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OFFICE OF INMATE ADVOCACY  
NEW JERSEY PUBLIC DEFENDER  
DEPARTMENT OF THE PUBLIC ADVOCATE

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ANNUAL REPORT

DECEMBER 1, 1981 - NOVEMBER 30, 1982

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Submitted to the Governor and the members of the Legislature pursuant to  
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## I. INTRODUCTION

### A. Background

The Public Defender's Office of Inmate Advocacy was established by the New Jersey Legislature in 1974 to represent persons confined in local, county, or state correctional facilities. N.J.S.A. 52:27E-10 to 52:27E-12. The Office has authority at the discretion of the Public Defender to represent inmates through negotiation or litigation with any principal department or other instrumentality of state, county, or local government. The mission of the Office principally has been to ensure compliance with existing laws and constitutional requirements that protect the essential rights of people detained or imprisoned. In addition, because the Office is a state governmental agency and is authorized to represent inmates as a class in negotiations or litigation, it is uniquely able to operate in a manner which limits governmental exposure to serious financial liabilities for substandard or otherwise unlawful conditions or practices in New Jersey's jails and correctional institutions.

From its inception, the Office literally has been deluged with individual complaints and inquiries from inmates in detention, correctional or penal facilities throughout the state, as well as from their families, friends or concerned officials. The Office monitors or investigates the complaints received in order to identify patterns of abuses or practices of a class dimension affecting the interests of inmates. Where such patterns or practices appear, the Office may represent clients in negotiations or litigation.

As in other Public Defender cases, those represented by this Office mainly have been the impoverished, for it is the poor who our jails predominantly house. Moreover, in regard to county jails, the majority of people have not been convicted of any crime or offense and are being detained in lieu of bail amounts they cannot meet pending disposition of charges. For such people continued detention is often solely due to impoverishment. Furthermore, such conditions as may exist in those jails are indiscriminantly imposed on those against whom charges have been wrongly brought or whose charges will be dismissed or who will be acquitted, as well as on those who eventually will be convicted. Thus, unlike state prisons, our jails and local facilities ordinarily house the legally innocent, the genuinely not guilty, and the lesser offender. As would be expected, persons held as detainees also are entitled to more beneficial conditions, namely to be free from conditions that amount to punishment; conversely those persons lawfully convicted may be punished, though not in a manner that is cruel or unusual so as to deny them a minimal civilized measure of life's necessities.

In fulfillment of its statutory mission to provide representation in such cases to persons held in confinement, the Office over the years has represented inmates on many types of issues: for example, serious deficiencies in intake medical procedures and in routine health care, racial segregation, impediments to reasonable visitation by family members or friends, abuses in disciplinary procedures within institutions, improper classification procedures jeopardizing inmate safety or institutional security, violations of the First Amendment rights of inmates (including illegal reading of incoming mail and opening of outgoing mail, prohibition on non-Christian religious services, censorship of reading materials, inadequate access to legal materials or a law library, attorneys and the courts), incidents of brutality against

inmates, and matters involving problems with parole and probation. In attending to its responsibilities, the Office also has pursued and successfully established positive working relationships with corrections officials throughout the State in order to facilitate administrative resolution of many conflicts between inmates and jail authorities, thereby averting the need for litigation.

B. Summary

In the period covered by this report, the work of the Office focused almost entirely on identifying the most serious problems generated by jail overcrowding and obtaining expeditious and pragmatic relief from overcrowding in specific jails. In 1982 alone, due to representation by the Public Defender in four overcrowding cases, jail populations were reduced, significant improvements in jail conditions were obtained, and important reforms in jail practices and programs were put in place, achievements which benefited clients and their families as well as jail personnel. Equally significant, and particularly due to representation by the Public Defender in these cases, hundreds of thousands of dollars were saved by local and county governments, and the State Department of Corrections, in avoiding exposure to large damage awards and substantial attorney fees that courts recently have awarded to inmates and their appointed or retained lawyers in many similar cases, both in New Jersey and across the country. (See Appendix)

Yet in 1982, Public Defender representation of persons confined in jails and prisons also was seriously affected by budget limitations, fiscal constraints, and the burgeoning populations in New Jersey's jails and prisons. The Office did not have the resources to respond equally, or at all, to many serious complaints or important issues brought to our attention by inmates, their families, or concerned county officials and jail administrators. Neither did the Office have the resources to continue some programs which had served

both inmates and jail officials. With respect to these matters, some of which are described in this report, violations of law will remain unchecked, dangerous conditions will continue to exist, and the operations of our jails and prisons will continue to expose those responsible for these institutions to substantial financial liabilities. For example, in counties such as Hudson, Atlantic, Cape May and Burlington, the Office could not provide representation to inmates, with the result that inmates on their own or through other attorneys instituted or continued litigation for which county governments or the State have been or will be assessed substantial costs as counsel's fees. Indeed, damage awards also will likely result from the tragic fire which killed seven inmates at the overcrowded Hudson County Jail and from three suicides at the Union County Jail, incidents which preceded the court orders to reduce the population of these jails.

Despite the severity of the overcrowding crisis, the Office also continued efforts to enhance its relationships with jail and corrections officials, as well as to increase their understanding of the assistance and advice which the Office could provide to jail administrators and other responsible officials. For example, with funds provided by the National Institute of Corrections the Office continued a project to provide technical assistance to county jails in developing inmate grievance mechanisms as a means to avoid litigation and to resolve disputes in a peaceful and positive manner. But as this report details, in 1982 the impact of the overcrowding crisis in the state's county and local jails necessarily became the chief priority for the Office. For overcrowding threatened not only important rights of persons detained or imprisoned, but had reached such serious proportions as to threaten the ability of some jails to maintain minimally humane conditions and a safe or secure institution.

## II. OPERATIONS

For most of 1982, the eighth calendar year of operation, the Office operated with a small staff consisting of one lawyer/director, two field representatives and a secretary. (Due to circumstances of the utmost gravity caused by jail overcrowding, an additional lawyer and one law clerk were provided for a portion of 1982 by the Public Defender.) Notwithstanding this minimal staff complement, the Office compiled a clear record of substantial accomplishments in carrying out its legislative mandate. But since the regular budgeted resources available to the Office did not keep pace with the demand for its services, the Office was forced to terminate or substantially curtail some programs in order to direct its limited resources to the gravest problems associated with jail overcrowding.

### A. Litigation

The dangerously overcrowded conditions existing in many county jails continued to result in the necessity of litigation in several counties. Lawsuits filed in 1981 against Union County and Middlesex County officials on behalf of inmates were successfully pursued in 1982, with the Office obtaining favorable court rulings or action by jail officials. As a result of severe overcrowding in the Camden County and Essex County Jails, additional lawsuits were filed against county officials and the New Jersey Department of Corrections. In addition, the Office was appointed by a federal court as counsel in ten consolidated individual lawsuits brought by inmates at the Ocean County Jail challenging overcrowding and resulting conditions, and seeking damages and injunctive relief. The Office also successfully reopened a 1979 Consent Agreement which had settled litigation over conditions at the Passaic

County Jail; the reopening was sought by the Office and consented to by the County because the dramatic increase in the population housed at the jail prevented the County from complying with many provisions of the Settlement Agreement. In November 1982, with most of the matters involving the counties already mentioned having been settled or otherwise favorably resolved, the Office turned its attention to investigating complaints of serious overcrowding and deteriorating conditions in the Monmouth County Jail and the municipal lockups of the City of Newark.

1. Union County

In the Union County Case, Federal District Judge Harold Ackerman ruled in April that conditions at the jail were unconstitutional. The Court ordered a reduction in the jail population and improvements in medical care, recreation and visitation. The ruling resulted from hearings before The Honorable Worrall F. Mountain, a former New Jersey Supreme Court Justice who had been appointed by Judge Ackerman to act as a Special Master in order to determine what conditions were like at the jail. The Special Master's findings essentially confirmed all of the allegations set forth in the Federal Court Complaint filed by the Office.

In the context of this lawsuit, Union County also had filed a third-party complaint against the Commissioner of the New Jersey Department of Corrections, alleging that the overcrowded conditions at the jail were caused by the large numbers of state prison inmates who were held at the jail, rather than being transferred to the state correctional system. In argument, this Office supported the County's position. The Corrections Department vigorously fought the effort to hold them responsible for the overcrowding problem and further asserted that the Commissioner was largely beyond the authority of the

Federal Court in acting under the executive orders that have been promulgated by Governors Byrne and Kean, empowering the Commissioner to essentially determine who shall be held in any jail facility throughout the state.

The Court, however, agreed with the plaintiffs and the County officials who asserted that the constitutional limitations on conditions in the jail must take precedence over the Commissioner's implementation of the executive order with respect to any particular jail facility where conditions are shown to be unconstitutional. The Order issued by Judge Ackerman compelled the Department of Corrections to remove from the jail all inmates sentenced to state institutions to the extent that state inmates would cause the jail population to exceed the jail's maximum capacity as fixed by the Court's Order. Although the Attorney General's Office has appealed Judge Ackerman's ruling to the Third Circuit Court of Appeals, the Department of Corrections nevertheless complied fully with the Court's initial Order to remove all inmates sentenced to state institutions by July 1, 1982 and thereafter within fifteen days from the date of sentencing. Once the jail population had been reduced, County Jail officials also proceeded to improve the specific programs and services which also had been the subject of the Court's Order.

In late September the population at the jail again began to exceed the capacity fixed by the Court's Order. After this Office brought this fact to the Court's attention, Judge Ackerman asked Special Master Worrall F. Mountain once again to review conditions at the jail to determine the extent of and reason for noncompliance with the Court's Order. After the initial investigation, Judge Ackerman convened a meeting of all the parties and additional County officials including the County Prosecutor. At that meeting the Special Master concluded, and the parties generally agreed, that the excess jail population seemed to result from an increase in pre-trial detainees and

inmates sentenced to county jail terms. County officials indicated that they would review steps to remedy the overcrowding problem and report back to the Court. As of late November, remedies for the continued overcrowding are still under review. The Office expects to proceed further during the month of December 1982 to ensure compliance with the Court's Order.

## 2. Middlesex County

In the Middlesex County litigation, overcrowding and deteriorating conditions at county jail facilities were substantially improved when County officials acquired additional housing facilities to accommodate most of the excess jail population. In addition, County officials were able to ameliorate certain deficiencies in jail operations by improving recreation and visitation programs at the County's institutions. Consequently, the Office and County officials informally agreed to suspend the litigation. During the course of 1982, the Office continued to monitor complaints from and conditions at the Middlesex County facilities. As 1982 drew to a close, the Office has taken under review a request by County officials that the litigation be reactivated in order to seek relief from increased levels of overcrowding. The Office agreed that conditions at the County's institutions will continue to be monitored to ensure that the overcrowding problems continue to be resolved by County and State corrections officials. In addition, because Middlesex County in 1983 will complete construction of a new correctional facility, the Office has asked County officials to determine what impact the new facility will have on reducing overall overcrowding in Middlesex County's correctional facilities.

### 3. Ocean County

In March the Office was appointed by Federal District Judge Dickinson R. Debevoise to represent a number of inmates at the Ocean County Jail who had filed their own individual lawsuits challenging overcrowding and deteriorating conditions at the Jail, and seeking monetary damages and injunctive relief. Upon being appointed as the attorney for these inmates, the Office began an investigation of the facts underlying the individual complaints and of the problems caused by overcrowding at the Ocean County Jail. The Office verified that the Jail was operating at approximately 150 percent of its constitutional capacity, that facilities for recreation or exercise were entirely absent, that formal disciplinary procedures and practices were not observed, that mattresses and bed clothing were unsanitary or not provided, that inmates were forced to sleep on floors, that visitation had been severely restricted, and that other essential rights of inmates were being violated. In May, the Office filed an Amended and Supplemental Complaint detailing the findings of its investigation and seeking to resolve all of the individual lawsuits in a single suit to be heard as a class action on behalf of all inmates at the jail. The Office sought only injunctive relief, not damages for the inmate class.

In June the Court granted motions by the Office to have the Ocean County suit certified as a class action and to include the Board of Freeholders as additional defendants. In June and July, extensive discussions were held with County officials to find a way to resolve expeditiously the concerns about conditions at the jail. These discussions resulted in a draft of a preliminary injunction which would require the County to reduce the jail population at the existing facility and provide additional temporary housing until a new jail, presently under construction, is completed in 1985. The

proposed preliminary injunction also was to provide other relief sought for the inmate class, including recreational facilities, medical screening, clean bed clothing and a prohibition on using the floors as sleeping areas. Staff members also traveled to Ocean County to tour two sites for additional inmate housing. The proposed Order was signed by Judge Debevoise on July 28, 1982.

Ironically, the preliminary injunction not only promised quick relief for inmates at the Ocean County Jail, but allowed County officials to demonstrate further the emergency need for additional jail facilities that would have occurred in any event with the planned demolition of a portion of the existing jail. In addition, the Order shielded County officials from becoming targets of local opposition to the siting of the temporary facilities. Between August and November County officials moved expeditiously to provide the additional temporary facilities in order to comply with the preliminary injunction. While the other issues in the lawsuit remain unresolved at this writing, as a result of continuing discussions with County officials the Office is hopeful that with the completion of the additional temporary facilities in December 1982, the other issues remaining in the lawsuit can be quickly resolved.

#### 4. Essex and Camden County Jails

During the month of June, the Office filed lawsuits involving overcrowding and deteriorating conditions at the Essex County Jail and the Camden County Jail. In both of these lawsuits, the Office for the first time named the Commissioner of the New Jersey Department of Corrections as a defendant, alleging he was in part responsible for overcrowding and resulting conditions at these jails, as well as County officials. The suits sought removal of state-sentenced inmates from the jails and substantial improvements in the living conditions for the inmates at these facilities. In July, the Federal

District Court ordered the appointment of Special Masters to investigate the allegations in the complaints filed by the Office and to hold hearings in which the cases would be presented. In the Camden County case, Federal District Judge Harold Ackerman once again appointed former New Jersey Supreme Court Justice Worrall F. Mountain as Special Master. In the Essex County case, Judge Ackerman appointed Sidney Reitman and James Zazzali as Special Masters. During August, the Special Masters commenced and scheduled proceedings, including inspection tours of both facilities. Pre-trial proceedings continued in both the Essex County and Camden County Jail lawsuits during the month of September.

After extensive pre-trial proceedings in the Essex County case, the Office reached a settlement of the inmates' complaints with the County, and both the Office and the County accepted a settlement proposal from the State Department of Corrections. The settlement was reduced to a formal Consent Judgment and entered as an Order of the Court on September 24, 1982. A maximum population capacity was established for the jail, essentially conforming to the capacity level which the Office had sought. The Department of Corrections agreed to remove all sentenced state prisoners from the jail in accordance with a specified removal schedule. The removal schedule provided that 150 sentenced state prisoners would be removed by October 15, 1982 and that another 150 sentenced state prisoners would be removed from the Essex County Jail by January 1983. In addition, the Department of Corrections agreed that an additional 30 inmates would be removed each month from the jail between October 1982 and June 1983, and that as of July 1, 1983, sentenced state inmates would be removed from the jail within 15 days of sentencing, if their presence caused the population of the jail to exceed the maximum capacity

established by the Consent Agreement. The Consent Agreement also called upon the County to make significant improvements in services provided to inmates, including increasing recreation from once a week to a daily opportunity for exercise, establishing visitation hours in the evenings, eliminating a ban on visits by children on Saturdays, installation of smoke detectors in all living areas of the jail, reintroduction of a comprehensive classification system, improved extermination to rid the jail of infestation by roaches and rodents, and improvements in the law library at the jail.

In the Camden County Jail case, the trial before Special Master Worrall F. Mountain commenced in late September. After the first day of trial, settlement discussions resumed and after a week's time, the parties had agreed on a general outline for resolving the lawsuit. Negotiations continued through October and early November, at which time a Consent Judgment was finalized to resolve the issues raised in the complaint which the Office had filed concerning overcrowding at the jail.

In the Consent Judgment, the County and the Department of Corrections acknowledged that the inmates at the jail were entitled to declaratory and injunctive relief due to the severe overcrowding at the jail and the inadequate living conditions and services resulting from that overcrowding. The Consent Judgment established a maximum capacity for the jail fixed at not greater than 147 inmates. At the time of settlement, the jail was housing between 360 and 400 inmates. Because the County was proceeding with a plan to construct a new jail and have it operational by November 1985, the Office on behalf of the inmates agreed to a "temporary emergency capacity" of 230 for the jail. In exchange for the provision permitting the jail to operate for up to three years at this temporary emergency capacity, the County agreed to provide immediate and substantial improvements in the services, programs and conditions

at the jail. (The temporary emergency capacity for the Camden County Jail will terminate on November 30, 1985, or sooner if there is noncompliance with the improved level of services, programs or conditions at the jail.)

Under the terms of the Consent Order, the Department of Corrections also agreed to remove all inmates from the Camden County Jail who are sentenced to terms in state institutions as of November 15, 1982 and to do so continuously after November 30, 1982. The County agreed further to reduce the jail population to 230 inmates by January 1, 1983. The Consent Order also prohibits the County from requiring inmates to sleep on mattresses placed on the floor and requires the County to make the substantial improvements and renovations specified in the Consent Order by January 1, 1983. The Order also provides for specific steps to implement its terms, including for the first time a requirement that the County restrict admissions to the jail in certain categories of nonviolent and minor offenders, if the capacity of the jail cannot otherwise be met. The Order also provides for additional sanctions against the County for noncompliance with the Order. The Order was formally signed by the Court on November 17, 1982.

##### 5. Passaic County

During 1982 the Office also investigated deteriorating conditions at the Passaic County Jail. County officials were under a Court Order, obtained in 1979 by the Office, which established certain standards to ensure that conditions at the jail would conform to minimal constitutional requirements. Complaints from inmates and investigations by the Office confirmed that the County was not complying with provisions of the 1979 Court Order. At the time of the 1979 Court Order, the population at the jail was approximately 300 inmates. During 1982 the jail population rose to over 500 inmates.

The increased population resulted principally from actions by the Commissioner of the New Jersey Department of Corrections compelling County officials to house inmates at the jail who had been sentenced to terms in state correctional institutions.

In July the Office arranged with the County Sheriff and County Counsel to tour the entire Passaic County Jail to assess compliance with the 1979 Court Order. As a result of that investigation, the Office and County officials reached an agreement to permit the Office to reopen litigation in order to seek relief for overcrowding at the jail that has developed since the 1979 Order settling the lawsuit. In September, Federal District Court Judge Herbert Stern approved an Order formally reopening the lawsuit to deal with the new overcrowding problem.

During October and November the Office commenced an investigation of specific complaints and conditions and notified the Commissioner of the New Jersey Department of Corrections, through the Attorney General's Office, that the housing of state inmates at the Passaic County Jail appeared to cause unconstitutional conditions and prevent compliance with the existing 1979 Court Order. The Office indicated that continued overcrowding at the jail would result in further litigation to reduce the jail's population to a constitutional capacity. As of this writing, because the continued presence of nearly 200 sentenced state prisoners causes unacceptable overcrowding, further litigation appears inevitable.

#### 6. Morrmouth County and Newark

Dangerous levels of overcrowding and deplorable jail conditions also have been reported in the Morrmouth County Jail and in the Newark Municipal Lockups. During November, the Office formally opened pre-litigation investigations into complaints alleging deprivation of constitutional rights

and the absence of minimally humane conditions of the most serious character in the Newark City Lockups and the Monmouth County Jail. Although the Office has made initial contacts with officials responsible for these facilities, the officials have not responded to requests by the Office to tour the facilities in order to evaluate and verify the allegations made in complaints to the Office.

In late November, the Office learned from press reports that Monmouth County officials had filed a state court lawsuit against the New Jersey Department of Corrections to seek removal of state inmates presently held there under the authority of the Commissioner of the Department of Corrections. Monmouth County officials had attributed the deteriorating conditions at the jail to the nearly 200 state inmates who have been housed there. Similarly, this Office had notified the Department of Corrections and the Attorney General's Office that the overcrowding and deteriorating conditions at the Monmouth County Jail could lead to further litigation if either the population was not reduced or additional temporary facilities were not provided, so that conditions improved. The County itself had acknowledged that the crowding at the jail had reached explosive proportions and that over 100 inmates could not be provided with beds. Unless the County is successful in its state court action seeking relief for the overcrowded conditions at the jail, this Office in representing persons confined at the Monmouth County Jail may find it necessary to commence further Federal Court litigation in the near future.

The situation with regard to the Newark Municipal Lockups is similar. The Office initially hoped that some relief for the crowding in the Newark Municipal Lockups would be provided by the removal of 300 sentenced state prisoners from the Essex County Jail by January 1983, in accordance with the Consent Judgment in the Essex County Jail litigation. While the removal of

sentenced state prisoners has permitted the Essex County Jail to admit greater numbers of inmates from the Newark Municipal Lockups, as of late November it was becoming apparent that a sufficient number of inmates from the Newark Municipal Lockups could not be admitted to the Essex County Jail without violating the terms of the Court Order governing the capacity of and conditions at the Essex County Jail. Moreover, investigations by this Office have found that conditions and practices apart from overcrowding clearly inflict such hardship and deprivations on persons confined in the Newark Municipal Lockups as to violate any standard of care compatible with civilized considerations, let alone minimal constitutional requirements.

B. Negotiations and Services

As in past years, the Office continued this year to seek to achieve its objectives without protracted discussions or lengthy litigation and through developing positive relationships with corrections and jail officials wherever possible. Because of its status as a state agency, and its ability to represent inmates as a class rather than as individuals, the Office often hoped that it could achieve the objectives of its mission in a nonadversarial manner. In this regard, during 1982 the Office received several hundred inmate complaints and numerous inquiries from county officials unrelated to specific litigation. Where patterns of complaints emerged from those received, the Office attempted to bring the matters of concern to the attention of county jail officials, in order to avert matters which would lead to litigation and to assist county officials in developing procedures that would avoid exposure to liability. In a number of instances the Office was able to promote improvements through the provision of this type of assistance and advice in certain basic areas such as medical care, recreation, access to legal material, disciplinary practices and procedures, visitation rights, and mail procedures.

During 1982, one example of these activities involved continuation of a project initially funded by a grant from the National Institute of Corrections, to promote the development of effective grievance resolution mechanisms in each of the county jails so that inmates housed there would have a procedure for the resolution of disputes without the necessity of their resorting to litigation or to any unlawful means of protest. In another example of technical assistance provided by the Office, we were able to respond quickly and effectively to a request from the Morris County Sheriff's Department to evaluate conditions at the Morris County Jail to determine the impact of jail overcrowding and suggest alternatives available to the County that would resolve any significant problems and minimize the County's exposure to liability for jail conditions. The Office staff toured the entire Morris County Jail, interviewed a number of jail inmates who had brought complaints to our attention, and prepared a comprehensive analysis and evaluation as requested by the Sheriff's Department. Previously, the Office had worked with Morris County officials supporting the County's decision to renovate the jail and build a small addition to the facility. In September of this year, doubts about the need for the renovation and expanded facility were raised by County personnel not thoroughly acquainted with the critical need for continuation of the expansion/renovation project. Partly as a result of the evaluation and recommendation provided to the Sheriff's Department and to the Board of Freeholders by this Office, the County committed itself to a renovation/addition plan that would add additional housing, recreation facilities and fire safety measures to the existing Morris County Jail.

The ability of the Office to resolve disputes through negotiation and compromise, while ensuring that the essential rights of persons confined

in detention and correctional facilities are protected, continued to be an important reason for the high regard in which the Office is increasingly held by jail and correctional officials, as well as the clients who the Office represents. Whether in litigation (as in Union and Camden Counties) or in negotiations (as in Morris County), the Office takes particular pride in the fact that among many who are technically adversaries, there are many who are in actuality friends. Indeed, corrections officials, sheriffs, wardens and county counsels have been frequent in their requests for advice and assistance and in invitations to participate in various programs and forums. In addition, many attorneys, judges, court personnel, and other public officials have regularly called upon the Office of Inmate Advocacy for advice and assistance in matters relating to the rights and interests of persons in confinement.

### III. PROGRAM CUTBACKS

As noted previously, the overcrowded conditions in the jails of this state have resulted in an increase in both the number and the nature of the complaints which we receive, as well as a reduction in the ability of this Office and of the administrators of the county jails to successfully resolve the complaints. In addition, overcrowded conditions in jails have continued to force many counties to consider and pursue new jail construction. Nevertheless, limited resources have required the elimination or reduction of Office activities in certain areas.

#### A. New Jail Planning and Construction

In recent years a very substantial portion of the Office's resources had been devoted to working with counties which were in the process of planning and/or designing new jail buildings to replace or supplement existing substandard facilities. The Office worked with counties in the design and development stage of these projects to ensure that the new building projects would meet current legal standards and professional guidelines. Following construction, staff members of the Office also have worked with counties to ensure that any new operations maximize the benefits which the physical plant permits. During 1980 the Office provided this type of assistance to Atlantic, Camden, Gloucester, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic and Warren Counties. In 1981, similar assistance was provided to Atlantic, Gloucester, Hunterdon, Middlesex, Monmouth, Ocean, Somerset and Warren Counties. Regrettably, as a result of the critical and explosive nature of the overcrowding crisis in the state's jails, and the limits on Office resources, the Office had to cease providing assistance to counties which were engaged in the planning, design, or construction of new jail facilities.

## B. Inmate Complaints

For similar reasons, even the Office's core function of providing direct assistance to inmates with respect to problems within their institutions has been curtailed. This development is particularly regrettable because such efforts have served as a safety valve of considerable importance to the jails of the state. Without this program, many inmates have no place to turn when they feel that they are being denied minimally humane treatment and jail officials are without an easily accessible authoritative source capable of fairly resolving meritless inmate complaints or providing corrective suggestions for legitimate concerns.

In previous years, virtually every communication received from or about an inmate resulted in personal contact by this Office, except where Office involvement was clearly inappropriate. Following the receipt of a letter or telephone call from or about an inmate in a detention or correction facility, a formal contact was made with administrative personnel to ascertain their position on the matter and to seek a resolution to it. These actions culminated in some formal follow-up, generally in the form of a letter to the inmate and/or the administration summarizing the problem and the solution. The resolution of these matters would take from a few minutes for the phone calls and preparation of letters and reports involved, to several days including direct on-site investigation and lengthy follow-up. Now in many cases of complaints or inquiries from inmates, their families, or jail officials, the Office must indicate that the complaint cannot be addressed and the inquiry is referred to other agencies for whatever help might be available, which often is none at all.

Past budgetary limitations had effectively terminated the handling of inmate complaints for all state correctional facilities. Present constraints now have forced cutbacks for the majority of county and municipal detention and

correction facilities. As a result, a great many inquiries from inmates, their families, or jail officials which raise legitimate issues for investigation or response by this Office must be turned away. Disputes which could be mediated, liabilities that could be avoided, and serious deprivations and hardships that should be remedied cannot be provided appropriate consideration. As a result, tensions, hostilities, and conflicts build in our jails and prisons, injuries to person and property and monetary damages may result, and people who are confined for detention and are unable to make bail, or who are in prison as a punishment for an offense or crime are subjected to practices that are clearly unlawful and contrary to all standards establishing minimally civilized conditions for jails and prisons.

Among the investigations that could not be pursued were those in the following areas: the sufficiency of medical facilities and treatment; procedures and equipment to assure fire safety and prevention; the legal propriety of objectionable disciplinary procedures or sanctions; denial of First Amendment rights, including deprivation of religious freedom, prohibitions on access to newspapers, and interference with incoming and outgoing mail at jails; confinement of juveniles in adult county facilities; visitation schedules which unreasonably impede visits by family members and friends; the absence of classification procedures needed to assure safety and security for jail inmates; and brutality and unreasonable strip searches imposed on inmates. While the achievements of the Office have been substantial, it remains increasingly tragic that the Office does not have the resources necessary to provide assistance to inmates with legitimate concerns in such vital areas as those identified above.

#### IV. CONCLUSION

The conditions in our detention, correctional and penal institutions are growing more serious as the populations housed in them increase. With the dramatic increase in the rate of incarceration in our prisons, jails and lockups, effective and independent representation for those confined is needed more than ever to insure that minimally decent living conditions, essential rights, and professional standards are not denied to the largely indigent populations of these institutions. In providing such representation, the Office of Inmate Advocacy offers a vital service to those who are confined, as well as to the officials who are responsible for running our detention and correctional institutions. As a state agency, this Office also insures that the representation it provides is afforded in a manner fully respectful of the best interests of the public. Indeed, if conditions in our jails or prisons are allowed to deteriorate to where inmates, particularly the types of people who are confined in our county jails, are subjected to lawlessness, terrorized by other inmates or officials, or deprived of a minimum measure of life's basic necessities, then our jails will breed more crime, violence and disrespect for a civilized and law-abiding society. As one commentator recently put it, "institutions that would degrade and humiliate" in the name of punishment only end up "freeing people who are no more equipped to function in the community than a rabid dog." The days when the simple thought that locking people up and throwing away the key solves the problem of crime in our society are gone forever. Indeed, even unnecessary exposure to financial liability for a jail and taxpayers will be risked by poor and substandard conditions or practices which indicate that all inmates at a jail, including those who have not been and may never be convicted of a crime, are there for punishment.

Obviously, too, society has a right to exact punishment for crime and even to require that the punishment include restrictive and harsh conditions. But when punishment begins to include being callous, deliberately indifferent, or cruel, we are doing much more than requiring that lawbreakers serve terms of imprisonment; instead our attitude and conduct begin to resemble those whom we incarcerate. Indeed, to deter such conduct and offenses against civilized standards, the Office of Inmate Advocacy was established. Hopefully, the significant record of accomplishments set forth in this report will serve to indicate that the Office has remained faithful to that high purpose. Equally, it is to be hoped that the Office will be able to continue to serve the people of this state in the future.

APPENDIX

COUNSEL FEES AND DAMAGES  
AS COSTS FOR OVERCROWDING  
AND UNCONSTITUTIONAL CONDITIONS  
OF CONFINEMENT

The Office of Inmate Advocacy is designed to achieve considerable savings for the State and county and local governments by identifying potential exposure to liability for conditions that exist at a particular jail. In many lawsuits over poor jail conditions in this state and across the country, substantial sums of money have been awarded to inmates as individuals and in class actions as damages for having to endure certain conditions, and as attorney fees to pay for the lawyers who represented inmates in cases where violations of law were established. Recently over \$200,000 was awarded to a class of inmates in a jail in Eastern Virginia for overcrowding similar to that which existed at the Union County Jail before the Court's ruling to reduce the population there. In New Jersey where lawyers other than this Office have represented inmates, damages and attorney fees similarly have been awarded. Indeed, while there may be not insignificant costs associated with any court-ordered improvements in jail conditions, representation of inmates by this Office at least limits the liability of the state and county officials and the costs to taxpayers. A compendium of recent cases usefully serves to demonstrate the cost which overcrowding and unconstitutional conditions of confinement have entailed in cases similar to those handled by this Office for which such costs were not incurred. The Office of Inmate Advocacy is operating during Fiscal 1983 with a budget of approximately \$50,000 in direct funding.

Jail and Prison

Litigation Costs

1. Ramos v. Lamm, 539 F. Supp. 730 (D.Colo. 1982) - Colorado State Prison \$709,933.50 awarded as plaintiffs' counsel fees for the work of over a dozen lawyers, as well as law clerks, legal assistants and paralegals; and \$32,782 for travel expenses, expert testimony, depositions. Counsel fees ranged from \$125/hour to \$60/hour for attorneys, \$35/hour for legal assistants, and \$25/hour for law clerks.
2. Palmigiano v. Garrahy, 616 F.2d 598 (1st Cir., 1980), cert. den'd 449 U.S. 839 (1981) - Rhode Island State Prison - \$86,655 awarded as plaintiffs' counsel fees in successful class action challenge to conditions of confinement. \$28,828 as additional Plaintiffs' counsel fees in successful challenge to prolonged lockup.
3. Stewart v. Rhodes, 656 F.2d 1211 (6th Cir. 1981) - Ohio State Prison (Columbus Correctional Facility) - \$117,020 awarded as plaintiffs' counsel fees for challenge to disciplinary procedures and racial segregation, which had culminated in a consent judgment after plaintiffs had obtained a preliminary injunction.
4. West v. Redman, 530 F. Supp. 546 (D. Del. 1982) - Delaware Correctional Center - \$47,000 awarded as plaintiffs' counsel fees in class action challenging disciplinary procedures and mistreatment.
5. Gates v. Collier, 616 F.2d 1268 (5th Cir. 1980) - Mississippi State Prison - \$52,736 awarded as plaintiffs' counsel fees and costs in class action challenging general living condition. Eight percent interest also awarded on delinquent payments by state.

6. Furtado v. Bishop, 635 F.2d 915 (1st Cir. 1980) - Massachusetts State Prison - Appeals Court increased counsel fee award to nearly \$23,000 for approximately 10 weeks of work in a suit by two inmates for interference with correspondence and use of excessive force by prison guards.
7. DeMier v. Gondles, 676 F.2d 92 (4th Cir. 1982) - Arlington County (Va.) Jail - \$16,368 awarded as plaintiffs' counsel fees in class action suit challenging strip search policy at jail which was stopped voluntarily after institution of suit. Fees awarded despite voluntary termination of strip search procedures due to contribution made by litigation in bringing about changed policies.
8. Fluhr v. Roberts, 463 F.Supp. 745 (W.D. Ky. 1979) - Jefferson County (Ky.) Jail - \$1,300 awarded as counsel fees and costs in individual action where plaintiff prevailed in only two of six issues (obtaining improvements in law library and seeking the return of personal property) and where counsel only billed for 31 hours of work.
9. Barret v. Kalinowski, 485 F. Supp. 689 (M.D.Pa. 1978) - Wayne County (Pa.) Jail - \$6,820 awarded as plaintiffs counsel fees in individual action challenging general conditions and involving work by five attorneys which was settled prior to pretrial hearing, except as to issue of attorney fees.
10. Cruz v. Beto, 453 F.Supp. 905 (S.D.Tex. 1977) - Texas State Prisons - \$27,760 awarded plaintiffs' as counsel fees and costs in class action for a total of approximately three months of work by plaintiffs' counsel.

11. King v. Greenblatt, 516 F.2d 1024 (1st Cir. 1977), cert. den. 438 U.S. 916 (1978) - Massachusetts State Institution - \$4,000 awarded as plaintiffs' counsel fees in individual action challenging general living conditions, resolved by two consent decrees, and involving approximately a total of two weeks work by attorney.
12. Bibb v. Montgomery County Jail Officials, 622 F.2d 116 (5th Cir. 1980) Montgomery County Jail - award of counsel fees to be allocated between county and state defendants according to responsibility for violations with award for overcrowding paid by state for housing state inmates at jail, against county for other conditions, such as restrictive visitation that resulted from county policy.
13. Spain v. Mountanos, \_\_\_\_\_ F.2d. \_\_\_\_\_, 51 U.S.L.W. 2285 (9th Cir. 1982) California State Prisons - \$70,000 awarded as plaintiffs' counsel fees in class action challenging general conditions, with additional \$6,318 awarded for expenses in collecting original \$70,000 award.
14. Travis County Jail Inmates v. Travis County Commissioners, \_\_\_\_\_ F. Supp. \_\_\_\_\_ (D.Tex. 1982), 6 Pretrial Rept. (No.5) at 9 (Sept. 1982) - Travis County Jail - \$110,000 awarded as plaintiffs' counsel fees in challenge to jail overcrowding and general conditions.
15. Ruiz v. Estelle, \_\_\_\_\_ F. Supp. \_\_\_\_\_ (D. Texas 1982) N.Y. Times at 10, c.1 (Nov. 20, 1982) - Texas State Prisons - \$1.7 million awarded as plaintiffs' counsel fees in class action challenging overcrowding and conditions.

16. Ippolito v. Howell, U.S. Dist.Ct., Civil No. 78-0911 - Atlantic County Jail - \$13,000 awarded as plaintiffs' counsel fees in class action resolved by consent agreement that had challenged general conditions.
17. Vespa v. Burlington County Freeholders, U.S. Dist. Ct., Civil No. 77-0765 Burlington County Jail - undisclosed counsel fees awarded in class action resolved by consent judgment that had challenged general conditions.
18. Morales v. County of Hudson, Sup. Ct. N.J., Ch. Div. Docket No. C-2602-80 Hudson County Jail - probable award of counsel fees to be between \$50,000 and \$100,000 in successful class action challenging overcrowding and general conditions of confinement.
19. Poston v. Fox, U.S. Dist. Ct., Civil No. 80-1459 - Cape May County Jail - probable award of counsel fees to be between \$40,000 and \$150,000 in class action resolved by settlement agreement that had challenged general conditions.
20. McElveen v. Prince William County, \_\_\_\_\_ F. Supp. \_\_\_\_\_, (E.D. Va. 1982), 31 Crim.L. Rept. 2446 (July 21, 1982) - Prince William County Jail - \$210,000 as damages awarded to class of 7,000 inmates held in jail during year and a half period, in class action that had challenged overcrowding and general conditions where jail crowding had been due in part to chronic backlog of prisoners awaiting transfer to state facilities; liability based on double bunking of inmates in approximately 35 square foot cells and on absence of separate area for recreation or exercise at the jail; damages allowed for even a single day of such confinement.