

B L I C    H E A R I N G  
before  
SUBCOMMITTEE OF THE ASSEMBLY COUNTY GOVERNMENT COMMITTEE  
on  
REPORT OF THE COUNTY PENAL SYSTEM STUDY COMMISSION

Held:  
June 27, 1978  
Majority Conference Room  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Chuck Hardwick (Chairman)  
Assemblyman John A. Girgenti  
Assemblywoman Helen A. Szabo

ALSO:

Norman Katz, Research Assistant  
Legislative Services Agency  
Aide, Subcommittee of the Assembly County Government Committee

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ASSEMBLYMAN CHUCK HARDWICK (Chairman): Good morning. This is the second public hearing being held by the Sub Committee of the Assembly County Government Committee on the report of the County Penal System Study Commission.

First of all, I wish to confirm with Mr. Katz that he has complied with all notices of public meeting, as required by public statute. Secondly, I understand that today is the picnic for the State House employees and we certainly want to thank the hearing reporters for being here. That is part of the reason that we are going to keep the meeting as short as possible. We promised to adjourn by 1:00. So, barring any early rain-outs, they will be able to make part of the picnic.

My name is Chuck Hardwick. I am Chairman of the Sub Committee. With me today are Assemblywoman Helen Szabo, who is also Vice Chairman of the full County Government Committee, and Assemblyman John Girgenti. In attendance on my right is Mr. Norman Katz, who is the aide to the Sub Committee.

At our first meeting on May 16th of this year, the Sub Committee heard from several of the authors of the report. The purpose of that session was to help the Sub Committee to define its basic areas of interest and concern. It is apparent that the recommendations of the majority of the Commissioners are highly controversial and some would require the expenditures of substantial sums of money. Personally, I don't know if substantial funds are available now for major changes in the county jails.

Before beginning today's hearing, I would like to briefly comment on some of my own attitudes that have developed toward the problem that is confronting New Jersey's county jails.

The Sub Committee has reached no firm conclusions by any means on what specific recommendations we will be making for legislation to the full County Government Committee. We will not do so until we have heard from all concerned parties. But, there are several important points to make.

Our county penal institutions developed over a period of time when the State exerted less regulatory power over localities than it feels it should today. In certain instances, it appears that tradition plays a greater role in determining how such facilities are run than modern concepts of penal management.

Not only does the condition of jails vary dramatically from county to county, but so does the control of such facilities. It seems clear to me that if the State were to start all over to establish a system of local penal institutions, such differences would not be permitted.

Our last meeting revealed numerous disagreements. However, all witnesses believed that the imposition of state minimum standards would benefit both the citizens of this State and the officials charged with operating local penal facilities.

It also seems apparent that a person incarcerated in a county penal facility deserves equitable treatment and that such treatment should not be based on which facility he or she happens to be sent to. The courts have long held that all penal facilities must conform to certain guidelines and that prisoners have certain basic rights.

Moreover, the existence of any substandard conditions in county correctional facilities may inadvertently contribute to this State's prime problem. By suggesting that county penal facilities require upgrading, I do not mean to

imply that jails should take on the appearance of luxury resorts. County penal facilities exist to punish offenders, to protect society from criminals, and to detain individuals who are awaiting trial. Such institutions should reflect the purposes they serve.

Again, I want to emphasize that my own views and the views of the other members of this Sub Committee are by no means final and that we have not reached any conclusions or any specific recommendations for legislation. The Sub Committee has asked certain individuals to testify today. I believe our schedule will be fairly tight and we intend to conclude today's session by 1:00 P.M.

We will be holding future meetings on this topic in the future. If you would like to address the Sub Committee at one of those meetings, please be sure to contact Mr. Katz at the end of today's meeting.

Now, I would like to ask Mr. Mintz, from the New Jersey Association of Corrections, and Mr. Hill to come forward.

D A V I D M I N T Z: Thank you very much. For the record, I would like to introduce myself. I am David Mintz. I am the Citizen Action Director of the New Jersey Association on Corrections. With me here today is Attorney Henry Hill. He is the Chairman of the Association on Corrections' County Jail Committee. He is also the Chairman of the New Jersey State Bar Association, Correctional Reform Committee, and he sits on the Advisory Council of the Department of Corrections.

We are very pleased to be here today and we are also pleased that the Committee has seen fit to look into what we think is one of the most serious problems in the correctional system in the State of New Jersey - and, in fact, around the nation.

The Association on Correction has been investigating the county jails in the State of New Jersey and has been doing research and a report for the past year. We expect that our report and conclusions will be published within the next month, or month and one-half. We will make all our information available to the Committee, and our recommendations, plus any other findings that we have. However, since the Committee has preempted us, so to speak - and we think that is a good thing - what we would like to do today is to make available to the Committee some of the information that we have collected, some of the preliminary conclusions that we do have, and some of our preliminary recommendations. It is our hope that it will help with whatever you are doing and that we can work together in the future on this.

What I am going to do is, I am going to summarize a bit of what our report has in it up to this point so that you can have some guidance and some of the data that we have. After I complete that, Mr. Hill will relate to you some of the conclusions we have come to, in terms of the information that we have collected.

The first thing that I would like to make very clear is that the problem of county jails is not one that we have to feel we are jumping out on a limb on, nor one that we here in New Jersey are doing something particularly unusual by looking into this area.

The American Bar Association has been concerned with county jails for a long time, throughout this nation. They have said - and I would like to just quote a couple of other sources - that many of the nation's jails and pre-trial detention facilities remain a blight on the correctional scene, offering perhaps



the most degrading and primitive environment for the handling of offenders in the whole spectrum of correctional institutions and services.

The LEAA - the Law Enforcement Assistance Administration - has said very recently that jails are a festering sore in the criminal justice system. There are no model jails anywhere. We know. We tried to find them. Almost nowhere are there rehabilitative programs operating in conjunction with jails. It is harsh to say, but the truth is that the jail personnel are the most uneducated, untrained, and poorly paid of all personnel in the criminal justice system. Furthermore, there aren't enough of them. The result is what you would expect - only worse. Jails are without question, brutal, filthy cesspools of crime; institutions which serve to brutalize and embitter men to prevent them from returning to a useful role in society.

So, what we are looking into, basically, is not unusual for the State of New Jersey, but it has been going on for a very long time and it has raised great concern.

One of the major obstacles in terms of researching and the public's interest in the county jails is that there is a misunderstanding, or a misconception, about the jails, in that they are marginal or unimportant. But, really, more people go through the county jails than any other institution in the criminal justice system - if they are going to be incarcerated or not - and it is the first experience that people have - serious experience - with the criminal justice system, and in many respects it is the most important.

According to the National Jail Census, there were 141,000 inmates in county and city jails, approximately, on any given date. Something like 400,000 are in jail every year. In the State of New Jersey on any given date you will find close to 4,000 people in the jails.

It is the first step in handling the arrested offender. So, therefore, it is very important that we take this problem seriously. In many states, including New Jersey, the majority of the population consists of pre-trial detainees - people who are innocent and who have not been convicted of any crime. So, therefore, it is very important that we look into the county jails.

Fourth, we find that the county jails are filled not just with what we call criminals, but with people with all kinds of social problems. Drug addicts, the mentally ill, vagrants, alcoholics, and basically what Dean Irving has called the "dumping ground" of society is what we find in the county jails. And, therefore, it is of particular interest to us to look into that situation because those people who have the greatest hardships in this country end up in the county jails - and that should be, very much, of legislative importance.

Fifth, there is a disproportionate number of minority and poor people in the county jails. And, just like in the State correctional system, where we have 70 percent of the population being minority in a State with a 12 percent minority, we have the same kind of disparity in the county jails. Therefore, it is also very important to see who belongs there and why they are there.

Another thing that is of particular interest to us is that county jails are very expensive. They would be more effective if they had the kinds of programs they should have. Most recently, in New York City, Coopers and Librin did a study on the jail system and they found that it cost close to \$26 thousand a year to incarcerate an individual. You can send many people to

college at that price. I think, therefore, if we are going to spend those kinds of funds, we have to make sure they are spent for a correct and proper purpose, that they are necessary to spend, and that people who are going through that system come out better and not worse than when they went in.

One of the things that we did for our study - because we have all had experiences with atrocities in the county jails-- I was on a radio program not very long ago with Sheriff DeMarino of Middlesex County and some people who had been through the county jails. One person had gone through nine separate jails and he witnessed all of the atrocities - or many of the atrocities - that are described in the report of Dean Irving. He had experienced and seen rapes occur in the jails. He had stories of beatings. They occur on a regular basis. We, at the Association, do not question the validity of what was in the Irving report.

The other thing that we found constantly was that there was forced idleness in the jails. People are sentenced to the county jails and they do nothing day after day, week after week, and that is a problem. It does very little in terms of rehabilitation. But, in fact, it creates a great deal of bitterness, it creates problems with drugs, and all kinds of other things. Therefore, we think that is a major problem.

However, what we did in our report is to try to take the existing empirical data that the State of New Jersey already has and collate it in a way that would be useful both to us and to the Legislature. What we have basically tried to do is to use the reports of the Department of Corrections, who investigate the jails on a regular basis. They collate their information as they inspect. They are inspection reports.

The Department of the Public Advocate has also done inspections of various jails, approximately nine of them in the State of New Jersey. When the New Jersey State Correctional Master Plan was being developed, the Master Plan Council also did a thorough investigation of the county jails. So, what we have tried to do is to put those reports together in the most objective way possible to get a sense of what our jails look like in the State of New Jersey.

Now, we did that within the context that these things were going on on a regular basis - in other words, you did have inspections by the Department of Corrections. We did have the Public Advocate inspecting. We did have the New Jersey Association on Corrections testifying, working, and suing, in fact, some of the jails. We did have the American Civil Liberties doing many investigations and suits in the county jails. We took all this data - given all these factors which are plus factors in the State of New Jersey, in that we have people looking into the situation - to see what really exists in those jails.

The first thing that we should note is that over 50% - and someone at the last hearing said 90%, but we know that throughout the State it is over 50% of the people in the jails - of the people in the jails are pre-trial detainees. In 1975, the Master Plan reported that 9% were under investigation; 16% were charged and awaiting indictment; 24% were charged and indicted but were waiting trial; 3% were waiting to enter a plea; and 1% was involved in other court processes. But, basically, that adds up to 53%. So, whatever conditions exist in the jails, keep in mind that people who are not guilty are experiencing those conditions.

Now, when we took all the data and collated it - and when we present the



report, you will see exactly how it was done - we tried to find some of the key areas that we could get a handle on, in terms of the county jail. We found that out of the county jails in the State - and there are 26 county jails or workhouses in the State of New Jersey - five had inadequate room size, based on the minimal standards that the Department of Corrections or the Master Plan Council was using - and these are the most minimal standards.

We found that 25 of the 26 jails or workhouses had dormitories or multiple occupancy cells - two, three, four people in a cell. Twenty five out of the twenty six had this.

Again, I want to stress that these are not our investigations, but this is done by the Department of Corrections, the Public Advocate, and the Master Plan Council. Nine of the twenty six institutions were over-crowded. Six of our institutions had inmates sleeping on floors. Twelve of the institutions had insufficient lighting, making it difficult for inmates to even read. Three of the institutions had no lights in some of the cells. Five of the institutions had poor ventilation. Eight of the institutions, even in the heat of Newark, had no air conditioning in the summer. Ten of the institutions had poor plumbing. Five had poor electric. Three had no individual toilets. Six had bad mattresses -- and when I say bad, I mean bad mattresses. Four of them were deemed unsanitary. One had an unsanitary, condemned kitchen. Vermin was found in two of the jails. And, inadequate fire protection was found in another one.

Now, these are the physical facilities of the jails. Again, this is within the context of innocent people being there and, second, with inspections going on on a regular basis by the Department of Corrections, Master Plan Council, ACLU, and the Public Advocate. So, therefore, the inspections are not enough because even with that going on and even with constant watching - or as best we can do, especially if it is private and non-profit or with the limited funds available to the Public Advocate - these situations exist.

Then, we looked at the problems of human and legal rights in the New Jersey jails and tried to collate what existed in those areas. We found that five of the institutions out of the 26, had inadequate religious services. Nine of them had insufficient medical services. Thirteen of our county jails did not offer an admission medical examination when you walked in. Thirteen. Five of the institutions had medications dispensed by guards rather than by qualified nurses or doctors.

It was found that 23 of the 26 institutions had visiting restrictions that were unnecessary and used as a form of punishment. Twenty-two of the 26 institutions had no contact visits. We found three of the institutions had undue male restrictions - again, for no reason other than to be used as some form of pressure or punishment. There were phone limits of excessive nature in seven of the jails. Outgoing calls were monitored - actually monitored - in one of the jails. There were newspaper and magazine restrictions in five of our jails. There is inadequate book provisions - reading material - in seven of our jails.

What was of particular importance to the Public Advocate and also to the Association on Corrections was that there was no legal library in 11 of our institutions. Ten of our institutions had no disciplinary hearings held by a committee if there were problems for the inmates in the jails.

Eight of our jails did not have rules printed in a way so that the inmates would know what the regulations were in the institution in which they were incarcerated. Six of our jails were using unconstitutional isolation cells. Five of our jails had no inmate grievance procedure. And, 11 of our institutions had no provisions for exercise. Seven of our institutions had no exercise provisions indoors or outdoors. And, in one of institutions we found out that the inmates were separated according to race in the State of New Jersey.

Now, the third area that we collated in terms of the information that we had - to give this Legislative Committee and the people of New Jersey an empirical sense of what is going on in our institutions - was the problem with rehabilitation knowledge, or what we call staffing, in the New Jersey institutions. Five of our institutions had no counseling, social service, or rehabilitation whatsoever. Nine of our institutions had no academic or vocational education. Two had no work release. Twelve of our institutions did not even have mass feeding. They served inmates in their cells - lunches, breakfasts, and dinners. Fifteen of our 26 institutions had inadequate separation between the innocent and the guilty.

ASSEMBLYMAN HARDWICK: What was that -- 15?

MR. MINTZ: Fifteen. Five of our institutions had inadequate emergency plans.

We looked at the staff of the institutions. And, when I say we looked, again we collated the data of the reports that were going on on a regular basis. Six institutions had inadequate staff training. One institution had no weapons training, even though people carried weapons. Six of our institutions had no first aid training for the guards. Five had very low salaries for the guards. Three had an incredibly high staff turnover which created problems. Two of our institutions had no Spanish speaking guards whatsoever. No one was there who could speak Spanish in that institution. Two of our institutions had an all white staff. And, four of our institutions had excessive force complaints.

Now, what we have done in our report - and we will make this available to the Committee, understanding that there is a time constraint on us - is to give the reasons why each one of these areas, even though there is a great divergency in the different institutions, is so important if we are going to establish a workable jail system in the State of New Jersey. Why is exercise so important? It is almost obvious to us sitting out here why exercise is so important. If you are incarcerated in a cell, it becomes even ~~much~~ more important. That is described here, using standards that are established and research that was done throughout the country. That will be available to the Committee. So, that will be clearly understood.

After we put together that data, the Association on Correction and the Woodrow Wilson School - but, particularly, I am speaking of the Association - became even more strongly convinced that those who need not be incarcerated in the county jail should not be there because what is going on is not an improvement, or going to lead to greater success in the community. So, again, we feel very strongly that diversion from the criminal justice system and the county jail system, whenever it is possible for non-dangerous offenders, should exist. This includes not only pre-trial intervention, but restitution programs, community service programs, alcohol and drug programs, and proper facilities for the mentally ill. Up until this day, people who are not dangerous and who have serious social and mental problems have been placed in the county jails and these

conditions as alternatives to what, in fact, they really need.

Before we did this research, we basically had a feeling and that was that the institutions - the county institutions - should not be run by the sheriffs in the State of New Jersey. Most of them are. We felt that jails had to be professionalized. They needed to be run by people who had a commitment to corrections first, and not necessarily law enforcement. They had to be educated in that field and they had to be there on a regular basis in order to maintain a decent institution.

We believe that a sheriff's duties are too all inclusive and too many in order to successfully run a jail. They provide court attendance. They serve writs and papers. They transport the prisoners. They collect taxes. In many places, their primary function is law enforcement. And, it is very difficult to be a law enforcement officer at the same time you serve as a corrections officer. Law enforcement and corrections are two different things.

We believed and found that custodial convenience is the single overriding principle in those institutions which are run by sheriffs. We found - and the literature throughout this country has shown this - that sheriffs, because of their other responsibilities and the nature of their position, are for the most part ignorant of correctional alternatives to incarceration and to the things that can occur in an institution of correction.

One interesting anecdote we saw was, one sheriff said that he was opposed to work and study release because it contradicts the nature of a sentence. Those kinds of things we hear many times. Sheriff DeMarino also felt that, given the duties of the sheriff, they should not also be running the jails.

There was a national study done, primarily in the Southern States, that showed that sheriffs spend between five and seventeen percent of their working day, over the year, running the jail. That means over eighty percent of their time is spent doing other activities. That is a serious problem when you are running an institution that can hold hundreds of inmates.

Politically speaking, sheriffs are in an impossible situation. "Law enforcement, get tough, lock them up, and throw away the key" is much more politically popular than serious correctional approaches. Therefore, we find it difficult and see a contradiction between sheriffs who run for political office many times on a strong law enforcement and get tough policy. They cannot have the value-free kinds of judgments needed to run a correctional institution.

Many times sheriffs are involved from five to seven months in elections and it is very difficult, when conducting a campaign, for the people who been running the campaign and the campaign manager to do anything else but to involve themselves in that campaign. Running for office takes time, but so does running a correctional institution.

We find that jail management, for the most part, when it is in the hands of sheriffs, is in the hands of politicians of one sort or the other, and the converse of that is when you have politicians running the jails. This brings politics into the jails also. And, throughout the State of New Jersey there is a history of testimony that speaks to the patronage system that goes on in the jails. I know in Middlesex County when the posters go up during the election, many of the people who put those posters up are the correctional officers who work in the jail. I also know that we have had testimony taken in Essex County indicating that promotions and patronage occurred on a regular basis, even though the



Civil Service system did exist. It lowers morale when that patronage goes on. It prevents, in fact, the development of professionalism on a regular basis. And, of course, one can mention that when you have people who run for office running the jails, you have a constant turnover, and that causes problems of the obvious kind.

So, those were our assumptions and, I guess you would say, conclusions after 15 years of being in the correctional field. Many times when we have raised issues to sheriffs as an Association, we found that our requests, or the issues we pointed to, were used against us to help them win an election somewhere in the State by taking the attitude: "I don't agree with the Association on Correction. They are wearing their heart on their sleeve and I am going to show them that I am real tough." They use that in the papers. We found that our statements were used against us for political reasons. We understand it, but it shouldn't go on.

What we basically did is, we took that data we had and we tried to see if the jails that were run by Freeholders in the State of New Jersey were, in fact, run better than the jails that were controlled by the sheriffs. We tried to do it in the fairest way possible, by taking those things that could be changed if there was a different administration. We do not necessarily mean building because anyone may have to rebuild. We tried to present it in the report in the most objective way possible.

We found, when comparing the jails in New Jersey and their problems, the Freeholders ran the jails better than the sheriffs run the jails. Primarily we find that part of it is because when Freeholders took over some of the jails, there was a need to reform immediately, but part of it is that Freeholders also tend to hire a warden - or a jail administrator, or professional - to handle that as a direct responsibility, rather than it being directly in the hands of somebody who is running for political office. And, the further you got away from the political situation, the better the jails were run. We found, generally, with all of the problems, that the Freeholders ran the jails a little better than the sheriffs did.

In terms of the numbers of problems, the sheriffs ran the jails considerably worse than the Freeholders. All that data will be available to the Committee and we can show you exactly how we reached that conclusion. I think you will also reach the same conclusion.

Now, in all fairness to the sheriffs and to the Committee, there was another variable that we found, other than the Freeholder-sheriff one, and this was that whether a jail was run by a Freeholder Board or by the sheriff, the smaller the jail - especially if they were very small - the greater likelihood there was of major core problems. That is, if the jails were too small to justify significant expenditures, or only housed by the 10 or 15 inmates, those jails offered none of the programs we think are important in the jails, and they basically met very few of the minimal standards.

One of the issues that is obviously raised by that kind of result is the question of regionalization of the jails, in those areas where the jails are small, by combining those jails with other counties to create some sort of workable, sustaining program, which does not seem to exist today in small institutions.

So, I think that the essence of what we are saying today - and I will

now pass the microphone to Mr. Hill - is that in spite of the observance of the jails of the State over the past years by the Department of Corrections, the Public Advocate, and various private, non-profit organizations, and the Master Plan Council, the problems are significant. They vary. They diverge. There have been minimal standards that people have been looking at which have not been enforced, in spite of the inspections. The standards that are there as guidelines, basically, have not been enforced. They could not be enforced. Voluntarily they would not meet them. We feel that is a serious problem and it has to be overcome immediately.

Secondly, we found that the sheriffs are not as successful at running the jails as the Freeholders are, however, the significance is not great enough to say turn the jails over to the Freeholders and have them hire a professional and that would be enough. Because even in the Freeholder-run jails, there are serious problems, inequities, and failure to meet the minimum standards. So, that is basically what our research has shown. It will be presented to the Committee.

I would now like to pass the microphone over to Henry.

ASSEMBLYMAN HARDWICK: We will then come back to the questioning.

MR. MINTZ: Sure.

H E N R Y H I L L: The immediate conclusion from the study is that the existing system is not working, probably because it is administered by the wrong people and because our county government may not be channeling the resources that are needed into this area. The solution, which all of the literature and all the serious studies recommends - and I am talking about the National Advisory Commission on Criminal Justice and the President's Commission on Law Enforcement and the Administration of Justice, and just a number of people who have published in the field - is a state take-over of the county jails in every state, not just New Jersey.

One of the writers observed that a common approach to social problems has been to abdicate responsibility to ever higher levels of government. But, the state take-over of the county jails is an option that we are considering. I am talking about our recommendations, but the New Jersey Association on Corrections is democratic in the sense that we will make recommendations to them and they will vote - the board will vote - on it. One of the things we will be looking at hard is the state take-over solution. The state take-over solution has one great advantage and that is that it is a total systems planning approach. As the President's Commission on Law Enforcement and the Administration of Justice said: The most compelling reason for making this change is the opportunity it offers to integrate the jail with a total corrections network to upgrade the jail and to use them in close coordination with both institutional and community-based correctional services.

The New Jersey Correctional Master Plan recommends that New Jersey go into a community-based correctional system. The only opportunity we have - the only correctional facilities now existing in the community - is the county jails. As you may know, the state is thinking of building another prison and is having a very difficult time finding a community willing to take that prison. It may be that a state take-over would offer the opportunity to integrate and to adopt a total systems approach in New Jersey.

It is also thought that a state takeover would upgrade the professionalism of the correctional staff, since people hired into the correctional system would have an opportunity to be hired in other places. They would participate in a state training program and they would have much greater career opportunities than they might presently enjoy as a guard in the Cape May County Jail, for instance. It would immediately offer the advantage of uniform standards. The state could allocate its resources where they were needed the most and enforce uniform standards. And, possibly it would offer a long-term economic advantage to the taxpayers. We don't have any statistics because the Correctional Master Plan attempted to get statistics as to what it was costing to keep people in the county jails in New Jersey but they found it was an impossible task, although they were asked to go back and try and do it again. The problem is that the counties don't allocate their expenses. It wasn't possible to determine how much electricity was being used by the jail, as opposed to other things. But, if the New York statistics are correct, the state is housing prisoners a great deal cheaper than the county jails. That is a question we can't give you the answer to because none of the data will enable one to determine what it is costing to house county inmates.

It is obvious that through economies of scale, purchasing could be done by the State for all county jails, probably more cheaply than is presently being done on a county-by-county basis.

The great disadvantage to state takeover would be that it would require a substantial reallocation of state funds. According to the correctional master plan, in 1975 all of New Jersey's counties spent well over \$30 million in the administration of county jails. I guess that number would be much larger today and if any state takeover were to be considered, it would have to be funded, although the taxpayers are now supporting the county jails through their county form of government.

The second disadvantage is that many of the apparent advantages of a state takeover could be realized by the adoption of the recommendation that Dean Irving has made, enforceable state standards and a subsidy program to get the counties to comply with those standards. Such a recommendation would be less threatening to the counties, less threatening to a political system that has grown up over the years, and would require less reallocation of state funding.

We don't know how we are going to act, but probably in the interest of realism we are going to recommend to the New Jersey Association on Corrections that they seek enforceable state jail standards, continued inspection by the Department of Corrections under enforceable standards, and a state subsidy program to encourage counties to make needed jail improvements.

I think that you should be aware - if you are not already - that all the state jails are currently inspected under NJSA 30:1-15, as amended. The original power was to the State Board of Control and through a series of legislation, it has been transferred to the Commissioner of Corrections. Under the existing system, or program, the state tries to inspect every prison and makes recommendations to the individual county, or to the individual Freeholders, suggesting reforms. And, some of those reforms are voluntarily undertaken by the counties, but in many cases the same problem appears over and over and over again.

One problem is, one of the counties has been blatantly segregating



their prisoners by race, which is clearly illegal and fully unconstitutional. I learned about this from Mr. Mintz and as a member of the Advisory Council on Corrections, I had the Commissioner verify that. It was verified. But, the Commissioner of Corrections is in a difficult position right now with relation to enforcing state standards. Although he has the authority, under the statutes, to bring suit against a county, because New Jersey's state prison system is presently overcrowded, the Commissioner has been negotiating with some of the counties to ask them to hold state prisoners at state expense. Apparently that is going to be New Jersey's short-term solution to overcrowding in the prisons. It is very hard for the Commissioner to negotiate with counties and at the same time enforce state standards on the counties.

I think that legislation should be adopted giving the Commissioner an affirmative duty to enforce state standards. I think also that there are informal guidelines - and I see that you have them in front of you - which were the basis of the Commissioner's report. They are informal in the sense that they are used by the inspectors to check against when they check the county jails, but they haven't been adopted in any sense. They haven't been adopted under the Administrative Procedures Act, for instance. I think that enforceable standards should be adopted in a due process manner, perhaps under the Administrative Procedures Act, giving the counties a chance to come in and argue against the standards at a hearing like this before they become law. The Commissioner should then have an obligation to enforce them on the county level.

Some of the problems are financial problems. Some of the county jails are horrendous. The literature indicates this. It is very difficult, or impossible, to meet state standards under the present physical conditions.

We note that some states, Maryland for instance, have enforceable standards and the state has taken a half-way approach. They give a 50% subsidy to counties by assisting them in complying with state standards. Minnesota and New York have enforceable state standards and they literally close down the county jails. They can order them closed or order that no more prisoners be taken if they don't meet state standards.

The advantages of such a system - and the literature recommends this as a stop-gap measure-- The National Advisory Commission on Criminal Justice Standards and Goals recommends that pending implementation of Standard 92, which is their recommendation that the state take over all county jails, the State Legislature should immediately authorize the formulation of state standards for correctional facilities and operational procedures and state inspections, to insure compliance. Their recommendations are set out in full in these LEAA publications and these recommendations really are made for state legislatures.

The advantages of the standards - the enforceable standards - approach with a subsidy is that it is relatively inexpensive - although the Department of Corrections would presumably need a larger staff - it would give counties the chance to upgrade their jails; and it is an interim step to state take-over. It is more moderate than state take-over, but the Legislature could then decide, if this didn't work, whether a state take-over was warranted at some later date.

If the standards go into staff training and if the Department of Corrections enforces staff training, it would tend to upgrade professionalism in the county jails, which is the single worst flaw revealed by our studies.

There are some other things which should be done. As the data indicates, the worst jails, by and large, are the small, rural jails and we think that something should be done to encourage regionalization, particularly of the smaller, more rural, county jails so that fairly expensive things, like libraries and disciplinary programs, can be initiated. It is very hard to initiate them.

Another stop-gap measure would be to require and encourage county Freeholders to take over the management of all jails from the sheriffs. We think that the county sheriffs - although some of them run excellent facilities - from a political science point of view, are not the persons suited to run a professional correctional facility. The committee should focus on this problem. Thank you.

ASSEMBLYMAN HARDWICK: Thank you, Mr. Hill. First of all, I think they say on Meet the Press - or someplace - the questions don't necessarily reflect the views of the people asking them, so I am speaking for the whole Sub Committee when I say that if we tend, by the questions we ask, to give the impression that we are either agreeing or disagreeing, that is not our intention. Our intention is to solicit answers to questions in order to better understand what a witness is saying. So, in that light, first of all I want to thank both of you for coming and sharing your preliminary results with us. I do look forward to seeing your entire report and having a chance to go through it in a more thorough way.

Mr. Mintz, I am concerned because you said that there are no model jails. You seem to mean that literally - that there are no model jails. Are you saying that no one has spent the resources to create a model jail, or we are not sure what a model jail should be? And, what are we comparing our jails with?

MR. MINTZ: There are a number of organizations, like the American Correctional Association and the American Bar Association that have set the kinds of minimal standards that are necessary, in their opinion, to run, "a model jail." There have been a number of reports on the kinds of diversion and rehabilitation programs that are also necessary in order to run a "model jail."

What I quoted was Richard Veld, who is the Associate Administrator of the LEAA - the Law Enforcement Assistance Administration - and he basically said they did a major report across this land to find a jail they can use as a model and they were unable to do so. None of the jails that they looked into had the level of priority within the criminal justice system to be called a model. What we basically found was, there has yet been no priority given to enforce - fully enforce - the kinds of minimum standards that are necessary. I think that in many respects New Jersey could be in the vanguard of doing that if it wishes to.

ASSEMBLYMAN HARDWICK: The reason that was an important question to me is, going on to something else you said, you gave us a rather extensive list of physical problems existing in the jails. I would venture to say that if I went to Trenton State Hospital this afternoon, or I took a tour in this building, I could give you an extensive list of physical problems with state owned facilities. So, this is not unusual for government-owned buildings.

Why then is this a major part of your findings and one that is of paramount importance? You said that we really should focus on the physical problem. That is true everywhere. You ought to see where Legislative Services

works.

MR. MINTZ: It was broken down into three groups. One was the facility related problem. The other was the problem with human and legal rights. The third area was the problem of penology - that is rehabilitation, social services, and staffing.

Now, clearly, the first one - the facility related problems - are the most difficult and the most expensive to correct, if you are talking about an increase in cell size, etc., etc. However, there are things that are not so difficult, like the plumbing; like inmates sleeping on floors; like mattresses; like the toilets; like the unsanitary conditions. Those are things that can be effected and changed if, in fact, there was a priority to do so, if there were standards that were enforceable to do so.

I think that it is the combination of all three areas, not just the physical ones -- I mean if you walked into this building, I don't think the sanitary conditions are so bad.

ASSEMBLYMAN HARDWICK: I understand that. But, going back to the physical points, how do you suggest that priorities be set for tax dollars to improve air conditioning for prisoners versus air conditioning for patients in a mental hospital or air conditioning for any one else? It sounds extremely difficult to know where you draw the line in what institutions and say, this is the standard; this meets the standard and this doesn't. How do you suggest that even be approached?

MR. MINTZ: Okay. What I would suggest - and this is, again, my suggestion at this time - is that a committee - an advisory committee - made up of legislators, professionals in the field, and various others - like they did with the master plan - put together a series of minimal standards. I agree the hearing should exist. It should have input from people on the county level who are running the jails today. And, we should take those minimal standards that exist in publications that were already done, for example, by the LEAA, by the Correctional Association, and by the ABA, and have the input so that we have the local conditions and what is possible and feasible within a certain framework, and set those minimal conditions. It is the same argument I hear all the time. People say, "Well, why should people who have committed crimes come before people who are mentally retarded, or before hospitals, etc., etc." All I can say is that there are certain basic constitutional rights -- there are certain basic rights that every human being has, whether you have committed a crime or not.

Again, I want to point out that over 50% of our county jails are filled with pre-trial detainees. So, those are people who are innocent.

The second thing we always point out is, 99% of the people who are in our correctional institutions - and even more particularly in terms of the county jails - return to the community.

ASSEMBLYMAN HARDWICK: I am not trying to cut you off, please understand that, but get back on the question or we really won't get through on it. The basic thrust of this Committee is to, at some point, deal with standards in one way or another. Now, the Dean Irving Report said that the state should develop rigid standards. I questioned what rigid standards meant last time. Are you saying that there should be so much candle power of light in a cell; that there



should be air conditioning, etc.? How do you realistically develop rigid standards in fairness to the inmates and in fairness to the taxpayers on a statewide basis? How do you do that?

MR. MINTZ: What I am suggesting is that there are certain basic standards that have been adopted by people who have been studying this for many, many years. Some of them will be applicable in the State of New Jersey. Some of them, given the particularities and specificities of the state, won't be. You need a committee to put those together and see what is feasible and what is not. We have no standards today. It may be true that those standards will shift over time as we get more resources and as we learn more things. But, the beginnings of basic standards, I think, are there.

Even the Department, when they do a report saying that there is insufficient housing or inmates sleep on the floor, implies that those are assumed and implicit standards. They are just not enforced at this point. I think that the minimal standards can be set without too much trouble.

ASSEMBLYMAN HARDWICK: Before I pass this on to my other committee members, I would like to go to the human rights section where you talked about standards. Do you think there is room for honest disagreement about human rights standards relating to telephone privileges or access to mail, or whatever? Do you think that is an area where good, honest people would just have a different viewpoint -- one being, maybe, an inmate advocacy viewpoint and another being one where they see problems with security in a jail or they see problems with inmates abusing a system for their own schemes?

MR. MINTZ: Yes. I think there are two areas. One is the area of constitutional rights. I think that, in many cases, is litigated and the rights of prisoners is the major issue of concern -- whether they have rights or don't have rights. I think the courts have decided in many of those areas.

However, in those grey areas, where it is a question of security versus the interest of the prisoners, or even the needs or wishes of the prisoners, I think, yes, there is obviously room for disagreement, and there will be disagreement. What we are arguing for is something very minimal -- just to even sit down with those people who disagree -- honestly disagree -- and work out the kinds of compromises that everyone would accept as minimal standards.

What we are basically arguing for is that there are things that go on in the jails that nobody could defend. Let's deal with those first and then worry about the ones in which there is legitimate controversy. Then, those have to be weighed, just like in every other area of government.

ASSEMBLYMAN HARDWICK: Let me ask my colleagues if they have any questions. Mrs. Szabo, do you have any questions?

ASSEMBLYWOMAN SZABO: Mr. Mintz, in your report you stated that in five of the county jails in the state the guards issued medication to the prisoners. What type of medication are you referring to?

MR. MINTZ: It is medication dispensed by guards. I imagine it would be, for one thing, tranquilizers.

MR. HILL: The data came out of state reports and the state was objecting. They don't always go into what the drugs they were objecting to are. The State inspection reports criticized the county for having the guards administer medication directly. This is a problem which exists in the state prisons also.

The Governor's brother is on the Advisory Council on corrections and he inspects the prisons. He has become very concerned about the way medicines are

administered and what precautions are taken. Obviously, some of the medications are addictive and can be used for other reasons. But, we don't know unless the report states what the particular drug may be.

ASSEMBLYWOMAN SZABO: I was under the impression that prisoners were examined by a doctor and then the medication is issued by the pharmacist. I don't know what institution you are speaking of, out of the five in the State of New Jersey. This is one of my concerns. One of the problems in the county jails throughout the State is the flow of drugs.

MR. MINTZ: Right.

ASSEMBLYWOMAN SZABO: I am quite concerned with that. In your statement you said that guards issue medication. That is why I asked what type of medication is involved and by whose order does the guard distribute these medications?

MR. MINTZ: I can give you the list of the five jails that were cited in the report, which shows where this occurs.

ASSEMBLYWOMAN SZABO: I would certainly appreciate it.

MR. MINTZ: Would you like to know?

ASSEMBLYWOMAN SZABO: Yes, I would.

MR. MINTZ: One is the Bergen County Jail annex. The others are the Burlington County Jail; the Cape May County Correctional Center; the Cumberland County Jail; and the Essex County Jail. Again, let me repeat to the Committee that these are reports of the State - either the Correctional Master Plan, the Public Advocate, or the Department of Corrections yearly inspection. That is basically the service we performed - putting them together so that we could get a full sense of it.

Now, those reports are more detailed and you have public access to them. You can find out exactly what drugs, possibly, and even the date on which those things were occurring.

ASSEMBLYWOMAN SZABO: Will we be getting that report?

MR. MINTZ: Yes.

ASSEMBLYMAN HARDWICK: I just want to insert one thing into the record at this point. I know we have some county officials here and I am sure you will hear something said somewhere along the line that you may not agree with 100%. Let me assure you that your turn will come. Take whatever kind of notes for comment that you may need, but to keep an orderly meeting, I really can't recognize people from the floor so that they may make comment at this point. But, please remember what it is you want to say and if it is not today, your turn will come. Okay? So, please be assured and don't be restless on that point.

MEMBER OF AUDIENCE: I would like to ask you a question so that you, in turn, can ask it of them.

ASSEMBLYMAN HARDWICK: Well, I would prefer not to have interruptions coming from the audience. I would be happy to see you during the recess and I would be happy to talk to you between meetings. But, your turn will come and we will be happy to recognize you at that time.

Mrs. Szabo, do you have any further questions?

ASSEMBLYWOMAN SZABO: No.

ASSEMBLYMAN HARDWICK: Mr. Girgenti?

ASSEMBLYMAN GIRGENTI: Mr. Mintz, just for my own information, your report was done over what period of time?

MR. MINTZ: We have been working on this report since last August. It will be a year in August.

ASSEMBLYMAN GIRGENTI: And the data you compiled is all from reports from the State, or have you done any personal visits yourself to the different institutions or county jails?

MR. MINTZ: The data we used in the report is all compiled from State inspection reports of one sort or the other. As I said, there were three reports: The Public Advocate; the Correctional Master Plan Council; and the Department of Corrections regular inspections.

ASSEMBLYMAN GIRGENTI: Okay. One of the statements you made - or one of the recommendations your group is making - is that in weighing it, the Freeholder county-controlled jails are, you would say, in better shape at the present time. I was under the impression that there was only one jail that was controlled by the Board of Freeholders and that was Essex. What other counties have this?

MR. MINTZ: I have the list for you. This is according to the report, but this is probably outdated now.

The New Jersey sheriffs run 18 of the State's 26 jails in 17 of the 21 counties. They are elected by ballot every three years.

ASSEMBLYMAN GIRGENTI: Right.

MR. MINTZ: The New Jersey County Board of Freeholders is responsible for 8 jails in 5 of New Jersey's counties. In Middlesex County the sheriff runs the jail and the Freeholders administer the workhouse.

ASSEMBLYMAN GIRGENTI: All right. Could you tell me -- you said there was one violation in a county that is using segregation. Which county is that?

MR. MINTZ: It is Monmouth, I believe. Yes, it is Monmouth County.

ASSEMBLYMAN GIRGENTI: Monmouth County?

MR. MINTZ: Yes.

ASSEMBLYMAN GIRGENTI: One of your points throughout the discussion - and Mr. Hill especially mentioned this - is that one of the recommendations is, the State should take over control and that a lot of states have said that lately?

MR. MINTZ: Well, everyone who has studied the problem of the nation's county jails, not just New Jersey's, has recommended this. It is a universally-recommended panacea, but as I stated, very often when one level of government is failing at a task, the knee-jerk response is to refer them to the next level of government. But, the National Advisory Commission on Criminal Justice; the President's Commission on Law Enforcement and Administration of Justice; and the National Council on Crime and Delinquency have all recommended state takeover, on a national basis, of county jails. Many other states have the problems we do and many of the studies have traced it to the nature of the position of the sheriff.

ASSEMBLYMAN GIRGENTI: Well, just as a point toward that, from what information I have the State has not been doing that tremendous a job themselves with their institutions, as everyone is aware.

MR. MINTZ: What we basically see is stages. We feel that the first and most important priority is the enforceable standards, worked out jointly with legislators, professionals, and the counties - with compromise when necessary.



The second step is to get those standards met. Now, that could include court suit on the part of the State, or it could be through some subsidy program which can induce counties - who are sometimes constrained, fundwise - to buy into the kinds of programs that are necessary, or the kinds of standards that are necessary - it has been done in other states - that would be a second step.

If, in fact, those two things together are impossible - they don't work even though we are hoping they would, and we suppose that they would at least improve the situation - then the final bottom line is state takeover. And, yes, there are problems in the State institutions. We have been speaking to that for a long time. However, at least it has become more centralized and you can begin to deal with them and you know who is responsible for those problems. Now, it is dispersed throughout the 21 counties and we are hoping that the standards and the subsidy programs could alleviate some of those problems before a state takeover is discussed.

ASSEMBLYMAN GIRGENTI: All right. Now, another point is - and I am jumping around because I jotted down certain points that I felt were important - when you gave the list of various human rights that were eliminated, let's say, or had problems connected with them - as Assemblyman Hardwick referred to - one instance that comes to my mind is the telephone privileges. I know, from personal experience with our county jail in my county, that telephones were being used for bookmaking. This was picked up. That is stretching it a little bit too far in terms of what a jail should be doing.

I go along with the fact that there is certainly need for improvement. For instance, if people have been sleeping on floors, that is certainly wrong. I don't agree with inhumane treatment, but I also don't want to advocate a system where we are going to get so lenient that people are going to be booking numbers from jails.

MR. MINTZ: No. We agree with you. I think the question is to create some criteria so that we know what is a reasonable use of the phone and what is excessive use.

ASSEMBLYMAN GIRGENTI: Well, how do you regulate that?

MR. MINTZ: Well, I think, for example, that the use of the phone cannot be denied as a form of punishment. I think that you have to set those standards and if there is a complaint on excessive use of the phone - or of not being allowed to use the phone - you have the same remedies you always had. There is a law. There are standards. And, if there is a complaint, you can litigate it. But, there is a basis for dealing with a grievance.

Now, part of the problem is, if you have the other recommendations which call for inmate grievance procedures and if you have a grievance committee and you have procedures outlined, again they are all interrelated and there would be less likelihood, if you have the grievance procedure working, that certain abuses would take place.

We are not calling for utopia. We don't think it can occur. Basically, we are asking for improvement. In 1850 the New Jersey Penal Reform Association-- I think it was called that, I can give you that report with this report.

ASSEMBLYMAN GIRGENTI: Dean Irving mentioned that.

MR. MINTZ: Yes. This report recommended many of the things that we are recommending now. We are not asking for a lot.

ASSEMBLYMAN GIRGENTI: Okay. Another point in conjunction with that - and I won't belabor this point - is contact visits. I understand there is a problem in that area too with the passing on of drugs, and so forth, into jails. It is a very hard area to regulate. I see it as a definite problem. Where do you get to the point that something is a right and something is a privilege? Also, what is a person doing in jail in the first place? I agree with you that he may be in the pre-trial period, or that he may be someone that is innocent, or a person that hasn't been proven guilty yet. But, if he has been convicted, what is a person in jail for? If we make it easy by giving all the little nicities, such as air conditioning and so forth, what would happen, I think, is we are going to give an incentive almost to the person who is living out in the street and who isn't getting along well to go into a facility like this. That is not what we want.

MR. HILL: Fifty percent of the people - or 53% - are in jail because they can't afford bail. They could be out on bail if they could afford it. Maybe they should be separated. One of the standards should be that they should be separated and maybe they should enjoy more rights than the rest. As it happens they have less rights than people who have been convicted because of the way the jails are run.

ASSEMBLYMAN GIRGENTI: Well, I have to say I agree with you on that point.

MR. MINTZ: Let me add one thing that deals directly with what you are saying. Our position is that you are essentially jailed not for punishment, but as punishment if you are sentenced. That is, what is being taken away is your freedom, either for the protection of the community or whatever. There should be nothing taking place for punishment in the county jails. The punishment is taking away one's freedom.

If you accept the notion that someone goes to jail for punishment, then any area of life within the institution can be used as punishment, with great disparities at the whims of those who run the jails. And, that is not what they are there for. You are put there as a punishment and that means that your freedom is taken away because you are a menace to society at that particular point. If you move into the other concept, you open up all kinds of problems. We feel very strongly about that.

ASSEMBLYMAN GIRGENTI: I won't belabor the point because I know there are other people that want to discuss this. There are just a couple of more questions that I have. Are there definite rules and regulations for such things as sanitary conditions in the jails at the present time? Is that what the Department of Corrections inspects? Are there any rules and regulations?

MR. HILL: There are guidelines and they are inspected against. If the toilets are malfunctioning, it is written down in the inspection report. But, they are not enforceable, although the statute says the Board of Control and now the Commissioner of Corrections could go to the county court judge and if he agrees that the standard is a reasonable one, he could enforce it. But, they are not doing that because it has never been done before and the Department of Corrections doesn't have a tradition or a directive from the Legislature to go around suing the counties. They have their own problems when they do their inspections and give advice. But, if the advice is not followed, they go on to their next chore.

ASSEMBLYMAN GIRGENTI: Thank you. I will hold off on any further questioning right now.

ASSEMBLYMAN HARDWICK: Mr. Katz has a question.

MR. KATZ: I have just one brief question. You were talking about, in lieu of state takeover, the adoption of minimum state standards in connection with subsidies. When you were talking about subsidies, did you mean that the State would just give a certain amount of money to counties for these jails, or were you talking about the adoption of certain programs and certain standards?

MR. HILL: Other states have done this - they have done a subsidy program. It can be done in three ways that I can think of. One would be matching funds. If the county spends x number of dollars to remedy a condition which is discretionary-- I think the county should not be allowed to segregate by race, for instance. They should be sued immediately if that happens. But, if it is a discretionary matter which costs money - such as air conditioning - if the county spends the money, maybe the state should give - as Maryland does - 50% or 25%, or what New Jersey can afford, to help the counties meet state standards. That is one way of persuading the counties to go along.

The other way would be to just order the jails closed. I live in Somerset and Somerset, for instance, wants a new court house and they are under pressure from the Bar Association and from the assignment judge to get a new court house. They also need a new county jail. The court house is winning although people don't live in the court house 24 hours a day, as people live in the county jails. Maybe those priorities should be set by the State Legislature. But it happens. The counties always need to do something and almost always the jail comes in last because people don't feel that that is the most important place in which to spend the county money.

ASSEMBLYMAN HARDWICK: Mr. Hill, perhaps your report will answer this, but I was interested when you said that you understand the Department of Corrections has entered into agreements with various states--

MR. HILL: Counties.

ASSEMBLYMAN HARDWICK: (continuing) --I mean various counties to hold prisoners at the county level. Are these prisoners who have been sentenced now for apparently over a year's term and they are keeping them at the county jail?

MR. HILL: Yes. Essex County sued the Department of Corrections because there were numerous state prisoners that should have gone into the state prisons but the state prisons were overcrowded and they just refused to take them. As I understand it, the State of New Jersey - I know; I am on the Advisory Council and I have seen the contract - appealed and it went to the Appellate Division and they lost. It went to the Supreme Court and they lost but there was a stay. Under the statutes the state is obligated to take prisoners that are sentenced. They just didn't have room and they finally entered into an agreement with the Board of Freeholders and they pay them \$27 a day on a per diem basis to hold 100 state prisoners. They have also entered into a similar agreement with Bergen, as I understand it. That is how the overflow of state prisoners is now being handled. They may be negotiating with other counties.

The problem is that they are trying to get the counties to hold prisoners and you can't push a county and persuade it to hold your prisoners at the same time. It makes for problems in the enforcement role of the Commissioner of Corrections.

ASSEMBLYMAN HARDWICK: Mrs. Szabo, or Mr. Girgenti, do you have any further questions?

ASSEMBLYMAN GIRGENTI: Just one quick question. What is the waiting time now for trial, roughly, for a lot of these people who are being detained? What is the period of time that they have to wait?

MR. HILL: There were statistics in the Correctional Master Plan and I think they are in that report. I don't remember what the average was.

MR. MINTZ: A lot of it has to do not with how long someone is in there before trial - I don't think you are asking that - you are asking how long someone is there without choice.

ASSEMBLYMAN GIRGENTI: Right.

MR. MINTZ: I don't know. I know the court backlog is about 170 thousand cases.

ASSEMBLYMAN GIRGENTI: One other point -- is there a prisoner's bill of rights anywhere in the State?

MR. MINTZ: Adopted?

ASSEMBLYMAN GIRGENTI: Yes.

MR. MINTZ: No.

ASSEMBLYMAN GIRGENTI: In certain counties?

MR. MINTZ: Not as far as I know.

MR. HILL: Although the State standards contain a bill of rights. Every state prisoner receives a booklet which says, "These are your rights and these are your obligations as a prisoner."

ASSEMBLYMAN HARDWICK: We thank you very much for coming today and giving testimony. We look forward to getting your completed report. I would now like to take about a 10 minute recess. We will reconvene with the Inmates Advocacy Officer from the Department of the Public Advocate.

(Recess)

#### AFTER RECESS

ASSEMBLYMAN HARDWICK: Our next witness is also Mr. Mintz. He is not to be confused with the first witness. Mr. Mintz, will you identify yourself and who you represent.

J E F F R Y M I N T Z: Yes. My name is Jeffry Mintz. I am the Acting Director of the Office of Inmate Advocacy, a division of the Department of the Public Advocate of the State of New Jersey. And, just informally, I am no relation to David Mintz, although lately we have been getting confused because we are working on the same side of the fence, so to speak.

I have a prepared statement from Commissioner Van Ness. I would point out - since I am sure all of you know - that Commissioner Van Ness is presently confined in a hospital, recovering from a heart attack. I prepared and reviewed this statement with Commissioner Van Ness before his illness and it does represent his views, officially on behalf of the Department, as well as my own, on behalf of the Office of Inmate Advocacy. The members of the Committee have received copies of the statement and I have extras if members of the press or other people would like to have them.

I could, if you would like, read the statement, or I can simply assume

that it will be read.

ASSEMBLYMAN HARDWICK: I am not sure that my Sub Committee members have had a chance to read the statement, so perhaps, for the benefit of those here, you should read it.

MR. MINTZ: Okay. Fine. This is, as I said, a statement of Commissioner Van Ness.

Chairman Hardwick, Assemblywoman Szabo, Assemblyman Girgenti: Thank you for giving me the opportunity to testify on this important subject. I have personally been concerned with conditions in prisons and jails since long before I became directly involved in the incident at Rahway Prison in 1971. For the past four years, since the Office of Inmate Advocacy was created in the Public Advocate Act of 1974, we have had a direct and ongoing responsibility in this area. I will first outline the work which the office has been doing, and then share with you our views regarding some of the recommendations of the County Penal System Study Commission.

The Office of Inmate Advocacy was established by the Legislature in 1974 as a part of the Public Defender's Office within the Department of the Public Advocate. It was given authority to "represent the interests of inmates in such disputes and litigation as will, in the discretion of the Public Defender, best advance the interests of inmates as a class on an issue of general application to them, and may act as representative of inmates with any principal department or other instrumentality of State, county, or local government."

While the office was established to insure that the proper concerns of confined persons were afforded adequate respect, it has always been the policy of the office, as it is of the Public Advocate Department as a whole, to act with full regard for the interests of the citizens of the State in general. Thus, we have never promoted benefits for inmates when we reasonably believed that proper public concerns such as adequate security were endangered.

During its first year of operation, from July 1, 1974 through June 30, 1975, the office was well funded by the Legislature and was thus able to respond to complaints from all institutions, county and State. The staff made frequent visits to county jails during that period, and encountered some substantial problems. However, the resources available did not enable us to follow through on those matters as fully as we might have wished, particularly since we were engaged in some major investigations and several court actions involving state prisons and reformatories.

For fiscal year 1976, the appropriation for the office was reduced. It was decided to concentrate our thus limited resources in the State facilities, since it was possible to have a more substantial impact than if we spread ourselves too thin. Since July 1, 1976, the office has not been funded in the State budget. However, effective the same date and continuing to the present, the office has operated with a grant from the State Law Enforcement Planning Agency, which is specifically limited to county and municipal facilities.

The office began its operations under that grant by physically inspecting every county adult penal facility in the State at that time, a total of twenty-nine institutions, with at least one attorney and one investigator assigned to each inspection.

I will briefly deviate from the statement to point out that the comment



in the previous speaker's statement that we have prepared nine reports is correct because after internal staff determinations, we felt that those were the nine counties where special interest was called for. So, we therefore prepared reports for dissemination only on nine. There were at that time twenty nine, not twenty six institutions. Bergen County has since consolidated into one, making it twenty eight separate county penal facilities at the present time.

An internal report of each inspection was prepared. Following the completion of all twenty-nine visits, the staff of the office reviewed the reports and individually evaluated each facility on both an absolute basis and in comparison to each other. It was decided that it would not be possible with our resources to deal with every jail, and a decision was therefore made to concentrate on those where the deviations from accepted legal and professional standards are the most substantial. Eleven institutions in ten counties were selected for this in-depth treatment.

From November 1976 to July 1977, nine reports were prepared reciting our factual findings, the legal and professional standards involved, and our recommendations. These were submitted to the sheriff and warden in charge of the facility, all members of the County Board of Chosen Freeholders, and all other relevant officials, such as the Prosecutor, Criminal Justice Planner, County Counsel, County Administrator, etc.

A face-to-face meeting was held with many of these officials during which the points raised in the reports were discussed. These were normally open meetings and received substantial press coverage. In all nine cases, the county officials submitted a comprehensive response in writing to the evaluation, and in some these were followed by further written communications. The responsiveness of the counties to our recommendations ranged from substantial to slight. It may be noted that in order to be fair, in all cases where our comprehensive report was written more than six months after the initial inspection, a reinspection was made before this was done.

In one case, that of Passaic County, it was determined that satisfactory reform could not be achieved through negotiation, and that litigation was therefore called for. A class action suit was filed in Federal District Court on February 8, 1978, on behalf of inmates at the jail alleging that certain conditions there were violative of their constitutional rights. As that matter is currently before the courts, it would be inappropriate to discuss it at other forums.

For the past year, in addition to continuing to monitor conditions in the nine target counties, there has been increased contact with the others. Several reports of a briefer nature were prepared, and smaller scale meetings, often with just the sheriff and warden, have been held in about eight other counties.

Throughout the course of the County Jail Program, the office has received about 400 individual complaints or requests for assistance from, or on behalf of, inmates in the county penal facilities. All of those have been responded to in whatever fashion is most appropriate. This has, in addition to our ongoing reviews of the general conditions, enabled the office to keep regularly abreast of problems as they arise.

Recommendations: At the present time, the Department of Corrections has the power to inspect county jails and issue reports on its findings and recommendations - New Jersey Statute 30:1-16. That authority to take counties

has never been exercised, and the courts have held that the Commissioner has no power or duty to either approve or to set standards or to issue rules, regulations, orders, or directives regarding their operation.

I have here a copy of Mac Neil Vs. Klein. It is an opinion issued by the Appellate Division of Superior Court on April 1, 1976. It says specifically that the Commissioner does not have the authority to issue regulations which are binding, or to order the counties to do anything regarding their jails.

The Office of Inmate Advocacy in our Department also has the implicit authority to inspect and the power to represent the interests of inmates in negotiations and litigation, but because our mandate focuses on the interests of the inmates, it does not readily enable us to deal comprehensively with conditions as a whole. No state agency is authorized to set standards or has the readily available power to enforce them.

One striking finding of our working in the counties is the diversity of conditions. At present, each jail is run largely according to the inclinations of its administrator, tempered by broadly varying differences in physical structure, funding, and staff.

We therefore concur with the Commission's recommendations that the Legislature authorize the Department of Corrections to develop mandatory standards, grant the power to enforce them through legal action or otherwise, and provide that technical and financial support be available to carry them out. Many other states have statutes so authorizing, and do not seem to have suffered any erosion of local control as a result. It is not acceptable, we believe, that a person will have daily outdoor exercise periods if he happens to be arrested in one county, but never leaves his cell area if he is confined in a neighboring one.

The development and implementation of such standards will effectively deal with all of the other areas covered in the Commission's recommendations, such as health care, classification, rehabilitation services, etc. An intergovernmental body with representatives from the appropriate state departments and county agencies could develop such standards in very short order, since there are a number of available models. One of the most recent and comprehensive is the "Standards for Adult Local Detention Facilities," issued last December by the Commission on Accreditation for Corrections. I have a copy of that here with me. These could, with little modification, be applied.

With regard to the Commission's most politically controversial recommendation, that jurisdiction over the jails be removed from the sheriffs throughout the State as has been done in six counties, we see no reason to advocate one side or the other. Our experience with the sheriff-run jails has been mixed and does not teach us that those officials as a class either are or are not generally qualified to run the jails. Again, the existence of uniform, enforceable standards will make the political nature of the local administrative official less significant in terms of the conditions in the jail.

Mr. staff will be pleased to assist the Committee, if requested, in drafting appropriate legislation to carry out these ends.

I appreciate the opportunity to share these views with you and will be pleased to answer any other questions which you may have.

To just carry on briefly beyond that, I think Assemblyman Hardwick hit the most important point at the beginning of the hearing when he made the statement

that we have just an enormous diversity of conditions from one county to another. In the 21 counties, your 28 institutions will just have great differences from one to the other. I can look at the three of you and the counties that you represent here and tell you that in Union County and in Passaic County there is no facility for a person to leave the cell area at all during his entire stay at the jail. He does not see sunlight. He does not get any -- I'm sorry, that is true in Union County. In Passaic, he doesn't get outdoors. There is a small gym in the Passaic area with universal gymn-type equipment where some amount of physical recreation is available.

Now, the sheriff of Union County, who is here with us today, is moving, I think very expeditiously, towards developing an exercise area in that facility. That is an area that we consider to be of utmost importance. It is just minimal. No matter what you have done and no matter how bad a person is, he ought to be able to get a little chance to exercise his body, see some sunlight, and breathe some fresh air, at least once in a while.

In Mercer County until a few months ago, inmates did not leave their cell areas either. Now, Mercer County, being very positive in this area, has opened its new jail which has, on the roof, a dual exercise area, a covered gym on one side and an open recreation area-gym on the other. So, depending upon the weather conditions and the time of year, inmates may go to one or the other. I believe - and the Chief Warden from Mercer County Jail is here - something like every other day inmates get a regular exercise period.

So, there we have three counties where conditions are very diverse. I don't think that should be the case and I don't think that anyone would agree that that should be the case. If you happen to commit a crime or even be arrested-- And, again, we have to emphasize that we are talking about people who have not been convicted of crime. We are talking about people who for the most part have been arrested, charged with an offense by the police, may or may not be guilty, depending upon the ultimate determination of the courts, and are held in jail primarily because their resources and the nature of the crime and other factors are such that they are unable to make bail set for them and the courts have determined that the only way to insure their appearance for trial is to hold them in custody.

The conditions under which such people live should not be determined by the fact that they happened to be arrested here in Mercer County, next door in Burlington County, in Union County. Or, if they happen to cross Elizabeth's line and go into Newark, they have to serve time in the Essex County jail where conditions are very diverse. We feel that, true, there may be some reasonable differences from one place to the next, but that kind of enormous variance from one place to another because there are no minimal standards, we think is inappropriate and unacceptable in this State.

We also find, again because there are no standards, that because one sheriff or one jail administrator or warden - as the case may be - feels a certain way about an issue, inmates have some rights in one county that they don't have in a neighboring county, or in a couple of counties away.

I have here the book put out by the National Sheriff's Association so I am not talking about standards by some of the, what might be called "bleeding heart liberal group." These were issued in 1974 and I might mention that Sheriff Joseph Job, of Bergen County, is one of the members of the committee that put

these out. And, the under-Sheriff from Bergen County, Peter Cursio, is here with us today also.

As an example, racial segregation was mentioned earlier. This document says unequivocally that any racial segregation in the jails is unconstitutional. The Supreme Court ruled that in the mid-'60, as I recall in a case rising out of Alabama. Yet - and I have to mention this since Assemblyman Girgenti asked the question - some of our jails, including Passaic County are racially segregated and the sheriff of Passaic County has acknowledged that in sworn depositions issued in the court suit which we filed, as I mentioned.

You mentioned contact visits. Again, the document of the National Sheriff's Association states that mechanical barriers, such as glass partitions, or guards between the inmate and the visitors should be avoided since this tends to emphasize separation rather than to help retain bonds between the inmate and the outside world. It is true that there are problems when you allow certain of these conditions, such as contact visits, but they can be met. They can be met reasonably and effectively by searching the visitors, to some degree, and by searching the inmates to make sure that, to the extent humanly possible, no contraband is secreted and brought into the jail. But, that is no excuse for saying that a man who is legally innocent cannot embrace his wife once in a while while he is in custody, unless that particular man is an unusual security case.

Some of our counties permit that. Most of them do not, largely because of physical facilities in some cases or because the jail administrator has said, "I don't like it. I don't want it. I won't have it. I don't care what the law is. I don't care what the courts say; that is the way it is going to be in my jail."

ASSEMBLYMAN HARDWICK: Mr. Mintz, with your permission, I would like to insert that we really won't be resolving what the standards should be today.

MR. MINTZ: Oh, I understand. I am bringing this up by way of example. In fact, my own feeling is that the Legislature, as a body, should not try and define standards.

ASSEMBLYMAN HARDWICK: I would agree with you.

MR. MINTZ: What there should be is, authorizing legislation enabling the Department of Corrections to develop such standards and then to enforce them. On that score, the American Bar Association Commission on Correctional Facilities and Services, some years ago - again, this was back in 1974 - had what they referred to as a statewide jail standards and inspections systems project, where they investigated conditions in states throughout the country with regard to the existence of standards and inspections. They issued certain case histories of how legislation, such as that which may be considered by this Committee, was developed in various states. I have here the Oregon jail standard story, which gives in brief form the process by which a bill, which enabled the State of Oregon to have enforceable jail standards, was developed from its inception - in committee processes such as this - to final enactment by the Legislature. They did one of these also for Arkansas, Texas, and -- I forget the other state. I wasn't able to put my hands on it yesterday in my office, but I will track it down. We would like to share them with the Committee and with the staff if that is called for.

So, there are precedents for this. There are other states which have done it. It certainly should be done in New Jersey and I think this is the

direction this Committee seems to be moving in. On that score, recommendations of the Commission would be very positive in that regard.

I have similarly brought with me other documents. I mentioned the manual of standards, issued by the Commission on Accreditation for Correction.

ASSEMBLYMAN HARDWICK: I think Mr. Katz would like to get a copy of that.

MR. MINTZ: Yes. Anything I have here I would be glad to share with them and if you wish to obtain copies for the Committee itself, I can recommend how that be done.

This was issued by the American Correctional Association, which is primarily a professional organization made up of correctional administrators. Again, it is not a group of people who aren't involved in the field - or what might be called "do-gooders." What this will involve, if this project works out, is a system by which all jails are reviewed and accredited in the same way that educational institutions and hospitals are now accredited. That is what the standards that are contained in this booklet are expected to carry out. This document, I think, could very readily be converted into a set of standards for New Jersey.

The American Bar Association's Section on Criminal Justice has issued a set of standards on the legal status of prisoners. Again, this is contained in this volume of the American Criminal Law Review. It is very detailed, citing court decisions. It is fully available. The National Sheriff's Association -- these are two or three of about eight booklets covering the entire range of areas in jail administration.

Again, what concerns me very greatly is that we have these things. They exist. Yet, our jails in New Jersey, for the most part, do not even use standards, such as those of the National Sheriff's Association. We have correctional standards of the American Correctional Association; the Compendium of Correctional Legislation Standards of the American Bar Association; and the Council on State Government.

ASSEMBLYMAN HARDWICK: There are plenty of standards, you mean.

MR. MINTZ: There are plenty of standards, to put it very simply. They are all available. New Jersey, I think, is a little behind, frankly, in the fact that it lets its counties go on and do their own thing, so to speak, in this area.

I think that is about all I need to say. At this point I will be happy to answer some questions.

ASSEMBLYMAN HARDWICK: Thank you very much for appearing. We are sorry about Mr. Van Ness' illness. We certainly send our very best wishes to him for a speedy recovery.

Would you mind explaining how the Office of Inmate Advocacy relates to a jail under current law? How often do you go to the jails and what happens after you file your reports - after you complete your tour of the jails?

MR. MINTZ: This varies. We don't have a routine procedure for every county. As I said, when we initially began this county jail project about two years ago, we visited and thoroughly inspected every one of the county penal facilities in the State. We prepared an internal report. I'm sorry I didn't bring one. We had a form which we developed for our own use so that we would cover every area of importance in the jail and we went through that.



ASSEMBLYMAN HARDWICK: Was this a form of standards?

MR. MINTZ: No, it was basically an informational form. It had questions like: What are the sanitary facilities? What are the recreational facilities? What is the staffing? What are the medical care facilities? That was for phase one. We prepared these 29 internal reports. We discussed them among our staff. The sheriffs and wardens sitting behind me will remember those initial meetings where we went through these documents. We interviewed them and we thoroughly toured, literally from the boiler room to the roof, all of these jails and county penal facilities.

We felt that we couldn't try and deal with every problem in every jail. We only have a small staff. At that time it was two attorneys and two investigators. We have lost one of our attorneys since then. So, I am the only one on the legal staff. There are two investigators, one of whom is with me today. He is in the back of the room.

We felt that we should focus on those jails where the problems seem to be the most substantial. We picked, as I said, eleven institutions in ten counties. We prepared detailed reports. We have given you copies of some of those. I think you have six or seven of them. We would be happy to give you all nine if you would like to see them. I do want to emphasize, for the sake of fairness, that those are dated. All of them were issued between a year and eighteen months ago. In many cases there have been improvements made since the time they were issued. So, I would not want to seem them relied on as showing the current state of affairs.

But, that is the way we proceeded. Those reports were issued, as I said in my statement, to the responsible officials and were followed up by meetings in the various counties, which again Sheriff Brennan will remember. We had a meeting in Burlington County. We had a meeting in Union County, with the Sheriff's predecessor. We also were in Bergen County regarding the jail, which was subsequently closed.

Responses to those reports were issued. Actions were taken. They varied. In some counties almost all of the things we recommended were done and done quickly. In other counties they were done slowly. I would say there was some response in every county and they varied. We are continuing our dialogue with most of those counties in an effort to carry that out.

ASSEMBLYMAN HARDWICK: I understand if a sheriff says that he disagrees with the basic standards, saying, "No, that is not necessary" and he argues about it. But, in some of your reports you cited the case of Vaughn v. Clifford, for example, in which you said a court ruling has said, under a certain set of circumstances, that a basic right must be given to an inmate. In that case I think it was the right of a three-member grievance panel.

MR. MINTZ: Yes.

ASSEMBLYMAN HARDWICK: Now, how do the sheriffs respond when you say the courts have ruled that this must be done and you are not doing it?

MR. MINTZ: Much of what we recommended - and as you read those reports I am sure you will see it - is based on court rulings. As a lawyer, that is where I get my knowledge of what the law requires, or what the courts have said.

Vaughn v. Clifford is an ideal example because it not a decision of some Federal Court off in California; it is a decision of the New Jersey Supreme Court, which says before you can put somebody in a lockup situation, or before

you can take away his earned good time, at the very least you must have a hearing with an impartial tribunal of three members. This should not have people on it who are directly involved or in the chain of command. That would have the effect of being one person because the underlings are going to do what their superior says. They should determine this and the inmate should have a chance to speak for himself and present his defense. I have had - I can tell you frankly because I have had a sheriff say this to me in front of other members of the Board of Freeholders - sheriffs say, "I don't care what the courts say. They don't run the jail. I run the jail." And, I have had sheriffs say to me, "Well, if that is what the law is, that is what I will have to do whether I like it or not." And, some have said that that is the way it should be. So, there has been all levels in between.

In most of the counties I think that practice is carried out now. I can't think of a county which does not have some measure of due process disciplinary proceedings. In at least one county I can remember the response was, "Well, we don't lock people up for punishment; we lock them up for the safety of the institution. If a person hits somebody, we lock him up because he might be in danger." Well, frankly, I find that a little hard to follow. If a person hits somebody, you are punishing him because he has done wrong. I don't dispute that that should be done. I don't say that he should be able to run free and do whatever he wants without being controlled. Certainly, if an inmate engages in violence and engages in practices which are dangerous, unsafe, or unclean, there should be strong methods for controlling him. And, in that sense - in line with what the last speaker said - the jail would be used for punishment. You are punishing him for that act: For striking an officer; for engaging in a fight; or for throwing garbage on the floor -- whatever. But, if you are going to do that, you give the man a chance to present his side of it.

In many cases, I have had inmates say to me, "Well, I hit somebody" - or started a fight, or hit a guard - "because I couldn't get any attention any other way. I had a medical problem. I couldn't make a phone call. I have been asking the the officer to help me on this and he said, 'sure buddy,' and I never got a response so I got desperate and I did something." True, that is a made-up story in some cases, but in some cases I believe it because it rings of truth to me.

That should not happen. There should be an on-going grievance procedure so that sort of thing cannot happen.

ASSEMBLYMAN HARDWICK: But, the real point was not on the grievance procedure, but the response from whatever official, be it a sheriff or an administrator, to a court decision as opposed to arguing with you about a standard. I was curious to know how they would respond when you cited legal precedence.

You said in your opening statement that you have had about 400 individual requests for assistance. Would you characterize those for us? Do you have any breakdown? What kinds of requests were they?

MR. MINTZ: I don't have that with me. I could develop it if the Committee would like, in terms of categories. A number of them deal with medical care.

ASSEMBLYMAN HARDWICK: How many of them do you find are justified after you have investigated them?

MR. MINTZ: Fifty percent -- two-thirds, something like that.

ASSEMBLYMAN HARDWICK: And they dealt with medical care, you say?

MR. MINTZ: Medical care is a substantial area. That is an area where many of our county jails are deficient. Again, it comes to the economy in scale. If you only have 40 inmates, to have a doctor or nurse in there daily, may not be the most efficient thing to do. But, if that is the way you are going to run the jail, you have to have some ability to provide regular medical care.

ASSEMBLYMAN HARDWICK: If this Committee recommended, and the Legislature approved which standards should be established - to be enforced by the Department of Corrections - what role would you see for your office in - I am sure you would want input in setting the standards - following up on those standards? Would you no longer have to exist then? Would you put yourself out of business, gladly?

MR. MINTZ: I can tell you, as a personal statement - and I expect this would hold for Commissioner Van Ness as well - there is nothing we would like more than for the Office of Inmate Advocacy to have no justification for continued existence -- that is, the inmates didn't need an independent, outside ombudsman to speak up for their interests because their interests were being met within the institutions.

I think it is possible that the development of such standards would reduce the need for our work. I am inclined to think that there would still be some value - considerable value - to having an independent agency, not answerable to either the people who are doing the inspections, the enforcing, or the operation of the institutions, who can come in and look at it afresh and say, "you are not carrying out your own standards here." So, I think there would be - at least for the foreseeable future - a need for continuing the Office of the Inmate Advocacy as an independent agency.

ASSEMBLYMAN HARDWICK: You would see yourself participating with the Department of Corrections on the routine inspections.

MR. MINTZ: No.

ASSEMBLYMAN HARDWICK: No? How would you see yourself working?

MR. MINTZ: One of the things, as you mentioned, that we do now is, we would respond to individual complaints. Hopefully, again, if every jail had an effective grievance procedure - which is something I pushed for for some time - that would be less necessary too. Perhaps that would be one of the standards. But, I think we should be available to respond to complaints that are not satisfactorily answered at the local level or by the Department of Corrections. Hopefully, those avenues would be exhausted first and we would be kind of a last resort available to the inmates to deal with problems which weren't being met at the local level.

ASSEMBLYMAN HARDWICK: Has your office had funding problems? Would you mind explaining what happened on that?

MR. MINTZ: Well, I don't know whether I should say this to three members of the Legislature.

ASSEMBLYMAN HARDWICK: That's all right, we are tough.

MR. MINTZ: I guess because the Public Advocate was new and glamorous in 1974, when it was first established, we got a fairly substantial appropriation. I believe it was around \$200 thousand, which, as I said, enabled us to have a staff consisting of a Director, two staff attorneys, and five investigators. At that point, any complaint we received was responded to with a personal visit by at least an investigator. We brought several lawsuits against the then

Department of Institutions and Agencies in a number of areas where we found we could not solve certain problems through negotiation.

At the end of the first fiscal year, the Legislature reduced our appropriation by about one-half -- I think it was about \$125 thousand. We therefore reduced to two attorneys and two investigators. We felt that it was just a practical matter. We couldn't realistically deal with all of the 21 counties scattered all over the State. It was just, logistically, too difficult - travel-wise, and so forth - to have an effective impact. So, we very substantially cut down our involvement in the counties and instead focused on the State institutions for that year. We continued with some law suits. We investigated all individual complaints. We had some major investigations in certain areas, such as medical care.

I would say - and I think I shouldn't be bashful about this - that we had some substantial impact, in terms of easing tensions in the State institutions. There were several major incidents which occurred back in '75 and '76. If you remember, there was a shoot-out in Trenton State Prison in an escape attempt. I was the very first person from outside the prison administration who toured the facility where that shoot-out occurred. I spoke to the inmates and saw the conditions there. I think our presence had a substantial ameliorative impact. I regret that we are not there any more. But, enough of blowing my own horn.

ASSEMBLYMAN HARDWICK: May I assume you will not take umbrage if your office were characterized by some county officials as a "pain"?

MR. MINTZ: In some places that is exactly what I want to be.

ASSEMBLYMAN HARDWICK: Okay. I assume that. Now, if I were an inmate in a jail and probably not completely happy with all of the attendants there and I was having all of my own problems, wouldn't a good way to harass my correction officers be to find ways to make complaints because I know they don't want State people coming in? They have a lot of problems and I know that. How do you guard against that?

MR. MINTZ: Well, I have a staff whom I feel are quite sophisticated in terms of being able to say when inmates are being straight with them and when they are not. That is why we try to deal face-to-face with as many of the inmates that complain as possible.

But, I think that what you are suggesting might occur has really not been our experience. I will give you a very direct example. One of the things we recommended in our reports is that each county have a comprehensive inmate rule book, where what is expected of the inmates and what they can expect from the institution is spelled out in some detail.

One of the first counties that responded to that and developed on its own what we still consider the model rule book in the State, was Somerset. One of the things that Somerset County included in its rule book as sort of an appendix is a listing of all agencies which inmates might be interested in. It has the Public Defender's Office listed. It has the Legal Aid Society. It has the County Alcoholism Program. It has the County Welfare Board. And, it also has the address and the phone number of the Office of Inmate Advocacy and a statement which says, if you have problems which cannot be worked out in this institution, with the institution, these are the people to contact.

So, every inmate who enters the Somerset County Jail is given our

address and phone number with the statement that you can contact these people if you can't solve your problems here.

We get fewer complaints out of Somerset, which has this information, than we do out of jails where inmates really have to hunt to find out that we exist. You have to remember that in jail there is a very substantial turnover and even if I were to go into a jail this week and tell every inmate, here is my address; here is where you reach us; if you have a problem, give us a call or write us a letter, three months from now there would almost be a complete new population and they will not have heard of us. We would almost have to be doing that monthly - or more frequently - to have an impact. Yet, places where they do not have a way of knowing about us on a regular basis, we have received more complaints and letters from than from Somerset, as an example. Somerset has an internal grievance procedure. If an inmate has a problem there, it is written out in the rule book. You write it out on a sheet and you hand it to your officer. You will get a response within a certain period of time to this. If you don't like that response, you can take it one step higher.

ASSEMBLYMAN HARDWICK: A lot of the complaints are handled at the local level.

MR. MINTZ: Yes. They are handled at the local level; they never get to us.

ASSEMBLYMAN HARDWICK: I think you have answered my questions. I am going to turn the questioning to my colleagues. I have one more question before I do that. I am surprised and disturbed at the comments on racial segregation. In your opinion, where that has been practiced, is that done by policy? I trust - not that it matters, I guess - that there is not a written policy statement. Is it done at the preference of the attendants? How is that implemented?

MR. MINTZ: In the three counties that I know of, where it has occurred until quite recently - and I can't swear that it is occurring today, but I think that at least in some of those it is - it has been the policy of the sheriff because he thinks it is a better way to do things. Again, because it is in official court papers, I can say that in Passaic County, Sheriff Englehardt has stated that he thinks it is better to have a jail that is segregated because there will not be conflicts between members of different racial groups.

That also was stated to me - at least to a partial degree - in Monmouth County by the sheriff there -- that with some inmates it is easier and safer to run the jail on a segregated basis. This applies also, to a limited degree, in Bergen County. The old jail was segregated. I do not know. As far as I know, since they closed the old jail and are presently operating in what is called the jail annex, racial segregation is a policy. Perhaps the sheriff may want to clarify that.

But Sheriff Job did state to me, in front of several Freeholders as a matter of fact, that racial segregation, to some degree, in his view is desirable. That is why it is done.

ASSEMBLYMAN HARDWICK: Mrs. Szabo, do you have any questions?

ASSEMBLYWOMAN SZABO: No, no questions.

ASSEMBLYMAN HARDWICK: Mr. Girgenti, do you have any questions?

ASSEMBLYMAN GIRGENTI: Yes. Mr. Mintz, in terms of guidelines - or what you go by now - you have your own standards that have been developed, I imagine. What do you look for? What do you use as your guide? Do you use these standards that you have before you when you go through a jail?



MR. MINTZ: We use several bases. If you take a look at the report - one of the copies of one of our reports, which Assemblyman Hardwick has in front of him - the primary thing we use - because we are first and foremost a legal office - is court decisions: For example the Vaughn v. Clifford decision, which requires due process proceedings before discipline may be imposed. We use the Supreme Court decision on racial segregation. We use decisions which have said that contact visits are a matter of right, except for people who are special custody cases and who are particularly difficult to manage and therefore cannot be trusted in that situation. So, that is the first thing that we look at.

The second thing that we look at is standards, such as these. You will find cited in there some of the standards of the National Sheriff's Association. This one, from the Commission on Accreditation, came out since our reports were issued. If one were to be issued in the future, I am sure I would refer to some of these. The American Public Health Association has issued standards on medical care in prisons, and we, in the health care portion of those reports, cite those with some considerable detail. So, it is a matter of what is required by law, first and foremost, and secondly it takes into consideration what is required - or at least recommended - by the best professional practices and minds in the field.

ASSEMBLYMAN GIRGENTI: Okay. So, just to give me a clearer picture - because I am really trying to educate myself - when you go into a facility, you base - as you said - your evaluation on past State and Federal court decisions? All of these things, such as censoring of mail, lack of contact visits, and arbitrary prohibition against seeing one's children, these areas have all been adjudicated before and this is the basis of your judgment?

MR. MINTZ: All of those -- yes, they have. Not everything we cite has been specifically decided by one court decision or another, but it comes from one of the other sources.

But, in those cases court decisions have said that inmates have the right to see their children if they choose to. That is an example relating to Chairman Hardwick's question. I have had sheriff after sheriff say to me: "I don't think children should see their parents in the jail. It is not good for the children." My response to that in every case - and I will stand by it - is, that is the parent's decision. It is not for the sheriff to impose what is good child rearing practices on people. It is up to the parent, whether he is a prisoner or not, to decide that. If he feels that he wants to see his children while he is in the jail, he has that right. If he feels he doesn't want his children to see him in custody, he has the right to have them stay home. It is not for the sheriff to decide what is a good practice for somebody else's children.

ASSEMBLYMAN GIRGENTI: How about the area of inadequate classification of offenders?

MR. MINTZ: There have been a number of court decisions in federal courts on classifications and there are also numerous professional standards on the issue of classification. Now, admittedly, in the kind of institutions we are dealing with - which are short-term detention facilities - classification is not as easy as it is in a facility where you know you are going to house someone for months or years. But, it can be done far better than it is being done now, in terms of hardened criminals being kept away from younger people and persons who are sentenced being kept away from people who are awaiting trial, etc. That is not as much the case as one would like to see it.

ASSEMBLYMAN GIRGENTI: In that area, one of the large problems - and I think it has been pointed out in the report that I read, and I guess you must agree with it because you probably advocate much of what is in the report - is the fact that you have people in there that are treated the same as people who are already convicted. What has been done about this? Has this been adjudicated in any way in our state? I think there should be a different treatment for the person who is already convicted versus the person that has not been convicted and who can't afford bail. Because, you know, the problem there is that a guy who has a few more bucks may be able to get out on bail, whereas the guy who doesn't have the money is thrown into a situation of frustration.

MR. MINTZ: Absolutely. I can say, very clearly and very emphatically, that in most cases people who are simply awaiting trial because they can't make bail are held in conditions which are far more onerous than people who have been convicted of serious crimes and are now serving sentences in the state prisons of New Jersey.

But, as far as mingling is concerned, you have to remember that in county jails the people that were sentenced - unless they are hold-over, awaiting transfer to state prisons - are people who have been convicted, usually, of minor offenses. Certainly, they are people who, by court determination, require only a minor sentence. Because, you can't be sentenced for more than a year to a county jail, with the exception of Hudson, Essex, and I think one or two others, where you can be sentenced for 18 months. So, they are relatively minor offenders.

There should be a separation between them because you should be dealing differently, for one thing, with a sentenced person. This is a person you know you will have there for a period of time. He has been convicted, so rehabilitation efforts of a different nature are appropriate, which may or may not be appropriate with the detainee who hasn't been convicted and may not be guilty of anything. You can't rehabilitate a person who is not guilty.

So, certainly on that score there should be classification. But, that is one of the things that I have always found most disturbing -- the fact that people who are legally innocent, and who are in custody solely because they have been arrested, charged with a crime, and cannot make the bail set by the court, are held under conditions which are far worse, in many, many cases, than they would be held under if they were sentenced and serving their time in Trenton State Prison.

ASSEMBLYMAN GIRGENTI: Right. Another area is based on the Commission's report. What is your opinion - or your Department's opinion - on the idea of using regionalized psychiatric holding and treatment centers? They wanted to have one in the northern area, one in the central area, and one in the southern area. Do you feel that is the job of a jail or of a penal institution?

MR. MINTZ: This is essentially - I couldn't say this is a departmental opinion, but we have found in our studies that certainly the mental health care is a major problem - or the lack of mental health care - in all of the county jails. It seems obvious to me - and I think it would be to anyone - that the mere fact of being held in custody, or being brought into a situation which to most people is a surprise - nobody expects to be arrested and put in jail - is a stressful situation. It has to put a person under a great deal of mental strain and tension. Therefore, responses to that, in terms of acting-out behavioral psychological aberrations are to be expected.

What I would advocate and what some of our counties have done is initiate a program of on-going mental health care in the institution for anyone who wants to avail themselves of it. If a person says, "boy, I'm really upset, I just have to talk to somebody," there should be somebody in the jail with professional training - a psychiatric social worker or a psychologist; it doesn't have to be a psychiatrist with an M.D. who charges \$50 an hour, plus - somebody who has training in the field of counseling to sit down and talk with this person and let him get off his chest what is bothering him. I think there would be less of this acting-out behavior.

But, for serious cases, where a psychiatrist or a practicing political psychologist determines that some major mental health care is called for, I think a hospital setting would be preferable to a jail setting. In that score, the present system really doesn't work. The inmates are sent to a nearby state mental hospital. It could be Greystone. It could be Marlboro. It could be Trenton or Ancora, depending upon what part of the state they are in. Those facilities may lack the security necessary to hold a person who is a custodial individual. Or, they may be overly secure as, for example, the Vroom Building, which is a super maximum security facility which a person who is arrested on, perhaps, a minor charge but is going through a psychiatric crisis doesn't need.

So, my recommendation - and this does exist in several of our counties -- Somerset, for example again, has an on-going relationship with its county mental health facility, which sends its people into the jail regularly. Burlington and Gloucester has a person with psychological training on staff and available to talk to inmates with these kinds of problems. I am just picking these as examples. They are not the only jails which have these. They just come into mind.

Monmouth has a relationship with its county mental health facility. Essex, which is one of the largest jails, has a forensic unit within the building, although I am not sure that is working as well as it could be. So, there are varying ways to deal with it, depending on the size. I think the simple answer is an on-going mental health facility, just the same as you provide for the person's physical health, to provide some way to deal with his mental health problems in the institution on a minor level. And, if it becomes serious, you send them to a mental hospital, just as you would if it were a serious physical illness.

ASSEMBLYMAN GIRGENTI: I have two more questions. Going back to the report again, another recommendation - which was five - was the appointment of an ombudsman by the Governor. He would be independent and he would not be responsible to the jail administrators. Some counties presently do have this. Could you tell me at this point how that type of system is working? Are you familiar with this?

MR. MINTZ: Yes.

ASSEMBLYMAN GIRGENTI: Also, they are doing what you are doing right now to some degree, is that true?

MR. MINTZ: They are doing it to some degree and it varies very substantially. Your county of Passaic is one that has a person with the title of Ombudsman. I believe Bergen has one. I just can't recall which of the others may have it.

I frankly have a problem with an ombudsman who is answerable to the same people that are causing the problems the inmate is complaining

about. I think it presents a conflict which is really not workable. If my job is owing to the sheriff and if I want to say the sheriff is not doing a good job in running the jail in this or that aspect, I have a little bit of difficulty doing that. I think anybody recognizes that problem. So, I think - as I was suggesting to Chairman Hardwick - that the continued existence, at least for the foreseeable future, of an independent ombudsman is appropriate. I don't think, as the report seems to recommend, that it is necessary to have one of these in every county. From our experience, I think one-half dozen people at most can adequately service the state for this purpose. I would be quite happy for it to be run out of our office. I think we have the legal authority and the expertise at this point to do that. And, if such a thing were set up, that would be - I think - a logical place to put it.

I think it is desirable to have an outside ombudsman who is not answerable to the same people. I would again point out that that is not to say that an internal grievance procedure shouldn't be there. An internal grievance procedure is a vital and important attribute. If an inmate can't get communication privileges because he wants to place a phone call to his lawyer or his wife, or something, or if he wants to get a clean towel and he just can't get to the right person to get that, that sort of thing just shouldn't be going on, but it does. So, an internal grievance procedure to deal with that sort of thing should exist. When things can't be worked out at that level, then sometimes an independent agency who is not answerable to the same people should be available and provide that.

ASSEMBLYMAN GIRGENTI: And in the areas where it is operating, is this done through the sheriffs at the present time?

MR. MINTZ: All of the counties that have an ombudsman, or somebody functioning in that capacity, at this point are answerable to the jail administrator, as the case may be - whether it is a warden, sheriff, or an independent administrator, as it is in the Freeholder-run counties, such as Mercer. But, they are answerable to the same individual as runs the jail.

ASSEMBLYMAN GIRGENTI: There is only one other point. We have heard - and Mrs. Szabo referred to this before and I believe this is a problem - that we are having a problem with drugs in the jails. This may even be as a result, possibly, of medication that is given in the county jail. It also is just contraband that could be brought into the jail. What are your feelings on it and what can be done to correct that?

MR. MINTZ: Let me separate the two aspects of that. Certainly, I am as opposed as anyone could be to illicit drugs being brought into an institution. I think all reasonable control to prevent that from happening should exist. But, as the Deputy Warden at the Essex County Correctional Institution said to me once, "If you put a wall a mile high around this place, some drugs would get in." So, there is no perfect system. So, on that score, I would agree.

Essex County is one which has contact visits at the Essex County Correctional Institution, following which all inmates are strip searched. That reduces their contraband very substantially.

As far as the use of psychotropic drugs--

ASSEMBLYMAN GIRGENTI: Tranquilizers?

MR. MINTZ: Tranquilizers, heavy antihistamines, or things that produce drowsiness in the jails, I certainly think that should be a minimum. I should mention

that the New Jersey Department of Health investigated every jail on that score and those reports could be obtained - we have copies in our files - by the Committee. They may be of interest to you. They found it ranged from 4% of the inmates on psychotropic drugs to as high as two-thirds in one institution.

Indeed, in some places it is true that it is easy to give the inmates drugs to keep them quiet. There is nothing else to do in the facility. There is no exercise. There is no recreation. There is no rehabilitation. The best they have is television and some places don't even have that. The inmates start to act up; there is nothing else for them to do with their time. So, if you give them a tranquilizer, it calms them down and keeps them quiet.

The other side of that would be the lack of mental health care. If an inmate who was getting tense had someone to talk to about his problem, he might not need a drug to calm him down; he might be able to get it out that way. I think that would be a far better way of doing it.

I can't say that the statement about inmates being turned into drug addicts by the institution is true, but I can say that there are county jails where inmates are frequently - many inmates - given drugs on a regular basis to a degree which I, as a layman, find questionable. I am not a doctor and I wouldn't want to prescribe, but it does strike me as peculiar.

ASSEMBLYMAN GIRGENTI: I was under the impression - and, again, I don't think you can answer this - that they can only be dispensed through an R.N., or somebody who has a license, and not through a guard or somebody like that. If that is done, then I believe it is illegal. I believe it has to be dispensed through a physician or an R.N., or someone like that.

MR. MINTZ: Well, they are prescribed by a physician. One of the things that we have strongly urged in every county is that drugs actually be handed to the inmate by a medically trained person, whether it be a nurse or a medic. In many counties the nurse may make up the prescription and put the pills in an envelope, but they are actually handed to the inmate by an officer. And, in some counties, I regret to say, the prescriptions are actually taken from the bottle initially by a non-medically trained person. That is something which I find very disturbing.

But, you are correct on that score. Drugs are handled in some institutions and, again, it is partly because they are small institutions and because of economies of scale they don't feel that it is appropriate for them to hire a nurse or a medically trained person to do this. So, they have an officer who is already there and who takes an hour out from his normal duties of patrolling the tiers to dispense medication. I don't think that is a good practice and we have recommended against it in every county where we have encountered it.

ASSEMBLYMAN HARDWICK: I just want to thank you. You have been very informative.

MR. MINTZ: Thank you.

ASSEMBLYMAN HARDWICK: I just have a couple of concluding questions, Mr. Mintz. I wonder if you agree with the statements made by the previous Mr. Mintz? Really, there were two witnesses and either he or Mr. Hill made the statements. One, Mr. Hill said the lack of professionalism by correctional officers is the most pressing problem that he saw. From your vantage point do



you agree, disagree, or partially disagree with that?

MR. MINTZ: If I put in a modifier, I would definitely agree. Again, I think this varies very widely. So, to say in a blanket statement that all correctional officers are unprofessional and poorly trained would be terribly maligning to many places. But, in some counties the state has what I think is a rather effective training program which is available, I believe, free of charge, except the county has to continue to pay the salaries to send their correctional personnel to this.

ASSEMBLYMAN HARDWICK: The Department of Corrections has this?

MR. MINTZ: The Department of Corrections has this. It was mentioned briefly at the last hearing. Some of the counties take advantage of that fully and all of their staff, within a year of the time they are hired, will go to Trenton and take that training. Some of the counties do not take advantage of it at all and none of their staff has ever been sent. Some counties have in-house training programs, which are good. Essex County, because it is a large county, can afford to do this. Monmouth has a Sergeant who has the job title of training officer and he does some of this. Other counties, which are smaller, may have inadequate staff.

ASSEMBLYMAN HARDWICK: Do you see this as a major problem?

MR. MINTZ: Again, if I were sitting here deciding what the standards should be, I would say definitely that all officers should have minimal training in the areas of security, inmates rights, officers rights, etc.

ASSEMBLYMAN HARDWICK: I was left with the impression that there was generally a better feeling regarding the jails that are run by Freeholders than by sheriffs, although they equivocated a little bit as to what extent that was true. What is your impression of that observation?

MR. MINTZ: If I was pressed on the point, I would have to say that the non-sheriff jails in general are a little better.

ASSEMBLYMAN HARDWICK: You disagree then?

MR. MINTZ: No, I agree.

ASSEMBLYMAN HARDWICK: The non-sheriff jails are better?

MR. MINTZ: The non-sheriff jails are a little better. I have to mention that includes Essex County, which is one of the largest. It is able to do things that other counties are not able to do. Part of the problem is that you have small counties with limited facilities.

One of the worst jails we ever came across is Warren County, which has been run by a warden answerable directly to the Freeholders for 20 years or more. The warden who had been there until about a year ago had as his main goal in life keeping his budget down, so he didn't bother to fix the plumbing or buy new mattresses, or things like that, nor did he pay his officers a decent salary. The place was in pretty shoddy shape until they finally kicked him out and got a new guy in there.

We have had problems in Middlesex County with the workhouse, which was Freeholder run. Mercer County I consider to be one of the most progressive. Mercer County has better facilities, however, than most of the other counties. Mercer has something which I think more should have, and that is separate facilities for your sentenced people and your detainees. They have a downtown detention facility where the people who are awaiting trial are held. And, out in Hopewell Township they have the workhouse, now known as the correction center for people

who have been sentenced and are being held. They have programs and facilities available to them of a different nature, more appropriate to their means.

It disturbs me that a county like Passaic doesn't have that, or a county like Union, frankly, who does not have a separate facility for its sentenced people. Union county judges are limited in what they can do with an offernder who stands before them. They really don't want to send them to the jail because a person who may need some rehabilitative program-- It is fairly good in Union, given the physical facilities. I don't mean to malign the sheriff or the jail administrator or the warden, who are here today. But, the facilities are lacking and I think a judge looks at that with some question. He might send a person to state prison who really should be in the county in a less restrictive, less onerous setting because he feels he needs custody and the county doesn't offer anything sufficient for that.

In Passaic, I think judges may have the same problem. In Mercer they don't because they know they have the workhouse or the different facilities available.

ASSEMBLYMAN HARDWICK: Thank you. Are there any other questions?

ASSEMBLYMAN GIRGENTI: Just one comment for the record. I would like to have an ombudsman come in from one of these counties that have them and have them testify at the next hearing. I would like to see the Committee do that just to have some comments from him.

ASSEMBLYMAN HARDWICK: We expect to have a fairly broad representation from the county facilities, so that would be fine.

ASSEMBLYMAN GIRGENTI: Another point is, I think we all realize what we are saying here - and I think Mr. Mintz understands it too - speaks to the world of the idealistic. I certainly would like to see the type of a setting you were talking about. Mercer County has the new luxury of a facility where you can separate the people and I think that is important. But, you know, we have the practical realities back home in certain areas where it is very hard to even get additional space, no less doing these types of things. So, they are important and I would like to see us move in that direction, but we also have to deal with the practicalities of what we have in existence today.

MR. MINTZ: I agree. I think the practical solutions are the ones that I have always tried to seek.

ASSEMBLYMAN HARDWICK: Mrs. Szabo, did you have any final questions?

ASSEMBLYWOMAN SZABO: No.

ASSEMBLYMAN HARDWICK: Mr. Mintz, on behalf of the Sub Committee, we thank you very much.

We initially intended to have Under-Sheriff Brown who was a key member of the Commission that prepared the report that we are evaluating. Mr. Brown has prepared extensive testimony for the Sub Committee. In the interest of time, I conferred with him prior to our last witness and he would prefer to be able to testify without an interruption.

So, it is evident the Sub Committee will have to have at least two more hearings. At our next hearing we will have Mr. Brown, and the Director of Corrections, Commissioner Fauver, who also wants to testify. At that hearing and/or at a fourth hearing, we also want the county officials, who would like to testify, to be given as much opportunity as they would like to do so.

If you would like to be notified as to the details of our next meeting,

time, and so forth, please see Mr. Katz and we will put you on our mailing list.

Thank you very much for coming today. Let the record show we quit on time. This hearing is adjourned.

(Hearing Concluded)



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