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1976
ANNUAL REPORT
of the
OFFICE OF INMATE ADVOCACY
DEPARTMENT OF THE PUBLIC ADVOCATE

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TRENTON, N. J.

Submitted to the Governor and the members of the Legislature pursuant to
P.L. 1974, c.27, sec. 47 (N.J.S.A. 52:27E-46)

December 1, 1976

1976 was a transition year for the Office of Inmate Advocacy, due to changes in funding. During FY 1976, until June 30, 1976, the Office operated with state funding, but at a reduced level from the prior year. We, therefore, limited our activities to dealing with selected major issues and significant complaints in the State Prisons and Youth Correctional Institutions, and declined any involvement in county or local jails. The Office was not funded by the State in the Budget for FY 1977; however we obtained a grant through the State Law Enforcement Planning Agency to conduct an Inmate Advocacy Pilot Program only in county and local jails. Thus, since July 1, 1976, the Office has ceased all involvement in State penal facilities, but has conducted an active program in the counties. This report is, therefore, broken up into two parts, covering each of those periods respectively.

DECEMBER 1, 1975 THROUGH JUNE 30, 1976

STATE PRISON AND REFORMATORY MATTERS

INDIVIDUAL COMPLAINTS

The Office received over 285 communications from or concerning inmates in State Prisons and Reformatories. All of these were screened by a member of the staff. As a result of the screening, 77 of the complainants received form letters indicating that we could not assist them, generally because the matter complained of was of limited significance and thus inappropriate for the expenditure of our limited resources, or outside the jurisdiction of the Office. In many cases, the complainant was referred to another agency, often the Prison Ombudsman in the

Department of Institutions and Agencies, or otherwise advised where assistance might be sought.

Of the remaining 208 matters, 192 were dealt with substantively by personnel in the Office. This generally involved direct contact with the inmate and investigation involving administrative personnel in order to resolve the matter. The other 16 were referred by us to the other agencies more readily able to deal with the particular matter, often the Office of the Public Defender.

In this fashion, over two hundred inmates were provided assistance from a State agency with a matter of importance to them. This service often resulted in a reduction in tensions, for inmates could feel that at least there was someone to whom they could turn with their problems.

When the Budget was enacted in mid-June, and it became clear that the Office would not be funded, letters were sent to relevant State officials, prison administrative personnel and inmate organizations advising them that the Office of Inmate Advocacy would no longer be able to receive complaints regarding State facilities. Many letters were received in response expressing regret of this situation, and appreciation for the past work of the Office.

FEDERAL CASES

As reported in our 1975 annual report, the Office entered into an agreement with the Judges and Clerk of the United States District Court

for New Jersey under which all pro se complaints filed by inmates in New Jersey prisons were referred to us as soon as filed. One of our attorneys reviewed each one, often assigned it to an investigator to make necessary inquiries, and attempted to mediate the dispute where possible and/or advised the inmate on the appropriateness of the lawsuit or other action he might take. During the period we processed forty complaints referred to us in this manner. In many cases, we were able to reach a resolution which resulted in the inmate withdrawing the unit. Again, with the termination of our funding, we were forced to advise the Court that we could no longer provide this service after June 30, 1976.

SUBJECT MATTER INVESTIGATIONS

Through individual complaints and other means, the Office encounters conditions existing in the institutions which have an impact on large numbers of inmates. In many such cases, it is the practice to undertake an overall investigation of the matter. The following are the subject matter investigations either carried over from 1975, or begun in 1976. All have, of course, been terminated or transferred to other programs as a result of the elimination of the Office's state funding.

1. Disciplinary Procedures. Following the State Supreme Court's decision in Avant v. Clifford, 47, N.J. 496, (1975), the Office regularly monitored the disciplinary procedures in the state institutions to insure compliance with the Court's decision and the regulations issued by the Division of Correction and Parole.

2. Parole Eligibility. This Office originally pointed out to

the relevant officials in November, 1974 that the manner in which parole eligibility was calculated did not comply with the statutes. The Division of Correction and Parole accepted our position, and attempted to implement a reformed system in September, 1975. However, the Parole Board objected to the changes, and the matter eventually had to be referred to the Attorney General for a legal opinion. The Opinion issued in April, 1976, upheld the position which had been taken by this Office, and the reformed system of calculation was implemented shortly thereafter.

3. Annandale Reformatory. Investigation during 1975 revealed substantial evidence of the excessive use of physical force against inmates at this institution. In December, 1975, a meeting was held with law enforcement authorities, at which an investigation by them was requested. This was done, and, at last report, is still continuing, although this Office ceased active involvement with the matter on June 30, 1976.

4. Bail Reform. As previously reported, the Office drafted a revision of the New Jersey Court Rules relating to bail and other forms of pre-trial release. With the assistance of our staff, these were processed through the Supreme Court's Criminal Practice Committee and submitted to the Court in the fall of 1976. They are presently under consideration by the Court. Supervision of this matter for the Public Advocate Department was transferred from this Office to the new Special Projects Section on June 30, 1976.

5. Correctional Master Plan. Staff attorneys from this Office participated, as Commissioner Van Ness' designated alternates, in the

deliberations of the Correctional Master Plan Policy Commission, resulting in the final report on corrections to be issued shortly.

6. Management Control Unit, Trenton State Prison. Immediately following the establishment of this special security unit on December 3, 1975, this Office became actively involved in monitoring its operations, with visits to the unit on three occasions, observation of classification hearings, and discussions with prison and other Institutions and Agencies officials regarding the unit. This led to our involvement in the development of regulations providing due process procedures and proper conditions in the Unit, and our participation as amicus curiae in the litigation which ensued, see Litigation below.

LITIGATION

It has been the policy of this office since its inception, as it is the policy of all Public Advocate Divisions with affirmative litigation authority, to seek to resolve all matters through negotiation before resorting to suit. Thus, in most of the cases listed here, court action was begun only after it became clear that discussions would not bring about satisfactory results. In some, we entered into existing cases in an amicus curiae capacity because we felt that the interests which this Office is authorized to assert were not properly represented. The following cases are those involving prison matters which were active during the first half of the year.

1. Bahati v. Hoffman (Superior Court, Appellate Division). This case was an appeal from a prison disciplinary action which had issues of procedural due process and infringement of First Amendment rights. The

appeal was affirmed by the Appellate Division in April, and it was determined that it would not be desirable to seek Supreme Court review.

2. State v. Wooten (New Jersey Supreme Court) This case involves the question of the application of the kidnapping statute to the act of holding an officer hostage during a prison disturbance. The case was transferred to the Department's Special Projects Section on June 30, 1976, and was argued in the Supreme Court this fall. Decision is awaited.

3. Wooten v. Klein (United States District Court) This suit involves the totality of conditions at the prison system's "Readjustment Unit", located in the Vroom Building at Trenton State Hospital. It was filed in February, 1975, and there has been considerable discovery. As a result of the changes undertaken subsequent to the filing of the suit by the administrators, many of the adverse conditions challenged were corrected. It was thus possible to formulate a consent decree and stipulation of settlement which is about to be entered with the Court, concluding the case. All but five of the 47 plaintiffs agreed to the settlement. (Because of its special nature, the final negotiations and conclusion of this case were retained in the Office subsequent to the termination of our State funding.)

4. McMillian v. Klein (United States District Court) This suit involves the conditions in the detention unit of Trenton State Prison, known as 1-left. It was originally filed by inmates acting pro se in January, 1975, and this Office entered an appearance in July of that year. As a result of numerous factors, the matter had not progressed very far when the Office's funding was terminated, and many of the issues which it involved had been dealt with in Hodges v. Klein, discussed below. It was

thus determined that we should withdraw as counsel, and leave of Court to do so was granted in September.

5. Hodges v. Klein (United States District Court) Shortly after the establishment of the Management Control Unit at Trenton State Prison, several inmates who had been assigned there filed a class action suit in federal court challenging the very existence of the Unit. The plaintiffs requested the Office to represent them in that suit. However, the Public Advocate, in consultation with the staff of this Office, determined that the best interests of the population at the prison as a whole would be served by the isolation of a few inmates, so long as the manner of selecting them was thoroughly fair and the conditions in the isolation unit were legally proper. We therefore entered the case as amicus curiae, so that we could insure that the proper steps to observe the rights of all were taken. During the litigation, the administrative officials undertook to improve the conditions, to carefully screen all of the inmates placed there, and developed regulations governing the future operations of the Unit. As a result, the federal court found that no constitutional violations had been shown. An attorney with the Office participated in all of the hearings and conferences in the case, actively questioning witnesses to bring out facts not uncovered by the parties.

6. Allen v. Maiese and Brown v. Burman (Superior Court, Chancery Division, Camden County) The local opposition to the housing of a unit of minimum security inmates on the grounds at Ancora State Hospital was manifested last spring by the arrest of a number of inmates and the officers accompanying them when they left the hospital grounds to participate in a local softball league. This Office filed suit on behalf of the inmates against the township officials involved. The Department of Institutions and

Agencies also filed on behalf of its institutional interests. A settlement was agreed to barring further such arrests, and clearing the records of those arrested. A consent decree was entered by the Court embodying those terms.

7. Hodges v. Hoffman (Superior Court, Appellate Division)

An inmate at Trenton State Prison filed an appeal from a disciplinary action, moving, inter alia, for appointment of counsel. The Court granted the motion, appointing the Public Defender. The matter was, in turn, assigned to this Office. It has been fully briefed, and decision is awaited.

JULY 1, 1976 THROUGH NOVEMBER 30, 1976

COUNTY AND MUNICIPAL JAILS

The grant from the State Law Enforcement Planning Agency became effective July 1, 1976. It provides funding restricted to carrying out the statutorily authorized functions of this Office in county and municipal jails and other penal facilities throughout the state. However, since the grant only provides for the salaries of two attorneys, a field representative (investigator) and a legal secretary, we have had to limit our work to major adult facilities. (The Department's Child Advocacy Office has undertaken to monitor conditions in juvenile facilities throughout the state.) The Office was fully staffed by August 5, 1976.

COUNTY JAIL INSPECTIONS AND REPORTS

The first action undertaken under the new program was to visit each county jail and penitentiary and thoroughly inspect each. This involved a total of 25 field visits, which were completed by the end of September. These visits, conducted by at least two and occasionally three members of the staff, involved an interview with the warden or a high-ranking officer regarding procedure, programs, etc. in the institution, a complete physical inspection of the building, and conversations with numerous inmates regarding their view of the conditions. They took from three to eight hours each, excluding travel time, depending on the size of the institution.

Following each visit, an internal report was prepared for Office use, on a standardized form developed by us to insure that no areas of concern were missed. The next phase of our project, which is currently going on will be to prepare a report to the relevant officials in each county regarding our findings. We have identified eleven "target" institutions where we believe that the deviations from the legal standards set out in court decisions, statutes and various guidelines are substantial. Each of these institutions will receive a detailed report, describing each deficiency, the legal standard relied on, and our recommendations for changes. Following the report, a meeting with the officials will be held to seek agreement to bring about the required changes. In those cases where the officials are unable or unwilling to undertake those reforms which the law appears to require, suit may be brought.

In the case of the remaining institutions where there are no deficiencies or where they are comparatively minor, a report will be issued pointing out our findings, requesting a response from the county, and

offering our assistance in carrying out the reforms. It is the goal of the project to produce a condition where all legal standards are followed in every adult county penal facility in the state.

INDIVIDUAL COMPLAINTS

In addition to our larger investigations, the Office has sought to encourage individual inmates in the County facilities to bring complaints regarding conditions to our attention. It has proven rather more difficult to do this in these institutions than it was in the prison for two reasons: (1) The populations in the jails are highly transient, and as a result, even when some inmates learn of our availability, they are soon gone, and the new arrivals have no way of learning of this Office; (2) Pre-trial detainees, in general, are primarily concerned with the disposition of the charges pending against them, and not matters such as their health and physical environment,

However, we have received 57 complaints from or about individual inmates in 15 county institutions in the five months that the new program has been in operation. Depending on the nature of the matter, our response may involve personal or telephone contact with the inmate and/or jail officials, or referral to another agency which will be able to deal with the problem. In general, we have been successful in resolving such matters as medical attention, disciplinary procedures, and visiting arrangements. Large issues, such as access to legal materials, food services, and general housing conditions which cannot be immediately resolved, are incorporated in our full report to the county for discussion along with the other issues.

SUBJECT MATTER INVESTIGATIONS

In a sense, each visit to and report on a county institution would have constituted a subject matter investigation under the system of classification which we previously used. However, we now reserve that category for special matters, either common to many jails, or unique to one, but outside the norm of our dealings with them.

1. Library Services We found that many institutions lacked adequate or, in some cases, any internal library facilities to provide general reading material to their inmates. Several were interested in developing such facilities but were unsure how to go about it. We made inquiries of the State Library, and other sources of services and assistance which were available, and have made the jail authorities aware of these.

2. Health and Sanitary Inspections. Our visits to many institutions suggested to us, as untrained observers, that food service and related facilities in some jails did not appear to be in a proper state of cleanliness. We undertook to learn whether any health agency was conducting inspections at these places. We found that there was no consistency among the counties. Some are inspected by the health agency of the municipality in which they are located, some by the county agency, and some by no one. Through contacts with the State Department of Health, we were able to arrange to have inspectors visit those places where no inspections were being done, with the result that many violations were encountered and corrected.

3. Essex County Corrections Center - Incident of

November 30, 1976. On this date an inmate at the Caldwell Penitentiary was burned to death in his cell, apparently in a successful suicide. A disturbance involving several inmates occurred as a result. The inmates requested that there be an independent investigation of the entire matter, and this Office was requested to conduct it. An attorney spent the following day interviewing inmates and administrative personnel. A full report is now in preparation.

LITIGATION

Because of the policy of this Office not to bring lawsuits except where the matter could not be resolved administratively, we have not yet been engaged in any litigation. It is anticipated that, in at least some counties, deficiencies which constitute substantial violation of the legal rights of inmates will not be resolved through negotiations, and that some lawsuits will have to be brought next year.

GENERAL COMMENTS

The loss of state funding for the Office of Inmate Advocacy, which has required us to cease all services to inmates in the adult correctional facilities in the state, has resulted in a situation where no agency outside of the Department of Corrections itself is presently available to respond to the concerns of those people. Officials of that Department, as well as many responsible inmates, have expressed concern that this useful outlet for the tensions of prison life has been lost. While it is understood that in the present financial situation in the State, other priorities must take precedence, we hope that in the not too distant future, it will

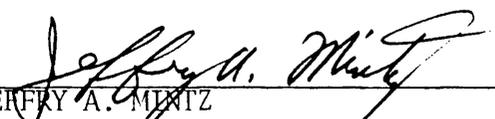
be possible to restore this Office to the budget and thereby lessen to some degree the possibility that these tensions may build to the point of producing serious and costly disturbances.

On the other hand, the SLEPA funding, which has enabled us to conduct a major inquiry into conditions in the county facilities, will result in substantial improvement in this previously unexamined area. We are hopeful that our grant will be renewed so that we can carry the work to positive conclusions.

As the Public Advocate Act presently exists, the authority of the Office of Inmate Advocacy to represent the interests of inmates in penal facilities throughout the state will terminate on December 1, 1978, unless extended by an act of the Legislature. This provision apparently reflected a concern of the Legislature over giving permanent existence to this inovative program. A bill has been introduced (S 1722) to remove this restriction from the act for this Office, as well as the Department's Division of Public Interest Advocacy. Having permanancy would better enable the Office to continue its work and to seek further funding. Support for this legislation is therefore urged on the members of the Legislature and the Governor.

Respectfully submitted,

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Public Advocate



JEREMY A. MINTZ
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Office of Inmate Advocacy