really are just word changes, I think, mainly. In Sections 30 and 33, there seems to be a slight inconsistency, as both of these sections define the jurisdiction of the Division of Public Interest Advocacy. I note that originally, in 33, the section was entitled "Powers of the Division", and it might well be that that original word was better than the substituted jurisdiction.

Section 30, I think, is a true jurisdictional section and talks about representing the public interest everywhere, except in Rate Counsel matters. I think that is good to have that stated clearly at the outset.

In Section 33 it is not so much a jurisdictional question as describing what methods of procedure, or what powers - as was originally in the bill - the Division has, to actually carry out its duties to represent the public interest.

Now, that's really linguistic. The main, slightly more substantive, objection I have is a criticism where it could be tightened up in sub-sections a. and b. of 33. The way it presently reads, it seems - and I don't know

whether it was intended this way - as if the Division of Public Interest Advocacy can intervene in agency or board proceedings but cannot institute proceedings there - cannot start them; whereas in sub-section b. it seems as if he can start litigation in court but cannot intervene in court. Unless that is not what is intended, it seems there is no reason for having different procedures in the different types of form that may be available to any attorney and, of course, the division would simply be a law firm. I would think that the law firm would have the choice based on - should have the choice - either the tactics of the case or, more importantly, based on the doctrine of abstention -- if the case is appropriate to be brought first in a board proceeding, he should bring it there; if it was appropriate to bring it first in court, he should bring it there, and he shouldn't have this restriction put on him. I think that probably was an oversight in the bill.

The only other comment I have has to do with the powers and duties of the ombudsman section - the office of Citizens Complaints. In section 37, b. it talks about investigating the complaints received and then to determine whether they were unreasonable, unfair, oppressive, or discriminatory, although in accordance with law. I had a little bit of trouble with that phrase because under many court decisions, actions that are unreasonable or unfair, oppressive or discriminatory, are not in accordance with law per se. It may very well be that sub-section b. could simply refer back to sub-section a., about the complaints that have been received, and sub-section b. could simply read, "to investigate such complaints", period, and then c., it would maintain records of them and d., it would go on to issue its report and try and mediate the thing,

and, if necessary - only if it cannot be settled - then it can be sent on up to the Public Advocate - to the Public Interest Section.

I think that is all I have. There was a question posed to a previous speaker about whether people who had complaints like this, involving the government but not involving corporate action - because this, obviously, also would deal with things like consumer fraud or some kind of environmental suit, or whatever - could hire their own lawyer and try and settle the matter by private action. I think the answer to that was also provided by the last speaker, and that is that the vast majority of cases are likely to fall into the category of non-litigable but negotiable; where it will frequently take just a single phone call to jog somebody's memory, or a series of phone calls to determine whether thus and so is the rule, and whether it is a good rule, or whether somebody at a lower level has misinterpreted it, or whatever. So, the point is that you need somebody who is readily accessible and can just pick up the phone or take very minor actions to effect a result. I think that sub-section of this Department will do that and do it very well.

SENATOR BEDELL: Thank you, Mr. Hodes.

Are there any questions? Senator Tumulty?

SENATOR TUMULTY: I take it, Mr. Hodes, that you are a lawyer?

MR. HODES: Yes, sir.

SENATOR TUMULTY: Have you ever engaged in general practice?

MR. HODES: Well, I was with the City of Newark as Corporation Counsel for the last three years and now I am with this. I was very briefly, after law school - not in this state, in Louisiana.

SENATOR TUMULTY: How long have you been with this group?

MR. HODES: Well, this group just began formally in February. Actually we were started in October or November and I have been with them since then.

SENATOR TUMULTY: Most of what you have testified to here today is based on what you think is your concept, or theory, of the thing; is it not based on actual experience in the practice of law, is it?

MR. HODES: No, I wouldn't say so, Senator. Partially yes, of course, but also what I was able to say about cases being settled over the telephone has already been born out, I think, just in the few months we have been here, involving departments of the State of New Jersey - the Education Department, partially, and Institutions and Agencies, to the extent the Youth and Family Service was involved.

SENATOR TUMULTY: Have you studied the operations of a public advocate in any other states, other than New Jersey?

MR. HODES: No, I didn't get a chance to.

SENATOR TUMULTY: You haven't studied their table of organization?

MR. HODES: No.

SENATOR TUMULTY: You haven't studied their performance record?

MR. HODES: No, I haven't.

SENATOR TUMULTY: Do you have any concept of what the cost of this Division would be?

MR. HODES: No, all I know is the appropriation that's given. I really don't feel qualified to go into that part of it.

SENATOR TUMULTY: Are you dissatisfied with the way Public Rate Counsel now handle matters through the Attorney General's office?

MR. HODES: Well, as I said, I limited what comments I had to those two divisions. I really don't know. I saw one proceeding in which Rate Counsel was involved, just as a spectator. So, I really have no idea of whether they are effective or not.

SENATOR TUMULTY: As a lawyer, do you have any fears regarding the power that is vested in the Public Advocate?

MR. HODES: In what regard?

SENATOR TUMULTY: Well, isn't he given very broad powers under this bill?

MR. HODES: Well, I think he is given some powers that-- In part, its better that they would be vested with a public official than with me.

SENATOR TUMULTY: One is the power to investigate every department of state government, including the Executive Department, short of the Governor's personal staff, is that right?

MR. HODES: Well, I think that is already true with the SCI.

SENATOR TUMULTY: Who checks the public advocate?

MR. HODES: Well, I think that's a question-- The answer to that probably is that by adding another autonomous, or semi-autonomous body to the present concept of government you increase the chances that there will be a check and balance, one way or the other. I think, in setting up this, you do have to make a policy choice; that you need an independent body who will, as best possible, stand out more or less on its own and be a watchdog on other agencies.

You always have the question, logically, "well, who will watch the watchdog?" I think the answer to that is that the public, if dissatisfied with his services, will speak out. And other sections of the government, if dissatisfied with the type of investigating that he is doing, I'm sure will make themselves known.

Some of these things will have to come to court. There will be disagreements within the State Government and they will simply have to be worked out.

SENATOR TUMULTY: Are you not fearful of superimposing a bureaucracy upon a bureaucracy here?

MR. HODES: No, I don't think so. Again, I'm not sure, exactly, how large it is going to be. My conception of it is that it will be much smaller than the--

SENATOR TUMULTY: Would you think it well, before we take further action on this legislation, that we see some form of a table of organization?

MR. HODES: I assume that there is one but I don't know how the procedure is worked out.

SENATOR TUMULTY: Well, there isn't.

MR. HODES: I think that, probably, there will be some kind of budget line set up for the different attorneys that will be in there.

SENATOR TUMULTY: Would you be fearful that under this bill the public advocate might be inundated with complaints, many of which might be baseless?

MR. HODES: Well, that is why I said I think it is very helpful to have a Citizens' Complaint Section, which will, yes, be inundated and, yes, will have, probably, its fair share of complaints that will turn out not to have too much basis in fact. However, the very fact that people will be

investigating those - people who are not attorneys-- I understand they will be more like community relations people, or people who are similar to case workers. They will be able to just talk some of these things out. They will screen out, or weed out, the vast majority of complaints, very easily and very quickly.

SENATOR TUMULTY: Well, now let's get down to a practical case. You talk about the non-litigable case, the one that can be settled by telephone. I am a lawyer and I have been one for 31 years. I have served on bar committees. I can say to you, without fear of contradiction, that out of every 12 complaints that I have received, seven or eight are from "crackpots". That is not to say there is not some basis of complaint from some people.

Do you have any fear, or is there not a possibility, that if people know that they can so readily run to the Public Advocate-- They may have a claim which may be valid or may be baseless, and if it is baseless they are using the public advocate to put pressure on the small businessman who may sell them some commodity - some home appliance or something. What redress does he have? He has the choice of either litigating with the Public Advocate or settling the case on the telephone. How about that?

MR. HODES: You are not talking about government agencies now, you are talking strictly about the businessman?

SENATOR TUMULTY: Yes.

MR. HODES: Those, as I understand the bill, will not go to Citizens' Complaints.

SENATOR TUMULTY: He might have a very valid defense to the claim that is made against him, but it may be of such small monetary value that it

wouldn't be worthwhile for him to hire a lawyer. Who is going to defend him?

MR. HODES: Well, I think in those cases the point is that the public interest law firm section, or division of this, is not a legal service for consumer - for individual consumer - cases, the way our legal services now exist, say, for individual divorce cases, etc.

SENATOR TUMULTY: Well, won't consumer frauds be over in this division?

MR. HODES: Right, except that I suspect, largely because of work load and partly because of the question that you raised also, that the division will not take on the type of case that you mentioned because the Public Advocate, and especially this division, has discretion to determine - in fact, must determine first of all - whether the public interest is involved.

A single person, whether his suit was ruined by a single cleaner, or whether, in fact, he was defrauded by a single merchant, does not raise the question of public interest. It would raise the question of public interest if, after some kind of preliminary investigation, it turned out that there was a whole pattern, or practice, by either this particular merchant or, let's say, an entire chain of gas stations or supermarkets - or whatever was involved in the practice. That would then rise to the level of what we would call a consumer protection case, if that was the field involved, or environmental protection case, if that was the field involved. So, I think the point that you raised-- It would be important for the public advocate to impose upon himself, as a limitation,

that he would not take those cases; he would not become simply a legal service, to take any case. We don't do that, for instance.

SENATOR TUMULTY: That becomes a matter of discretion with the Public Advocate?

MR. HODES: Yes, it does.

SENATOR TUMULTY: So it leaves him a broad spectrum of choice, doesn't it?

MR. HODES: Yes, it does. I think the point is, as I started to say in the beginning, we have to make the same choices and have to decide whether the case - even if compelling - is not for us because we simply do not have the time; especially us, we only have a total of 4 lawyers in two states. We cannot - the other state is Pennsylvania - take our time and resources, even on a compelling case unless it is clear to us that it involves broad policy questions.

Now we may be wrong on occasion. We may reject a case that we should have taken or we may take a case that we really shouldn't have, if it was too small. But all we can do is do the best we can and I think that with the Public Advocate, who is a public official and is responsible to someone - the person who appointed him plus the public at large - that the chances of that exist, yes, but, hopefully, will be even smaller than in our case, where we are just merely private citizens who are taking on this burden.

SENATOR TUMULTY: What will the Attorney General's office be doing when the Public Advocate is doing all this work?

MR. HODES: Well, in some instances, if there is a real conflict and it is something that really has to be litigated, I think the Attorney General's office

may well be on the other side of the case. That would be a classic case of who is controlling - who is watching the watchdog. Clearly, if things were out in the open in court, then both sides would have play; there will be different parts of the public interest receiving play.

I noted that in the statement that we have. I know that people have been bothered by that concept also; that there might be either a conflict or it would seem unseemly. But, actually, we already have that system, for example, in every single public defender case that is tried. You might very well have a case of the public defender being a state employee, the prosecutor being a state employee, the judge being a state employee and, if there is a highway patrolman or even a municipal police officer, he, again, would be a public servant.

SENATOR TUMULTY: The only fellow that isn't on the payroll is the poor old taxpayer, is that right?

MR. HODES: Well, we call him the defendant in that case.

But the point is that although, on paper, it would seem that there are four different people in this case - or it might be, the defendant might be also; all five might be state employees. The point is that if, on paper, it may seem that there would be an inevitable conflict, in fact, we trust all of these people to represent their part of the public interest; that the police officer will testify truthfully; that the judge will make correct rulings; and, the one that concerns us most, that the Attorney General or the prosecutor on the one side and the Public Defender on the other side will do their best

and really mix it up, if you will, in court, to the end that justice, whichever way it goes, will triumph. That is our system. We have that now. I don't think that anyone is really challenging that as a concept. But I know that, theoretically or abstractly, can bother people, but it really, in practice, has not become a problem.

SENATOR TUMULTY: Thank you.

SENATOR BEDELL: Mr. Hodes, I'd just like to ask you a question that is more or less a value judgment from your point of view. Due to the fact that this proposed department has such an impact, would you feel that it is proper to proceed slowly in evolving the necessary legislation - progressively, of course, but slowly - or do you think that the urgency of the need for this office would dictate haste?

Perhaps you are familiar with the previous two cabinet level departments that were established. They took three to four years from the time of inception - what with organization tables and what not, supporting data - until the time they were enacted. This department seems to be coming off the floor in rather a hurry. Do you think we are acting properly, within our province, to proceed rather slowly because of the importance of it, or should we be moving rather hastily because of its urgency?

MR. HODES: Well, I don't think haste is a good word. I think the basic concepts of the bill and the relationship between the departments are well conceived and, with a couple of exceptions that I noted - and perhaps some of the previous speakers have noted, I don't know - it hangs together and it says what it wants to say, I think, and sets up a

system which seems to do the trick and which will allow for the small case - which will be weeded out - and will allow for the case where there is real conflict, etc.

I think people are making guesses about how much it will cost, etc. I assume that some kind of data will be available as to how many people will be hired. I assume this will not be like the Public Defender which has to actually man court-houses in every county in the State. This will more likely be an outfit that will have a couple of central offices with people coming out of the Citizens' Complaint Section, and that will go into more of the areas and will be more mobile.

But I don't think, if it were passed quickly and established quickly - all as part of the same package - that should be called hasty. I think the bill does not reflect any kind of haste, although it hasn't been long since it has been introduced. It looks like - to me anyway - groundwork was done previously; that somebody has been thinking about this and has written it down. I assume also that there has been some comparison with other possible models - the way this has been set up in other states. I am just not familiar with them but, again, that is really not for me to say.

SENATOR BEDELL: It is just, as I said, a value judgment.

You have concerned yourself, in the main, with the concept - as Senator Tumulty has mentioned. We are also concerned with the mechanical nature of the bill itself, as to the length of term, the appointing powers - should they be under the Executive Branch or the Legislative Branch. These are other

areas with which the Committee is going to have to find itself deeply involved in the weeks to come.

Your group hasn't devoted itself, to any degree, to that area, has it - to the mechanical part of it?

MR. HODES: Not to the actual setup. The reason that I left that is-- Again, it was an assumption on my part. It seemed like the way it was being set up was following the general model of the present public defender system, where the top man himself would be appointed, to be confirmed, and his deputies would be appointed by him. Obviously, this gives him discretion. Obviously, this is the system that, I think, pertains to most departments. The control on that is that he is responsible to them and has to be responsible, not only to the Governor but to the people as well.

I think if someone got into this office who was clearly unfit, either by temperament, or by philosophy, or just by work habits, or whatever, that the news would get around very quickly and there would be ways of heading something like that off.

SENATOR BEDELL: Thank you very much.

I'd like to call upon Chris Burke, Public Interest Research Group.

C H R I S T O P H E R B U R K E: Good afternoon. I am Christopher Burke, the Executive Director of the New Jersey Public Interest Research Group. NJPIRG is a non-profit, non partisan, student-funded research corporation supported by college students on eight New Jersey campuses. We thank you for permitting us to testify today and we would like to thank those responsible for calling these hearings.

The New Jersey Public Interest Research Group feels a Department of the Public Advocate is a must for good government in New Jersey. As the

needs for more governmental services have increased in recent decades, an enormous state bureaucracy has developed. This cumbersome bureaucracy tends, at times, to separate itself from the needs of the citizens it was created to serve.

An example of this is our present Division of Consumer Affairs which was formed by the Legislature to protect the interests of the consumer. In fact, this division doesn't solve complaints as it receives them. It waits until it has received 5 complaints about a particular business establishment before attempting to solve the problem. In fact, our group, operated by college students at Rutgers, solves complaints as we receive them and many of the complaints we receive have been channeled to us through the Division of Consumer Affairs.

The formation of such a new agency - that is, the Department of Public Advocate - rather than increase the unworkability of the giant bureaucracy, is necessary to spur the existing government offices and cut red tape.

The recognition of the need for such an agency in the state is commendable. After years of debate, special interest influence peddling, and footdragging, the U.S. House of Representatives has recently voted to create the Federal Consumer Protection Agency which would perform part of the same function on the Federal level as the proposed Department of the Public Advocate would on the state level. Taking such action is necessary to force government offices to perform their task of serving the public.

The initial expenditure of \$250,000 to cover the Office of the Public Defender, a full-time Division of Rate Counsel, Division of Mental Health

Advocacy, Division of Public Interest Advocacy, and Division of Citizen Complaints and Dispute Settlement appears appropriate to start. However, the Legislature must be certain that future spending is sufficient for the new department to perform its assigned function. It is very difficult to say, at this stage, how much money will be needed for the new department to be effective.

The New Jersey Public Interest Research Group would like to alert the Legislature that this bill shifts still more power to the executive branch of New Jersey Government. By making the Public Advocate a principal department of the executive branch, the commissioner must constitutionally serve at the pleasure of the governor. This means the commissioner could be immediately fired if his investigation or actions in the public interest were sensitive to the governor. A Richard Nixon-Archibald Cox situation could develop with the Legislature having no say in the matter, as the Congress had no say in that previous matter.

The only remedies for this problem would be a constitutional amendment; one, to either make the department independent; two, a change in the bill itself to make the Public Advocate's office part of the Legislative Branch; or, three, a different change in the bill to at least make the department independent from the Executive Branch, like the present status of the Commissioner of Education. This proposal deserves due consideration by the branch which has complained of limited power in the past, and we urge you to consider such a change seriously. Preserving the checks and balances inherent in our democratic system is essential, particularly in this era of Executive Branch dominance.

Thank you for permitting me to present our views in this area.

SENATOR BEDELL: Thank you.

Senator Garramone?

SENATOR GARRAMONE: Yes. I am rather intrigued by your last recommendation, that you feel we should give the Legislature a greater check and balance on this. You feel that it should become an arm of the Legislature?

MR. BURKE: Well, that's certainly one alternative. We feel there there is great concern here that you are really creating another branch of the Executive Branch, which is thereby going to increase the power of that branch. This is, at the same time, what many people are complaining about; that the Legislature is the so-called weaker branch of New Jersey government. We just want to bring this point out. Really, it is your decision, but it is one alternative.

We studied this particular question and those were the three alternatives that we found that were at all feasible. I am not necessarily saying that is the most feasible, or even particular feasible, but it is an alternative.

SENATOR GARRAMONE: So, conceivably, this office could be responsible to the Legislature, as opposed to the Executive?

MR. BURKE: Right. I think that certainly has strong arguments for it.

SENATOR GARRAMONE: That's all. Thank you.

SENATOR BEDELL: Senator Tumulty?

SENATOR TUMULTY: Mr. Burke, to pursue this a little further on the Legislative Branch having jurisdiction of the new office, would you think that there would be greater control by the Legislative over the Department, rather than if it remained

under the control of the Chief Executive?

I think you pointed out here that - somebody did, if you didn't, then somebody else did - a Chief Executive could capriciously discharge a Public Advocate.

MR. BURKE: That's right.

SENATOR TUMULTY: By the same token the Public Advocate who could get out of line could be very quickly reined in by the Legislature.

MR. BURKE: That's right.

SENATOR TUMULTY: Would you agree with me that if it was part of the Legislative Branch that it might also dovetail its operations with that of legislative committees, in an investigatory sense?

MR. BURKE: You mean the Department of Public Advocate?

SENATOR TUMULTY: Yes, if it was a part of the Legislative Branch.

MR. BURKE: You mean there might be a conflict?

SENATOR TUMULTY: No, one might augment the other.

MR. BURKE: Absolutely. I definitely agree. I think that is an argument for the idea that the Public Advocate be--

SENATOR TUMULTY: One might compliment the other.

MR. BURKE: Right. Absolutely. I do think, though, this is what we saw as one of the major potential problems in the bill and certainly this isn't any reflection on the present Governor. This is just a lesson we have recently learned from our present President; there can be this conflict that can really result, not so much-- Well, there is the problem of the discharge of the Public Interest Advocate but the question of the public

trust is what we are concerned about. If you appoint a Public Interest Advocate and then when he or she begins to get into a sensitive area, he or she is discharged, there is no public trust.

SENATOR TUMULTY: This would be a remote possibility if it were a function of the Legislative Branch?

MR. BURKE: That's right.

SENATOR TUMULTY: To your knowledge, does such a system, such as this bill proposes, operate in any country, other than the United States?

I know that Canada has it - Nova Scotia, Saskatchewan, and several of their provinces. I think in one or two Scandinavian Countries they have it; also West Germany and Russia.

MR. BURKE: I cannot comment on the effectiveness of the latter but--

SENATOR TUMULTY: Also, Israel has a military ombudsman.

Have you studied, at all, a table of organization?

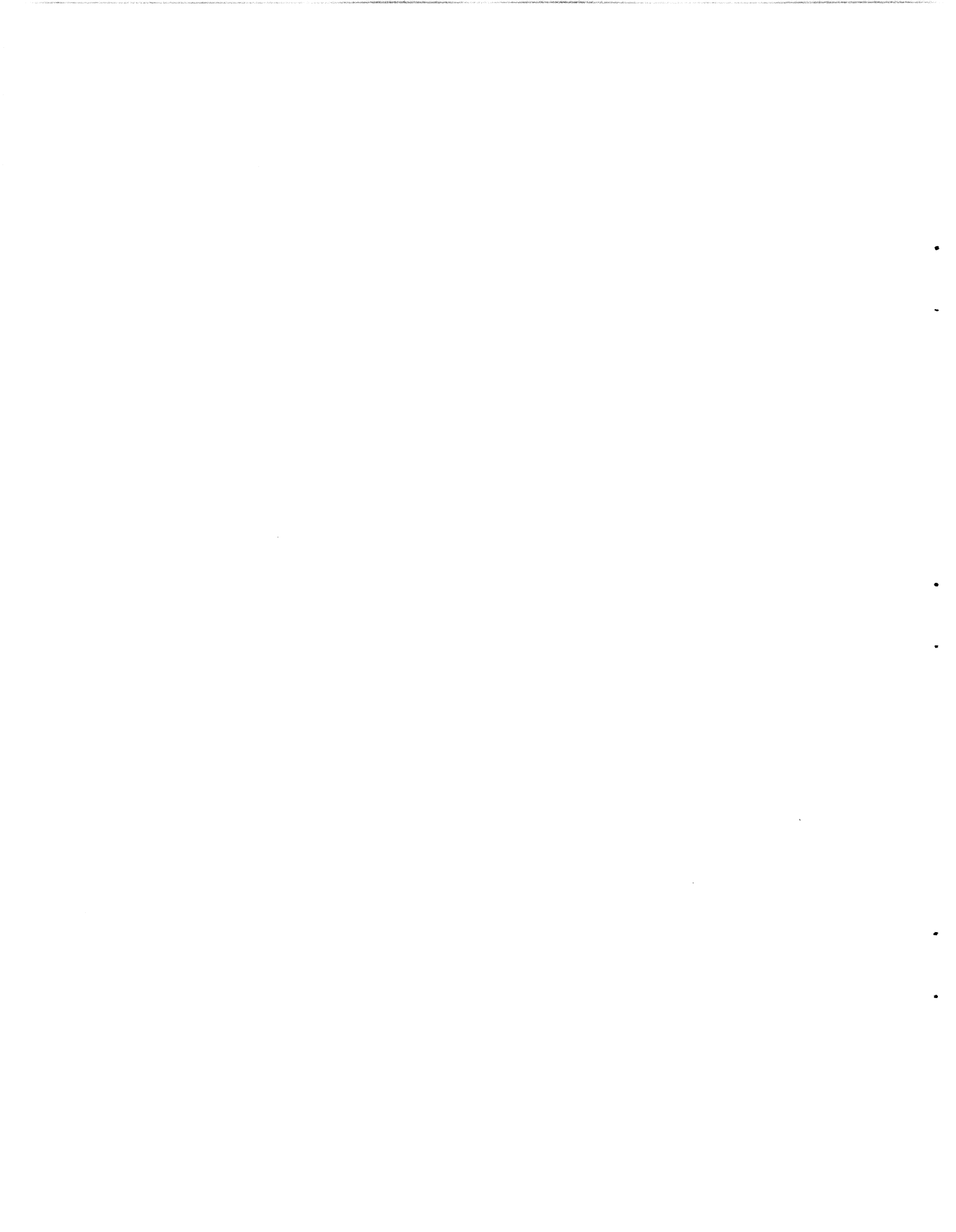
MR. BURKE: No, sir.

SENATOR TUMULTY: I see. Thank you very much.

SENATOR BEDELL: Thank you very much, Mr. Burke. We appreciate your comments.

The Committee would like to take a 10 minute recess. We will reconvene at 20 minutes after 3:00.

(Recess)



(After Recess)

SENATOR BEDELL: We will reconvene the public hearing. I would like to call upon the Attorney General, the Honorable William Hyland.

W I L L I A M H Y L A N D: I want to thank the Committee for the opportunity to be here today to talk about the Department of Public Advocate because I think that some of the questions that have been raised in the press and by the Legislature have wondered about the relationship between the Office of the Attorney General and the Department of the Public Advocate - how they interrelate, whether they overlap and, in a sense, I suppose, what our attitude is about the creation of the Department.

As Attorney General I want to say that I support this legislation and its concept with the anticipation that it will begin to provide some relief for the frustrations that I feel many individuals have today, in terms of the inability to feel that you have a place to go, that you have an opportunity to have your rights represented, that you have the chance to correct some wrong. I guess there is, in every one of us, a little bit of the Judge Sirica syndrome - the feeling that you would like to be, at some point, in a position where you can do something to correct some injustice.

Individual citizens never have the chance to put that feeling into being and I think it would be very correct to say that part of the lack of confidence in government today rises from the absence of any visible means by which the private citizen can influence the power of the bureaucracy to make decisions seriously affecting his life.

I think, to a significant degree, that the Department of the Public Advocate will help to make up for that lack of capacity to do something about correcting wrongs.

I have been asked by some of the legislators to comment from time to time about two aspects of the bill. I would like to address myself to them at this point. One of them concerns the existing jurisdiction of the Attorney General's office to designate Rate Counsel in utility matters and sometimes in insurance cases, etc. I'd like to say that I think in the utility field, for example, that a great deal of progress has been made during the last four years in the fact that my predecessor, George Kugler, adopted the practice of appointing, essentially, the same lawyers to represent the public interest. I think you all know that under the statute these lawyers are compensated in the course of the proceeding by an assessment made against the utility. Many years into the past these appointments were not always made with the need for expertise in mind, but rather as a form of political patronage.

In the last several years, as I indicated, I think that that was overcome and we have had lawyers with the opportunity to build up some skill, and that they have done a much better job. But I think what is being suggested here now, in the assumption of the Attorney General's power of appointment by the Public Advocate is the logical final step in the development of a much better and a more economical way of representing the public interest.

There will necessarily be a transition period, I think, when the Public Advocate will probably find

need for reappointing some of the men who have been doing this work in the past because it will take some little while to build up the internal - the in-house skills. But I think that it can be done and that it should be done.

Another area that I have had some concern about involves the conflict position that my office is frequently placed in by having the statutory responsibility to represent a given department and also the Division on Civil Rights. We find ourselves in the ironic position in cases where a state employee is alleging discrimination, or some other injustice on the part of a state agency, of representing the Division on Civil Rights, which has the statutory responsibility for adjudicating that, and also the particular department in which the employee is stationed, because we have the statutory responsibility to represent that department as well.

This is one of the types of conflicts that I think, and I hope, can be resolved more satisfactorily with the creation of a new department.

We have also been asked, "what will be the effect of a new department on the Division of Consumer Affairs, why shouldn't that Division, and its functions, be moved over to the Department of the Public Advocate?" I would like to remind the Committee that the Division on Consumer Affairs acts under the Consumer Fraud Act; so that the Division, in many cases involving injustices to the consumer, acts in the role of a law enforcement agency, which is the traditional function of the Attorney General as the chief law enforcement office of the state. So, it would not be practical or possible for the Department of the Public Advocate

to take over those consumer fraud prosecutions. As a matter of fact, it is conceivable that in some cases the Department of the Public Advocate will be defending people who have been charged with consumer fraud. That is the most fundamental reason why we can't mix those two functions.

Some consideration, of course, has been given to the cost of creating a new department. I think perhaps that discussion has tended to overshadow the value that the new department will provide. But our estimates are that the Rate Counsel expense will, basically, pay for itself, and it may even be that the Rate Counsel function of the department can be carried on at a lesser cost than the revenue produced by the assessment made under the statute against the utility; which, incidentally, is one-tenth of 1% of the revenues under review for the preceding calendar year.

The financial analysis of the cost of the department indicates that we are probably talking about new money, appropriations that don't exist at the present time, in the area of \$2 million. The budgetary request for 1974/75 to the Office of the Public Defender, which of course is now in being and functioning, is \$9.3 million. So, it wouldn't be correct to include that figure, or any part of it, in any discussion of what the cost of the Department of the Public Advocate will be because we have that expense as an obligation already.

So I say that for these very important services that will be possible under the jurisdiction of the new department, we estimate that approximately \$2 million in additional appropriations will be required.

The question has also been asked about the number of attorneys that are likely to be required as a result of the creation of the department. Our best guess about that is approximately 50, including the expanded jurisdiction of what I will call for this purpose, the Office of the Public Defender.

So, in summation, I would say that our best opinion of this subject is that the proposal embodied in A-1297 is highly desirable in the public interest. It does not represent anything that concerns my department, in terms of overlapping jurisdiction, or conflicting jurisdiction. Quite to the contrary, it will help us, I think, do the job that we are constituted to do, more effectively and more consistently with professional ethics than we are at the present time because of the conflict that I have indicated sometimes arises in civil rights cases. Thank you very much.

SENATOR BEDELL: Senator Garramone?

SENATOR GARRAMONE: Mr. Attorney General, I gather there can be two parallel paths here between your department and the Office of the Public Advocate - or at least separate and distinct functions. Can there be a situation - I think, possibly, you alluded to this - where you would be defending a state agency against the Office of the Public Advocate?

MR. HYLAND: Or against someone represented by the Office of the Public Advocate?

SENATOR GARRAMONE: Yes.

MR. HYLAND: Yes. But I say that's better than finding that I have two deputys who are attempting to do that in my name, all at the same time.

SENATOR GARRAMONE: Do you feel that under the umbrella of the Public Advocate-- Would the office

of the Public Defender become as costly, or can it become more efficient now that you have a greater source of manpower to choose from? I was thinking of the \$9.3 million and, let's say, \$2 million for the rest of the division. Do you feel there would be some economies that might come forth by embracing the Office of the Public Defender?

MR. HYLAND: I think that, under the rule of larger numbers, yes. There are some economies in administration that come about as a result of larger numbers of people. But the \$2 million figure that I have given, as our best estimate at the moment, has taken that into consideration.

SENATOR GARRAMONE: You have, all right.

Do you sense any apprehension in terms of the responsibility of the Public Advocate to some individual? Should there be someone he should be responsible to, other than the Executive?

MR. HYLAND: No, I think this Department belongs, in the traditional sense, with the Executive Branch of Government. I don't think we, realistically, are able to create an agency today in government and have it somewhere out there, independent of any of the three branches. I suppose that's what your question is really getting at.

SENATOR GARRAMONE: Well, I wouldn't want it independent of any of the three branches. I think I was directing the question, maybe as a follow-up to the prior spokesman, to whether you think the Legislature should have some greater input into this office than is presently defined by this proposed bill?

MR. HYLAND: No, I think that would present a serious constitutional problem. I don't see any

problem in having this set up the way it is.

SENATOR GARRAMONE: Thank you.

SENATOR BEDELL: Senator Tumulty?

SENATOR TUMULTY: Mr. Attorney General, have you had an opportunity to look at a table of organization for this proposed Office of Public Advocate?

MR. HYLAND: Well I have in the narrative sense. I have examined the defined jurisdictions of each of the several divisions.

SENATOR TUMULTY: Do you have any idea of what the salaries would be?

MR. HYLAND: No, I haven't been asked to pass on that at all, Senator.

SENATOR TUMULTY: If you know, I heartily agree with a comment that you made about this matter of Rate Counsel, as that was operated in the past; on the matter of fees that have been awarded to attorneys, who I don't think had any particular expertise in cases except, just as you said, they happen to imply that they had the right to be appointed as Rate Counsel.

MR. HYLAND: Well, I haven't said that about the last four years. Some of these men have been adversaries of mine and they have done an excellent job.

SENATOR TUMULTY: Well, anyway, some of the fees they have gotten have been pretty high.

Now, under the new setup, would there be any outside attorneys hired as Rate Counsel, or would the attorneys of the Office of the Public Advocate handle all the rate cases?

MR. HYLAND: I think when the Department is fully implemented, it should be possible for the attorneys handling rate-making proceedings all to come from within the Department. During the transition

from where we are now until we reach that point, I think it will be necessary for the Public Advocate to appoint some outside attorneys and outside consultants of one kind or another. I am not sure, for example, whether the Department of the Public Advocate will necessarily ever have the full complement of economists that it might need, or men who are skilled in evaluating the cost of money and what the return on common equity stock should be at a given time, or men who have the engineering skill to be able to evaluate the construction program of an electric utility. So it is quite possible that those skills, indefinitely into the future, will be secured in the form of consultants.

SENATOR TUMULTY: Do you think the practice of retaining outside Rate Counsels would be eliminated?

MR. HYLAND: I think that can be eliminated. You asked earlier about salary scales. I think it would be important for the salary scales of the new department to be consistent with those in our own, otherwise we are going to have recruiting problems. The important thing would be to have a range of salary potential that would indicate quite clearly to an attorney, who has the skill to do this work, that there is a future for him in public service. It is important to give that assurance, at least to the key people in any department. You can stand a certain amount of turnover of men who are with you for two or three or four years, but you also have to have the financial capability within the department to attract people who are going to make a career of public service. This would be very important in the Rate Counsel area.

SENATOR TUMULTY: In line with Senator Garimoni's last question, there was a suggestion made by a previous witness - you seem to have constitutional doubts about it - that maybe the department ought to be under the Legislative Branch of Government. The thought was advanced that if it were, because of certain things that would be developed in the nature of public complaints, that the office of Public Advocate and the Legislative Branch would more or less complement each other and that the Legislative Branch would also have legislative investigatory powers. You think that would present a constitutional question?

MR. HYLAND: Yes, I do.

SENATOR TUMULTY: You do?

MR. HYLAND: Yes.

SENATOR TUMULTY: I will abide by your opinion.

MR. HYLAND: I think that each legislator is--

SENATOR TUMULTY: I am trying to explore this.

MR. HYLAND: I served here for eight years and I know that a great deal of the time of a legislator is spent in receiving and deliberating over and responding to complaints. But we still have to remember that the Legislature is where the laws are made and the Executive Branch is where those laws are carried out and implemented and that is what I see as the problem here.

SENATOR TUMULTY: I suppose the Legislative Branch would be aware of any abuses that the Public Advocate would uncover and they would then have the right to investigate and look in the direction of curative legislation?

MR. HYLAND: I think that's done all the time and it is done in the annual appropriation review, for example, in a very effective way, sometimes, Senator.

SENATOR BEDELL: Thank you, Mr. Attorney General.

MR. HYLAND: Thank you for the chance to be here.

SENATOR BEDELL: Our pleasure.

The committee would now like to call Mr. Allen Lowenstein.

A L L E N L O W E N S T E I N: Thank you, gentlemen, for the opportunity to be heard this afternoon.

SENATOR BEDELL: Do you have a statement, sir?

MR. LOWENSTEIN: I have no written statement. I would like to make one, however.

I would like to say that my background is that of a senior partner of a corporate and banking law firm. For 35 years I have been active in social welfare agency programs. I have been a draftsman of considerable legislation that is now on our books, such as the Banking Act of 1948 and the New Jersey Business Corporation Act of 1969 and, subsequently, many other items.

But today I am not here as a representative of any client or any action group, I am here purely as a citizen and as a lawyer, to endorse the comments, really, that the Attorney General has just made. I did not have the opportunity to hear prior witnesses before this committee. I did hear the Attorney General and I was most pleased to hear what he said, not only because I agreed with him - we always like to hear someone with whom we agree - but he also answered some of the questions that I was concerned about as to the relationship of the Department of Public Advocate to that of the Office of the Attorney General.

As I see it, this act covers 5 or 6 points,

some of which are largely non-controversial and some of which may be. The Office of Public Defender, in effect, comes over as a unit and whether this act is passed or is not passed, as the Attorney General pointed out, the appropriation will be there, the office will be there and the Director of the Office of the Public Defender himself will be there.

The responsibility of the Office of the Public Defender, however, is being increased by this act in a very valuable way; the Office of the Public Defender is given the responsibility, as I understand it, for the Office of Inmate Advocacy. This means that the Public Defender is now going to represent, in class actions only, the inmates of our penal institutions. This does not mean that he is going to go forward in representing individual inmates on their individual disciplinary, parole, or other problems. But in those instances in which class action is required or deemed desirable on behalf of a group of prisoners, or inmates of various types of institutions, the public defender will fill a gap that I think has been very much needed.

With regard to the Division of Rate Counsel, some point has been made by the Senators and, I believe, by the Attorney General, as to the cost question and the savings. I want to emphasize that not only is that true but by developing a full-time, professional staff there is going to be an expertise that has been growing by accident - if you want to call it such - by calling upon the same men over and over again in the past. Actually, Rate Counsel work is an extremely complicated matter. I have had some past experience, not as Rate Counsel but in the field of public utility and insurance regulation, and I can tell you, you can spend a lifetime

in this field. To come into it for the first time, or on a limited basis, is such a disadvantage that you cannot do an effective job. Having full-time people who take this as their public responsibility, on the public payroll, to serve in this Division of Rate Counsel, is going to enhance the quality of the work, as well as cut back on what in the past, at times, I have felt were rather high costs.

There is a new point, and that is the Division of Mental Health Advocacy. I dare say that the day is going to come when our courts are going to take the position that a person cannot be committed, against his will, to a mental institution, merely on the say so of one or two psychiatrists, or one or two physicians who may or may not be psychiatrists. I think we are just getting our feet wet in this area. What this Division of Mental Health Advocacy is doing is saying that in the case of the indigent admittee - someone who feels that he is without funds but is being committed to an institution against his will - will have an opportunity to be heard and be represented by counsel. This is something on which there is no court decision in this State, to my knowledge, as yet and, yet, I think it is very important.

Also there will be a representation of classes of inmates of our mental health institutions. This is an area, frankly, in which New Jersey is far behind, despite our great wealth. I think having an opportunity for a Public Advocate to set up, through a Division of Mental Health Advocacy, and provide us with an opportunity to bring to the forefront the problems of admittees and people who are

inmates of these institutions and who may be about to go into these institutions, is something in which we will be taking a most forward step. I think it is time to do it this way, rather than wait for the courts to rap our knuckles.

I think the two most controversial areas of the bill - if I understand them correctly - relate to the Division of Public Interest Advocacy and the Division of Citizens' Complaints and Dispute Settlement. I think most governmental agencies would like very much to be immune from outside complaint. They consider themselves individuals who try to do a conscientious job, "so let us alone to do it." I think, however, those of us who have some familiarity with young people growing up these days, know the tremendous frustration that exists, - to which the Attorney General referred - the feeling that the individual really can't be heard with regard to governmental agencies, or actions by public authorities, or where individual rights are concerned. There is no place to turn.

Sweden started this years ago with the ombudsman and that has been carried forward in other countries in Europe and it has been adopted in several states in the United States; we are not the first.

I think the opportunity to release some of that frustration; for individuals to be able to come to an office that can speak for them-- Maybe their claim is without merit. I suspect that most of them are. I get in my office, God knows why because I am not in the criminal law field, every month, letters from inmates of institutions, or individuals who write to me - they pick my name from Lord knows where - asking me if I would take up their cause. They are indigent. They have had things done to them -

or not done to them - by some city, county or state agency.

If we had an office of Public Advocate there would be an opportunity to screen the worthless ones; to satisfy people who may just be partially imbalanced, partially not seeing the right view of what's going on. There would be an opportunity to screen them. But take the good ones. Take the legitimate ones and be their advocate in dealing with state agencies. I think this Division of Citizens' Complaints that we are talking about is a very valuable opportunity to let people let off steam and also to take out those which have real merit and pursue them.

Now I think Senator Tumulty had a point here. I am not sure that I agree with the Attorney General on the question of constitutionality. I think it is possible that this Division of Citizens' Complaints, or the ombudsman, could have been established independent from the state administration, as it has been done elsewhere. With that independence you would not be dealing with one department of the government, looking into the right or wrong of actions of another department of same administration. There would be much greater independence. A good argument could be made for having that independence.

I think this bill, as now presented, is a far less radical step. In effect it says, "let's set up an office where people, as part of the same administration, can come as a friend to another part of the same administration and say, look, we have been getting this type of complaint, maybe something ought to be done about it." Sometimes when you come, not as an adversary from afar, but as somebody who is part of the same administration, something can be

done to correct what is wrong as it applies to an individual. Keep in mind - I am sure you gentlemen are fully aware of the fact that all administrations, regardless of political complexion, want to please the public and they want to minimize criticism and objection. I think a great deal can be done by having an office where somebody can sift through the complaints and see which ones have validity and then go to the other departments and say, "look, something better be done about this or we are going to have a lot of criticism from without." I think this is a far less radical position than having the independent ombudsman which has existed in Europe and I believe elsewhere in the United States, where the ombudsman is truly not part of the administration at all.

Now as to the Division of Public Interest Advocacy - and then I will conclude because I know you have others to hear. This is something that could be a very fearful office - the Director of the Division of Public Interest Advocacy - provided that the position, number one, was misused and secondly, so were the decisions or actions that could be taken by that division. Keep in mind that all the Division of Public Interest Advocacy can do is go into court. We still depend upon our court system to protect our constitutional rights; to determine whether or not an administration is acting properly or improperly. All this Division provides is an opportunity to be heard in court; there is nothing that the Director of the Division of Public Interest Advocacy can do on his own other than participate in litigation. The decisions have to be made by the court.

Now I have heard individuals say that - and I have no way of knowing whether this is true - the appointment of the Public Advocate is likely to go to Mr. Stanley VanNess, and if it goes to Mr. VanNess it is going to a man of great integrity and ability and nobody is at all worried that Mr. VanNess is going to misuse this position. What happens if it goes to somebody less responsible, less intelligent, less professional, in the way he conducts himself? My answer to that is, in the first place this is a cabinet position in an administration. I cannot believe that any Governor is going to appoint to that position someone who is going to help destroy his administration, or someone who is going to tear down the public fabric.

Furthermore, if this position was misused, the act expressly provides that the Public Advocate serves at the pleasure of the Governor. If a man is misusing his position the Governor can replace him immediately. Now this is a weakness of the bill because the Public Advocate may be stepping on the toes of the Governor, in which case the removal can be something similar to what happened when Mr. Cox and Mr. Richardson were removed from the national administration. But it is a pretty serious thing for the Governor to remove a member of his cabinet who has taken a position in the public interest.

While I don't think this is a perfect bill - I think if lawyers get around the table and there are five lawyers, they can have six different versions of the bill that they would like to see adopted, we seem to have that tendency as members of the legal profession - I think it is a good bill and I don't

think it is a radical bill. I just want to point out that this does not establish an independent ombudsman. It establishes somebody in the administration to whom people can turn - individuals can turn to - to avoid individual frustration.

There is one last word I want to say. Those of us who have been active in the political world know that the strongest effective influence, whether it be in administration or in legislation, comes from those who have a self interest in mind which is paramount. Now self interest doesn't necessarily mean bad interest. Those of you who are members of the Legislature fully know that there are many people who come here, out of self interest, with something that is truly in the public interest, but there are very few people who come here with no self interest at all.

This ombudsman statute - this Public Advocate statute - allows people who have no interest at all from a selfish point of view - other than the interest of the public generally, in which they participate, - to come and express themselves and be heard and get the matter before the court. But there is no decision made by the Public Advocate. He merely has the opportunity to recommend, or the opportunity to present a matter to a court for a decision. Thank you very much.

SENATOR BEDELL: Senator Garramone?

SENATOR GARRAMONE: I couldn't agree with you more in terms of the governmental process being more responsive to the people. Anything that we can do to implement this is highly desirable. I have always felt that that's the role of a legislator - the elected official - and should be.

In terms of some of the specifics of this bill, I'd like your thinking on this Public Interest Advocacy. You mentioned that the only option this office has is to go to court. Yet, if one reads the bill - and it might be ambiguous - it would suggest an option; they can either - and I am reading from page 9, in the middle of the page - intervene in proceedings before any department, commission, agency or board or, the other option, institute litigation. As an attorney, would you read this as an optional choice of this individual or not?

MR. LOWENSTEIN: I may have spoken too fast. Our administrative agencies frequently sit in judicial capacities - a public utility commission, an insurance commissioner and, if you go into the federal agencies, you go to the Federal Trade Commission or the Interstate Commerce Commission, etc. These administrative agencies are both investigatory, administrative and, also, judicial. Now when an insurance company or Blue Cross or a public utility or some other organization which charges rates to the public, comes before a state regulatory body, there is an administrative hearing and then the commission sits, in effect, as a judicial body and makes a decision. Now, in that instance, if it is a matter of significant public interest, the Public Advocate may very well want to be heard and we have had problems in the past, as I recall, with regard to Blue Cross and I think we also had it with regard to automobile rates - charging for automobile insurances. Where was the authority in our legislation to have somebody represent the public interest? I think a special act of the Legislature had to be passed

to compensate the attorney who did a rather fine job for the citizens with regard to automobile insurance rates.

SENATOR GARRAMONE: You mentioned that the Rate Counsel, at some time, could develop a professionalism with the Rate Counsel structure. I guess that this would mean we would have to depend - at least in the initial stages - upon attorneys who have done this in the past. Is that how you interpret this?

MR. LOWENSTEIN: I suspect, if I heard correctly what the Attorney General was saying and what I read in this bill, that for a period of time the Public Advocate was going to call upon those who had been active in this field until such time as he could build up a permanent staff.

SENATOR GARRAMONE: Just one final question. I think you mentioned the Inmate Advocacy was class and not individual and yet in the Mental Health Advocacy it was individual and class both.

MR. LOWENSTEIN: That's correct.

SENATOR GARRAMONE: Do you have any comment on why there should be that distinction between these two areas?

MR. LOWENSTEIN: I think, really, it is a practical one. We know that there are many dissatisfied inmates in penal institutions and if this office was to represent individuals on all their individual cases, they may be swamped and there may be a terrific cost. I think the ILA - the Inmates Legal Association, or whatever the name of the ILA is - has taken upon itself the responsibility for representing individual inmates. I understand, also, that the Commissioner of the Department of Institutions

and Agencies is setting up new rules which, presumably, will provide for a hearing board.

Right now, for example, somebody coming before the Parole Board has no legal representation. It may be that there is a need at some point for a parole review counsel. I don't know. All I am pointing out is that this bill does not go anywhere near as far as it might if it did a total job. Let's hope we don't have to do the total job because the cost would be much greater.

SENATOR GARRAMONE: Thank you.

SENATOR BEDELL: Senator Davenport?

SENATOR DAVENPORT: No questions.

SENATOR BEDELL: Senator Tumulty?

SENATOR TUMULTY: Mr. Lowenstein, I think you are more familiar with this bill than any of us, probably. Did I hear something previously here today that there was some limitation on the Public Advocate holding public office for two years, or was that a proposed amendment?

MR. LOWENSTEIN: I don't recall seeing that in the bill.

SENATOR TUMULTY: Oh, I guess Senator Merlino suggested that. I would welcome your comments on that.

MR. LOWENSTEIN: I have never given it any thought but we all know that when people do a fine job in any aspect of government, they are in the public eye and sometimes there is an interest on the part of the public to see them go forward to more things. So many of our political leaders have made names for themselves in lesser positions and have gone forward from there.

I am sure what's in the back of your mind is

the feeling, will this mean that the Public Advocate will be more concerned with headlines than with doing a conscientious job; would it be better, therefore, if he had a waiting period afterwards so that he would concentrate on doing a good job, rather than hitting the headlines. That conceivably would be a point well taken, but we all know that members of the Legislature, members of various commissions and others have gone forward to higher--

SENATOR TUMULTY: I think Senator Merlino mentioned it before. I thought it was in the bill.

MR. LOWENSTEIN: It may have some merit. Whether it is one year or two years, it might be a good idea to have the Public Advocate concentrate primarily on--

SENATOR TUMULTY: Would you think that should extend to taking a judicial appointment also?

MR. LOWENSTEIN: No, I don't think so. I would think that this would be a natural development. If we found a Public Advocate who did a first rate job, I think we would be losing somebody if we didn't give him the opportunity to go on the bench.

For many people who are highly competent the opportunity to go on the bench is one that represents economic sacrifice and we also know that not every practicing lawyer makes the best judge. If somebody in this position does an unusually good job, where a lot of discretion is required, he might be an ideal judge. I wouldn't want to lose him.

SENATOR TUMULTY: I'd welcome your comment on one other thing. The bill provides that the Public Advocate may, in the discretion of the Governor, concurrently hold another position established in or out of the Department of the Public Advocate. Is

there any possibility of a conflict of interest with that provision?

MR. LOWENSTEIN: I would assume that was intended to cover the Public Defender as well as the Public Advocate. I certainly think there would be a conflict if he were to hold a position in one of the agencies or governmental departments that he was going to file a complaint with.

SENATOR TUMULTY: Thank you.

SENATOR BEDELL: Senator Davenport has a question.

SENATOR DAVENPORT: I'd like to ask you a question, Mr. Lowenstein. It has been said here today that they thought that maybe the bill should be amended to read that the Public Advocate should be a lawyer. Do you agree with this?

MR. LOWENSTEIN: When I first read the bill I was surprised to see that it did not require a lawyer because I think that the lawyer has professional knowledge and skills which would aid this position greatly. I would be amazed if most Public Advocates, if this bill were adopted, were not lawyers.

On the other hand, you might find some unusual individual who, because of extensive experience in the Legislature, knew government perhaps better than most lawyers, who is an excellent administrator and was prepared to hire directors of these various divisions who were lawyers. Under those circumstances I can conceive of the Public Advocate being very effective without actually having been a member of the Bar.

SENATOR DAVENPORT: Both of these positions, Public Advocate and Public Defender, are classified in the bill as full-time jobs. Do you believe that one man can hold two full-time jobs?

MR. LOWENSTEIN: Only if he has a full staff because he has to delegate the work, there is no question about it. There is a position here as Deputy - Assistant Public Advocate - and I think it contemplates a number two man in the organization. I think it really comes down to the size of the staff and the degree of delegated responsibility.

SENATOR DAVENPORT: One more question. In the bill it calls for an assistant and as many deputy public advocates as is necessary to run the various divisions in the Department.

MR. LOWENSTEIN: Yes, sir.

SENATOR DAVENPORT: You don't have any idea of how many deputys they intend to appoint or at what salary, because in the bill it says that the Public Advocate shall set the salaries.

In other words, there is no one else to supervise or recind a salary he would set. Of course, realizing that the Public Advocate would probably receive a salary of \$49 thousand a year, you can imagine what the assistant and the deputy public advocate's salaries are going to be.

MR. LOWENSTEIN: I would assume that these provisions would have to be covered in the annual appropriations bill for the Department and that there would be hearings on that and that the Appropriations Committee of both Houses would review them very carefully if they tried to get out of line.

I believe that what the Attorney General said would be right and that is that the salaries would

have to be on a comparable level to the Office of the Attorney General or there would be real recruitment problems.

SENATOR BEDELL: Thank you very much.

The Committee would like to call upon the Commissioner of Institutions and Agencies, the Honorable Ann Klein.

H O N O R A B L E A N N K L E I N: Senator Bedell and Honored Senators, I am really very happy to have an opportunity to be here on this bill today. I have with me, Mr. David Einhorn, who is connected with my staff. In case I run into some technical questions, I think he might be helpful to me.

I do not have a prepared statement on this, except for one very, very brief paragraph. I would like to say at the outset that my response to the proposal to have such a Department as the Department of Public Advocacy has been extremely positive from the very beginning. When I was in the Assembly last year I was a co-sponsor of a bill which would have given the Public Defender a position inside the prison system to be an advocate for inmates. I think that this is something that is very badly needed.

I thought, when I was a legislator, and tried to handle a lot of the letters and complaints, etc. that came to me - and I see it now as a Commissioner also - that this type of a public advocate, removed from the Department, representing the inmates of the prisons, the patients in the state hospitals, and the public at large, is, I believe, a very progressive and forward-looking piece of legislation and I am here to support it. I particularly want to be very strong in my support because I gather some people

have had some questions as to whether it would have an adverse effect upon my department and whether it would create problems that we couldn't handle.

I want to say, although I may live to regret those words - I don't know - I am inclined to believe most strongly that it will not have that kind of adverse affect at all but will, in fact, be helpful to the Department in trying to achieve some of the things we would like to achieve in terms of improving the conditions for the people in our institutions.

We would probably be the department in government most affected by the activities of the various divisions of the Public Advocate, aside from the Rate Counsel. Mental patients, I think, most particularly, would be given a voice heretofore unexpressed because of the unavailability of legal counsel. Prison inmates would also, in effect, be provided with a house counsel of sorts concerning matters of general concern to the prison population - not as individuals but as a class.

In addition, the fact that our Department would be subjected to a much greater volume of litigation, our administrative rule-making practices would also be a subject of scrutiny and intervention of the Public Advocate. These things, however, I feel-- We should take the position that we are unafraid of such surveillance and, indeed, welcome such a watchdog as an invaluable source of expertise and judgment.

I have thought a lot about this bill in terms of, if we are doing everything that we ought to be doing in the Department, why would we need to have another department of government to call to our

attention.- or force us to take action,- to areas that we should be attending to. I believe, in fact, that such a department would be of assistance to us in accomplishing some of the goals of the Department, really, in terms of, perhaps, forcing us to take action which might be very difficult to take for various reasons -whether financial or lack of public support. I believe that this advocacy department would be one that would help us to improve our policies and the conditions in our institutions.

That is really the depth and length of my statement. I would be very happy to try to answer any questions you may have.

SENATOR BEDELL: Senator Garramone?

SENATOR GARRAMONE: Commissioner, you are absolutely right. I am sure that the bulk of this new Department would be directed to your Department.

You mentioned house counsel. Do you feel that you would have to expand your own facilities in terms of defense of these intrusions by the Office of the Public Advocacy or would there be, possibly, another direction that you would take - one of accomodation, one of interest--?

COMMISSIONER KLEIN: No, I don't believe so. Of course, I could say I have a need to expand my personnel, regardless of whether this bill passes or not, but I know that nobody ever has the amount of personnel that they need and I am sure this Department will not have what they will need either.

However, presently we are subject to a great deal of litigation. I think there are over 400 court suits pending against the Department right now. These, of course, are defended by the Attorney General and

not by my office.

I would hope that, although this Department is basically an advocate and would be in an adversary position, that, on the other hand, there could be some accommodation. I have taken the position with regard to some of the suits against the Department now, that we should - in those areas where we feel that the plaintiff has a justified grievance - rather than concentrate on defending what may, in fact, not be good practice, we should be taking a positive step towards trying to get legislation introduced to change regulations to accommodate those complaints, rather than get into a very lengthy litigation process - whenever that is possible. I am not a lawyer. I realize that one has to defend the statutes but I think if another department of government were calling to our attention areas in which they were going to press for action that it could be an added impetus to us in being able to resolve some of them without having to go to court.

SENATOR GARRAMONE: How do you feel about the class action exclusively for Inmate Advocacy as opposed to individual class action for the Mental Advocacy? There is a distinction that appears in the law.

COMMISSIONER KLEIN: Yes. I guess I am not entirely clear as to why there was a distinction made between the two groups. I think that the bill I co-sponsored last year did envision a more personal type of advocacy for individual inmates but I guess I would have to say that perhaps the most severe lack of any kind of legal representation lies in

the area of mental health. Right now we are looking at the commitment laws to see if we can get some action, in connection with some of the legislators, to try to alter some of those commitment proceedings.

I think that the need for personal counsel for people who are committed to mental hospitals, or who may have been committed there some time ago, is an extremely important thing. If it works well perhaps in the future they might consider enlarging the Division of Inmate Advocacy, or whatever it is called, for the prisons. But, at the moment, they are restricted to class action and I think there is quite a bit that could be done just in terms of class action.

SENATOR GARRAMONE: You wouldn't see this as a substitution for some long-range planning within your own Department to rectify situations that require rectification?

COMMISSIONER KLEIN: No, I am not one to feel that one should sit back and wait for the courts to make all the changes that have to be made.

I will continue to be involved in long-range planning and trying to improve the situation but, again, feel that this Department could be an impetus and a help to us.

SENATOR GARRAMONE: One last question, Commissioner. You have been a legislator and now you are in the Executive Branch--

COMMISSIONER KLEIN: Are you going to ask me which I like better?

SENATOR GARRAMONE: No, that you can tell us in a few years. Where do you think that this office would be more rightfully situated - as an extension of the Legislature or just another department of the

Executive, looking at another department of the Executive?

COMMISSIONER KLEIN: Well, I think I could visualize such an office as being either in the Legislative or the Executive Branch but I don't see any real problem with it being in the Executive Branch.

SENATOR GARRAMONE: Thank you.

SENATOR TUMULTY: Just one thing, Mrs. Klein. I am concerned about this matter of commitments to mental institutions. Will this bill cure the effects that you think exist now in the commitment procedures or do you still think there should be remedial legislation?

COMMISSIONER KLEIN: Oh, I believe there should be remedial legislation and I think that the more we remedy things the less there will be for this Department to have to do. I don't think by any means we should wait for various suits to be brought. There are already a couple of suits on this question.

No, I don't think that it precludes at all the necessity for new legislation on that. I think a Department, such as the Department of the Public Advocacy actually being involved in representing patients might have some helpful input into what kind of legislation should be developed.

SENATOR TUMULTY: Thank you.

SENATOR BEDELL: Thank you very much, Commissioner. We appreciate having you come by today.

COMMISSIONER KLEIN: Thank you, Senator.

SENATOR BEDELL: The Committee would like to call upon the Honorable Robert M. Ruane, member of the New Jersey State Assembly.

A S S E M B L Y M A N R O B E R T M . R U A N E :
Gentlemen, thank you very much. Senator, I know it is getting late so I will make my remarks brief.

Some time ago we passed a bill here in the House - 1409. It was the Public Advocates bill. It passed the House 78 to 0. We felt the bill in its present form was good for the people of the State of New Jersey and that any problems that might be derived from it, or through it, could subsequently be amended.

What concerns me greatly is the current Rate positions. Currently the Attorney General, as we all know, appoints the Public Advocate. I go back to Arthur Sills, he appointed a Mr. Isadore Glockerman in an insurance rate case. Mr. Glockerman saved the public millions of dollars but I understand his fee was astronomical - somewhere in the area of \$100 thousand.

The Public Advocate's office would employ a well compensated, I hope, full-time professional staff, 52 weeks a year.

On the lighter side, former Governor Hughes, former Chief Justice Weintraub and former Attorney General Sills handled a PUC case and Governor Hughes was quoted as saying that if he ever became Governor he would appoint one the Attorney General and the other Chief Justice. But the point is, that in that instance, gentlemen, the public was extremely fortunate to receive such men of high caliber, but they were only serving on a part-time basis. I believe that we can develop, through a Public Advocate's office, men of that caliber and who, subsequently, will serve the people of the State of New Jersey.

With regards to the citizens' complaints:
At the present time there is no central office for

the receipt, the investigation and the resolution of complaints by citizens. I feel that that particular section of the bill would help the people of the State of New Jersey because they would have, for their grievance, a one stop on a one call basis, central office to turn to. Thank you.

SENATOR BEDELL: Thank you, Bob.

Senator Garramone?

SENATOR GARRAMONE: Just one question, Assemblyman. In the Rate Counsel area, I gather you would be a strong advocate of going very easy on this temporary counsel one would have to hire to--

ASSEMBLYMAN RUANE: The transition period?

SENATOR GARRAMONE: Yes.

ASSEMBLYMAN RUANE: Oh, no question about it because it would be whole new endeavor on behalf of the State and I feel that we would have to transition into it and perhaps make a few mistakes, as we are all capable of doing from time to time - being human.

SENATOR GARRAMONE: You'd keep that at a very low level I presume?

ASSEMBLYMAN RUANE: Yes, I would.

SENATOR BEDELL: Bob, thank you. We appreciate your time and the fact that you are putting so much into this part-time Legislature that we have. That takes up a lot of your schedule. Thanks again.

The Committee would now like to call upon Jack Herer, National Association of Independent Insurers.

J O H N R. H E R E R: Good afternoon, Senator and members of the Committee. It is a pleasure to

be here. My name is John R. Herer and I am New Jersey Counsel for the American Mutual Insurance Alliance and I have on my right, Mr. John Cucci, who is a specialist in insurance with the New York office.

I might say, as a preface, that the Alliance is a major association of mutual, property and liability insurance companies, most of whom do business in New Jersey.

Assembly bill 1409, while it presently has certain laudable and humanitarian objectives, also includes a provision which is not, in our opinion, in the best interest of the people of New Jersey. This provision is the one which establishes an office of Rate Counsel and allows his intervention in insurance rate hearings with the expense of the intervention to be met by a one-tenth of one percent assessment on premiums derived from New Jersey business.

We believe this provision of the bill to be anathema to sound public policy for the following reasons:

1. It seems predicated on the assumption that the Commissioner of Insurance cannot protect the public interest. We disagree.
2. It will seriously impair the effective management of the Department of Insurance.

Such administrative difficulties are bound to seriously hamper the operation of the total administrative machinery in the State of New Jersey.

3. It will result in an unnecessary financial burden being placed upon the citizens of New Jersey by requiring them to pay for the maintenance of three groups of rating experts through their tax dollars and their premium payments: namely, they would be supporting the cost and expense of maintaining the permanent staff of rating technicians employed by the Insurance Department as well as those employed by the insurers who apply for rate increases, and, lastly, the cost of the temporary experts recruited by the rate counsel (the cost for the last two groups of technicians eventually being reflected in the premium rate.
4. It would make insurers reluctant to request a general percentage increase or decrease in rates, since this would also entail the penalty of paying for the rate counsel's experts.

These factors may combine to cause many

insurers to take undue risk with inadequate rates and go along with them in some form of "Russian roulette" to the serious jeopardy of the general public. It completely removes rate-making from the objective, impartial atmosphere in which it belongs.

5. We believe that a serious doubt arises as to whether this bill is consistent with the constitutional guarantees of due process and the right to a hearing without subjecting the party to oppressive burdens. We believe that the requirement that an insurer pay for the rate counsel's rating staff would be sufficient to deprive an insurer of its constitutional right to a hearing.

The New Jersey Commissioner of Insurance occupies a position of preeminence among state insurance regulatory officials. Yet the basis of this proposed legislation appears to be that the Commissioner cannot determine the rating experts who should take part in the hearing and that the rate counsel is somehow better suited to protect the public interests in this respect than is the Insurance Commissioner.

Taking into consideration the obvious point that an insurance regulatory official would seem to have more expertise in this

matter, we are left with the inescapable implication that the Commissioner cannot properly perform his duties.

We feel that the Department of Insurance has done a most commendable job and has carried out its duties in the best traditions of public service. We think this bill, in a sense, constitutes a most undeserved depreciation of the services of the Department of Insurance of the State of New Jersey.

It is said that the operation of a state is only as good as the operation of its administrative departments. In this respect, we have grave forebodings about the future of the relations between the Department of Insurance and the office of the Division of Rate Counsel. We visualize disputes, clashes and frictions between the two departments, with one group of public service experts pitted against another Insurance Department group. Deadlock and delay will ensue. It would also seem likely that, under these conditions, morale and recruitment would suffer for both departments. The resulting administrative chaos would leave the New Jersey citizen as the chief loser. We also question whether the participation of the Public Advocate so directly in the activities of the Insurance Department rate hearings might also raise some questions as to the impartiality of the rate counsel to render opinions on insurance rating matters.

We are disturbed by the fact that the Rate Counsel can, in effect, ask for an indefinite number of experts to take part in any rate hearing and charge the expense thereof to the insurer. Anyone acquainted with the complexity of some insurance rate hearings realizes what a tremendous financial burden this could place upon an insurer. Many of the recent hearings in New Jersey have involved the testimony of numerous specialists and have run over the course of several weeks. How could a small company, which might be singled out as a target for a requested rate reduction, resist such pressure? The Rate Counsel might call a string of high-priced actuaries, accountants, attorneys, and other technical experts which would overwhelm any consideration of opposition by an insurer.

Moreover, we would also like to point out that the assessment of one-tenth of one percent will be viewed by other states as an additional tax, subjecting New Jersey domiciled companies to retaliatory taxation in other states where they do business.

Therefore, for the reasons outlined, we feel that property and liability insurers should not be subject to this legislation. Existing safeguards already exist and dual regulation of this sort is wasteful, expensive, unnecessary and non-productive. Thank you.

SENATOR BEDELL: Thank you, sir.

Senator Garramone?

SENATOR GARRAMONE: Yes. Just as a comment to the Committee, I think, Senator Bedell, we might, if you haven't already, invite the Department of Insurance to give their observations on this bill.

SENATOR BEDELL: I just made a notation on that.

SENATOR GARRAMONE: I have a few questions, sir. In your opening statement, page 2, second paragraph, "It will seriously impair the effective management of the Department. . ." My question is, how?

MR. HERER: Our concern, sir, is that by empirical studies and experience, when you have one bureau in State government competing with another bureau, you operate in a competitive atmosphere which is not conducive to efficient management.

We feel that the Department has done an excellent job in the past; that the insurance commissioners, of recent days, have been objective, impartial and have done an excellent job. I don't say this because we have gotten a lot of rate increases, because we haven't. We feel that the complexities of the insurance industry should remain in this atmosphere. If you have members of the Department of Insurance going one way and members of the Rate Counsel going the other way, in a formalized competitive atmosphere, under one aegis, we feel this is not conducive to efficient management.

SENATOR GARRAMONE: Well, in an extension to that general questioning, your third paragraph would suggest that there would be an added cost because we are now looking for two sets of technicians. Could it not be possible that this Department could utilize the technicians and the experts from the Department of Insurance when they arrive at rates and the adjustment of rates? I gather this is already into the Department.

MR. HERER: That certainly, sir, in all candor, would be possible. We, however, are not that optimistic, that you are going to get in the ultimate, in the long run, that kind of cooperation

between two departments.

SENATOR GARRAMONE: How do you presently pay for the experts, are you assessed in any way at the present time?

MR. HERER: Not to my knowledge.

MR. CUCCI: Well, the experts are paid out of the general premium taxes assessed against all insurers and all operating expenses of the Department are paid for in that manner.

SENATOR GARRAMONE: So, in a sense, you are paying for this, are you not?

MR. CUCCI: That's right.

MR. HERER: Senator, in this context, it is interesting that our figures, at least, indicate that total premium taxes and fees collected amount to almost \$48 million and funds out of that spent for operation of the Insurance Department amount to, roughly, \$2348,000 so that you have almost \$46 million, which we pay, that is not used in any way to regulate us.

SENATOR GARRAMONE: Do you have a breakdown of this particular piece of arithmetic - the \$48 million and the \$2 million?

MR. HERER: Yes.

SENATOR GARRAMONE: I'd like to see that. May the Committee have a copy of that?

MR. HERER: Yes, sir. We have just one copy. We will leave that with you.

MR. CUCCI: Those are the latest available figures, Senator; they are for 1971.

SENATOR GARRAMONE: They are for 1971? O.K. On page 6 - if you will just expand somewhat on this retaliation that you anticipate by other states-- Would you expand on that somewhat?

HERER: Yes, sir. If a company is doing business here and is taxed then when that company does business in other states there is a retaliatory taxation. So, I don't know whether we have figures, Mr. Cucci, on this but it could amount to a great deal of money.

MR. CUCCI: We are working them up. We don't have final figures now.

SENATOR GARRAMONE: You are assuming that this will happen. Have you anything to substantiate that this will actually occur?

MR. CUCCI: The past record of how the other states view this kind of assessment - whether you call it an assessment, a fee, or what have you - the other states call it a tax and if they are being taxed in New Jersey - if their corporations are being taxed in New Jersey at an increased rate - then all New Jersey Corporations will be taxed in their states at an increased rate. They view it as a semantic device to get around retaliatory taxes. Call it a fee or whatever, our experience is that they call it a tax.

MR. HERER: Would you like to have our work product, sir, when it is completed? We would be happy to supply you with this.

SENATOR GARRAMONE: Yes, it would be very interesting.

MR. CUCCI: It is a very funny law - the retaliations law - but it is on the books.

MR. HERER: I gather, Mr. Cucci, they have been used?

MR. CUCCI: Oh, yes. There is no question about it. It is automatic.

SENATOR GARRAMONE: Thank you, that is all.

SENATOR TUMULTY: Mr. Herer, at the present time you have hearings before the Insurance Commission, is that correct?

MR. HERER: Yes, sir.

SENATOR TUMULTY: Does the public have notice of these hearings?

MR. HERER: Oh, yes, indeed, sir.

SENATOR TUMULTY: So there is no benefit - there is no advantage under this bill that doesn't already exist for the public?

MR. HERER: No, sir. No, it is simply who is doing it and who is paying for it.

SENATOR TUMULTY: Are any Rate Counsel appointed at these hearings?

MR. HERER: Customarily no. I don't believe here--

MR. CUCCI: They can if they want to. Usually the Chief Actuary of the Department represents the public interest - in most recent cases that being Mr. Stern.

SENATOR TUMULTY: Of the Attorney General's Office?

MR. CUCCI: That's right. There has been, in the past - I think in 1966 - an insurance advisory bureau case where a special rate counsel was appointed.

MR. HERER: I believe that's correct, but that is the exception rather than the rule. They have not followed the--

SENATOR TUMULTY: The insurance company has to pay for that rate counsel, I hear.

MR. HERER: I don't believe so.

SENATOR TUMULTY: I don't know whether it did or not but there were monies there in the area of \$45 million to pay for that.

MR. HERER: Well, in that sense, Senator, there is not, again, as in public utilities in the past, a specific charge but there is this almost \$48 million which the industry pays in premium taxes and fees and it comes out of that, I would presume.

SENATOR BEDELL: Thank you very much.

MR. HERER: Thank you very much. We will have that for you as soon as our figures are worked up. We will do it at the earliest time. Thank you again.

SENATOR BEDELL: Mr. George Apfel?

G E O R G E A P F E L: Good afternoon, gentlemen. My name is George Apfel. I reside in Park Ridge. I represent myself.

Article 2, Paragraph 20, where we are considering the fees again - if you make these fees an operating expense, they will be levied directly upon the consumer and the Federal Government, of course. This would be because the utilities are permitted all rate increases necessary to bring their rate of return to a fixed percentage of their assets. So, no matter how you try to collect this money it is eventually going to come out of the public's pocket. Would it not be more expedient to have the utilities pay these fees out of intra-state profits? The cost of utilities expand in their pleadings of rate cases and these are already paid for by the consumer. Now you would have the consumer pay for both sides of their pleadings.

Paragraph 5, line 8, why do you preclude municipal and county governments? The public, at this time--

SENATOR TUMULTY: Page?

MR. APFEL: I don't know the page, sir.
Paragraph 5 - it is back toward the tail end.
I'm sorry, it is Section 5 - Article 5 - I'm sorry.

SENATOR BEDELL: Page 9, Joe.

MR. APFEL: Why do you preclude municipal and county governments? The public at this time has only a limited course of redress if it feels that a wrong has been done, either by error or illegally. It can only address its suppositions to the courts through an attorney. I feel that if an interested citizen has uncovered something that he feels is wrong, there should be some agency of appeal without the citizen being called upon to bear the heavy cost involved.

The apathy of the public to government today will be the eventual downfall of our system of government. You must do something to convey to the general public that corrective measures can be accomplished by observant and dedicated citizens.

In answer to one of your questions, Senator Tumulty, - "how many lawyers would be needed" - asked earlier in the hearing, perhaps that is our basic trouble; everything has to be done through attorneys. Perhaps a new method of redress, without the use of attorneys, might be a proper answer to most of our problems. Thank you.

SENATOR TUMULTY: I take it you are not against the bill but you are against certain phases of the way it is drawn, is that correct?

MR. APFEL: Yes, sir, that is so.

I am very much in favor of the bill. I would like to see a Public Advocate but I would like to see him be able to handle both municipal and county

affairs. It specifically excludes that now.

SENATOR BEDELL: It is excluded under the Division of Citizen Complaints and Dispute Settlements.

SENATOR TUMULTY: If you are going to do it you might as well do it all the way.

MR. APFEL: Very definitely because I think that's where most people are going to be involved. They are going to look and do their homework and find conditions that may be right, may be wrong, but they are not knowledgeable and the only response they get from the public bodies is, "hire an attorney and take it to court - sue us." That is the only response I have received so far in a number of cases. I can't afford to spend \$3 thousand or so to bring a case to court.

I think, though, that if I am wrong, somebody should be in a position to tell me right away without spending that amount of money to tell me that I am wrong.

SENATOR TUMULTY: Do you think this bill would cause a great influx of complaints?

MR. APFEL: I hope so.

SENATOR TUMULTY: You hope so?

MR. APFEL: Yes, sir. If they are there, I hope so.

SENATOR TUMULTY: I mean genuine complaints.

MR. APFEL: That I am not in a position to state.

I will tell you, from my personal angle, I have done my homework in many cases and I have been very, very frustrated in my responses from my local and county government and I am at my wits end, where to go or what to do. I sure would like some recourse to overcome the time that I spend trying to dig up

these things that I think are either wrong or illegal. The only answer I get is, "go hire an attorney and sue us."

SENATOR TUMULTY: Where do you live?

MR. APFEL: Park Ridge.

SENATOR TUMULTY: I didn't think things like that happened up in Park Ridge.

SENATOR GARRAMONE: That happens to be in our legislative district, Senator Tumulty.

I imagine you'd like to see an Office of Public Advocacy on both the county and the municipal level?

MR. APFEL: Yes, sir. Now the only recourse we have is to the prosecutor if we can show that something illegal has been done. We are not normally in a position to prove that something illegal has been done, where we could go to the county prosecutor and prove it. But if we have an advocate we could lay our cards on the table and say, "this is what I saw, this is what I heard and here are the minutes of the meeting, this is what happened. Perhaps there is something wrong, will you look", and we can get an answer in a couple of minutes and that is the end of it.

SENATOR BEDELL: Thank you very much, Mr. Apfel. We appreciate your coming by.

Mr. Richard F. McCarthy, Tax Collector,
Burlington County?

R I C H A R D F. M C C A R T H Y: Good afternoon, gentlemen. I am the tax collector of Burlington Township, Camden County. I am up here on my own behalf, not in an official capacity.

I came here mainly to support the bill, particularly

where it pertains to a public advocate challenging some of the constitutionality of some of the statutes and some of the actions of the bureaus.

When a law is passed it is assumed to be constitutional until that time when it is - if it is - challenged successfully in court. If it is successful in court and the court rules it to be unconstitutional, it is not unconstitutional from that time, it was unconstitutional all along. Now one of the reasons it is not brought into court is because of the injury it causes is insignificant, or the person who is injured says, "well, they must know what they are talking about and therefore I won't challenge it."

I am one of those angry, frustrated citizens that you have been hearing about. For some time now I have been very, very disturbed about the tax structure in the State. In talking to several attorneys, one said, "come in with \$10 thousand and we will talk about it". In trying to explain what the situation was that I felt was wrong, I found that I wasn't capable of explaining it to an attorney, although I knew, within myself, what I meant.

In the hopes of being able to educate people, or to clarify my own thinking, I filed a suit against the State pro se. That suit challenged the constitutionality of the educational tax structure. One month after I filed that suit Jersey City filed its suit and it cost Jersey City and other municipalities quite a bit of money. As you know, in connection with that suit, the Supreme Court has said it is unconstitutional to support education through the local property tax structure.

I felt good. Here was something that was done and I felt relieved and relaxed. Until suddenly I started to hear rumors about a statewide property

tax. When I started to hear about that I started to look into the tax structure itself. I am thoroughly convinced that the tax structure on the property according to true value is unconstitutional.

Believe me, gentlemen, I spent many hours, days, weeks investigating this, going back to the 1947 Constitutional Convention and the hearings on it to find out what was wrong, what did they intend, what did the people understand. I finally became convinced that assessing property according to true value was unconstitutional. Fine. So I sat down and I drew up another brief and I filed another suit against the state pro se. That was in December of 1971. I figured it was going to be called. What do I know? I'm not an attorney. Finally it wasn't called, so I made a motion to the court just to find out what was going on and asking the court to assume the cost of this thing. I pleaded, I said "I'm an average person. I haven't got the money to go into a lawyer. I can't go to legal services. There is nobody I can turn to." The court said, "we haven't the money either." Fine.

Finally, I asked the court to hear this case because of its importance. The court said, "why don't you ask for a summary judgment"? What's a summary judgment? I didn't know. The judge said, "do you know what a summary judgment is?" I said, "no, your honor." So he tells me. Fine. I filed a summary judgment.

Believe me, the complaint itself was 50 pages and the briefs that I have typed-- I have become an expert typist.

I went into court one morning. A lot of attorneys were there. Prisoners were there. It was on a summary judgment but it was tied over to

another time - a hearing on it. The judge said, "well, this won't take too long, gentlemen. I want to hear this case first." I spoke all morning. Fine.

He said, "well, you haven't got the local assessor and you haven't got the county board of taxation included in the suit." I had everybody else, from the legislature-- If I knew the name of the janitor of the Capitol I would have had him in there too. So, he said, "include these people." O.K., fine. I filed an amended complaint and I included these people.

Again, all morning I spoke. The case was dismissed - no written opinion, just dismissed. The argument the state gave was that they could not afford to assess property according to its true value. Now if I was an attorney, if I was an expert and able to probe why these things were not done and how it conflicted with the constitution, I believe I would have won that case.

After that I found out that in order to appeal it, you have to have a transcript of the hearings. If I had known that I would have gone in and said, "your honor, read the brief" and kept my mouth shut. I can't turn around and pay for a transcript of this thing.

In the meantime I tried to organize people to help. I tried to get municipalities to help. I haven't got the capabilities. I did not appeal the case, not because I felt that I was wrong but because I didn't have the money.

Now where does the average person, fighting something like this-- I can debate this thing and argue this thing with anybody. The use of the true value standard is unconstitutional.

Whether I am right or wrong, I have a constitutional guarantee to be fully heard in court and under the present system I can not be heard because I can not afford it.

Now you talk about anger, You talk about frustration. I am a tax collector. I can afford my taxes. Why did I take the action? Because of senior citizens coming and saying, "I cannot afford these taxes, what can you do about it?" I undertook it as an educational thing to try to alert people as to what was going on.

If you had this Public Advocate thing, that I could sit down and explain and undertake this course, I think that people would be well served.

Senator Tumulty has questioned the number of complaints there would be. The other gentleman said you would be flooded - yes. But I think eventually the flood will cease because I think the Legislators themselves will start looking at all these bills that they are passing and the first thing they are going to say in their mind is, "does it meet constitutional restraints or does it exceed what the people have told the State it cannot do?" We will have better laws because of this. Because now there will be somebody who will speak for the people and the people will no longer feel as frustrated and angry as they are now. And, believe me, they are. I know I am and I am only an average person. Thank you very much.

SENATOR BEDELL: Thank you very, very much.
Senator Tumulty?

SENATOR TUMULTY: I would just like to make this comment, I sympathize with Mr. McCarthy. There was another witness here earlier today and he spoke about investigating a sewage authority down in South Jersey. I think one thing we should have had a long time ago was remedial legislation - where the public, when they have questions that concern them, as in your case and in his case, - which would impose upon the Attorney General the right upon a petition by a taxpayer, or a group of taxpayers, to come in and represent them. Because everything that you say about the cost of litigation is true. I have been through a few of these cases. I was a crusader and I know what these cost.

I come from Hudson County where a few fast curves have been thrown over the years and I happen to be on the other side of the fence, so I know what can happen and what can go on.

I think you have raised a good point. I think that there ought to be remedial legislation. Remedial legislation may cure some of the things you have talked about. You have raised a good point, there is no question about it.

MR. MC CARTHY: Well, I believe the Attorney General could--

SENATOR TUMULTY: I think you have acquired a lot of legal talent, if you are ever looking for a job, look me up.

MR. MC CARTHY: I think the Attorney General could handle cases like this. As a matter of fact, if I remember--

SENATOR TUMULTY: There should have been

legislation.

MR. MC CARTHY: They can do it now.

SENATOR TUMULTY: After having listened to the other man earlier today and now you--

MR. MC CARTHY: Wasn't it Attorney General Wilentz who sued the Legislature because the Legislature was going to waive the railroad tax interest? Even though it was against the policy of the Legislature and the Governor, he still sued them. I think that the Attorney General can, but he doesn't. The question is whether he is aware of it, or whether he is interested in it, or whether he is swamped with other work, I don't know.

But whether it is this bill or something else, there must be something, someplace, that the average citizen can turn to.

SENATOR TUMULTY: To vindicate the public right.

MR. MC CARTHY: Yes. You mentioned your authorities. I want you to give this consideration. Authorities were designed in order to serve those people who were going to benefit directly from the authority. Yet, the State passed a moral responsibility resolution - or law, whatever the blazes it was - to support the meadows. In my township, my municipality co-signed - or pledged - the municipality to that portion of the town where the utility authority has put water. I am not being served by that. I would challenge this. I don't think-- If we are going to do this, then do away with the authority and establish commissions because the authority is no longer serving the purpose that they were started for.

Even if I were to take this into court and not win, in the hopes of raising the question of

what the people are saying is objectionable to the and having it rectified by legislation-- This is what I am looking for, some way to educate both the Legislature and the people as to what is wrong; maybe the people will then get a clearer understanding of what is in the minds of the Legislature.

SENATOR TUMULTY: Very good.

SENATOR BEDELL: Thank you very much.

Earlier today we called upon Robert Wilentz who was listed as a speaker. Is anyone here representing Mr. Wilentz?

(not present)

We also called upon Paul Gewertz, Center for Law and Social Policy. Is Mr. Gewertz here, or is there anyone representing him?

(not present)

Is there anyone here who wishes to speak before the Committee at this time?

Mr. Hillman?

J O S E P H H I L L M A N, J R.: Thank you, Senator. I really came down today only to listen. My name is Joseph Hillman, Jr. I am past director of the State Office of Poverty and Law, which is part of the Department of Community Affairs. I am a member of the State Bar Associations Committee on Availability of Legal Services. So in those contexts I was personally interested in the work of the Committee.

I'd just like to make one observation. The types of cases that will be handled by the Office of the Public Advocacy, relating to Inmate Advocacy and the Mental Health Division are the kinds of things that, on a limited basis, Legal Services has been doing in New Jersey for the last seven years. So, it is not in any sense anything new, or should

be considered controversial as far as the bill is concerned. It is really the number of cases, the amount of work that will be done by the office of the Public Advocate that is new, as far as the State of New Jersey is concerned.

I think the bill itself is a necessity at this point, considering the future of legal services on a nationwide basis. There seems to be quite a movement, at this point, to restrict the types of cases legal services can handle, which would eliminate class action types of cases that would be handled by the Public Advocate.

The only other comment I have concerning this bill relates to a question raised earlier about the difference between the sections of the bill covering the Mental Health Advocacy Department's ability to handle individual cases and the Inmate Advocacy Department being able to handle only class action cases. Under the Federal rules, one individual can constitute a class if his circumstances are such that it would generally affect all those who are in that prison situation - if that is the type of case that is being handled. So you could, with the proper pleadings, represent an individual - one individual - as a class to protect the general interest or the public interest of the whole inmate population. That would limit those kinds of cases to a very few and of course keep down the cost of the Office of the Public Advocate. Thank you.

SENATOR BEDELL: Thank you very much.

Senator Garramone?

SENATOR GARRAMONE: Would the formation of this new Department do away with any of the services that you people are performing presently in legal services?

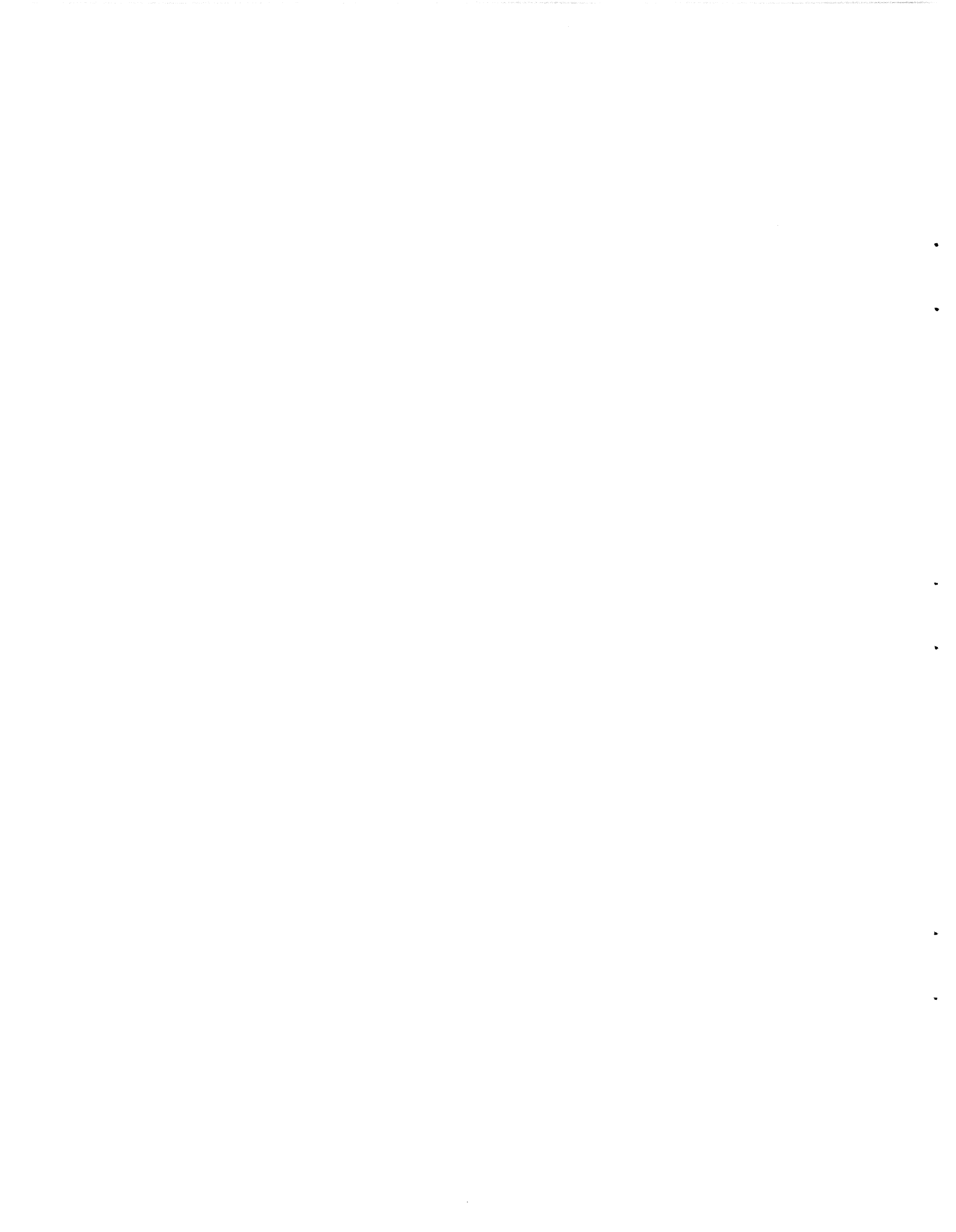
MR. HILLMAN: At this point the legal services offices are being cut back in the amount of funds that they can have to operate any kind of programs, other than individual services. I can anticipate that in the next couple of years there will be no money available for the local programs to handle this type of case, so we desperately need this service in New Jersey.

SENATOR BEDELL: Thank you very much, Mr. Hillman.

Is there anyone else present who wishes to speak before the Committee at this time?

There being none, the Committee will adjourn at this time and will reconvene at 7:00 tonight.

(hearing recessed)



(Evening Session)

SENATOR BEDELL: We are reconvening the hearing on the Public Advocate Bill, A-1409.

The Committee would like to hear from Mr. Martin Haines.

M A R T I N H A I N E S: I do not have a prepared statement, just a few rough notes.

I appear on behalf of the public interest, simply as a private citizen. But I think for the record I should state very briefly some of my background so that you may decide whether I'm qualified to serve that role.

I was a Past President of the New Jersey State Bar Association. I was Special Counsel in one Blue Cross rate application. I was Chairman of the Governor's Welfare Commission. I am presently Chairman of the Committee on the Future of New Jersey. I am presently a Trustee and was the founder of the Bar Institute and Law Center. And I am a Trustee of the Educational Law Center.

I might note that all of those positions are without financial compensation, with the exception of the Blue Cross undertaking.

I appear in support of the legislation.

It seems to me that the size and complexity of government has made it increasingly difficult for citizens to have redress and to feel a part of the governing process. This statute offers an excellent avenue for citizen representation and participation, and seems to be a valuable consolidation of many public functions.

I think further it's an opportunity for New Jersey to take the lead in a rather unique concept.

Two or three specifics about the bill. One,

the creation of a permanent office of rate counsel offers very obvious advantages and opportunity to develop real expertise, to develop good resources and to develop good information that is permanently kept in one place where it can be used again and again.

I served as Rate Counsel simply on the usual hit-or-miss basis. Never having served before, never having served again, I would leave others to judge what kind of a performance that led to, but it's so obvious that I was obliged to prepare myself in the very beginning and to devote a lot of time to learning essentials that others in an office, such as this bill would create, would not have to undertake.

I think there has been some concern about the very broad discretion that this statute would place in the hands of the Public Advocate. My comment on that would simply be that this same kind of broad discretion has been placed in the hands of every cabinet officer, every department head in the State. I think it's necessary.

Also there has been some concern, and there was an editorial in the Law Journal last week, about the words "public interest", the concern being that they are not well defined. I would suggest that they should not be tightly defined. I think it is better that the true meaning of those words be developed through litigation, administrative rules and experience under the statute. And I would note that that language is no more difficult of interpretation than many other words that we have relied upon in our statutes, for example, "the general welfare" is a very popular term. It has been subject to much interpretation in the courts and otherwise. I do not think that we would back away from the use of those words

were we faced with a first opportunity to use them again.

There are many other typical examples.

Now, finally, I think there's a basic concept of government contained in the statute that's worth emphasizing. I would call it an invitation to challenge.

This is the concept that a government which is confident that it operates in the public interest and is secure in what it is doing is quite willing to invite the exposure of its programs and its actions to significant challenge. Conversely, a government which is not public oriented is the one most interested in thwarting public challenge. It cannot afford an exhibition of its weakness.

I believe the proper test of every important undertaking of a public nature is its total exposure to every possible criticism and objection. If it survives that exposure, its validity is assured. If it does not, it will fall, as, of course, it should. This bill supports that concept. It speaks very well of this government, in my opinion, if it is adopted.

Thank you very much.

SENATOR BEDELL: Thank you, Mr. Haines.

Any questions, Senator Garramone?

SENATOR GARRAMONE: Just a question or two, Mr. Haines.

I am interested in your experience as a Rate Counsel. You mentioned you were employed in terms of establishing rates for Blue Cross?

MR. HAINES: Yes, I was.

SENATOR GARRAMONE: Could you give me some indication of the length of time and what sort of preconditioning you had to go through to become an effective Rate Counsel?

MR. HAINES: I was in about five or six weeks in advance of the hearing, and appointed. I met immediately with the Insurance Commissioner and the Actuary in his office. I got the general problem, obtained what literature was available, spent as much time as I could with the Actuary from thence forward, spent most of those five or six weeks preparing the case by visiting interested parties all around the State and arranging for witnesses. I examined the pertinent law, the statute, and that sort of thing, and conducted the hearing. That was followed by a preliminary report making recommendations dealing primarily with rates to the Insurance Commissioner, and then a second report, about a month later, much more extensive, generally exploring all of the problems relating to the hearing.

As I indicated in what I said earlier, I had had no prior experience with Blue Cross rates, with Blue Cross Company, or with any other rate undertaking, for that matter.

The length of time that case took to prepare I think was unusually short, based on what I understand to have been previous experience. Compensation apparently was modest also, based on what I understand of previous experience.

But it seems obvious to me that had I been an experienced Rate Counsel there are many short cuts that I could have taken. I would have had an intimate and immediate knowledge of resources and people. And I think that I would have considered the use of an independent actuary, which I did not have. I had an Actuary in the Department itself, William White, a very fine Actuary, and I think that he and I together presented a very independent case. As a matter of fact they wound up in that proceeding denying

any increase whatsoever. So on that basis I suppose it was rather successful.

SENATOR GARRAMONE: Would you feel that the proposed rate counsel within the framework of this bill should have a separate staff of experts rather than call upon the experts that may exist in the PUC or the Department of Insurance to assist him in his chores as Rate Counsel?

MR. HAINES: I think that ought to be considered. I think it would depend on how frequently they would be used and whether their expertise is such that it should be confined in this one department. I'm not quite sure.

SENATOR GARRAMONE: Were you ever called on again?

MR. HAINES: I've never been called on again.

SENATOR GARRAMONE: When did this take place, what year was this?

MR. HAINES: This was the spring of 1972.

SENATOR GARRAMONE: Do you have any feeling as to whether this office should be under direct control or responsibility of the Executive or as an adjunct to the Legislative branch of government?

MR. HAINES: You're talking about the Public Advocate himself rather than the Rate Counsel.

SENATOR GARRAMONE: The office of the Public Advocate.

MR. HAINES: Rather than the Rate Counsel.

SENATOR GARRAMONE: The Public Advocate.

MR. HAINES: Well, I would like to see the Public Advocate, particularly in what I suppose are the controversial areas, as independent as possible. I think my only really adverse criticism of the statute would be that the Public Advocate in performing his roles where he is most keenly the Public Advocate is

pretty much subject to the control of the Executive in that there is his appointment and so forth, unlike the Public Defender, for example, which is strictly autonomous under the language of the statute.

Now, nevertheless, this is a good step forward and I think it's an area, since it is unique, in which we have got to feel our way for a while and see how it develops. If it develops well and if the need is seen for greater autonomy, I would hope that that would come through additional legislation.

SENATOR GARRAMONE: No further questions.

SENATOR BEDELL: Senator Tumulty?

SENATOR TUMULTY: Mr. Haines, the bill as it is written now provides that the Public Advocate may in the discretion of the Governor currently hold another public position established in or allocated in the Department of Public Advocate, notwithstanding any requirement of law that he devote his entire time to the duties of one position. Would you think there would be any conflict between a man being the Public Advocate and Public Defender also?

MR. HAINES: I find it very difficult to see any real conflict in that situation where we are talking about two people in two positions in one department.

SENATOR TUMULTY: Well, since it's a full-time job how could he occupy both jobs?

MR. HAINES: Well, in that sense, he can't, of course. He can't be full-time as the Public Advocate and spend some part of his time in one of the subpositions, if we're going to be very literal about it.

SENATOR TUMULTY: Do you have any fears, as a Lawyer, that legislation of this kind will result in the Public Advocate's office being inundated with complaints?

MR. HAINES: Well, there are two or three areas in the bill where I think some very heavy caseloads may develop. For example, in mental health. It seems to me that that's a bottomless pit just being explored. Nevertheless, I think it's very necessary to explore. And caseload is going to determine largely on how the Public Advocate uses his discretion to operate his office. I think he's going to have to be, at the beginning, very careful in what he accepts and the criteria which he erects which will determine what cases come to him. Unless that's handled carefully, certainly he could be inundated.

SENATOR TUMULTY: I know you're a Lawyer of many years experience. I've had the experience of being Secretary to the Ethics Committee of the Bar Association for four years and I can say quite candidly to you that out of every 12 complaints that I received there were about one or two that were valid and the others were complaints that usually were inspired by another lawyer or a layman where a person had a dispute about a fee or something and said well here's a nice way to collect this fee or get an adjustment on the bill that the lawyer gave you, make a complaint to the Ethics Committee and the lawyer will make a settlement with you.

Isn't there a possibility of that kind of thing happening here?

MR. HAINES: Oh, certainly you will get crackpot complaints but it doesn't seem to me that that problem or the problem of an avalanche of complaints is one that should be argued as defeating the bill. I think that those things can be controlled. The crank complaints are usually pretty obvious, just as you suggest in your experience. And I would think any competent person in that office would weed them out rather quickly.

SENATOR BEDELL: Mr. Haines, do you think that

the area covered by the Public Advocate should be extended to local jurisdictions?

MR. HAINES: I haven't really given that any prior thought. I touched the edges in a little conversation. It's quite clear that there are local problems that would be helped by some independent investigator upon whom local citizens could lean, areas of zoning, for example, where there are many problems; areas of municipal finance where I think there is not enough understood or too much perhaps hidden sometimes. I think it would be helpful. I am not sure however that you have to bite off that big a chunk on the first jump.

SENATOR BEDELL: We had two witnesses here today - I never gave much thought to the local problem either but one witness recited his experience with a local sewage authority. The other witness is still here and he discussed his problem with taxing as a problem. I think it was the tax authority where he's located. And it would seem to me that some consideration ought to be given if we're going to adopt a bill of this kind to having investigatory authority over municipal agencies and particularly autonomous authorities.

MR. HAINES: I would not find that objectionable.

SENATOR BEDELL: Because as I explained to one of my friends at dinner tonight, I come from that impeccably lily-white county of Hudson that has never had any crime or corruption and I've had some personal experience with some of these autonomous authorities and I know exactly what the witness was testifying to. It gets to be pretty costly when a taxpayer attempts to fight on something like that, corruption or one of those things.

MR. HAINES: Unquestionably.

SENATOR BEDELL: I am inclined to feel that it ought to extend to the local level.

SENATOR GARRAMONE: There is an office of dispute settlement which, as I read this bill, can offer a service to community civic groups and it says to organizations, governmental agencies. It doesn't refer to the county and municipal government agencies. I presume this is as one party against state government not necessarily advocating some citizen complaints.

MR. HAINES: I think it touches upon local jurisdictions in two or three places. In the mental health area, for example, it specifically relates to private institutions, local ones, and so forth. In the jail section, the inmate section, there is authority to deal or negotiate with county governing bodies.

SENATOR BEDELL: First, Mr. Haines, do you think that perhaps by the nature of the office itself and the obvious asset it might be someone aspiring to further himself politically, it might be wise to prohibit a holder of the position of public advocate from holding public office for a period of time after leaving that office.

MR. HAINES: I really don't think so. I think that you can level that charge at a great many high government positions. Certainly almost any cabinet position could be used as a stepping stone. If the office is abused for that purpose, I would hope that the abuse becomes apparent and, therefore, it doesn't become a stepping stone. Maybe that's too idealistic.

SENATOR BEDELL: One further question.

It's been suggested that perhaps all advocates should be attorneys. How do you feel about that?

MR. HAINES: I don't feel that they should all be attorneys. I've heard that said. I was an advocate when I was President of the Bar and I still am with much greater involvement of lay people and the

undertakings of lawyers. The Bar Institute, which I was instrumental in commencing, for example, provides in its charter for three laymen to serve on its Board of Trustees.

I have felt that our disciplinary boards ought to accommodate laymen. That's not very popular among lawyers.

SENATOR GARRAMONE: I think, just as a comment, that should be extended to all these bodies that employ their own professionals and police themselves.

MR. HAINES: I do too. I think it is arrogant of them to say, "Those we affect most directly should have nothing to say about how we affect them."

SENATOR BEDELL: Any further questions?

Thank you very much. We appreciate your coming to give us your thoughts and your views.

Mr. Morton Feldman, Pleasantville Taxpayers Association.

MR. MARCUS: I am Robert Marcus appearing on behalf of the New Jersey State Bar Association Ombudsman Committee. I have got to get back to Newark, New Jersey. My presentation will have to be in the area of ten minutes or so. I wonder, I don't know how long they contemplate their presentation will take. If it appears to be of any great length, I wonder if I could be scheduled at an earlier time.

SENATOR BEDELL: Then I defer to Mr. Feldman. I have his name listed prior to yours on our agenda. That's the reason why I called him first.

MR. FELDMAN: Well, we certainly would want the State Bar Association to hear or at least to learn some of the things that we are telling. However, if you would prefer, if you are interested enough to perhaps accept one of our memorandums, which we will mail to you at some

later time, we would certainly be glad to defer for about ten minutes. But certainly our presentation is one that should be heard by the State Bar Association as much as by the Assembly. Now, perhaps we might want to defer for about ten minutes and then maybe you would like to stay and listen to us for a few minutes.

MR. MARCUS: I will be pleased to accept service of your memorandum.

SENATOR BEDELL: Are you ready, Mr. Marcus?

Thank you very much, Mr. Feldman. We will have you back.

Mr. Robert Marcus, New Jersey Bar Association Ombudsman Committee.

R O B E R T M A R C U S: I wish to limit my comments to Article 5 of the legislation dealing with the Division of Citizen Complaints and Dispute Settlement. As the statement to the legislation would imply, this is the portion of the bill that approaches an ombudsman function.

SENATOR BEDELL: May I interrupt, Mr. Marcus. Do you have a statement?

MR. MARCUS: No, I don't.

SENATOR BEDELL: All right. Proceed.

MR. MARCUS: The State Bar has played a role, its Ombudsman Committee, over the past four years or so with varying pieces of legislation that have been proposed, including one piece of legislation which passed the New Jersey Senate, Senate Bill No. 34 which I believe is in the docket again as 464 this year. That is a "classical ombudsman" piece of legislation. There is no contention, I believe on the part of the supporters of this bill that this is a pure, classical, traditional ombudsmen in its sense. And I think, while the Committee that I represent supports the concept of a State ombudsman and, to that extent, supports this legislation and this

division of it, we would hope that the Committee would give serious consideration to strengthening this section of the legislation in a manner which would give it some of the greater attributes of the traditional ombudsman, specifically the question of independence or slightly greater independence on both selection and removal or answering authority.

As created here, it is a position underneath a cabinet officer subject to appointment and dismissal by the appointing authority. The traditional ombudsman would be more independently appointed and also subject to removal in a more difficult procedure.

I think this legislation would be strengthened by a mandate requiring a certain number of local offices, other than the central State offices in Trenton or conceivably in Newark, as indicated in prior legislation as to this department, mandating no charge on the acceptance of complaints so as to facilitate at least delivery of complaints for initial review by this department.

Similarly, this division would be greatly strengthened. It is unclear to me whether this position now carries with it a subpoena power to the other divisions or to this officer to require the production of documents or the production of testimony in its investigation of a citizen complaint.

Other legislation also involved independent investigation by an ombudsman or by the Division of Citizens Complaints but did not require an actual citizen's complaint to commence a review of a procedure or of some division or bureau within the concept of agency.

We also believe that the legislation speaks in terms of the public advocate delivering an annual

or periodic report to the Executive, to the Governor and to the Legislature. We believe, at least as to the function of this Department, that ought to be a mandatory procedure because this is traditionally one of the stronger weapons that an ombudsman would have in making known his findings, in publicizing what would probably be deemed weaknesses or development in procedures or improvement in procedures in a department caused by his investigation, caused by his review. And the intent is, of course, to both strengthen the internal procedures and build a public awareness of a continuing refinement of governmental procedures which builds confidence in a citizenry in the procedures that they may at some point be subject to.

The Committee supports the concept but seriously urges the Committee, your Committee, to consider strengthening it in the respects that Senate Bill 34 or Senate Bill 464 contain in both giving the greater independence and greater strength to the person that would occupy this position.

Since I'm here on the grace of some time, I would like to leave some time open if the members of the Commission have any questions.

SENATOR BEDELL: Senator Garramone?

SENATOR GARRAMONE: Since you haven't addressed yourself to the remainder of the bill, are you not concerned with its impact or have you just got a total approach to this bill?

MR. MARCUS: Well I get to the question of the limit of my authority. Our Committee has reviewed the bill and feels our comments should be addressed to this. I think there are other comments that I have made semi-officially perhaps to Mr. VanNess and to other members involved, some of which appear in your questions

to Mr. Haines who preceded me. And if I might perhaps make some of these comments, again I qualify the authority that I am speaking with at that point because it's more personal or the position of independent members of the Committee rather than the Committee's position itself.

One of the questions you raised earlier and we have questioned is whether or not the Commissioner ought to hold other positions in the Department. Personally, I am opposed to this actually occurring because the cabinet level position will require supervision and policymaking of very diverse branches, in terms of rate counsel, in terms of public defender, in terms of the citizen complaint area.

Without any comment as to any one individual's ability to do that, it seems to me, as a general policy, it would be sounder administration that the cabinet level commissioner not also serve in the position of a deputy commissioner or overseeing on a day to day basis one of the other departments within his department.

SENATOR GARRAMONE: No further questions.

SENATOR TUMULTY: You say that you urge greater independence and strength be given to the public advocate. Don't you think he's pretty powerful as established under this bill?

MR. MARCUS: In certain respects he is. But when you bring it down to the deputy or assistant commissioner for citizen complaints and dispute settlements, it's unclear from my reading of this legislation whether or not he has the power to subpoena records and to subpoena witnesses in conducting investigations. If he does not have this power, then he's relying on his good reputation and/or perhaps a directive from a senior authority in the Executive Branch. In practice this may

work very well if people are required to answer his questions so as to conduct a reasonably complete investigation. If this power is not existing and he in fact does not have the full cooperation at all times of the senior authorities, it seems to me that his ability to investigate a situation will be very seriously limited.

SENATOR TUMULTY: Who is he really accountable to under this bill?

MR. MARCUS: Under this bill it would appear to me he is accountable to the public advocate which is, of course, accountable to --

SENATOR TUMULTY: Who is the Public Advocate accountable to?

MR. MARCUS: Most directly to the Governor. To the extent that he will report to the Governor and to the Legislature and these reports will undoubtedly be public, the entire administration will have some responsibility for his actions. Not being an elected official, he is not going to be responsible to the public the way the Governor or a member of the Legislature would be.

SENATOR TUMULTY: And he serves at the will of the Governor.

MR. MARCUS: That's correct. The earlier legislation I referred to, Senate Bill 34 or 464, creates the position as a division of the legislative branch of government.

SENATOR TUMULTY: What do you think about that?

MR. MARCUS: I think it would instill a somewhat greater degree of independence.

SENATOR TUMULTY: A greater degree of independence?

MR. MARCUS: Yes. Because, again, that aspect is tied in with a very independent appointment procedure which involves basically all three branches of government,

It involves the Judiciary selecting a panel which would then select a series of names which would be submitted to the Governor. The Governor's designation would be approved by two-thirds of both legislative bodies, the Senate and the Assembly. With that kind of selection it seems to me you would probably be zeroing in on an individual of high character and reputation. And having all three branches of government in the selection process it would seem to me this would give him a level of independence which I do not see a Deputy in charge of citizen complaints having.

SENATOR TUMULTY: Thank you.

SENATOR GARRAMONE: Thank you, Mr. Marcus, for the benefit of your thinking.

MR. MARCUS: Thank you for your time.

MR. MELICK: I wonder if there would be any chance of Mr. Feldman allowing me three or four minutes? I would circulate copies of your material to people.

MR. FELDMAN: Okay. We'll be on the same basis. Stay for at least a couple of minutes to listen to us.

SENATOR GARRAMONE: You are being very generous, Mr. Feldman.

May we have your name, sir?

E D W I N F. M E L I C K: Yes. Edwin F. Melick. I live on Beekman Road, Summit, New Jersey. I come to speak primarily for myself and also as a consequence of the fact that for approximately the last five years I have served informally as a chairman of an ad hoc committee or group of organizations interested in the creation of a State Ombudsman of the type Mr. Marcus referred to in Senate 464. And I come to express a very simple concern on just that aspect of this bill. Personally and for any members of these groups who have been interested and have been part of the New Jersey

Ombudsman Committee, I do not wish to speak for or against this bill or any of its provisions except Article 5, having to do with the Division of Citizen Complaints.

The simple point that we would like to express here is serious concern about the fact that the Director of the Division of Citizen Complaints, in the way it's structured here, lacks the kind of independence and the careful appointment process again of the type that Mr. Marcus referred to and which is embodied in the more classical ombudsman concept expressed in Senate 464.

My own personal conclusion is that without jeopardizing or prejudicing, which perhaps would be the right word, this bill itself in any way I feel, and the members of these organizations that I had a chance in the limited length of time to speak with feel that it would perhaps be better to delete this section from the bill and that we would favor and support the eventual adoption of something along the lines of Senate 464 which has been resubmitted in this year's Legislature.

SENATOR GARRAMONE: Senate 464. Roughly what does that provide for?

MR. MELICK: It provides for a State Ombudsman who is in an office which is created in this process which Mr. Marcus has referred to. The chief of the Supreme Court has a panel, goes to the Governor and involves two-thirds ratification by both branches of the government, the Senate and Assembly.

We feel that that principle of independence for the idea of an ombudsman type person, if you will, who would receive complaints on behalf of citizens is so important it ought to be preserved and kept in that somewhat more classical or more independent form than appears to be possible within the framework of

this bill. And, frankly, I can't see any way that this bill, in the way it's structured, could accommodate this, just because of the way the public advocate and the whole department is created.

So from my own point of view and, again, from others, individuals of these organizations, I would favor seeing this Article deleted and we would favor and continue the support of the other type of legislation.

SENATOR GARRAMONE: You don't feel that in toto this bill does more than just a separate ombudsman department or grouping?

MR. MELICK: Yes. I think it appears to do a great deal more than that but I'm not qualified or prepared to speak to these other many offices and divisions which I see in here. And that's why I feel that I must confine our expressions of concern to this one area of the bill. We truly do not want to express any opposition to the bill itself or strong support, either myself or again community and labor and religious and business organizations that have taken an interest in the ombudsman concept over the past five years.

SENATOR GARRAMONE: Have you any questions?

Well, thank you very much.

M O R T O N F E L D M A N: Mr. Melick and Mr. Marcus expressed so well some of the views of some of my clients and myself, when I get to those parts I won't repeat them, for the sake of saving time. I've never met them before but I am glad to see persons from different parts of the State come to conclusions in an independent manner.

I am Morton Feldman. I represent several civic and taxpayer associations in the South Jersey area, particularly in Pleasantville, Vineland, Ventnor, Weymouth Township, Atlantic City.

I have several statements from several of my clients and I believe we would like to read about half of them and the others we will submit copies of, so that we can be a little bit brief.

SENATOR GARRAMONE: Do you have copies of all the statements, Mr. Feldman?

MR. FELDMAN: Yes. I delivered them in a white folder.

SENATOR GARRAMONE: Do you plan on reading all of these statements?

MR. FELDMAN: No. We will do slightly less than half of them.

SENATOR GARRAMONE: Maybe you can give a synopsis of each?

MR. FELDMAN: Well, I would prefer to read about five or six.

SENATOR GARRAMONE: All right, Mr. Feldman, please start.

MR. FELDMAN: Statement of Jack Haynie, President, Ventnor Civic Association:

"As far as I can see so far, the Public Advocate bill seems to cover too wide a scope. It looks as if it offers everything and may end up offering nothing.

"One feature that needs correcting is that the Public Advocate can take the cases he wants and reject others, at his choice. This leaves it open for political maneuvering.

"We need more time to think this over and give it consideration at our general meeting. Perhaps the Assembly will hold an additional hearing or perhaps we will attend the Senate hearing."

SENATOR TUMULTY: This is the Senate Committee hearing held in the Assembly.

MR. FELDMAN: Oh, I'm sorry. I thought it was an Assembly hearing.

Well, I don't know what to advise Mr. Haynie.

SENATOR GARRAMONE: The invitation did not so state?

MR. FELDMAN: No. We learned of it through the media and asked Dr. McGahn for a copy of the bill.

SENATOR GARRAMONE: I see.

MR. FELDMAN: Statement of Leah Finkler, who is a Senior Citizen Advocate and President of several groups:

I have many times proposed the use of an ombudsman for senior citizens; the senior citizen organizations in which I am active and the many unorganized senior citizens with which we communicate can be almost certain to welcome a New Jersey public advocate for these purposes, with however many reservations. The most important reservation we have is whether or not he will be effective. We want someone who can enforce the laws; too often we are just sent from one place to another. If the public advocate's office is going to be just one more place where we are going to be sent on a run-a-round, we don't want a public advocate; in such case we would prefer to do the job ourselves and that our time not be wasted; there is the danger that the public advocate will be performing his duties just build up a name for himself so that he can run for office; we would like you to find some way to make certain, or at least try to provide against the office becoming political. A lot depends upon on who the persons are who are going to serve in it. You get a bunch of heels in it, and that's what you have heels. We have

seen too much of the practice of government 'comity'; the officials professing to help senior citizens all too often devote their best efforts to sliding in some salary increases for themselves, quietly, of course.

What we need from an advocate is some noise; a lot of the help that can be given senior citizens is in legislation in Congress, and whereas we might be hoping for too much for a full time lobbyist, a public advocate for senior citizens could at least give us some help by a phone call now and then to some of our senators and representatives and some of the committee chairmen in Washington; we send letters and letters and letters and we get back letters and letters and somehow they look as though they were all done on the same typewriter by someone pressing one button. The Social Security Trust Fund Bill is one such example; the social security funds is constantly raided by other government agencies taking 'loans' at rates of interest that were appropriate in 1935. Much more important is the need for an advocate to see that the legislation gets carried out; there are a lot of programs in which the funds are provided but the administrators either don't don't want to are just are not smart enough to know how to use the funds. Paying administrators who don't know what they are doing costs millions which would be better spent on the senior citizens who are the purpose of the legislation; we appreciate it when we get a few good people who are really interested, not political hacks.

The Retired Service Volunteer Program is a good example of a situation in which a public advocate, with a little amount of work, could do a lot of good. We run into roadblocks of people in various agencies not knowing how or whether they are supposed to participate in this program of having retired persons visit other persons who are too sick to do little chores for themselves. It would be very simple if we could just tell the obstinate, or uninformed, agencies to simply telephone the public advocate for advice on whether or not it is legal for them to participate.

We spent a long time trying to convince local businessmen that they could make some slight increases in sales and profits by providing discounts and transportation for senior citizens. A public advocate could have helped us in this and can advise the legality of other similar situations.

The only substantially effective senior citizen advocates that we know are those in the labor organizations; a state advocate for senior citizens should be modeled after these.

Senior citizens, especially poor ones, have another problem: their contemporaries all have their own problems and nobody seems to give a damn what happens to one another, again, especially the poor ones. There are a lot of them who have problems that I don't even know about. A good public advocate will have to do more than just wait for healthy ambulatory citizens to knock on his door; he is going to have to go around and search out some of the breaches of the Human Rights Law in hospitals and nursing homes.

We are not convinced that a new agency, at additional cost to the taxpayers, will accomplish its pretended purpose any more than the existing agencies, all of which could do the same by accomplishing their pretended purposes. Put some assurances in the public advocate bill and we will be for it; otherwise, please don't waste what little precious time we have. What we want is effective representation to enforce the laws. You worry about the name.

April 14, 1974

Leah Finkler

That's by Mrs. Leah Finkler. She might have come here tonight but she is about 70 or 75 years old and has the flu.

SENATOR GARRAMONE: Mr. Feldman, I notice this is addressed to the Assembly Committee on State Government. Would you perhaps give that Committee a copy of that brief?

MR. FELDMAN: I will afterward.

SENATOR GARRAMONE: You haven't as yet.

MR. FELDMAN: I made that mistake on all of them.

SENATOR GARRAMONE: All right. It's after the fact.

MR. FELDMAN: Yes. I'll make additional copies.

The next is some comments of mine, addressed to Mr. Florio of the Assembly and just as well to the Senate.

(reads following statement)

MORTON FELDMAN

ATTORNEY AT LAW
ATLANTIC CITY, N. J.

April 13, 1974

(609) 344-3185

ONE SOUTH NEW YORK AVENUE

Hon. James T. Florio
Chairman, Assembly Committee on
State Government

Re: Public Advocate Bill #A-1409

Dear Mr. Florio:

This is one of several statements for or against the Public Advocate bill, and many of the statements of my clients and myself seem to be in apparent conflict. Perhaps this might rationalize some of the conflicts in our minds:

(A.) Rule number two of all explorers is that moving in any direction is more productive than standing still. Help for the citizen is needed, and, as the bill will move a step in that direction, I believe we would prefer to be marked in the column of persons "for" the bill, that is, if we have to be counted at all. We believe that the bill in its present form will have only miniscule effect toward its stated purpose, and at a price burdensome to the taxpayers.

(B.) New Jersey already has all the institutions and procedures needed to accomplish all the purposes of the bill. What New Jersey lacks is a tradition of wanting to abide by the law. Desire to abide rather than subvert the law can no more be legislated than the desire of the proverbial horse being led to water; methods are:

(1) clean and sweeten the water, (2) make it stylish to drink good water, (3) proximity to the water, (4) the carrot post-water, (5) the stick pre-water, and (6) salt. We don't need a bill; all we need is a thirst for justice and a place to get it; and I suspect we have a thirst for justice and no place to get it. One thing we need is a viable court system. The present court system is almost totally powerless in the fields of consumer protection, environmental protection, and in protecting citizens' rights against the administrative branch of government. The lack of such power is because of the lack of willingness to exercise it; there is no lack of jurisdiction. The lack of willingness to exercise it stems from a few factors, (first) lack of enjoyment in doing so; whereas automobile negligence cases are fairly standardized and somewhat pleasant, citizen advocate suits are usually tangled and complicated; (second) lack of accolades for decisions favorable to large segments of the population; judges who give such decisions are frequently called fools by their friends, and even by their colleagues; (third) the large court backlog; whereas a plaintiff in a negligence suit, however mis-

content to do so, will wait his year or two for his case to be heard, civic, taxpayer, and environmental group, often hastily formed and with limited funds, will expire prior to their cases being considered by the courts; the defendants, and, I suspect, the courts, know this, and play highly criticizable games to take advantage of this position; (fourth) rewards are likely to be very minor; the plaintiff litigants, of course, pursue such actions for the love of it, and at often great personal expense; poorer litigants, excuse me, would-be litigants put their complaints into other forums, including, I might advise you, some of our past street riots; the courts can but infrequently do award counsel fees to lawyers who serve the public by bringing public arguments peacefully into public courts; (fifth) there are many business organizations, as well as government agencies operating on the borderline or accross the border of fraud; the traditional practice is that one will be civilly prosecuted, the rest, doing similar acts will continue to do the same thing, and the one prosecuted will find a way to circumvent the court order and do the same thing in a slightly different manner; what we need, moreso than another prosecutorial agency, is an agency for implementing the judicial decisions already made; (sixth) I will leave you to draw the "salt" comparison.

My suggestion, much less expensive, and more effective, and more pervasive is that you divide the state into one hundred rectangular districts along parallel and meridian lines, approximately in population, and appoint a hundred new Superior Court judges, to be called, "dispatcher judges". The prime function of the dispatcher judge will be to listen to citizen petitions for grievance and write an order detailing the forum in which the grievance is to be tried and the procedure, including discovery procedures, for it; the forum most often will be an administrative agency. The dispatcher judge might also perform two other functions: I. He he might hear all or most motions, thereby freeing the other judges for more trial and settlement work. II. He might sit as 'dispatching magistrate' for all municipalities in his district, deciding, the same day as arrest, which criminal cases ought to be sent to the grand jury and which are minor enough to be treated at municipal court level.

I hope it is understood that this approach is one of making our present institutions work rather than constantly creating new institutions.

Thanking you for your cooperation, I am

Very truly yours,

s/Morton Feldman

That's my statement.

Now the statement of Gilbert Cramer, who is what you might call a one-man taxpayer association in Egg Harbor City. He frequently tells me that the persons there are just afraid to speak up:

I want to tell you the local government is cheating me. And I don't know what the exact words are; that's what you lawyers and assemblypersons and what-do-you-call-its are for. I know I'm being cheated and I can't get anyone to do anything about it.

I may not have the fancy procedures for telling the twisted way in which it was done; what I mean is that I built a house, and a couple people next door and a few squares away put up houses at the same time, and theirs cost more than mine, and mine ended up getting taxed more than theirs; it wasn't any mistake; it was a criminal act. The tax assessor is in the business of selling module homes and the deeds show that he sold those houses to the neighbors and the deeds and the tax records also show that he gave them forty percent discounts on their assessments.

I've been three years trying to do something about it. First, I was shuffled out of the county prosecutor's office. Then the President of the County Tax Board held a special meeting for my brother-in-law and me

and there were ten people there telling us a lot of things and we didn't have any lawyer at the time, and we didn't say anything about dropping the case; then, a couple weeks later they sent us some paper saying we had agreed to drop the case. And right away, the prosecutor's office also sent us a paper saying they were dropping the case too.

I hired a lawyer, and he looked up all the deeds and corporation records and took the matter to some court [Division of Tax Appeals]. He subpoenaed ten witnesses and a bunch of lawyers and government officials showed up and the judge threw the matter out for some reason or said we were in the wrong court or something. I don't know exactly what's been happening since then. I know it's been sent to some other places [New Jersey Attorney General and United States Attorney] and I know I've been investigated, but that's been almost a year and I don't think those guys are going to do anything more than the first guys.

Please pass a bill to help me and the rest of the people who are in situations like this.

Now, if we do have time, I have a couple of amendments that I might like to discuss. I think what would be more important for the moment would be for Mr. Wilson, who is Chairman of the Pleasantville Taxpayers Association, to make his statement, if that would be all right.

SENATOR GARRAMONE: Go ahead, Mr. Wilson.

T H O M A S W . W I L S O N: Ever since Moses revealed the simple laws of life, the Ten Commandments, we have had a deluge of laws, all of which portend to improve, but in most cases make conditions a little worse.

My first impression of the public advocate idea was so scary to say the least, I visioned some foundation funds and some federal funds that someone wanted to get their hands on. I also visioned another administrative procedure building hazards on the road to justice. However, if administered properly it may have some effect on straightening out our chaotic court system.

The Pleasantville taxpayers whom I represent have had some small experience with the courts and administrative legal procedures, having now been through eleven courts concerning the unfair taxing procedure. I therefore suggest that we test the system for a short period and that we use the Pleasantville Taxpayers as the test case. The following criteria should be enlightening:

1. The method of applying the school tax has been adjudged unconstitutional. Since it is an illegal tax, the Pleasantville Taxpayers would like to pay no school taxes; further they would like to sue Longport because Pleasantville's student rate per \$100 of tax assessment is much greater than Longports.

We would like in fact to use this as a class case so that all those over taxed communities could sue the undertaxed.

We presume we could apply for this service under Article IV, Division of Public Interest Advocacy.

2. I have stated that the Pleasantville Taxpayers have been in 11 courts with no relief. It is our intention to pursue our case to the Supreme Court of the United States, if necessary. Therefore, under Article V, Office of Citizen Complaints, we would have the Office of Dispute Settlement provide mediation.

3. It is an established fact that property taxes on residences are not the same as business or industrial property taxes, or in fact the same as farm property taxes. We, the Pleasantville Taxpayers would like to sue as a class case the undertaxed industrial and farm property taxpayers.

4. The equalization formula as issued by the state and adopted and applied by the counties is only 60% effective between communities and not effective at all within a community. We would therefore request the Public Advocate to sue the state and county to abandon its use.

5. I could go on with many more cases, but I believe that if the Public Advocate would conscientiously accept these challenges he would have exhausted his budget.

6. Whether he would accept the challenge would depend on who was the individual or lawyer who was seeking help; or how much hue and cry would be caused by his taking the case; or how much political pressure could be applied to his appointed office. It is my personal belief that if any of the judges who have dodged rendering a decision on the Pleasantville Taxpayers case were to be appointed Public Advocate, then no good could emerge from having a public Advocate. In fact it would only serve to confuse and delay Justice on her tedious road to Pleasantville.

I would like to, instead of reading the next thing, just mention the abuses that we have encountered so far.

MR. FELDMAN: I think you ought to know that this is the law suit that we are preparing to have some of the sub-Robinson versus Cahill communities sue some of the surplus-Robinson versus Cahill communities, if you can understand that briefly, and to have the court implement the law in the interim. In any event, this is part of that law suit.

MR. WILSON: Under 10 of that particular suit it says: Particular Judges of the New Jersey court system and the New Jersey Division of Tax Appeals have, during the Pleasantville Taxpayers Association litigation, done each of the following:

- a. Failed to open the computer-report documentary evidence through which plaintiffs had sewed a hair to determine whether it would be opened; ruled on the case without looking at the evidence.

I might just digress for a moment and say that the members of Pleasantville's community, who know nothing about computers, were instructed by myself as to how to build a format using the criteria from the tax books. And we compiled a document covering for two years all the taxes in the City of Pleasantville on a computer report. This was used to show the wide range of how the taxes were applied. So --

SENATOR GARRAMONE: Mr. Wilson, I can sympathize with the inequities that you describe here but could we possibly focus directly on this bill? There is great substance to what you are saying but we are directing ourselves to this bill.

MR. WILSON: Well you will see what I'm saying

here, I think, in a moment.

b. Generally opposed and obstructed taxpayers class action litigation, contrary to rules of court.

We presume that the advocate would be able to help us get a class action for a taxpayers' suit.

c. Required counsel to sign his name 837 times to swear to his delivery of a single box of tax appeal applications.

That's kind of ridiculous for the law. Maybe we could straighten that kind of thing out.

d. Decided litigation in the three-courts of the Appellate Division without reading the pleadings submitted by the plaintiffs. This is contrary to the New Jersey constitution which guarantees a right of appeal. The practice of not reading pleadings is established; non-judicial readers are employed with state tax money to read pleadings for the judges.

e. Refused to schedule taxpayer cases without consistent prodding.

f. Scheduled the first of the plaintiff's state tax appeals at a site a hundred miles from Pleasantville and refused to hear the case after the taxpayer arrived.

g. Dismissed or attempted to dismiss litigation on the court's own motion during settlement negotiations.

h. Sometimes ordered that the cases be considered one by one, and sometimes dismissed, or attempted to dismiss all cases as a class.

i. Persuaded, or attempted to persuade individual taxpayers to withdraw their cases.

j. Attempted to suppress the right of freedom of speech of Mario Natale.

k. Directed petitioners to subpoena the tax assessor and then, when subpoenaed, excused him, without stated cause, from testifying.

k (1). In other taxpayer litigations, the same judge dismissed ten witnesses from testifying about government corruption.

l. Refused to hold the tax assessor in contempt for failure to respond to subpoena. Refused to direct the tax assessor, then present in court, to give his testimony then and there.

l (1). Refused to document his denial.

m. Refused to abbreviate transcript.

n. In many instances and at many hearings, judges did act judiciously and proper.

What I'm saying is that if this bill is going to help that kind of thing to be eradicated from the courts, I am for it one hundred percent. So are all the taxpayers that I know.

I might read one more thing, which is by Mr. Castagna, President of the Pleasantville Taxpayers Association. And it's a telephone conversation with a judge who was working on our case:

Mr. Castagna phoned Judge Savino regarding his decision on previously heard case:

1. Judge Savino said that he had reached a decision on our case and that he would tell Mr. Castagna that decision "unofficially" and "confidentially."
2. Savino said that he was ruling "against the Taxpayers Association."
3. His reasoning was threefold:
 - a. He did not like the "manner" in which our lawyer (Mr. Feldman) presented the evidence nor did he like the way in which Mr. Feldman handled himself, particularly Mr. Feldman's "objections" to Savino's court manner.

b. Our evidence "was not" presented in such a manner as to show discrimination.

c. Judge Savino said, "If I were to render a decision against the City of Pleasantville it would stir up a hornet's nest."

Some observations:

1. Judge Savino had reached a decision without ever reading the Assistant City Solicitor's brief which was not even filed until the first week in April.

2. On the phone Savino mentioned that "White" (our present tax assessor) was doing a good job (no argument there) however our case is against Ackley Elmer (somehow Savino did not "seem" to be aware of this fact even after we presented our evidence including the liberal use of Elmer's name.)

3. Judge Savino dismissed our Main Witness (Ackley Elmer) upon which much of our case rested. This is equivalent to dismissing John Mitchell in the Vesco Trial.

4. Every court we've been in has asked us to present the evidence in a "different way." We've presented the evidence in every form imaginable from IBM printouts to colored graphs. But to NO avail. Are there no judges in New Jersey who have any guts to stand up to politicians and who aren't afraid of "stirring up a hornet's nest"?

So far we haven't found one!!

Now if a Public Advocate can do this then we're for him one hundred percent.

MR. FELDMAN: I would like to suggest some specific amendments that I would like to present for your consideration.

Now, if you would be kind enough to look at Article 1, paragraph 4, line 17, which talks consistent with the rules governing the courts of New Jersey.

Now this is probably a minor amendment but one of the things that is needed in a revision of the Court Rules - and I wouldn't want this law to be quoted as saying that the Legislature on that line is telling the Public Advocate to not look into revising the Court Rules. I have stated what the amendment is in my memorandum there.

Article 1, paragraph 6. It talks about receiving salaries - other expert assistants shall receive salaries. You run into a problem which is personal to me in this situation. I shouldn't say a personal affront but personal to living. Im a Public Advocate and I shouldn't say earn my living that way, I hardly eke one out. It's very hard to do so. I would no more be interested in working for the government than - I guess you can see some of the invitations here. I guess you see my experience is more in prosecuting. But there are many instances in which - not that I would want to do what he's doing, it's more that he would want to be doing what I'm doing. And there are many cases which die on the vine for lack of funds. And I think that a very worthwhile approach - again I may be thinking too much in terms of myself - would be to have something in the bill whereby private attorneys, who are doing public advocate work, could initiate the legislation, excuse me,

initiate the litigation in court and then the Public Advocate review it and look and see if it is something with which the Public Advocate ought to provide some assistance. Now the assistance need not even be monetary. It could be monetary, which, of course, would be highly appreciated, but it would be effective enough if the Public Advocate would merely do some smaller things such as investigation - I don't think brief writing is necessary - or even some very expensive thing known as photocopying.

I would not want to see the Public Advocate be the only person who could do public advocacy in New Jersey.

That's a lot to say in changing one word there. Maybe I'll cover it somewhere else.

Now, Article 1, paragraph 12, line 4. I would like you to add a sentence and I don't think there would be too much difficulty in your doing so or much argument about it, that the term "Inmate" shall also include persons confined in jail on programs, post conviction, or pretrial, who spend limited amounts of time outside confinement. I am fairly certain that the drafters of the bill just didn't stop to think of this. This is one of the matters that I'm working on and a few other people are working on. I'm sure it's going to be the coming thing in New Jersey that you're going to have some confinement in jail and some discipline outside of jail. And if that would add to that or even give that a spurt, I think it would be a nice amendment. Again, it's not especially essential.

Now Article 1, paragraph 14, about professional responsibilities. I have just in my marginal notes that this is a bunch of horse something, and it needs general redesigning if it's to accomplish its

purpose.

Now the Attorney pleading a case in which the Government is a defendant should have the amount of money that he is going to be given stated in advance so that he won't have to genuflect to his bursars. The bursar is very likely to be very related to the government defendant, as you can understand. Again, I'm thinking in terms of the concept that the Public Advocate might allot something like a budget of \$40 a week to some private Attorney to pursue some case and then somewhere along the line just shut off the \$40 a week when someone doesn't like what's going on. So I would like to see that that is protected against.

Article 2, paragraph 19, line 12, - my proposal there again is for private attorneys. You know, private attorneys can do rate counsel work also. And the State Public Advocate, rather than thinking he is the only person who can, if he does collect information he ought to make that available to private attorneys as well. I'm not sure that I would want to make it totally and freely available. Maybe that amendment ought to be slightly different. But that's what that amendment is about.

Now, Article 2, paragraph 20, line 25. I can't see how that possibly escaped any of the public utility lobbyists. Not that I profess to represent any public utilities but I would be as much in favor of seeing them get a fair shake also. And I can't see with the formula there, the way I read it, they are going to just be socked with such a huge amount that they ought to be able to go to court and say, well, this amount that we've been assessed with is just too large in relation to the amount of counsel services performed and ought to be reduced. I think

a lot of the utilities would appreciate that being added. Or there's another thing that happens very frequently in legislation - I don't know if it happens in the Legislature but it happens in legislation of the more local type in my area - that special interest groups will put in something that is so obviously unconstitutional that they know it's going to be struck down, just for the sake of making it look as though there's something against them. But I would rather see that part modified and give the public utilities a fair shake and, of course, I kind of think that my analagous assertion about this isn't appropriate.

Article 3, paragraph 26 talks about class actions. This is a co-counsel phrase. After the words "interest of" please add the phrase "or serve as co-counsel representing the interest of"

Article 3, paragraph 27, line 19. Now this is a problem that hits all middleclass persons and I don't think we've grappled with it yet and I think the amendment I proposed in the wording as it is or perhaps this can be slightly better reworded would take a great demarcation out of what we talk about very often, that the rich can have legal services, the poor can have them because they're provided by the government, but the middleclass persons just have to fend for themselves. So the solution to that I think is my amendment which would add the sentence for instances in which - I think this is mental health patients - could be found to afford or couldn't be found to afford, or an instance in which the determination is marginal we ought to have some provision whereby the Director can give some services to an attorney, not pay his way but perhaps just make it easier for him to get the records or, again, something as simple

as photocopies.

Now Article 4, paragraph 33. I would like a paragraph added to that. Again, this is about co-counsel. Now you're talking about the Public Advocate intervening and the Public Advocate instituting litigation. Now is this going to be to the derogation of private attorneys? And if you know what it's like to do public advocate work on a private basis, you will realize that anything that looks like it has the slightest color of saying that you should go to some other jurisdiction is going to be immediately adopted by the judges, partly because of their backlog, saying just get them out of our court, there is some other agency to do this.

So I would want it again to be made clear - this is one of them - saying that the public advocate can serve as co-counsel with private advocates doing public advocate work.

Now Article 5. Again, my statements on Article 5 are very similar to what Mr. Marcus and Mr. Miller said so I think I will dispense with this.

Article 6 should contain two additional paragraphs which I have denominated here as 50 and 51. They should be renumbered and probably included as 43 and 44. These are very essential to the bill. In fact, I would oppose it on constitutional grounds if one or both of these weren't added.

Now there is something known as the run-around. And to prevent the run-around with the public advocate's office - after all it's going to have several divisions - I think, if you think about it, you will probably agree with me, - in instances in which there may be questions on which of the divisions would best serve the interest of the - I left three words out on your copies, if you're making them, - the interest of the citizen it should say and any one jurisdiction may initiate

representation, any division can initiate representation if it has the color of jurisdiction, and upon another division or other divisions also initiating representation, any one or more of such divisions may petition the Director - of course that would be Mr. VanNess - or the Director on his own motion may assign representation to what he deems to be the most proper such division for the purpose, to such division or other divisions also.

Now this again is needed to prevent citizens from just being run-around from one division of the Public Advocate's Office to another. You're particularly going to run into it in the prisoner inmate versus mental health inmate. It's hard enough to tell as it is, I would say, among the prisoner inmates themselves to their own knowledge as to whether they are discipline prisoners or rehabilitative prisoners. And I can't see where there would be much opposition on that. I take it everyone wants a good bill and that would strengthen it.

Now number 51 that I proposed again has to do with our court system and the rule about exhausting administrative remedies. I would like you to discuss this briefly with me as to whether it's going to be said that the Public Advocate is another administrative agency and courts are going to tell persons that they should have exhausted their administrative remedies by going to the public advocate prior to coming to court, which gets to be ridiculous. I hate to use that word. It gets to be counterproductive. And if we don't have this amendment in there, the bill will be harmful and will be a step backward for the people of New Jersey.

The amendment is this, that a citizen, class of citizens or party or parties choosing to litigate without the services of the department of advocacy shall be

exempt from any opposition defense which might contend that such litigant should have first exhausted his administrative remedies by seeking the assistance of the Department of Public Advocacy.

I hope that you will take those amendments very seriously. I have a few other statements which I think probably are better left to read to you, although I'm sure Mr. Torbyn thought that I didn't say at least one word out of his, so he will be disappointed. He says in the end:

"We need honest and efficient government."
And I will leave the rest to you to read.

I don't know. Do you gentlemen have any discussion about this? We appreciate your listening.

SENATOR GARRAMONE: It's not our position to discuss. We're here to get the input. We're not the sponsor of the bill. We are not here to defend or taking a position whatsoever on the bill at this time. We're here to get the information from people like yourself to try to build in, as best we can, proper legislation to put out on the floor for a vote.

MR. FELDMAN: Okay. Rather than engage in conversation, I might note something about tripartite government.

We all understand that three parts of government are set up to be checks and balances on one another. In New Jersey it hasn't worked.

The Legislature, I am here now talking to persons who are interested - the Legislature has never - I don't think they've thought too much about looking into the court system to see whether it works.

The main legislative check and balance on the courts seems to be senatorial courtesy with all of its problems, both good and bad, by the way. I'm more in favor of it probably than against it. But I would like to suggest

that it's the duty of the Legislature to take a look over there once in a while and see what's going on in our courts. You might find out there is nothing going on there. Excuse me, Mr. Natale can tell you. Could you please make a very short statement?

M A R I O N A T A L E, SR.: I want to thank you very much for the opportunity to tell the truth and I wish nobody will go through what I went through in my five years - my best five years of life. I am 71 years of age. That is outside the record.

How could it be possible?

You don't have to be an attorney to know whether it is right or wrong.

When the attorney brings the brief to give the court and the court say it is the wrong one, do the judges themselves pick the cases, which case they wish, or does somebody dispatch the cases to the proper judge and court?

Could it be possible that ten judges, say they have no jurisdiction to decide the case and that it doesn't belong to any of them? Let us say that the fault, it is the directly the fault of the 'dispatcher.' The duty of the dispatcher, he should have duty to notify the attorney that it is the wrong court and he should notify the attorney which court is the right court. Could it be possible that ten judges, they don't know whether the case belongs to them? If the dispatcher doesn't tell the attorney that it is the wrong court and he is bringing all his people to the wrong court, and for that they have taken time off of their jobs and lose their pay and inconvenience to get to the court and after that the

judge says "you don't belong to this court," it is very embarrassing for the attorney to face the client and the client complain about the court. All this; is it the fault of the judges or is it the fault of the dispatcher? Whoever it is, he should be blamed for the error. If there is no dispatcher, whoever the legal papers he is responsible for all the inconvenience.

This went through five years, hoping for justice because I know that my case I am in the right. The judges in their heart know that I am right. I know that I like all them because I do understand that they don't come in a parachute from the sky; they, the judges are men and they have been appointed by men and they have never told me I am wrong they always tell me I am in the wrong court and I run to other court and other court tell me to run to other court or back to other court. What we all need is a man or judge to be dispatcher and good dispatcher by doing so we could save a lot of money and tax money and expenses and personal headaches and time of the judges.

So that in America we have justice. I just have not been lucky enough to pick the right door.

I like to express this to you. How could it be possible that in my last five years they don't give the grace to accept my case. I'm human, just as human. He knows, every judge, that in his heart I am right.

Then I will leave it in your hands, gentlemen and maybe it will help me, but you can help the American Flag. That's what you're going to help, this Country. May God bless you people and I pray for you people that you do something if you can or that you try.

Thank you.

SENATOR DEBELL: Thank you very much for waiting and giving us the benefit of your views.

Mr. Louis Marolda, Trenton, New Jersey.

(No response).

That exhausts the list of speakers. Is there anyone here who wishes to speak before the Committee at this time?

There being none, these public hearings are hereby adjourned.

(Hearing adjourned)

SUBMITTED BY: W. William Hodes



Education Law Center, Inc.
Suite 800
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Newark, New Jersey 07102
201-624-1815

April 15, 1974

STATEMENT OF THE EDUCATION LAW CENTER
REGARDING ASSEMBLY BILL 1409,
ESTABLISHING THE DEPARTMENT OF THE PUBLIC ADVOCATE

The Education Law Center is a public interest law firm specializing in legal problems having to do with public elementary and secondary education. The Center is funded by a Ford Foundation grant, and employs four full-time lawyers in the States of New Jersey and Pennsylvania. We wish to thank Senator Bedell for the invitation to appear today, to express our general views, and to comment on some of the specific provisions in the bill.

As lawyers engaged in the representation of "consumers" in the education "industry," we welcome the proposed addition of a Public Advocate in New Jersey as a firm step forward for the entire consumer protection movement. The mere existence of such an office--with the prestige and moral force of the State behind it--will no doubt encourage citizens who have been aggrieved by government or corporate action to step forward and make themselves heard.

It is entirely fitting that New Jersey should be one of the first states to establish public advocacy as a matter of official state policy. Beginning with the landmark case of Hennigsen v. Bloomfield Motors, establishing the concept of a manufacturer's liability for the harm later caused by his products, New Jersey courts have consistently shown the way for the entire nation in insisting that individuals, with limited or no bargaining power of their own, need the assistance of government in working out problems. Indeed, the very point of those decisions is that the essential business of government is not only to provide protection for our homes and persons, and education for our children, but also to affirmatively lend a hand in solving our day-to-day problems.

The Public Advocate will come to the aid of individuals who stand powerless before the huge economic forces deployed by giant corporations. This alone will be of enormous benefit to the public at large.

In cooperation with the Citizen Complaints Division, the Public Interest Advocacy Division will also help to police agencies of the State government itself. This is an important feature of the bill, and demonstrates the willingness of the State of New Jersey to acknowledge that at times public officials make mistakes or appear too distant, and to do something about it.

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No doubt most citizen complaints will be resolved in the early stages, as the mere investigative process may shed enough light so that the public official will see his error, or the citizen will see that he has not actually been aggrieved. The rare case may have to be litigated--either in court or in an agency proceeding. But this is where really tough problems should be settled anyway, and there is nothing untoward about one State agency suing another. After all, when the Education Law Center sues a State agency, both the Deputy Attorney General defending the case and the judge hearing it are State employees. In a typical criminal case, the prosecutor, the defense counsel, the judge and the witnesses may all be public employees, yet we trust each to do his job to the best of his ability.

Under such a system, each aspect of the public interest receives full play, and the total public interest is served.

The Education Law Center hopes that its comments will be useful to members of the Legislature in discussing this bill, and that we will be called on again, if we have something to contribute.

Submitted by: Augustus Nasmith, Esq.
Associated Railroads of N. J.

Senate Committee Amendments

to

Assembly Bill No. 1409

<u>Page</u>	<u>Sec.</u>	<u>Line</u>	
6	19	8 - 12	Delete the following sentence: "The Division of Rate Counsel may initiate any such proceedings when the director determines that a discontinuance or change in a required service or a rate, toll, fare or charge for a product or service is in the public interest."
6	20	6	Delete "Director of the Division of Rate Counsel" and insert in lieu thereof "Public Advocate"
6	20	9	Insert the word "particular" before both the words "product" and "intrastate service"
6	20	19	Insert the following paragraph: "This section shall not apply to proceedings before and appeals from the Com-muter Operating Agency in the Department of Transporta-tion pursuant to P. L. 1966, c. 301 (C. 27:1A-15, et. seq.) and all amendments and supplements thereto."
6	20	19	Insert the following paragraphs: "(b) If the business, industry or utility shall desire to question the reason-ability of the amount of any item or portion thereof set forth in any such statement, then, within 20 days after its receipt of said statement, it shall file with the Public Advocate a petition setting forth its objec-tions to the payment of such item or portion thereof. As a condition for filing such petition, the business, industry or utility shall pay to the State Treasurer that part, if any, of said item or portion thereof which is not in reasonable and substantial dispute. If the Public

Advocate and the business, industry or utility cannot agree as to the part of said item or portion thereof which is not in reasonable and substantial dispute, the Public Advocate shall hold a hearing upon notice and shall make a determination with respect to the reasonableness of the amount of said item or portion thereof. If he shall find that such amount is not reasonable, then he shall fix an amount which he shall determine to be reasonable. He shall furnish a copy of his determination to the business, industry or utility and to the State Treasurer. Such determination shall be subject to review in the same manner as any final decision or action of any State administrative agency."

"(c) If the business, industry or utility shall file a petition setting forth its objections to the payment of any item or portion thereof set forth in any such statement pursuant to subsection (b) of this section, then within 30 days after a determination by the Public Advocate pursuant to said subsection, or if such determination shall be the subject of judicial review, then, within 30 days after final decision on review, the business, industry or utility shall pay to the State Treasurer either (1) the balance of the amount of such item or portion thereof as set forth in such statement if the Public Advocate, or the court on review, as the case may be, shall have found such amount to be reasonable, or (2) if the Public Advocate, or the court on review, as the case may be, shall have found such amount not to be

Page Sec. Line

reasonable, then, the difference, if any, between the amount determined by the Public Advocate, or by the court on review, as the case may be, and the undisputed part of said item or portion thereof theretofore paid by the business, industry or utility, as hereinabove provided."

6 20 20 Before "All" insert "(d)"

6 20 22 Insert after "assessment" the words ", except as hereinabove provided"

