

**THE CORRECTIONAL ASSOCIATION  
OF  
NEW YORK  
ANNUAL REPORT  
1973**



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135 East 15th Street  
New York, New York 10003

THE CORRECTIONAL ASSOCIATION OF NEW YORK  
135 East 15th Street  
New York, New York 10003

September 1, 1974

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HON. PERRY B. DURVEA, JR.  
*Speaker of the Assembly*

HON. ABRAHAM D. BEAME  
*Mayor of the City of New York*

MEMBERS OF THE CORRECTIONAL ASSOCIATION OF NEW YORK

Pursuant to Chapter 163 of the Laws of 1846, as amended by Chapter 398 of the Laws of 1973, we have the honor to present on behalf of the Board of Directors, the One Hundred and Twenty-Ninth Annual Report of The Correctional Association of New York.

Paragraph 6 of the Act incorporating the Correctional Association of New York (as amended by Chapter 398 of the Laws of 1973) provides that "The said executive committee [of The Correctional Association of New York] by such committees as they shall from time to time appoint shall have power to visit all the prisons in the state, and annually report to the legislature their state and condition, and all such other things in regard to them as may enable the legislature to perfect their government and discipline."

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## LETTER FROM THE PRESIDENT AND THE CHAIRMAN

The Attica prison riot of September, 1971, was a tragedy for the 43 inmates and staff who died there during the course of the disturbance, and for their families and friends. It was also a tragedy for the people of New York State, their government and their system of criminal justice. There was the tragedy of not caring enough or soon enough. Far out in the country and out of the sight of most who might have cared, the Attica Correctional Facility has been a monument of historical neglect.

What was learned from this "... bloodiest one-day encounter between Americans since the Civil War"? That today's prison inmate is aware of his rights, more sophisticated than his predecessors of the 1950's, and more militant. That it was penny-wise and pound-foolish to issue prison inmates cheap, ragged clothing and one roll of toilet paper a month. That it was disgracefully wrong to have virtually abandoned in-service training for personnel, including correction officers, years before the riot occurred. That "correctional institutions" without trade training geared to the current job market are not correctional at all. Of that a financially starved prison system cannot provide for basic human rights and decent living conditions. All of this was learned, and more.

Attica taught us at a great cost in lives, dollars and human dignity that an uninformed, uninvolved and, consequently, inactive public soon loses control of its governmental agencies and their performance.

### *Some Accomplishments in the Public Interest*

Over the years, *The Correctional Association of New York* has sought to generate public awareness, involvement and action for the purpose of modernizing and changing the corrections and related criminal justice system of the State. The Association was founded at a time (1844) when the rights of prisoners were even less guarded than they are today, and the duties of the State with

regard to them even less understood than they are today.

In succeeding years, the Association was instrumental in introducing in the United States the indeterminate sentence, and in developing probation in New York State through drafting the State's first probation law and pressing for its passage in the Legislature. The establishment in the State of separate courts for children, special programs for youthful offenders, and legislation to provide appropriate consideration for mentally defective delinquents are all historically progressive milestones in which the Association played a significant role.

The major activities and programs of the Association over the past year or so are described in a subsequent section of this report. Of particular interest are the recommendations submitted to the 1974 session of the State Legislature, and the recent activities of the Association's Civil Legal Services Bureau, Correctional Social Services Bureau, and Family Services Bureau.

The Association's role as a representative of the public interest has been both the hallmark of its purpose and the measure of its performance over the years. Yet the lesson of Attica is that there is broad room for improvement. In the months ahead, the Association intends to increase its citizen membership, to provide information to the public with reference to the problems and needs of the criminal justice system, and to try to stimulate public action in New York State.

### *Demands to be Met*

Public safety, restoration of the offender, and the assurance of justice require the mobilization of an aware and active public.

In looking ahead to the many problems and priorities of criminal justice, one must remember that only a few of the men and women released each year from correctional institutions throughout the State find employment in occupations in which they have received some training while confined. Job training during probation and parole offers little additional encouragement. Similarly neglected are the family, social and hous-

ing needs of accused and ex-offenders. These facts help explain why approximately 65% of all those who are arrested have prior criminal records.

Parole supervision in the community is helpful to some, but not to all, and can never compensate for the failure of other correctional agencies to more adequately prepare men and women for community life. Furthermore, community health, family, welfare, employment and social services for accused and ex-offenders are scattered. From the standpoint of the individual seeking assistance from either the public or private agencies in the State mandated to provide help, the telephone book and a handful of dimes are his best friends.

Correctional agencies fail too often in the objective of providing alternatives to criminal life styles, and release to the community continues to mean a scavenger hunt by men and women who have served their time and who are entitled to assistance and redirection. With the help and support of its citizen membership and the public, *The Correctional Association of New York* plans to take positive action on these problems. Visits to correctional facilities and legislative recommendations will continue to reflect the Association's commitment to the need for progress in these areas.

Progress in the corrections and criminal justice fields requires not only an aware and active public, but also the continuing efforts of the many public and private agencies which in the past have contributed to the improvement of the criminal justice system throughout the State.

## Highlights of 1973 and 1974

### *Visits to Correctional Facilities*

Since its inception, *The Correctional Association of New York* has held the responsibility and authority to visit correctional facilities in the State, and to report annually to both the Legislature and the City of New York as to their current status and condition. This authority to visit facilities was reaffirmed by the 1973 session of the State Legislature and signed into law by Governor Rockefeller on June 6, 1973.

Directors, members and staff of the Association are visiting and are scheduled to visit all of the institutions of the New York City Department of Correction, Correctional institutions administered by the New York State Department of Correctional Services, as well as the jails and penitentiaries operated by upstate localities, will be visited on com-

pletion of the New York City visits. Following the visits, reports and recommendations will be presented to the cognizant authorities, the citizen membership of the Association, and the public in order to point to progress and to disclose current problems and needs of correctional facilities throughout the State, and to press for change where it is needed.

The importance of such visits is clear. During 1972, the most recent year for which data are available, nearly 800,000 persons were admitted to confinement facilities throughout New York State, many for only a day or so, but many for much longer periods of time.

In April, 1974, several Directors and staff members of the Association visited the Manhattan House of Detention, one of the eleven institutions administered by the New York City Department of Correction. This tour of the "Tombs" followed a request from the New York City Board of Correction to provide recommendations to the Board as to the future of the institution. The 1970 and 1971 riots at the Tombs, the subsequent conclusion of the New York State Senate Committee on Crime and Correction that the institution should be closed, and the January, 1974, ruling of the United States District Court (Southern District) that conditions at the institution violate the troubled history of inmates, reflect clearly the troubled history of the Manhattan House of Detention.

The Association's independent assessment of the institution led to the conclusion that the physical plant was beyond renovation, that there was a lack of diversification in security and program, and that, in general, intolerable living conditions existed. As a result, the recommendation of the Association was that the institution should be vacated as soon as possible and discarded as a detention or confinement facility of any kind. A second recommendation was that the City should aggressively pursue the development of alternatives to secure detention which would protect the public while maintaining more accused offenders in the community without requiring costly maximum security incarceration. The Association will press for such action. In the meantime, the frequent presence of Association attorneys, Directors and other staff in all of the facilities of the New York City Department of Correction, including the Manhattan House of Detention, helps in the understanding of existing conditions, and gives relevance and timeliness to the recommendations that follow.

\*Attica: The Official Report of the New York State Special Commission on Attica, New York: Bantam Books, Inc., 1972, p. xi (Preface).

#### Civil Legal Services

Over 60,000 persons were placed in detention, and over 10,000 persons served sentences ranging from 15 days to one year in New York City correctional facilities during 1973. While they are incarcerated, many of these people suffer major setbacks in their outside affairs. Their spouses may decide to divorce them, their property may be taken away, landlords may evict them without giving proper notice, and employers may not send them their final wages.

In addition, serious difficulties specifically related to arrest, adjudication or imprisonment quite often arise. These difficulties include the inmates' inability to locate their funds for bail, their inability to reclaim forfeited bail or to recover property seized at the time of arrest, the need to vacate Family Court warrants which interfere with the inmates' participation in work-release and other diversionary programs, and immigration problems and the possibility of deportation. All of these problems are legal in nature and create for the inmates the need for civil legal services.

The Correctional Association's Civil Legal Services Project, funded jointly by the Mayor's Criminal Justice Coordinating Council and the Association, handles approximately 2,400 inmate civil legal cases per year at an average cost of about \$125 for each inmate assisted. This unique service, provided by the Association attorneys assigned to each of the City's eleven institutions, enables impoverished inmates to exercise their rights in regard to civil matters, and plays a major role in obtaining proper release of individuals from detention, in protecting their rights, and in reducing tension in institutions that too often leads to riots. The Civil Legal Services Project is described more fully in a subsequent section of this report. The CJCC and the Correctional Association of New York are cooperating in seeking future funding for this vital program.

#### Legislative Recommendations

As in past years, the Association submitted recommendations to the 1974 session of the New York State Legislature. Included among these recommendations were positions taken by the Association relative to the enactment of new death penalty legislation and the need to increase the independence of the State Commission of Correction.

On December 4, 1973, the President of the Association offered testimony against the enactment

of new death penalty legislation before the New York State Assembly Codes Committee in New York City. However, on May 17, 1974, the Governor signed into law Senate Bill 21028. The new law mandates the death penalty for persons over 18 years of age who are found guilty of murder in the deaths of police officers or employees of correctional facilities. In addition, the death penalty is mandated for persons over 18 years of age who are found guilty of committing any murder while in confinement or under custody upon sentence of a life term.

In the face of evidence that the death penalty is counter-productive in that it does not deter such crimes, and that it is discriminatory in application, the new law is an unfortunate step backward in criminal justice. Continuing the pattern established over the past ten years, the courts must now rule on the constitutionality of New York State's newest death penalty.

The Association was joined by a number of other organizations in the community in successfully urging the passage of Constitutional Amendment No. 5 in the November, 1973, statewide election. The new amendment provides for a significant increase in independence for the State Commission of Correction, a body charged with the responsibility of inspecting correctional facilities statewide, through abolishing the requirement that the Commissioner of the State Department of Correctional Services serve as the Chairman of the Commission. This is a positive step forward for the State.

#### Detention and Sentence Institutions

The Association will continue to visit institutions to assure that the safety of the community and the rights of the prisoners are protected, and that efforts are being made to restore the offender to the community. Nonetheless, the Association is convinced that imprisonment, for the most part, constitutes the least effective method for meeting these goals. At best, imprisonment protects the community for limited periods of time. At worst, imprisonment all too often maintains and strengthens criminal life styles.

There is a select group of violent offenders who pose such a serious threat to community safety that incarceration is required. However, for the great majority of offenders, alternatives to incarceration must be found. The Association will actively press for the development of greater diversification in services to offenders and, particularly, for the de-

velopment of community-based residential and non-residential centers for accused and convicted offenders.

The Association will inform its membership and the public, and press the Legislature to assure that recommended changes in correctional operations are implemented and are not merely added to the growing library of prison reform literature.

The President's Task Force on Prisoner Rehabilitation concluded that "... perhaps the greatest obstacle to improvement in the correctional system always has been the tendency of much of the public to regard it and treat it as a rug under which to sweep difficult and disagreeable people and problems."<sup>\*</sup>

The Correctional Association will utilize its institutional visitation authority, its direct social and civil legal services programs, and its legislative activities to confront these difficult issues.

#### New Management

In 1972, the Board of Directors conducted an appraisal of the Association's existing activities, objectives and organization which led to recommendations for future policy. One important result of this examination was the recommendation to establish the position of a full-time President and Chief Executive Officer of the Association. In September, 1973, the Board elected to this new position Dr. Robert H. Fosen, formerly Assistant Commissioner of the New York State Department of Correctional Services. Dr. Fosen's experience in the criminal justice field began in the California Department of Corrections, 1958-1966, where he assisted in the establishment of one of the first correctional research organizations in the country. He has served as a consultant to the Ford Foundation, and to the President's Commission on Law Enforcement and Administration of Justice.

Dr. Judith A. Wilks, formerly a member of the New York State Division of Criminal Justice Services, was at the same time selected by the Board of Directors as the full-time Vice President. Dr. Wilks was a Probation Officer in Ohio, 1958-1960, and served as a consultant to Governor Rockefeller's Special Committee on Criminal Offenders, and to the President's Commission on Law Enforcement and Administration of Justice during the period 1967-1969.

<sup>\*</sup>The Criminal Offender—What Should Be Done? President's Task Force on Prisoner Rehabilitation, Washington, D.C., Government Printing Office, April 30, 1970, Page 24.

Mr. Donald H. Goff, after twelve years of service as General Secretary of the Association, has become Director of the National Prison Study of the United States Commission on Civil Rights.

#### The Board of Directors

The Association's Board of Directors is made up of twenty-five members, representing a broad cross-section of experience in the fields of business, community service, criminal justice, education, finance, law, psychiatry and religion. With the exception of the President, all of the Members of the Board are volunteers who give their time and effort to the Association without compensation. Regular meetings of the Board are held monthly, and each Board Member serves on one or more committees. The major Committees are: Correctional Institutions and Offender Services, Finance, Law, Membership and Nominations.

During the two and one-half year period ending on March 14, 1974, Mr. Harry W. Fowler served as Chairman of the Board of Directors of the Association. The Board expresses its deep appreciation and gratitude to Mr. Fowler for his generous and outstanding service during this period, made at considerable sacrifice in time on his part. The Association is fortunate in having Mr. Fowler continue to serve as a Member of the Board.

#### Looking Ahead

There is a great potential for improvement and change in the criminal justice system in New York State. An active citizens' organization such as the Correctional Association is in a position to make a significant impact. With a strong, hard working Board and staff the Correctional Association intends to enhance its usefulness by:

- Working on the problem of shortening the amount of time spent in pre-trial detention.
- Working on the problem of changing and improving the detention and sentence institutions in New York State.
- Increasing and widening its membership base.
- Increasing its foundation and individual financial support.
- Continuing, if total funding can be obtained, its direct civil legal services to detainees and sentenced prisoners.
- Determining what programs are effective in

other States, and working for their adoption in New York State.

- Working with other citizens' groups in the correctional field and officials in the correctional system in New York State.
  - Increasing its schedule of visits to City and State institutions.
  - Continuing to make recommendations to the New York State Legislature.
- All this takes money. The Board of Directors urges those who share its belief that these goals are

worthwhile, to join the Correctional Association and give it their financial and personal support.

The Association's audited financial statement for 1973 is presented as the last section of this report.

ROBERT H. FOSEN

*President and Chief Executive Officer*

GEORGE G. WALKER

*Chairman, Board of Directors*

## MAJOR ACTIVITIES AND PROGRAMS 1973-1974

During the period covered by this Annual Report, the Association presented to the New York State Legislature recommendations for changes in State laws that, in the opinion of the Association, would help secure public safety, restore the criminal offender to a law-abiding life, improve the quality of justice, and better insure that persons involved in the criminal justice process are treated humanely. These recommendations and subsequent actions taken by the Legislature and the Governor in 1974 are presented below.

The other major activities of the Association during this period included the Association's visit to and evaluation of the Manhattan House of Detention for Men and the President's subsequent testimony to the New York City Board of Correction regarding this facility; and the operations of the Association's Civil Legal Services Bureau, Correctional Social Services Bureau, and Family Services Bureau.

### *Recommendations Submitted To The 1974 Session Of The New York State Legislature*

#### RECOMMENDATION NO. I

##### COMMISSION OF CORRECTION

*The Commission of Correction should be given the legislative mandate to set minimum standards for incarceration, such as the American Correctional Association's standards, for all sentence and detention institutions in the State, to certify by annual inspection that each institution meets these standards, and to enforce these standards in any institutions that fail inspection. The Legislature should appropriate adequate funds to permit the Commission sufficient staff expansion to comply with this mandate.*

#### DISCUSSION:

Although the Commission has a mandate to promulgate rules and regulations establishing minimum standards for local correctional facilities, and has the power to enforce these rules and regulations, it has no mandate to set standards for State correctional facilities or power to enforce such standards.

The extension of the standard-setting mandate and enforcement power to cover State correctional facilities would enhance the ability of the Commission to improve the humanness and the effective-

ness of the full range of institutional programs within the State.

Presently, the Commission has a staff of 29 full-time employees, 15 engaged in administration and 14 involved in inspecting penal institutions. The present complement of staff is too small for the Commission to develop adequate standards to meet its already existing mandate. Furthermore, it was able to inspect only 80% of the penal institutions in the State during 1973, and these inspections were limited to the structural condition of an institution's buildings and to the very basic elements of its correctional program. Additional staff will be required to bolster inspectional services and assure that the Commission's recommendations are carried out.

The Commission will need a sizeable increase in staff to carry out its present responsibilities properly and to meet the new responsibility of a larger mandate.

#### ACTION TAKEN DURING 1974 SESSION:

A bill was introduced in the State Senate on February 13, 1974 by Senator Emmanuel R. Gold, extending the Commission's legislative mandate to all correctional facilities in the State. Assemblyman Alan G. Hevesi introduced a companion bill in the Assembly on the same day. Neither bill was reported out of committee.

#### RECOMMENDATION NO. II

##### SELECTION OF INSTITUTIONAL SUPERINTENDENTS AND DEPUTY

##### SUPERINTENDENTS

*The positions of institutional superintendent and deputy superintendent of State Department of Correctional Services facilities should be filled by appointments made by the Commissioner of Correctional Services in accord with:*

- A specified set of published job qualifications consistent with the functions of superintendent and deputy superintendent (e.g. experience in institutional management, education, experience in criminal justice), and
- The advice and consent of the Commission of Correction as to job qualifications and each appointment pursuant to them.

*The Commissioner of Correctional Services should develop and implement procedures for reviewing the performance of superintendents and deputy superintendents periodically during the term of their appointment, and, with the advice and consent of the Commission of Corre-*

tion, should remove from office superintendents and deputy superintendents whose work performance is judged unsatisfactory.

#### DISCUSSION:

The positions of institutional superintendent and deputy superintendent of State correctional facilities should be exempt from Civil Service classification and be filled by direct appointment. Because the incarceration and rehabilitation of felons present very complex problems for institutional administration, these positions require incumbents with unique and diverse talents which are not developed through any one line of experience. For this reason, the procedure of advancement through merit, which is the cornerstone of the Civil Service System, does not produce an appropriate reservoir of candidates for these sensitive positions. The Commissioner of Correctional Services should have the broadest possible freedom to appoint the most qualified candidates to these positions and to remove them from office if their work performance is judged unsatisfactory.

The requirement that the advice and consent of the Commission of Correction be sought in all appointments to and removals from these positions provides a safeguard that candidates would be qualified to administer institutional programs designed according to standards set by the Commission.

#### ACTION TAKEN DURING 1974 SESSION

Assemblyman Richard N. Gottfried introduced during the 1973 Legislative Session an amendment to the correction law that would exempt the position of institutional superintendent from Civil Service classification. Since no action was taken on the bill during that session, it was automatically reintroduced in January, 1974, during the second year session of the Assembly term. The bill was never reported out of the Assembly Codes Committee.

#### RECOMMENDATION NO. III

##### RIGHTS OF PRISONERS

*The individual's right of freedom of movement should be the only right denied while the individual is imprisoned. Any other right which does not threaten the safety of the institution or the surrounding community, or violate the rights of the other inmates and staff of the institution should be allowed and protected in law.*

#### A. CIVIL DEATH

*That all remnants of the civil death concept presently found in New York State statutes be repealed.*

#### DISCUSSION:

By the imposition of civil death, the State withdraws all rights from the citizen. A common law concept, developed as an alternative to the death penalty for noblemen and clergy, civil death has long been abandoned in England, yet still applies to individuals serving sentences in New York State correctional institutions. Since the complete denial of rights to those serving sentences serves no discernible purpose other than additional punishment, any remnants of this archaic law presently in statute form should be repealed.

In 1973 the Legislature amended the Civil Rights Law to extend to persons imprisoned in State correctional facilities the right to initiate and prosecute suits in any court within the State. Currently, it amended the Civil Practice Law and Rules to remove the tolling provision on claims of incarcerated persons. However, in spite of the fact that prisoners now have the right to sue, their incarceration makes it very difficult for them to exercise this right within the usual time limitations. Therefore, the tolling provision in regard to civil suits should be restored for incarcerated persons, and it should be extended to include those situations where a cause of action occurs prior to incarceration. Furthermore, the Legislature should create for incarcerated persons tolls of the various short statutes of limitations which require the service of notices of claim or intention to sue the State, local municipality or authority within 90 days of the time the cause of action accrues.

In addition, all prisoners should enjoy the right to vote. Just as every citizen has the right to sue to vindicate his constitutional rights, every citizen of proper age should have the basic right to participate in the selection of his government.

#### ACTION TAKEN DURING 1974 SESSION:

During this session, the Legislature passed and submitted to the Governor on May 7, 1974, a bill extending to detainees and inmates serving sentences for offenses other than felonies, the right to vote by absentee ballot. On June 7, 1974, the Governor signed the bill into law. On March 4, 1974, Assemblyman Richard N. Gottfried introduced legislation that would permit absentee registration for any inmate otherwise qualified to vote. The bill

was never reported out of the Assembly Judiciary Committee.

#### B. CONDITIONS OF INCARCERATION

*That statutory provisions be enacted to insure that all prisoners confined in New York State have the rights of ordinary citizens to the extent consistent with the public safety and national standards as to incarceration promulgated by organizations such as the American Correctional Association.*

#### DISCUSSION:

Beyond provisions consistent with civil rights, the laws of the State of New York should extend to inmates of both State and local correctional institutions rights enjoyed by ordinary citizens, to the extent that those rights would not endanger the safety of other inmates and staff or disrupt the necessary orderly functioning of the institutions. In particular, an inmate should be permitted to send an unlimited number of unopened and uncensored letters to any person and to receive an unlimited number of uncensored letters from any person. If the superintendent of an institution or his designee judges that incoming mail should be opened to intercept suspected contraband, the mail should not be opened except in the presence of the inmate or his designee. Once any contraband is removed, the mail should be delivered directly to the inmate. Secondly, every inmate should have the right to confer in private with any visitor, except if the superintendent has reason to believe that a particular visit would jeopardize the security of the institution or the inmate's rehabilitation. If the superintendent chooses to disapprove a visit, he should notify the inmate of his decision in writing, giving the reason for his decision. Furthermore, he should extend to the inmate, aided by counsel, an opportunity to be heard in opposition.

#### ACTION TAKEN DURING 1974 SESSION:

Over thirty bills supporting the extension of rights to inmates were considered by the Legislature this year. However, none of them was enacted into law. Among these were bills to require that procedures for inmate disciplinary proceedings be described for the inmates in writing; to permit the inmates to send or receive an unlimited number of unopened and uncensored letters; to disallow the confiscation of the inmates' personal property, except when the inmates' possession of this property would threaten health, safety, or security, or

hamper the operations of the facility; to require that rules and regulations defining, permitting and prohibiting inmate conduct be published and posted in English and Spanish; and to allow the inmates to confer in private with any visitors of their choice, subject only to reasonable rules and regulations.

#### RECOMMENDATION NO. IV

##### EMPLOYMENT OF EX-OFFENDERS

*That the present statutory bars to employment of ex-offenders be repealed except for the provision that certain specific offenses directly related to the employment sought may be considered as a reason for refusing such employment; that a clearly defined process be instituted to hear appeals of cases where employment is denied on such limited grounds.*

#### DISCUSSION:

In New York State every individual convicted of a felony incurs some legal disability for future employment. Regardless of the nature of his crime, a released felon cannot work in any capacity in a supermarket or restaurant with an alcoholic beverage license, for a firm which transports alcoholic beverages, or in any branch of medicine. No one should be denied employment or licensing solely on the basis of a criminal conviction. When an ex-offender's crime has a direct bearing on the employment sought, so as to constitute a possible threat to his welfare or to the welfare of others, exclusion should be discretionary rather than mandatory with a clearly defined process of appeal from any such decision.

#### ACTION TAKEN DURING 1974 SESSION:

Seven bills were introduced by various legislators in both Houses of the Legislature in direct support of the intent of this recommendation. None of them was enacted into law.

#### RECOMMENDATION NO. V MENTALLY ILL AND PHYSICALLY ILL OFFENDERS

##### A. MENTALLY ILL OFFENDERS

*That fair and appropriate procedures be established for the care and treatment of the mentally ill detainee who has nonetheless been found competent to stand trial.*

#### DISCUSSION:

Many prisoners awaiting trial who suffer from some form of mental illness are held in the same facilities as the rest of the detention population, with little or no attention given to their particular needs. Although mentally ill prisoners in New York City detention facilities and in other such facilities throughout New York State may be kept under observation and provided with sedatives when needed, there is virtually no treatment in the prisons, except for crisis intervention. Because of this, some have committed suicide or suffered injury on themselves or others, or have influenced a deterioration of their mental condition while awaiting trial. The Correctional Association of New York intends to study the nature and scope of problems experienced by mentally ill inmates in New York City detention facilities. On the basis of the findings of this study, the Association will design and recommend solutions to these problems and, with the approval of the Appellate Division of the First Judicial Department, will attempt to implement some of these solutions. The Legislature should enact statutory provisions which would require local authorities to establish procedures whereby the mentally ill in detention would be provided with appropriate medical treatment.

#### ACTION TAKEN DURING 1974 SESSION:

The Legislature enacted during this Session and submitted to the Governor on May 7, a bill that allows a warden or jailer to have an inmate, found to be in such a mental state as to need care and treatment, moved to a psychiatric hospital for such care and treatment. On May 30, 1974, the Governor signed this bill into law.

It is doubtful that this law will meet the need presented in this recommendation. Only those inmates who are sufficiently dangerous and disturbed to meet the involuntary commitment standards set out in the New York Mental Hygiene Law will receive care and treatment through the provisions of this law.

Those who are severely mentally disturbed, but whose diagnoses do not meet the Mental Hygiene standards or for whom the warden or superintendent chooses not to take action, have no right to treatment under the provisions of this bill.

#### B. PHYSICALLY ILL OFFENDERS

That appropriate procedures be established and adequate funds appropriated to provide proper medical

treatment to detainees and sentenced offenders suffering physical illnesses or disabilities.

#### DISCUSSION:

The quality of medical services in most of the State and local correctional facilities is far below the standards promulgated by the Commission of Correction. The reasons for this are many, but prominent among them is the lack of sufficient funds to attract enough highly qualified doctors and nurses to staff the institutions, and to provide the institutions with adequate medical facilities. The Legislature should enact statutory provisions which would establish procedures that would insure that detainees and sentenced offenders receive adequate medical services, and appropriate sufficient funds to support these services.

#### ACTION TAKEN DURING 1974 SESSION:

Six bills were considered by the Legislature during this Session that would require each correctional facility in the State to provide inmates with dental and physical examination upon entering the facility and once annually thereafter. None of the bills succeeded.

#### RECOMMENDATION NO. VI PROBATION AND PAROLE

*That the operations of probation and parole be strengthened as alternatives to institutional correction. Specifically, that the State Division of Probation, local probation departments and offices, and the State Division of Parole be given proper authority to enter into contractual agreements with probationers and parolees, to be both developed and consented to on an individual basis by the parties to each agreement, which would stipulate requirements for the successful completion of probation or parole; that these agencies be given authority to enter into contracts with public or private organizations for the provision of services, such as job training, job placement and educational services for probationers and parolees; that appropriations for probation and parole services be increased substantially to permit the implementation of contract programming; and that a college education should be required as an entry level qualification for all probation and parole officers.*

#### DISCUSSION:

Probation and parole services and requirements are standardized, for the most part, for all offenders either placed on probation or paroled from an

institution. Little or no regard is paid to the adequacy of the standard services for the particular needs of the individual offender, or the appropriateness of the requirements to the offender's situation in life. Contract programming would match the needs of the individual to specific resources at hand and would require both the offender's participation in the contracted program and the delivery of specific services to the offender.

Probation and parole services have a much lower per person cost than does institutional correction. The present process of financing probation should be reviewed and alternative methods which might better facilitate contract programming, such as complete State support, should be explored.

Presently the State Division of Parole requires that all parole officers have a college degree while most probation departments require that their officers have a high school diploma. The work specifications for the two positions are very similar. Yet because the educational requirements differ, the rates of compensation differ. Many probation officers, once they attain the college degree, attempt to leave probation and move into parole work. The same educational requirement for both positions together with an increase of appropriations for probation services would help strengthen probation services.

#### ACTION TAKEN DURING 1974 SESSION:

Senator Bernard C. Smith introduced legislation on April 10, 1974, that would set the baccalaureate degree as a requirement for the position of probation officer. The bill was never reported out of the Senate Finance Committee.

#### RECOMMENDATION NO. VII

##### GUN CONTROL

*That legislation be enacted to better enforce the requirement that individuals must obtain a permit to possess or purchase handguns in New York State; that all handguns be registered in a central state registry; and that all ammunition for handguns be sold only to individuals with license for such weapons; and that legislation be enacted to better enforce existing New York State law as to the illicit importation and transportation of all handguns.*

#### DISCUSSION:

The number of homicides committed in New York State each year with illicit handguns attests to

the fact that the Sullivan Law, without a proper enforcement procedure, is ineffective in controlling the use of handguns in crime. Little is known about the transportation of such weapons into and within the State. There are no special law enforcement programs operating in the State to deal with this illegal traffic. Legislation is needed to strengthen existing New York State law in regard to this traffic so that adequate law enforcement programs can be developed to deal with the problem.

#### ACTION TAKEN DURING 1974 SESSION:

Assemblyman Dominick L. DiCarlo, Chairman of the Assembly Codes Committee, introduced legislation that was passed and signed by the Governor on May 23, 1974, that would include wholesale gun dealers in the definition of "dealer in firearms" for the purposes of the gun control sections in the Penal Law. However, the Legislature took no action that would better enforce the already existing gun control laws, e.g., establishment of special law enforcement units, such as those currently designed to enforce tobacco tax laws.

#### RECOMMENDATION NO. VIII

##### VICTIMLESS CRIME

*Although serious crime continues to pose immense problems for our system of criminal justice, the attention on every element of the system — police, prosecution, the courts and correction — is being diverted from serious crime by the many laws that make certain acts victimless crimes. While the harmful effects of most of these acts are doubtful, the harmful effects of the current laws should be made clear to the Legislature. Laws against gambling, prostitution, sodomy, pornography and the use of marijuana, committed by or between consenting adults, needlessly expose those involved to blackmail, extortion, and harassment. Rather than preventing people from gambling, etc., many of these statutes enable organized crime to maintain a very lucrative business and provide a natural opportunity for official corruption. As long as gambling, prostitution, pornography and marijuana are outlawed, the citizen will go outside the law to gamble, etc., and organized crime will supply the service. Furthermore it is inconceivable that illegal gambling, prostitution, pornography and marijuana use will continue on a large scale without official corruption. While these acts may be offensive to a great many Americans, they do not constitute a serious threat to the public welfare.*

#### MARIJUANA

*That the Legislature repeal the existing statutory provisions which make the possession of marijuana for one's own use a criminal offense.*

#### DISCUSSION:

No conclusive evidence has yet been uncovered that demonstrates that the use of marijuana leads to the use of physically harmful narcotics. Furthermore, there exists no conclusive proof that the use of marijuana leads to other types of behavior, such as assault or robbery, which could pose a serious threat to public welfare. The present widely held views on the dangerousness of marijuana use were artificially created in the 1930's to bolster official policy which had already been decided upon. Prior to that, marijuana was used freely in this country, and indeed, was part of the standard medical pharmacopoeia.

Today, a large section of young Americans, denied the right to smoke marijuana while the older generation is free to indulge in perhaps more harmful substances, see the present laws and the activities of law enforcement, prosecution and the courts as arbitrary, capricious and hypocritical.

The existing statutory provisions which make possession of marijuana for one's own use a crime should be repealed.

#### ACTION TAKEN DURING 1974 SESSION:

Two pieces of legislation were introduced in the Senate in support of this recommendation. Both bills died in committee.

#### B. GAMBLING

*That all existing constitutional bars to gambling be repealed.*

#### DISCUSSION:

It seems ludicrous as well as discriminatory for a State which allows on-track betting for commercial gain, off-track betting and a State lottery to increase public funds, and bingo and raffles for charitable purposes, to retain penal statutes that outlaw gambling. The Constitution of the State of New York should be amended to remove the blanket ban on gambling and the Legislature should enact any subsequently necessary procedures and controls.

#### ACTION TAKEN DURING 1974 SESSION:

Five bills were presented to the Legislature in support of legalizing various types of gambling. However, none of them were enacted into law.

#### C. THE ALCOHOLIC OFFENDER

*That the Legislature repeal the statute of the penal law which declares public intoxication to be a violation. Furthermore, that the Legislature enact legislation which would permit the chronic alcoholic offender to be given the opportunity to participate in short term detoxification programs, and that the Legislature appropriate funds to support such detoxification programs.*

#### DISCUSSION:

According to the FBI Uniform Crime Reports for 1972, of the 1.2 million defendants who pleaded guilty to a criminal charge in 1972, 30.1% pleaded to the charge of drunkenness. The Commission of Correction reports that one out of every four inmates incarcerated in local correctional institutions in New York State in 1972-73, were committed on public intoxication charges. For the most part these individuals are in and out and then back in jail, all in a short span of time. They recidivate, not because they are criminals, but because they are ill. The present process of adjudication and incarceration tends to maintain them in their problem, since neither the time spent in jail nor in their home communities is long enough for them to benefit from a detoxification program.

#### ACTION TAKEN DURING 1974 SESSION:

The Legislature passed and the Governor signed into law on June 15, 1974, a bill that repeals public intoxication as a violation and provides emergency treatment for persons intoxicated and incapacitated by alcohol.

#### D. PROSTITUTION

*That the act of prostitution between mentally competent, consenting adults be no longer criminal and that the State limit its concern only to the problem of open solicitation when it constitutes a public annoyance and the accompanying offense of recruitment for prostitution and exploitation of a prostitute.*

#### DISCUSSION:

The act of prostitution between competent, consenting adults is in no way a threat to the public welfare. Therefore, it appears that there is not sufficient reason to retain it as a crime. However, administrative rules and regulations should be promulgated at the local level to provide adequate safeguards as to public health.

Recent history has shown that the laws against prostitution either as a crime or as a violation are

unenforceable in New York City. The police make many arrests each day, yet most of the charges are dismissed as groundless or because the arrests were made in violation of the right of due process. Soon after her case is dismissed, the prostitute is back in business, making a mockery of the law in the process.

Recruitment of the young for prostitution and exploitation of a prostitute, both acts being the exploitation of another person, should be prohibited by a criminal law. Open solicitation, when it constitutes a public nuisance, should be controlled by local administrative rules and procedures.

#### ACTION TAKEN DURING 1974 SESSION:

Senator Roy M. Goodman introduced legislation on April 2, 1974, in support of this recommendation. The bill was never reported out of the Senate Codes Committee.

#### E. HOMOSEXUALITY

*That the present law making sodomy between mentally competent, consenting adults a crime be abolished.*

#### DISCUSSION:

The American Law Institute, in a Model Penal Code drafted in 1955 urged reform of the criminal law to eliminate punishment for sex practices performed in private between consenting adults. The report states in part:

"... no harm to the secular interest of the community is involved by atypical sex practices in private . . .

"As in the case of illicit heterosexual relations, . . . statutes that go beyond (violence, corruption of minors, and public solicitation) permit capricious selection of a very few cases for prosecution and serve primarily the interest of blackmailers."

In the instance of homosexual behavior, should such activities be accomplished with violence, constraint or fraud, punishment according to the type of violence, constraint or fraud committed should be meted out without the sexual element being considered a relevant or aggravating circumstance. Otherwise all sex acts committed between competent, consenting adults in private should fall outside the ambit of the Penal Law.

#### ACTION TAKEN DURING 1974 SESSION:

Five bills were introduced that would remove sodomy from the list of penal offenses. None of these bills was enacted into law.

#### F. PORNOGRAPHY

*That there be no legislation controlling the creation and dissemination of written, visual, or auditory pornography to adults who solicit such material.*

#### DISCUSSION:

Several studies pertaining to sexual behavior have failed to produce any evidence that pornography is a cause of sex crimes. On the contrary, one study concluded that sex offenders are less often aroused by pornography than is the rest of the male population. The right of the individual to be free from government control so long as he is not harming himself or others should extend to viewing, reading or hearing pornography in a private place or such other places as are entered only by persons seeking admission. In a 1959 ruling, the United States Supreme Court declared unconstitutional those laws which affect viewing pornography in an individual's home. The Legislature should repeal any laws which prohibit the publication of pornographic materials and the sale of such materials to consenting adults. Administrative rules and procedures should be established to control the advertisement of such materials in public places.

#### ACTION TAKEN DURING 1974 SESSION:

Assemblyman Antonio G. Oliveri introduced a bill during the 1973 session of the 1973-1974 term of the Assembly to repeal the sections of the Penal Law which define and set a penalty for obscenity. The bill was never reported out of the Assembly Codes Committee that year, and so was automatically reintroduced at the beginning of the 1974 session of this term. The bill died in committee at the end of the second session.

The Legislature enacted legislation signed by the Governor on June 15, 1974, that amends the Penal Law to fix a new definition of "obscene" as whatever an average person, applying contemporary community standards, would find, as a whole, to appeal to prurient interest in sex and to lack serious literary, artistic, political or scientific value.

RECOMMENDATION NO. IX  
STATE COURT SYSTEM

*That the Legislature establish a centrally administered and financed State court system.*

DISCUSSION:

The court structure in New York State today continues to reflect the requirements and thoughts of an earlier age. There are 16 different types of courts presently in existence in New York, resulting in duplication of administrative efforts, unequal distribution of judges and support personnel, differing standards and pay rates from one locality to another, and vastly differing standards of judicial administration.

Since central administration is effective only when it is accompanied by central fiscal control, statewide equality of justice can only be provided by a unified statewide judicial budget.

ACTION TAKEN DURING 1974 SESSION:

During this session, the Legislature took giant steps toward the achievement of a unified court system. The Legislature passed and sent to the Secretary of State on May 7, 1974, a bill to amend the Constitution to provide that the authority and responsibility for supervision of a unified court system be vested in a Chief Administrator. The Chief Administrator, a judge, would be appointed by the Chief Judge of the Court of Appeals, upon the advice and consent of the Senate. The State would pay for the costs of operating and maintaining the courts of the unified system, with local governments reimbursing the State for some of these costs. This bill will be introduced again next year during the next Session of the Legislature.

The Legislature also enacted a law which the Governor signed on May 30, 1974, which will require the Chief Administrator of the unified court system to establish an Office of Court Administration, which will assume many of the responsibilities currently vested in the Judicial Conference.

Thirdly, the Legislature enacted legislation, signed by the Governor on January 31, 1974, permitting the Chairman of the Administrative Board of the Judicial Conference to designate a State Administrative judge, in lieu of a Chief Administrator, with all the powers and duties of a State Administrator.

These three pieces of legislation have a unifying effect. The designation of a State Administrative Judge begins a shift in court administration from

four separate administrations in four geographically distinct Judicial Departments to one Administrative Judge for all the courts in the State. This Administrative Judge is assisted by a Deputy who oversees the operations of the court in New York City. This legislation does not end the separate administrations of the Judicial Departments, but through the Judicial Conference, which is composed of the Chief Judge of the Court of Appeals, as Chairman, and the Presiding Justices of the four Departments, begins to consolidate administration in one appointed judge.

The Constitutional Amendment would end the current Judicial Department administrative system and place the authority to administer the courts of the State in one Chief Administrator of the Courts, appointed by the Chief Judge of the Court of Appeals. Such a shift in administration could not take place until after the bill is passed again in 1975 and the Constitutional Amendment is approved by the voters of the State in the next Statewide election in November, 1975.

Until such time as a Chief Administrator of the Courts is appointed, the newly enacted legislation gives the designated State Administrative Judge the powers and duties of the State Administrator to administer the courts of the State in a unified manner, without, however, taking the base of these powers and duties away from the Judicial Departments.

RECOMMENDATION NO. X

SPEEDY TRIAL

*That the Legislature enact a law providing for the release from custody of any defendant where trial is delayed more than 90 days, and for the dismissal of prosecution where trial is delayed for more than six months, except where the delays is caused by the defendant.*

DISCUSSION:

The Constitutions of the United States and the State of New York guarantee to everyone the right to speedy trial. In many instances in New York State this right has all but disappeared under the heavy weight of court backlog. The most recent report of the Administrative Judge of the Criminal Branch of the Supreme Court of the First Judicial Department states that the average duration of a case before the Criminal Branch in the Bronx was 10.6 months during the period June through October, 1973. The comparable statistic for New York County for the same period of time was 5.7

months duration. The Judicial Conference tried to respond to this problem by promulgating rules and regulations two years ago. They were superseded by legislation which required the District Attorney to state he was ready to proceed and which would allow delays for lack of courtroom space.

The right to a speedy trial should not be compromised because of courtroom congestion or lack of space. Legislation should be adopted to protect this right from such compromise.

ACTION TAKEN DURING 1974 SESSION:

Senator John R. Dunne presented a bill in the Senate in support of this recommendation. Assemblyman Peter J. Costigan introduced a companion bill in the Assembly. Both of these bills were first introduced during the 1973 Session of the Legislature and were automatically reintroduced in the 1974 Session. Neither bill was reported out of committee.

The Legislature did enact legislation, which was signed into law by the Governor on May 23, 1974, which requires a superior court to release on its own recognizance a defendant who has been in custody for more than 45 days awaiting grand jury action. Exceptions are made to this requirement when the lack of a grand jury disposition is due to the defendant's action or when the prosecutor shows good cause why the defendant should not be released.

RECOMMENDATION NO. XI

SELECTION OF JUDGES

*That the Legislature change the method of selecting judges from the present system of election to a merit appointment system.*

DISCUSSION:

In order to remove the selection of judges from the political arena, to lessen the possibility of undue influence in the nomination of judicial candidates and the selection of judges, and to insure that high standards of quality be met in the selection of judges, the Association recommends that the Legislature provide a method of selecting judges by appointment based on merit. Judicial qualifications commissions should be established to evaluate the qualifications of candidates for judicial office throughout the State and to nominate to the Governor and to the chief executives of local jurisdictions candidates for judicial appointments as vacancies occur. The law should also require

that the Governor and the other chief executives be limited in their selection to those nominated by the commissions.

ACTION TAKEN DURING 1974 SESSION:

Twenty pieces of legislation were introduced by various Senators and Assemblymen in support of this recommendation. None, however, were enacted into law.

RECOMMENDATION NO. XII

MISCONDUCT AND DISABILITY OF JUDGES

*That the Legislature establish a commission on judicial conduct to provide surveillance of the fitness of judges and to provide procedures for removal from office for misconduct or disability.*

DISCUSSION:

The Court on the Judiciary has met only a half a dozen times during the 26 years of its existence. Throughout these years serious challenges have been made by others as to the competence of an individual judge to sit or as to the appropriateness of a judge's decisions. Yet the Court on the Judiciary has chosen to hear only a minuscule number of these challenges.

What is needed is a commission, composed of members of the judiciary, members of the bar and representatives from the community at large to review on a regular and ongoing basis the fitness and conduct of judges.

ACTION TAKEN DURING 1974 SESSION:

Legislation was passed and signed into law by the Governor on June 7, 1974, creating a temporary commission on judicial conduct. Among other duties, the Commission will receive complaints against judges with respect to their qualification, conduct, fitness to perform, or performance of official duties.

RECOMMENDATION NO. XIII

IMPROVEMENT OF METHODS FOR DEFENDING INDIGENTS IN CRIMINAL CASES

*That Statewide methods for the defense of indigents in criminal cases be strengthened through the establishment and enforcement of stricter standards as to qualifications for admission to assigned counsel panels, through the provision of adequate compensation to assigned counsel, and through the establishment of procedures whereby in-*

mates, represented by assigned counsel, may present complaints about their representation and whereby such complaints would be reviewed.

#### DISCUSSION:

In 1971, the average cost per case of criminal defense of indigents ranged from approximately \$47.12 to \$244.74 statewide. The lowest per case cost occurred in Legal Aid defended cases in New York City and the highest average cost occurred in New York City cases defended by assigned counsel. Despite this higher average cost for assigned representation, there is a wide disparity in the quality of this defense. It is not uncommon to encounter prisoners who, despite lengthy incarceration, have not been visited by their assigned attorneys and who are unable to obtain any information from them about the status of their cases. Furthermore, there exists at present no mechanism in the courts for receiving and reviewing complaints from inmates about their assigned representation.

Stricter standards as to qualifications for admission to the assigned counsel panels should be established, along with a procedure for enforcing these standards at the time of admission and during the period an attorney remains on the panel. In general, the quality of assigned representation should be no less than what the defendant should expect from privately retained counsel.

The rate of compensation should be increased for the attorneys and they should be compensated for all the time they devote to their assigned clients' cases.

Finally, a procedure should be developed whereby accused and convicted offenders may present complaints concerning their assigned representation and have them properly reviewed.

#### ACTION TAKEN DURING 1974 SESSION:

The Legislature passed and sent to the Governor on May 7, 1974, a bill to amend County Law to allow counties to pay assigned counsel, in extraordinary circumstances, compensation and reimbursement for expenses before the completion of assigned representation. Normally, such attorneys are not paid or reimbursed until their work is completed. The Governor signed the bill into law on May 23, 1974.

#### RECOMMENDATION NO. XIV ABOLITION OF BAIL BOND SYSTEM

*That the bail bond system should be abolished.*

#### DISCUSSION:

The only criterion which a court should consider in determining whether to release a person prior to trial is whether there is a reasonable assurance that the person will appear in court as required. The practice of requiring that a defendant post a bond discriminates against the indigent. If the defendant is without funds, other valuables or credit, he is denied an opportunity for release open to the affluent. The practice of requiring a bail bond from a defendant should be eliminated and replaced with other procedures that are not discriminatory such as release on recognizance, diversion to rehabilitative or social service programs, or supervised release.

#### ACTION TAKEN DURING 1974 SESSION:

Five bills were introduced during this session in support of bail reform. None, however, were enacted into law.

#### RECOMMENDATION NO. XV

##### DEATH PENALTY

*That the death penalty should be eliminated from the Penal Law.*

#### DISCUSSION:

In none of the responsible studies made to date has there been any indication that the presence or absence of a death penalty has any impact on the homicide rate. Thorsten Sellin, Professor Emeritus of Sociology at the University of Pennsylvania, demonstrated in his studies published in 1959 and 1967 that "the presence of the death penalty—in law or practice—does not influence homicide death rates." He also found it impossible to conclude that policemen in states with no death penalty are killed or wounded at a higher rate than are policemen in states with capital punishment. In his study on prison homicides, he found that prisoners and prison personnel do not suffer a higher rate of homicide or assault from prisoners serving life terms in states without capital punishment than they do in death penalty states. In the absence of any definite evidence that the death penalty acts as a deterrent to crime, the efficacy and morality of imposing it as a sentence should be questioned.

#### ACTION TAKEN DURING 1974 SESSION:

Instead of supporting this recommendation, the Legislature passed legislation, signed into law by the Governor on May 17, that provides the death

penalty for murder if the victim was a police officer or an employee of a correctional facility performing his official duties, or if the defendant was in custody or confinement serving a life sentence, and the defendant was more than 18 years old at the time of the murder.

#### For Future Sessions of the Legislature . . .

The Association will continue to make recommendations to the New York State Legislature concerning new and modified legislation required to reduce crime and delinquency rates and to increase the fairness and cost-effectiveness of the criminal justice system.

In particular, the Association will advocate legislation that will:

- Expand alternatives to pre-trial detention.
- Protect the rights and welfare of prisoners.
- Eliminate the death penalty.
- Prohibit the construction of maximum security prisons, and minimize the construction of all other institutions, with the exception of small residential facilities.
- Foster the development of community-based correctional facilities and programs.
- Improve the quality of police, prosecution, judicial and defender services.

#### Testimony Concerning the Manhattan House of Detention

On April 16, 1974, the President and Vice President, accompanied by two members of the Board of Directors of The Association, visited and evaluated the Manhattan House of Detention for Men (the "Tombs") in New York City.

Subsequent to this evaluation, the President testified before the New York City Board of Correction on April 25, 1974, concerning existing conditions at the Tombs and made recommendations concerning the future of the institution. A major portion of the President's testimony is as follows:

*Chairman Lehman, Members of the New York City Board of Correction, ladies and gentlemen:*

It is my honor and privilege to have this opportunity to appear before you today, and to offer recommendations with reference to the Manhattan House of Detention.

Following my receipt of your April 3, 1974, invitation to appear today as a wit-

ness, arrangements were made with New York City Correction Commissioner Benjamin Malcolm for an extensive and thorough tour of the Manhattan House of Detention. I visited the institution on Thursday, April 18, 1974, and was accompanied by Mrs. Susan A. Powers and Mr. David A. Schulte, Jr., both of whom are members of the Board of Directors of The Correctional Association of New York. I was also accompanied by the Association's Vice President, Dr. Judith A. Wilks. Our tour of the facility was essential for the preparation of this testimony, in that our group was given the opportunity to visit every floor, cell block and support service area of the physical plant, and to discuss administration, policies, living conditions and problems with inmates and personnel at all levels, including Warden Arthur Rubin and Executive Deputy Commissioner Jack Birnbaum.

Since the frequently troubled history of the Manhattan House of Detention has been documented in a host of preceding reports and testimony, permit me to proceed directly to a summation of my views and recommendations concerning the facility.

#### Summary and Recommendation

The Manhattan House of Detention should be vacated as soon as possible and discarded as a detention or confinement facility of any kind. The institution does not serve the purposes or functions for which it was clearly ill-planned and ill-designed.

A detention facility should be planned, designed and operated with two major purposes in mind. The first is to insure the appearance at court or trial of defendants for whom bail is not set, or who fail to post bail in lieu of detention. If this first purpose stems from our interest in the effective administration of justice, a second purpose of providing humane care and conditions follows our growing concern for the defendant himself.

The Manhattan House of Detention serves reasonably well the purpose of guaranteeing appearance at trial. The facility fails completely in the purpose of

providing an atmosphere that bears any resemblance whatsoever to the needs or interests of the detainee.

While guaranteeing appearance for trial, the Manhattan House of Detention was never intended to punish the detainee, but it does. And while the Administration of the Department of Correction and the staff of the facility may commendably continue efforts to reduce the punitive nature of the facility and to strengthen programs and services, the fact remains that theirs is a genuinely impossible task. The task is impossible because of the architectural design of the building, not because of lack of Departmental or staff effort to make it workable. Now is the time to add resolve and dollars to our customary rhetoric, to vacate and to discard the Manhattan House of Detention, and to proceed immediately in the planning, design, and construction of a new facility consistent with contemporary purposes and standards for such facilities.

We have a great deal of work ahead of us. If the decision is made, as suggested here, to vacate and discard the Manhattan House of Detention, we should first plan and carefully consider the ultimate need for a new facility, its location, size and characteristics with reference to future plans for better managing the physically and mentally ill offenders, and plans for evaluating and expanding present diversion programs. This is simply to stress that no facility offering still more confinement, that all of us agree should be used in the most conservative way possible, should be planned without first understanding procedures in the City of New York and the flow of defendants, the flow of sentenced and convicted people. Without that kind of information it would be impossible to design a new facility. I assume that information can be obtained.

#### *Discussion*

In support of the recommendation to close the Manhattan House of Detention, I would like to offer the following specific reasons:

### **1. The Need for Diversification in Security and Program.**

Both common sense and current standards for the design and operation of correctional facilities, including detention facilities, call for classification procedures and capabilities that permit at least maximum, medium and minimum confinement. Such classification systems should, in addition, go beyond the determination of risk (i.e., to escape, to harm someone, to harm one's self, or to destroy property), in specifying objectives for program and activity during confinement. Classification systems presume the required capabilities in physical plant, budget, staffing, and in the broad area of policy and procedure, needed to implement the specific requirements upon which various classifications are based.

For example, it is customary for minimum security people to have extremely broad access to all kinds of basic educational and vocational programs. It is not common practice that maximum security people would have that same access.

Maximum security confinement is generally thought to include a secure, manned and patrolled outer perimeter (in the form of either a wall or fencing); inside cell construction: single ceiling; and, above all, 24-hour-a-day surveillance. In contrast, minimum security does not presume a secure, manned or patrolled outer perimeter (if, indeed, any indicated perimeter); but it does provide relatively simple housing; group or dormitory-type living; minimal surveillance; and extensive inmate involvement in programs and activities. Medium security obviously borrows from both maximum and minimum security, and typically includes the secure perimeter and single ceiling with greater freedom of movement and less surveillance.

The need is clear for such diversification in security and program within the Manhattan House of Detention. It is also clear that there is no type or amount of renovation that could possibly provide for such essential diversification in the present physical plant. Even with a complete so-

called gutting of the present building, the City of New York would be left with a maximum-to-medium security institution, no minimum security, and sub-standard program and activity space.

Consistent with an effective system of classification, a new facility, again if needed, and again if consistent with other programs in the City of New York, particularly at the court level, could provide adequate activities and program space to permit detainees to pursue alternatives to boredom, illness and despair. Basic programming could provide for voluntary participation in the even more important areas of remedial education and trade training, representing from the detainee's point of view, genuine benefits upon release to the community.

A decision to further retain and renovate the Manhattan House of Detention would be tantamount to a de facto classification of all present and future detainees at maximum security risk levels for whom only the bare rudiments of program and activity would be available. We must weigh this possibility with the conservative estimate that approximately one-third of all present and future detainees should require no more than minimum custody, and that no more than one-quarter should require maximum security. Both groups should be managed accordingly. A new facility, constructed with diversification in mind, would be in the ultimate best interests of the community and the detainee.

### **2. The Need for More and Better Contact with the Outside World.**

After more than fifteen years of experience in correctional research and administration, I feel confident in suggesting to you that the most direct and certain route to the destruction of physical and mental health, to the provocation of unrest and disturbance that may end lives in rioting, and to the continuation of individual criminal careers is clearly the excessive and unnecessary isolation of the detainee or prisoner from his normal physical and social world. Unfortunately, confinement means removal from one's

family, normal friends, employment and the community. It obviously means loss of the freedom of movement.

The architectural design of the Manhattan House of Detention, however, forces the Department of Correction to maintain an excessive and tragic level of isolation for every inmate-detainee of the facility. This level of isolation exceeds everything in my experience outside the segregation units of maximum security State and Federal institutions. This matter of lock-in or lock-out, by the way, I suggest to you is a fiction. Whether you're locked in or locked out, that is tantamount to maximum security, and indeed I would suggest tantamount to assignment to segregation in most facilities.

Visiting with one's wife or child by means of a telephone and through a tiny glass window not much larger than an automobile rear-view mirror is excessive and tragic isolation. Seeing the sky once a week or so when it is your turn for recreation on the roof is excessive and tragic isolation. A covering bubble on the roof of the facility to permit recreational use of the roof during inclement weather is comparable to the provision of a placebo for cancer. What is needed is a new facility, with 500 to 600 beds. Certainly no larger than that.

### **3. The Need for a Tolerable Environment**

Jails, detention facilities, penitentiaries and prisons cannot and should not be expected to create the environmental characteristics of a middle-class private residence or of a modern motel. This is as nonsensical as the assumption that the way they are now is the way they should be, or that they cannot be improved. In my judgment, the Manhattan House of Detention has been beyond improvement since the day it was opened. While the facility could be made more sanitary, better ventilated, better lighted (naturally or otherwise), and better sound-controlled, the fact remains that the result would be, once again, a sub-standard institution, having been made a little less sub-standard.

#### *Conclusion*

I have attempted to indicate the major reasons that I feel support the recom-

mentation to vacate and discard the present Manhattan House of Detention in favor of the construction of a new facility. My testimony has been directed at what I believe to be the hopelessly limited physical characteristics of the facility.

I would like to close this statement with a word or two of genuine encouragement. Throughout the course of my contacts with personnel of the New York City Department of Correction, including the staff assigned to the Manhattan House of Detention, I have been sincerely and favorably impressed by an obvious sense of devotion to duty and responsibility, a desire and quest for fairness, and clearly, enthusiasm to discuss problems in search of the best solutions.

I very much appreciate this opportunity to appear before you today, and would be pleased to attempt to answer any questions you may have.

#### *Civil Legal Services Bureau*

##### *The Problem*

According to the New York City Department of Correction, 60,783 persons were placed in detention, and 10,795 served sentences ranging from fifteen days to one year in New York City correctional facilities during 1973.

While they are incarcerated, many of these people suffer major setbacks in their outside affairs: their spouses may decide to divorce them; their property may be taken away; landlords may evict them without giving proper notice; and employers may not send them their final wages.

In addition, serious difficulties specifically related to their arrest, adjudication or imprisonment quite often arise for inmates. Typically, these difficulties include the inmates' inability to get hold of their own funds to make bail; their inability to reclaim forfeited bail or to recover property seized at the time of arrest; the need to vacate Family Court warrants which interfere with the inmates' participation in work-release and other diversionary programs; and immigration problems and the possibility of deportation.

All of these problems are legal in nature and create for the inmates the need for civil legal services.

In 1973, the vast majority of the inmates held in detention and many in the sentence facilities were poor.

These detainees had neither the cash nor the credit to make bail. They had no money to retain private attorneys for their criminal defense. Their assigned counsel had neither the time nor the resources to visit them during their incarceration. Thus, in general, their only available time to obtain legal advice is in the hurried two-to-three minute period outside the courtroom before their criminal case is heard. Prior to the arrival of the Correctional Association legal staff, there were no attorneys making regular scheduled visits in New York City prisons.

##### *Objectives*

Through the provision of civil legal services to the inmates in the New York City detention and correctional facilities, the Correctional Association of New York seeks to solve the civil legal problems of the inmates cited above, such as pending divorce action against them, eviction, the withholding of wages, and their inability to secure their own funds. In addition, the Association seeks through the services of this project to help bring about new institutional procedures that preclude the development of a host of civil legal and other problems.

##### *Administration, organization and staffing*

To help the inmates deal with such problems, the Association employs one administrative attorney, a staff of eight additional attorneys, four secretaries, two paid part-time law students and approximately twenty part-time clinical law students who work fifteen hours per week for the project and its lawyers as part of their law school training.

The Project started in 1971 with a staff of two attorneys and by February of 1973, it expanded to its present size.

##### *Funding*

During 1971 and 1972, the Project was supported by a grant of \$88,000 from a private donor. In February of 1973, the Mayor's Criminal Justice Coordinating Council (CJCC) awarded \$150,000 to the Association to expand this service to all the New York City detention and correctional facilities for the period February, 1973 to March, 1974. These funds, appropriated in accordance with the Omnibus Crime Control and Safe Streets Act of 1970, had been granted to CJCC by the New York State Crime Control Planning Board for the purpose of this project. The State Board had received

the funds as part of a much larger action grant from the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice. In addition to this \$150,000, the Association expended \$57,000 of its own funds to support the project during the fourteen-month period.

The Association received a second grant from CJCC and the State Crime Control Planning Board in March of 1974 to continue the project for another year, beginning April 15, 1974. This award for \$238,000 was from funds provided by LEAA in accordance with the Crime Control Act of 1973. The Association has agreed to expend approximately \$30,000 of its own capital for this project. A grant of \$5,000 from a private foundation has been received, and \$5,000 from a private contributor is expected to help the Association defray its share of the cost of the Civil Legal Services Project and prevent further erosion of the Association's invested capital. It is anticipated that in the future the total cost of providing these services to detainees and sentenced prisoners at the required level of operation will approximate \$300,000 annually.

##### *Activities*

The Association handles approximately 2,400 cases per year which results in an average cost per case of \$125.00. Each attorney is assigned to one or more of the eleven institutions in the City to insure continuity of representation. The attorney visits his or her institution at least one full day a week and makes emergency visits as required. The students accompany the attorneys on their visits and are assigned to follow up on specified cases, so that an inmate always knows who his attorney is. Third-year students are permitted to appear in certain lower court proceedings.

##### *Project Results*

The major benefits of this project are that it enables impoverished inmates to exercise their rights in regard to civil matters; it relieves the inmates of undue suffering caused by their inability to handle their family and fiscal affairs; it helps assuage the tensions that build up within confinement institutions and lessens the likelihood that such tensions would become kindling for prison riots; and it could reduce the detention population and thereby reduce both the City's operating costs and the need for future new cell construction.

The solutions to legal problems of inmates which

the Civil Legal Services Project provides do help relieve some of the tensions and frustrations inmates feel while incarcerated. As one inmate remarked, "I never knew that the law could work for me." Confinement in itself is a difficult life for most inmates. The provision of civil legal services not only helps the inmates keep their lives intact, but also helps defuse the shared sense of frustration and anxiety that can build up and explode into rioting.

Experience with these services has enabled the Association to make practical suggestions for change to the Department of Correction. For example, upon the advice of the Legal Services attorneys, the Department changed administrative procedures relating to visitation by inmates' children and to the promulgation and posting of bail requirements.

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals advised that each correctional agency in the nation should immediately develop and implement policies and procedures whereby inmates would have direct access to attorneys for "proceedings or consultation in connection with civil legal problems relating to debts, marital status, property or other personal affairs of the offender."

The Correctional Association, in cooperation with the New York City Department of Correction, has implemented such procedures. Currently the Correctional Association is the only organization in the City providing civil legal services to indigent inmates at no cost to the inmates.

After eighteen months of experience working with sentenced and detained prisoners, the Association has come upon several major problems which can be solved by expanding its present civil legal services. These expanded services should include.

- An automatic review and interview procedure for all inmates who have been detained for more than six months.
- A procedure for locating appropriate diversionary programs for inmates detained more than six months; or as a last resort, the Association's attorney could initiate a new and collateral civil proceeding to attack the overlong detention on constitutional grounds.
- A procedure for reviewing detention cases to select out those who have been diagnosed and found to suffer from some form of mental illness. The Association would attempt to find alternative placements in proper facilities for

mentally ill inmates and to work out a program for maintaining these inmates in such facilities as long as necessary.

- A procedure for removing indigent civil prisoners from detention facilities housing alleged criminal offenders.

#### **Correctional Social Services Bureau**

##### *The Problem*

Most indigent defendants and offenders, upon release from New York State or New York City correctional institutions, face great difficulties in finding housing and jobs, re-establishing family life, getting into educational programs, obtaining health services, and establishing financial credit. Primary among these difficulties are a lack of money for food, clothing, and temporary housing. In addition, these individuals are usually poorly educated, are ignorant of educational, job training and job placement opportunities open to them, and are inexperienced in the ways of finding jobs and dealing with large public agencies. Records of arrest, conviction and incarceration often promote unreasonable discrimination on the part of prospective employers and official service and licensing agencies. Furthermore, crises often develop while defendants and ex-offenders wait for services. Unless these individual have family or friends to rely on until they get settled, the chances are great that they will find these and other difficulties insurmountable and turn to more direct and seemingly effective means of meeting their basic needs, including crime.

##### *Activities:*

The Correctional Association, through this Bureau, has for years responded to the requests of men and women released or soon to be released from detention and correctional facilities for aid in trying to find housing and employment. In addition, the Association has assisted many defendants and ex-offenders to get started on jobs by providing them with money to buy tools or for car fare to last until the first pay check; to go through the necessary procedures to apply for public assistance; to work out disputes they have with their families; and to get into educational programs.

Although the Association has helped many individuals, the number assisted is miniscule when compared to the total number of defendants and ex-offenders living in the New York Metropolitan Area who have the same problems and the same needs.

The Correctional Social Services Bureau has had one full-time caseworker handling all the cases, except for the small number involving female inmates and releasees whose cases were handled by the Association's Family Services Bureau. During 1973 and the first five months of 1974, the Association has spent \$10,541.29 of its funds to provide these services to 1,408 defendants and ex-offenders.

#### **Family Services Bureau**

##### *The Problem:*

On any given day tens of thousands of New York City residents are arrested, detained, incarcerated or released by law enforcement or criminal justice agencies in New York State.

Many of these people contribute to the support of their families. Once they are arrested, their families are without financial support, their wives are without husbands and their children without fathers. If the mother of such a family tries to apply for public assistance, she finds that she needs to demonstrate that she and her family qualify for assistance according to criteria set in law and official agency policy. To many women in this situation the arrest and incarceration of the husband is a sudden, unexpected experience that leaves them unprepared to meet all these application requirements quickly and easily. If the family does receive public assistance, the mother needs to adjust the family's life style to a whole new set of requirements. The woman needs to deal with this situation and get her children to do likewise, abruptly and completely.

Other problems arise for the family of an incarcerated person — problems in school, in the community, and even in the family's church.

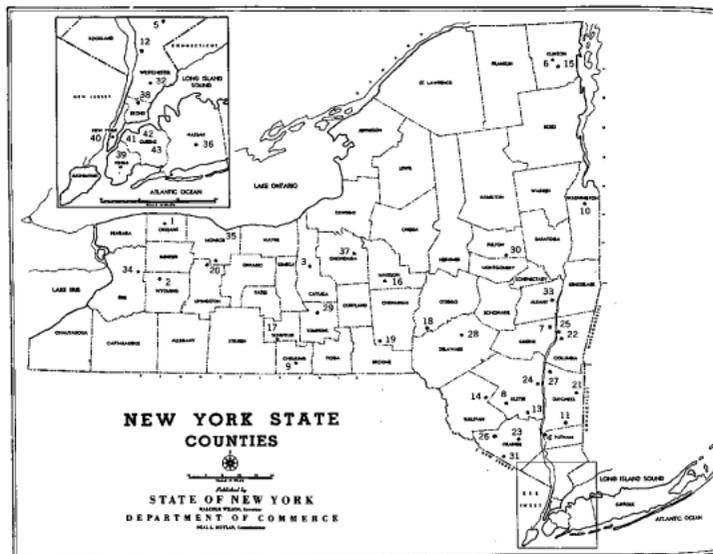
##### *Activities:*

For years the Association has set as one of its objectives the provision of assistance to the needy families of those incarcerated. The Association's caseworker has helped some of these families apply for public assistance, work out a family budget, buy sewing machines to make clothes, get the children into summer day-camps, keep the children in school, and find part-time work for the mother or after-school jobs for the children. In short, the Association has attempted to provide whatever help it can at the time it is needed. The Association's Annual Christmas Party for children of offenders has been one of the traditional highlights of this Bureau's activities.

The work of the Bureau is handled by one caseworker. During 1973, and the first six months of 1974, the Bureau provided 300 families with casework assistance and \$27,670.24 in direct grants and loans.

Community generosity, through the contributions of foundations and private donors, has helped make possible the work of this Bureau and of the Correctional Social Services Bureau.

STATE AND MAJOR LOCAL CORRECTIONAL INSTITUTIONS  
IN NEW YORK STATE



NEW YORK STATE CORRECTIONAL  
FACILITIES

1. Albion State Correctional Facility
2. Attica Correctional Facility
3. Auburn Correctional Facility
4. Beacon State Institution
5. Bedford Hills Correctional Facility
6. Clinton Correctional Facility
7. Coxsack Correctional Facility
8. Eastern New York Correctional Facility
9. Elmira Correctional Facility
10. Great Meadow Correctional Facility
11. Green Haven Correctional Facility
12. Ossining Correctional Facility
13. Walkill Correctional Facility
14. Woodbourne Correctional Facility

*Division of Correctional Camps*

15. Camp Adirondack
16. Camp Georgetown
17. Camp Monterey
18. Camp Pharsalia
19. Camp Summit

NEW YORK STATE DIVISION  
FOR YOUTH

20. Agricultural and Industrial School, Industry
21. Amenia Center for Girls, Amenia
22. Brookwood Center for Girls, Claverack
23. Goshen Center for Boys, Goshen
24. Highland School for Children, Highland
25. New York School for Girls, Hudson

26. Otisville School for Boys, Otisville
27. Overbrook Center for Children, Red Hook
28. South Kortright Center for Boys, S. Kortright
29. South Lansing School for Girls, S. Lansing
30. Tyron School for Boys, Johnstown
31. Warwick School for Boys, Warwick

COUNTY PENITENTIARIES

32. Westchester County Penitentiary, Westchester County Jail, Westchester Women's Detention Unit, Valhalla
33. Albany County Penitentiary
34. Erie County Penitentiary
35. Monroe County Public Safety Building and Jail
36. Nassau County Jail
37. Onondaga County Penitentiary

NEW YORK CITY DETENTION FACILITIES

38. Bronx House of Detention for Men
39. Brooklyn House of Detention for Men
40. Manhattan House of Detention for Men
41. Rikers Island: New York City Adolescent Reception and Detention Center  
New York City Adolescent Remand Shelter  
New York City Adult Remand Shelter  
Rikers Island Hospital  
Sentence Institutions: Correctional Institution for Men  
Correctional Institution for Women
42. Branch Queens House of Detention for Men
43. Queens House of Detention for Men

## IN MEMORIAM

### C. SUYDAM CUTTING

1889-1972

Mr. C. Suydam Cutting, for 38 years a strong supporter of The Correctional Association of New York.

A friend and confidant of the globe trotting Theodore and Kermit Roosevelt, master of the game of court tennis, and naturalist par excellence. This was Suydam Cutting.

Joining the Executive Committee of The Correctional Association in 1934, Mr. Cutting began an era of 38 years of strong support for the ideals and objectives of the Association. Despite the need to curtail his direct personal involvement in the activities of the Association in later years, he continued to express his confidence in its work through his philanthropic generosity. By the many friends he had, not only in The Correctional Association of New York, but through his lifelong series of expeditions to nearly every corner of the globe, he is sorely missed.

### MRS. CLOVER TODD DULLES

1894-1974

The Correctional Association of New York notes with sadness the death of Mrs. Clover Todd Dulles on April 15, 1974.

A member of the Association since 1927, Mrs. Dulles was elected to the Executive Committee in December, 1938. She was an active member, serving on the Committee on Detentions and the Committee on Probation and Parole, until 1960 when she moved to Washington, D.C. with her husband, Allen W. Dulles.

Always generous with her time and her financial support, Mrs. Dulles was named an honorary member of the Executive Committee in 1972.

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## FINANCIAL STATEMENT

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