THE CORRECTIONAL ASSOCIATION
OF
NEW YORK

131ST ANNUAL REPORT TO THE LEGISLATURE
1976

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This is an official report of The Correctional Association of New York to the Legislature of the State of New York, which has been made annually since 1845, and constitutes the one hundred and thirty-first of the series.

Paragraph 6 of Article XI 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."

1976 N.Y.S.L.D. — G00514

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THE CORRECTIONAL ASSOCIATION OF NEW YORK
135 East 15th Street
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July 15, 1977

Hon. Hugh L. Carey
Governor of the State of New York

Hon. Mary Anne Krupsack
Lieutenant Governor and President of the Senate

Hon. Stanley Steingut
Speaker of the Assembly

Dear Governor Carey, Madam President and Mr. Speaker:

Pursuant to Chapter 163 of the Laws of 1846, as amended by Chapter 398 of the Laws of 1973, this One Hundred and Thirty-first Annual Report is presented to you on behalf of the Board of Directors with the request that you lay the same before the Legislature.

Respectfully,

George G. Walker
Chairman

Adam F. McQuillan
President

REPORT FOR 1976

This 131st Annual Report covers an active period in crime and in criminal justice in New York. It was marked by crises or near crises in prisons, hearings and litigation in the courts on elimination of abuses, appointments to key official positions in criminal justice in the state and in New York City, and the introduction of important bills in the state legislature affecting crime and criminal justice.

All this put heavy demands on Board members who volunteer their time very generously in making prison visits, in discussions with officials, working on legislation, fund raising and in many other ways. It put a strenuous burden on the small and dedicated staff and a further strain on financial resources. Nevertheless there were some solid achievements, including these:

* Prison officials throughout the state were alerted to conditions requiring immediate action in their institutions.

* Several important measures backed by the Association were enacted by the legislature.

* An Association-sponsored conference on sentencing was followed by the Governor's establishment of a special criminal justice task force.

* 528 inmates received civil legal help from the Association's Legal Services Bureau.

* 907 social services visits and interviews aided inmates and their families.

* Contact visits were finally instituted at Rikers Island.

* The Association pursued a wide-ranging program of official communications, discussions, visits and testimony contributing to long-term improvement in the system.

Following is a summary of activities:

Prison Visits

Board members and staff made 41 visits to state, city and county correctional facilities with a total population of nearly 10,000 inmates. These included emergency visits to state institutions at Attica, Great Meadow and Fishkill, and to the Bronx and Queens Houses of Detention in response to indications of disturbances which had been relayed to the Association President, Adam F. McQuillan, veteran warden in the New York City correctional system. Recommendations based on the findings of these visits were sent to and discussed with the authorities involved. Summaries of reports on the visits begin on page 11. Abuses center on lack or infrequency of family contact visits, lack of adequate exercise, inequities in the parole system, lack of meaningful post-release guidance and job opportunities, and delay in trial hearings. A common response is that these conditions exist because of lack of money. We are not convinced, from what we have observed, that a correctional system which spends $447,937,000 a year to house and feed 29,000 detained and sentenced prisoners in state, city and county jails is not capable of marked overall improvement.

We believe that a lot more can be done with the time and money that are already available to the total criminal justice system in New York State. Including police protection, judicial, legal services and prosecution, public defenders, prisons, parole and probation, victim compensation, and other criminal justice areas, the total amount spent in fiscal year 1975 was $2,061,406,000. These costs do not include the human costs of crime to the victim, to the criminal and to society.

Rikers Island

Board members and staff have made six visits to Rikers Island since May 1976. More people and problems exist at Rikers than in any other single location in the state. Conditions are most serious in the House of Detention for Men, a maximum security facility, and in the Adolescent Reception and Detention Center, a facility for youths of 16 to 20 years of age who are awaiting trial and sentencing.

We have visited the physical plant, talked with wardens and their staffs, and listened to their problems. We talked with inmates and listened to their problems. We have reported to policy-making city and state officials about conditions at Rikers and have made recommendations. We have read the reports of the New York City Board of Correction and the State Commission of Correction, the official watchdog agencies for prisons. As an independent, volunteer watchdog agency we agree basically with their findings of existing conditions. We think it is constructive that the city and the state announced in mid-may, 1977, that an agreement had been reached to reduce the population of HDM by 15%, to 1,200, and that unsanitary and unsafe conditions be improved by September 1, 1977.

We shall watch the implementation of this agreement with care. We are glad that the State Commission of Correction has set hearings for mid-September 1977 to evaluate progress. Other than compliance with a court-ordered contact visit procedure at HDM and some much-needed painting, there has been very little fundamental improvement at HDM or ARDC over the past two years.

Contact Visits

The record of the City of New York in providing contact visits to inmates of its jails is not one to be proud of. Contact visits are recognized as being essential to emotional stability and one of the basic human rights.

As the chronology beginning on page 17 indicates, the city has acted only when ordered by the courts. It has not yet provided contact visits for the Brooklyn or Queens facilities.

A copy of the chronology has been sent to Nicholas Scoppetta, Deputy Mayor for Criminal Justice, urging that the city implement contact visits in all its facilities, at least on an interim basis, by mid-September, and that a full program of these visits be begun throughout the department by the end of 1977.

Key Official Posts Filled

In New York City the post of Deputy Mayor for Criminal Justice, a key position under the revised City Charter approved by the voters in November 1975, was filled in December 1976. The Honorable Nicholas Scoppetta, the first incumbent, and his deputy criminal justice coordinators were effective in bringing about the mid-May agreement between state and city on the House of Detention for Men at Rikers Island.

In the state, the position of Chairman of the State Board of Parole, vacant for some time, was filled in September 1976 by the appointment of Edward R. Hammock. Stephen J. Chinlund was appointed Chairman of the State Commission of Correction in July 1976. It was under the initiative of the State Commission of Correction that a report on conditions at HDM was made, and a state and city agreement reached on correcting some of them.

Recommendations to the Legislature

The Association submitted nine recommendations to the 1976 Session of the New York State Legislature. One bill reflecting the Association's position on employment of ex-offenders (Recommendation IV) was passed and enacted into law. Three bills which the Association actively supported became law, and the legislature voted first passage of a constitutional amendment on court reform, an issue which had been part of the Association's recommendations since 1967. Details on legislative recommendations and achievements begin on page 21.

Roundtable Discussion on Criminal Sentencing

In the early days of prison reform the Association was instrumental in introducing the indeterminate sentence in the United States and in developing probation in New York State, drafting the state's first probation law and pressing for its passage. In their time these measures were giant steps forward in criminal justice reform. Today the pros and cons of indeterminate sentencing and determinate, or flat time sentencing, along with the concomitant questions of rehabilitation, parole and probation are the subject of much public examination and debate.

To facilitate interchange of ideas on the subject with state and New York City officials, and other experts in the field, the Association sponsored a roundtable conference in December 1976, led by Robert B. McKay, Director of the Aspen Institute for Humanistic Studies and a recognized leader in the field of criminal justice.

The result of the meeting was a letter to Governor Carey suggesting the problem needed study and cohesive effort, and recommending the establishment of a blue-ribbon panel to make recommendations for the development of criminal sentencing procedures that would serve the needs of offenders, their victims, and the community.

The response from the Governor's office was prompt, advising that he had set up a cabinet-level task force dealing with a variety of matters in the criminal justice system. The task force recommended the creation of a study group to examine the feasibility of instituting a more definite and equitable sentencing structure in New York State.

We were assured that community, civic and professional groups would be included in the study group.

Civil Legal Services

The Association continued to provide legal assistance on civil matters, as it had been doing since the fall of 1971, to indigent inmates in New York City's correctional and detention facilities. February 28, 1976 marked the end of the Law Enforcement Assistance Administration (federal) grant extension under which the Legal Services Bureau had operated at a reduced level since May 1975. A grant from the individual donor who had made possible the start of Legal Services in 1971 permitted continuation of this curtailed service for another year, and exhaustive efforts were made to obtain future funding from government and other sources. These efforts were not successful. On February 28, 1977, the Legal Services Bureau terminated operation. All cases that could not be closed by that date were turned over to other agencies that had agreed to assist the Bureau in closing out cases that remained open.

Thus ended a service that had been provided by the Correctional Association to indigent inmates for five and a half years, a service that had been widely praised by inmates who had been helped, the Department of Correction, and institutional administrators. The lessening of inmate tension resulting from this relief was welcomed by the corrections staff. Inmates became aware that the law could serve their needs as well as imprison them. . . an awareness new to many of them. During its last year the staff was reduced ultimately to two attorneys who made regular visits to only two of the nine institutions visited when staff was at its full complement of nine attorneys. Telephone requests for assistance were accepted from all institutions, with visits being made where warranted. Even under these restrictive conditions the Bureau was able to assist 528 indigent inmates with their civil legal problems. During its five and a half years of existence, the Legal Services Bureau handled 5,236 cases. Major accomplishments of this program are outlined on page 33.

Social Services

There were 907 client interviews at the Association offices, the institutions and at clients' homes. These contacts were with family members of incarcerated individuals, inmates, and ex-offenders. The caseworker made regular visits to nearby institutions in an effort to maintain family stability. A primary goal of the Social Services unit is to keep families intact so that inmates on their release return to a supportive home environment. The caseworker also worked with inmates on their institutional problems, helping them to approach these on a mature, rational level rather than becoming overwhelmed and frustrated by them. The hope is that this manner of dealing with difficult situations will carry over into post-release life. A description of the unit's work begins on page 35.

Testimony and Public Information

The Association's President, Adam F. McQuillan, testified at several public and court hearings on matters of importance to the Association. He addressed groups of high school and college students, and labor union groups on the problems of the criminal justice system and the role of the Association in effecting change. A summary of these activities begins on page 31.

Financial

After providing for depreciation of building and equipment under the new accounting rules, the Association had a 1976 loss of $44,807, about the same as the previous year.

The Board has approved a mailing in a direct mail campaign to test the feasibility of getting increased support from a larger group of citizens interested in reducing crime and improving the criminal justice system.

Board Changes

In May 1976, Mrs. Mary Stevens Baird retired from the Board of Directors after having served loyally and effectively since 1963. She brought an invaluable expertise in corrections gained through her extensive work in the field, having served on the Board of New Jersey's Department of Institutions and Agencies and its Reformatory for Women, and as a member of the Mayor's Task Force on Correction in the Lindsay administration. The Board will feel the loss of Mrs. Baird's active membership but is happy that she will continue to participate as a Director Emerita.

Two other valued members resigned from the Board in 1976: Baldwin Maull, Jr. was appointed to a new position whose duties did not permit time for active participation; John H.F. Shattuck, on the Board since 1975, was appointed director of the Washington office of the American Civil Liberties Union. In 1977, William B. Meyer, a long-term member who served the Board well, resigned from membership. The Board will miss their help.

During 1976 the following members were elected to the Board:

Harry W. Albright, President, Dime Savings Bank of New York
Peter J. Ames, Secretary and Counsel to the President, New York University
William J. Dean, Attorney-at-law
Michael B. Mushlin, Attorney, Director of the Legal Aid Society's Prisoners' Rights Project
Adam C. Powell III, Manager, News Operations, CBS Radio [resigned in 1977 because of out-of-town work schedule]
William H. Vanderbilt, former Governor of Rhode Island, Chairman of the Board of South Forty Corporation

At its June 1977 meeting, the Board elected Constance P. Carden, an attorney for the Legal Aid Society, to membership.

The Board's strength and effectiveness is increased by the addition of these members.

Future Goals

The Correctional Association of New York plans to. . . .

* continue staff and Board committee visits to city, county and state correctional facilities. Efforts will be made to ensure that adequate safeguards are provided for protection of the rights of inmates and correction officers, and that effective and efficient operation is maintained. . .

* press for alternatives to incarceration for minor, non-dangerous offenders; keeping this type of individual in a penal facility is costly and counterproductive. . .

* seek funding for support of a program for children and families of offenders. . .

* continue to press for examination of the issue of comprehensive sentencing reform. . .

* continue to cooperate with other agencies engaged in reform of the criminal justice system. . .

* seek to increase its membership, to further interest in criminal justice, and to strengthen its ability to operate more effectively against the causes of crime.

We wish to thank the members of the Association for their financial support and for their interest in what the Association is trying to accomplish. Without the skills and devotion of the Board and committee members who volunteer time and money, and the dedication of a hard-working staff, the Association could not effectively contribute to the improvement in the criminal justice system and the reduction of crime in New York.

On behalf of the Board,

George G. Walker
Chairman

Adam F. McQuillan
President

REPORT OF ACTIVITIES

Prison Visits

Exercising its legislative mandate to visit the prisons in New York State and report to the Legislature on their condition, the Association through its staff and the Board Institutions Visiting Committee made 29 visits to facilities in New York City, Dutchess, Nassau, Rockland and Westchester Counties, to Bedford Hills, Fishkill, Green Haven, Great Meadow and Attica state institutions, and to two state work-release facilities in New York City, Lincoln and Parkside. Emergency visits to four prisons were made by President Adam F. McQuillan in response to indications of disturbances.

Visits to Correctional Facilities
January 1, 1976 - April 30, 1977

1976

March 16. . Bedford Hills Correctional Facility for Women
April 28. . . Westchester County Jail and Penitentiary
May 10. . . Rikers Island: House of Detention for Men; Adolescent Reception & Detention Center
May 25. . . Bronx House of Detention
May 26. . . Great Meadow Correctional Facility
June 8. . . . Rikers Island: Adolescent Reception & Detention Center
June 29. . Queens House of Detention
July 7. . . Dutchess County Jail
July 15. . . Nassau County Jail
July 26. . . Attica Correctional Facility
Sept. 13. . Rikers Island: House of Detention for Men
Bronx House of Detention
Oct. 3. . . Fishkill Corr. Facility
Oct. 5. . . Queens House of Detention
Nov. 12. . Rockland County jail
Dec. 10. . Brooklyn House of Detention
Dec. 13. . Attica Correctional Facility

1977

Jan. 8. . . . Fishkill Correctional Facility
Feb. 3. . . . Lincoln Correctional Facility
Feb. 7. . . . Rikers Island: Correctional Facility for Men
Feb. 12. . . Parkside Correctional Facility
Feb. 15. . . Manhattan Corr. Center (Fed.)
Feb. 25. . . Parkside Correctional Facility
Feb. 28. . . Fishkill Correctional Facility
March 8. . Fishkill Corr. Facility
April 6. . . Westchester County Jail & Penitentiary: New Health Care Unit
April 8. . . Rikers Island: House of Detention for Men
April 13. . Queens House of Detention
April 19. . Queens House of Detention

During this period twelve social service visits were made by the Director of Social Services to Bedford Hills, Fishkill and Green Haven Correctional Facilities.

Summary Reports of Major Visits

NEW YORK CITY

Adolescent Reception & Detention Center, Rikers Island (6/8/76). Population under capacity. Outdoor recreation for over 1,000 adolescents restricted to eight small yard areas while large baseball field surrounded by ten-foot fence, ideal for active sports, is unused. Continuation schooling for approximately 120 inmates does not operate during the summer, and inmates assigned to program are idle during July and August. This idleness, combined with lack of passive activities and limited physical activity, aggravates boredom. Inmate grievances cited were: 1) lack of contact visits; 2) lack of job opportunities, institutional jobs being assigned to sentenced prisoners; 3) lack of indoor passive games and activities; 4) monotony of food service; 5) failure of administration to listen to their just grievances.

Recommendations. 1) Make large yard available immediately for outdoor activity, since the adolescent detainees are sorely in need of an outlet for their physical energies. Response from Correction Commissioner Benjamin Malcolm to this recommendation cited lack of security because of staff shortage. 2) Increase passive recreational activities by obtaining materials from concerned social service agencies. No response to this recommendation.

House of Detention for Men, Rikers Island (9/13/76). Adam McQuillan and Joel Berger, attorney-in-charge of Legal Aid Society's Prisoners' Rights Project, visited institution together to examine recreational and psychiatric facilities.

Observations. Only one small yard used in entire facility, which is hardly adequate to service the needs of over 1,200 trial prisoners. Small yards adjacent to eight cell blocks are not used; administration claims lack of correction officers for staffing. However, yards are overgrown with grass and weeds and appear not to have been used for over a year. Indoors, only one dayroom in each block results in overcrowding. In the mental observation unit there is no nursing station, and no psychiatric personnel are assigned. Overflow from main mental observation facility at C-71 is housed here. There is no dayroom or area where interviews can be conducted by mental health personnel.

Recommendations. No formal recommendations were made. However, on September 27 and 28, Association President McQuillan testified on behalf of the inmates before Judge Morris Lasker, U.S. District Court, Southern District, in the case of Benjamin v. Malcolm, a Legal Aid Society class action suit. His testimony covered, among other problems, the areas of contact visits, recreation, search procedures, lock-in and lock-out time.

Bronx House of Detention (5/25, 9/13/76). Mr. McQuillan and Joel Berger, of the Legal Aid Society's Prisoners' Rights Project, made the first visit to examine visiting procedures, an issue which was before the court at that time. Just hours before the second visit, intended as a routine follow-up, the inmates began a peaceful protest when they learned that contact visits scheduled to begin

on September 15 would be delayed. [See below for report on contact visits.] The inmates refused to go for court appearances or lock into their cells. The protest extended to grievances over lack of court reforms in Bronx County. At the meeting of the Inmate Liaison Council at which Mr. McQuillan and Mr. Berger were present, attorneys informed the inmates that some of their demands required legislative action, while others — such as speedy trial, lower bail for indigents, and better Legal Aid representation for indigents in the police precincts and the courts — could be resolved by the courts. Following a meeting on September 15 with Judge William Kapelman, Bronx County Administrative Judge, and District Attorney Mario Merola, at which the issues were further clarified, the inmates voted to return to their cells and obey Departmental rules. By September 17 they had begun to make court appearances and on September 21 the situation returned to normal while inmates awaited further action on their behalf. Contact visits began on October 5.

House of Detention for Men, Rikers Island (4/8/77). On April 3, 1977, the New York City Board of Correction advised Mayor Beame that this facility was "outmoded and inappropriate" and should be phased out as a long-term detention facility. Five days later Association President Adam McQuillan toured the institution and discussed the proposed shutdown with its warden.

Observations. Present usage of cellblocks prevents adequate handling and observation of inmates by correction officers. Inadequate mess hall facilities and food service; substandard and inadequate kitchen facilities. Inadequate Receiving Room facilities.

Recommendations. Close top section of each cellblock to reduce population to 160-inmate capacity. Put in new kitchen equipment and utensils; clean, paint and install new ceiling in entire kitchen/mess hall area. Erect a new Receiving Room.

On April 13 an editorial in the New York Times noted that the New York State Commission of Correction had announced an investigation and hearings on conditions at HDM, and the Times proposed a re-opening of "The Tombs" to house the HDM population. In advance of the hearings, the Association submitted its recommendations to the Chairman and Commissioners of the State Commission of Correction with suggestions for utilization of under-occupied facilities on Rikers Island and changes in deployment of correction officers. In a letter to the Times the Association reaffirmed its position (see below) that "The Tombs" remain closed.

The situation at the House of Detention for Men is serious, and the Association is playing an active role in attempting to find a satisfactory solution.

"The Tombs." In October of 1976 the Association directed its attention toward New York City's attempt to re-open "The Tombs" (Manhattan House of Detention for Men) which had been ordered closed by Federal Judge Morris Lasker in 1974 because conditions violated constitutional rights of inmates.

A report of changes proposed by the city was studied by the Association. On November 15 a letter was sent to Judge Lasker (who was considering the proposal) setting forth the Association's opposition to re-opening the facility on the grounds that the proposed changes did not meet constitutional standards. Judge Lasker conducted six days of hearings during which experts on both sides testified. In addition to the Correctional Association, the American Civil Liberties Union National Prison Project, the NAACP Legal Defense Fund, and the New York City Board of Correction submitted position papers opposing the re-opening. On December 23, the New York Times reported that Judge Lasker had rejected the plan to re-open "The Tombs," and it remains closed.

COUNTY

Westchester County Jail and Penitentiary (4/28/76). Population under capacity. Location is readily accessible to county residents, and physical plant was exceptionally clean. Contains a new psychiatric and medical facility, and there will be a 14-bed psychiatric unit to handle more acute suicidal cases. Commissioner Albert Gray stated that lack of inmate interest in educational programs was one of his challenges. He is trying to encourage their participation. There are also a variety of work-related projects, chiefly maintenance.

Conclusions. An efficient, effective operation, well-managed under the direction of Commissioner of Correction Albert Gray.

Dutchess County Jail (7/7/76). Population under capacity, over two-thirds detainees who have at times been violent and disorderly. There have been two suicides. Long pre-trial incarceration common, but situation improving because of reduced delay in courts. Classification is a problem, with the need to segregate adolescents from adults, sentenced prisoners from detainees, and to separate psychopathic, homosexual or violent prisoners. There is a registered nurse on staff, but no physician except once a week. County hospital ambulance is sent for emergencies. Artificial cell lighting is poor, and heating poor because of old equipment and deteriorated windows that cannot be sealed. Medical examining room, commissary and conference room for attorneys are small and inadequate. No indoor recreation room for winter exercise, or dayrooms. Outdoor exercise yard used daily when weather permits. Too little for inmates to do; some work for sentenced prisoners. School program two nights a week, but few inmates take advantage of this.

Special Problems. Sheriff Lawrence Quinlan is under court order, resulting from a 1973 class action on behalf of the detainees, to make changes in the prison. He asserted he has been unable to obtain appropriations from the county legislature.

Recommendations. a) Provide year-round recreational activities, both indoor and outdoor; b) retain a full-time physician; c) repair windows and heating system before cold weather sets in; d) replace inflammable foam rubber mattresses with non-flammable ones; e) divide and modify rooms on

third floor to provide better visibility for officers; f) expand dormitory housing to reduce classification problems.

Nassau County Correctional Center (7/15/76). Population under capacity. Institution remarkably clean and quiet; 60% air-conditioned with efforts being made for approval to air condition entire facility. Inmates and employees eat same food; weekly menu provides variety of foods for balanced and nutritious diet. Forty-four programs provided by both public and private agencies, including high school program, social services, alcoholic and drug counseling, visits by county prison reform groups. Contact visiting provided in temporary area for all except a few high security risk inmates. New area being built.

Conclusions. Cleanliness and air conditioning contribute to generally relaxed atmosphere. Extensive programs provide relief from boredom which can be source of tension. Under the direction of Commissioner Saul Jackson and Warden Walter Flood, the reduction of tension has improved the relationship between officers and inmate population.

Recommendations. None

Rockland County Jail (11/12/76). Population under capacity, composed of 65% trial and 35% sentenced prisoners; 60% white, 40% Hispanic and black. Detainees' average stay is six weeks; sentenced prisoners serve from 45 to 50 days. Nine out of ten inmates had been in the jail at a previous time. Part-time medical staff provides seventeen and a half hours coverage daily. Visiting is currently of the closed booth, phone type, twice weekly. Plans for contact visits are in process. The Association's visiting committee found inmate morale good, to the extent that it can be good under conditions of incarceration, and was informed that it had improved since renovation of the facility in 1975. Three members of the County Legislature are on a subcommittee whose charges include visiting the jail and reporting its findings.

Conclusions. The institution is well run, an example of what good management and a concerned county legislature can do.

Recommendations. a) Increase inmate visits from twice a week to at least four times a week. b) Since there is only one Spanish-speaking staff member, another should be hired or existing staff should learn the language so that a Spanish-speaking individual is available at all times.

STATE

Great Meadow (5/26/76) and Attica (7/26/76). Association President Adam McQuillan made trips to Great Meadow Correctional Facility in Comstock, and Attica Correctional Facility following disturbances at the former in May and the latter in July. The incidents were handled well by both administrations, with a minimum of violence and injury. Following the disturbance at Attica, which was triggered by the refusal of an inmate to submit to a cell search, the superintendent imposed a two-day cooling-off period during which

all but essential services were suspended. All normal activities were resumed following this period; two weeks after the disturbance the institution held a Family Day outdoor picnic for 110 inmates and more than 150 members of their families.

At Great Meadow the disturbance resulted from a fight between two rival inmate factions. Most of the injured were treated on the scene by staff physicians. Hispanic inmates expressed apprehension to Mr. McQuillan that the San Juan Feast Day would be cancelled. Mr. McQuillan emphasized this point in his report to the Commissioner of the Department of Correctional Services, Benjamin Ward; in a phone conversation with the Department's Director of Public Relations he discussed the possible effects of such a cancellation. The Department subsequently decided to hold the celebration on June 27, as planned.

Although there were no overt signs of tension at either institution, there were grievances at both. Those expressed most frequently were difficulties in obtaining both parole and transfers, the lack of program and work assignments, and the lack of counseling for work release and parole. Mr. McQuillan reported that although there was some improvement in conditions at Attica since the rebellion in 1971, he found both there and at Great Meadow that the overriding problem is overcrowding. He recommended to Commissioner Ward that a population reduction was essential. The State Commission of Correction recommended a reduction at Great Meadow from 1,500 to 1,150, and the superintendent at Attica would like to see a comparable reduction. A major demand of inmates during a peaceful strike at Attica at the end of August was for transfer to communities closer to their homes. On August 15, Governor Carey had announced plans to open five new prison facilities to provide quarters for 844 inmates. Three are located in Hudson, Wilton and Otisville, and two in New York City — one in Manhattan and one in Long Island City. These facilities will be used for the transfer of individuals who do not need maximum security but who, until now, have been shipped to such facilities because there has been nowhere else to send them.

In August, Mr. McQuillan met with Hildy Simmons, Director of Community Relations for the New York State Department of Correctional Services, who is coordinating the downstate facilities for Commissioner Benjamin Ward. Ms Simmons and Mr. McQuillan discussed the feasibility of the Association's Institutions Visiting Committee touring those facilities in New York City and Westchester County, and submitting reports of findings and recommendations. Ms Simmons welcomed the offer of assistance.

Attica (12/13/76). Visit by Association member-volunteer Dorothy Teryl, of the Niagara Frontier Chapter, New York Civil Liberties Union, to observe contact visiting arrangements. Physical facilities poor, but new visiting room with individual tables and chairs will be an improvement. Complaints were made about lenth of time visitors had to wait for prisoners to arrive in visiting area. Association President Adam McQuillan has discussed these complaints with the institution's superintendent.

Fishkill Correctional Facility (2/28, 3/8/77). An emergency and a follow-up visit were made in response to weekend phone calls to the social worker from inmates' families requesting the President's presence at the facility. Inmates were planning a strike as the result of problems with the new administration. Mr. McQuillan sat in on a meeting of the Inmate Liaison Council with the new superintendent and the staff. The most serious issues were related to medical care and parole. The President was instrumental in persuading the administration to modify some orders that had been causing inmate tension. He urged careful consideration of medical treatment and parole by medical directors and parole supervisors.

In follow-up visits and conversations with both inmates and staff, Mr. McQuillan observed that the situation had defused. The new superintendent, Theodore Reid, had instituted innovations such as improved yard periods, painting and sanitary clean-up of the facility.

Contact Visits

One of the most serious problems in the New York City institutions has been the lack of contact visits. Following a series of visits to New York City prisons between July 1975 and July 1975, the Association's first recommendation in a report to the Department of Correction was: "Contact visits for inmates with their families should be made generally available in every institution." At that time such visits permitting direct contact between inmates and visitors were allowed only in the New York City Correctional Institutions for Men and for Women. Lack of such visits in detention facilities was the basis of a class action suit brought by the Legal Aid Society on behalf of the inmates.

The delay resulting from Department resistance to establishing contact visits, and compliance only on court order for each facility, was a problem on which the Association focused much effort during 1976. Repeated recommendations were made to the Department and to the courts, and on September 27 it was announced that the city would no longer oppose through court action the implementation of contact visits.

Prior to this announcement, President Adam McQuillan had called for immediate hearings in the U.S. District Court, Eastern District, on cases pending on behalf of inmates of the Brooklyn and Queens Houses of Detention. On October 12 Judge Henry Bramwell of that court directed the Commissioner of Correction to submit a plan within 90 days for contact visits at the Brooklyn House of Detention. Judge Bramwell quoted from the decision of the Second U.S. Circuit Court of Appeals, which had heard this case previously: "...In providing for...detention, correctional institutions must be more than mere depositories for human baggage and any deprivation or restriction of the detainees' rights beyond those which are necessary for confinement alone must be justified by a compelling necessity...." He applied standards raised in other cases, where "deprivation of common forms of human communication" were declared unconstitutional, to the inmates of the Brooklyn House of Detention.

At its inspection visit to the Adolescent Reception and Detention Center on Rikers Island on June 8, the Association found lack of contact visits to be the principal grievance cited by the warden, his correction officers and the inmates. Because of a court order, contact visits had been instituted at the nearby House of Detention for Men early in March, on a limited basis in temporary quarters. Here the inmates — detainees awaiting trial, presumably innocent — were able to clasp a friend's hand, embrace a wife, and hold a child. These mutually enjoyable visits helped to reduce tensions. In contrast, the young inmates at ARDC — also presumably innocent detainees — continued to have only the frustrating booth visits, separated from their visitors by an often dirty glass partition and communicating over a frequently faulty telephone system. Added to the frustration was the fact that convicted and sentenced inmates at the two correctional institutions on the Island, for men and for women, also enjoyed contact visits, while the adolescent detainees were denied them. The anger at what the young inmates perceived as discrimination was a source of potential violence.

On September 13 there was a disturbance at the Bronx House of Detention when inmates were notified that contact visits promised for September 15 would be delayed. Fortunately this was a peaceful protest, and through that week Mr. McQuillan — together with Joel Berger of the Legal Aid Society's Prisoners' Rights Project, and representatives of the Prison Reform Task Force and the New York City Board of Correction — met with members of the Inmate Liaison Committee to help restore order. Contact visits were finally implemented on October 5.

By the end of 1976 the Bronx House of Detention was the only institution to have implemented contact visits following withdrawal of the Department's opposition. [Note: contact visits were instituted at ARDC on February 15, 1977.] A spokesman for the Department of Correction has stated that plans are in progress for instituting contact visits at the Brooklyn and Queens Houses of Detention. The Correctional Association will continue to watch developments closely and to press for implementation of the visits with a minimum of delay.

Chronology of the City's Conduct Regarding
Court Orders Requiring Contact Visits

January 1974	Judge Lasker rules that contact visits are required at the Manhattan House of Detention. He holds that the denial of these visits is "inhumane and cruel."
November 1974	The Court of Appeals affirms Judge Lasker's decision that contact visiting is required.
December 1974	The Tombs closes and inmates are transferred to the House of Detention for Men on Rikers Island (HDM).

February 1975	Judge Lasker orders that contact visits begin at HDM within 90 days. The city applies this holding technically and gives contact visits only to those HDM inmates who were in the Tombs when it closed.
July 1975	Judge Lasker orders that all HDM inmates receive contact visits as soon as possible; the city appeals again.
December 1975	The Court of appeals again upholds Judge Lasker, stating that "an unconstitutional booth is no less objectionable because it sits on Rikers Island rather than the Tombs."
February 1976	A temporary contact visit program finally begins at HDM providing one contact visit every other week — over two years after Judge Lasker first declared that contact visits were legally required.
February 1976	Meanwhile the city opposes efforts to implement contact visits in Brooklyn, Bronx, Queens and Women's Houses of Detention. In these cases it argues that contact visits are not legally required even though the Court of Appeals twice said that they are.
May 1976	Judge Lasker declares that contact visits are required at the Bronx House of Detention and orders that a program of contact visits begin in September, 1976 with a full program to commence in May, 1977. He also orders that a full contact visit program begin at HDM by May, 1977.
September 1976	Commissioner Malcolm and Deputy Mayor Zuccotti announce to the press that they will no longer oppose contact visits in court.
October 1976	Commissioner Malcolm announces to Queens inmates that he will inform the court that he no longer opposes contact visits for the Queens House of Detention.
October 1976	Contact visits begin at Bronx House of Detention on interim basis.
October 1976	Judge Bramwell holds that the absence of contact visits at the Brooklyn House of Detention is an unconstitutional condition which must be promptly rectified. He gives the city 90 days to submit a plan.
October 1976	The city agrees to begin contact visits at ARDC within 120 days.
January 1977	The city submits a plan for contact visits at the Brooklyn House which calls for no interim program and no contact visits until February 1979.

February 1977	The city agrees to consider an interim program of contact visits at Brooklyn. Four months later in June, 1977 the city has not yet announced whether they will actually begin an interim program.
February-March 1977	Judge Tenney rules unconstitutional mixture of booth visits and contact visits at the Women's House and orders that all visits be contact visits within 30 days. On the 29th day the city seeks modification of order to exclude non-family visitors from contact visits. Court refuses modification but gives city another 90 days for full implementation of all-contact visiting program.
March 1977	The city asks to be relieved from the court's deadline of May 1977 for full contact visits at the Bronx.
April-May 1977	City first informs court that all-contact program at Women's House will begin April 30, 1977, then later tells court that all-contact visiting program will be indefinitely postponed. Meanwhile, no non-family contact visits are allowed at Women's House.
May 1977	Judge Lasker holds a hearing on the city's motion to be relieved from requirement of a full contact visiting program at the Bronx.
May 1977	Two experts retained by the inmates' lawyers to assist in ascertaining whether an interim program of contact visits can be implemented in Brooklyn are denied permission to enter the Brooklyn House of Detention. Judge Bramwell orders that they be granted entrance.
May 1977	The Corporation Counsel of New York City writes the court in the Queens case and promises that contact visits will be granted to inmates. The letter is sent eight months after Commissioner Malcolm announced to inmates that he would no longer oppose contact visits in Queens. However, the letter gives no date for implementation of contact visits.
May 1977	The city submits that its final plan for contact visits at HDM will be two visits per week, thereby reducing the number of visits inmates can have from three hours per week to two hours per week. Judge Lasker takes under consideration inmates' request that at least three hours of contact visits a week are required.
June 1977	Three and a half years after Judge Lasker's ruling that the constitution requires a full program of contact visits, hundreds of inmates at two of the major city institutions have still not

received their first contact visit. At other institutions the promise of contact visits is only partially realized.

Summary of City's Compliance with Court Orders for Contact Visits as of June 1, 1977

HDM	Each inmate may receive two one-hour contact visits per week.
Bronx	Each inmate may receive two one-hour contact visits per week only with family members.
ARDC	Each inmate may receive two one-hour contact visits per week.
Women's House	Each inmate may receive one on-hour contact visit per week plus one visit on the weekend each month. If inmate has a child an additional contact visit is permitted per month.
Brooklyn	No contact visits, none promised until at least February, 1979.
Queens	No contact visits; city has withdrawn legal opposition to contact visits but has given no date when these visits will begin.

Recommendations to the Legislature

The Correctional Association submitted the following recommendations to the 1976 Session of the New York State Legislature. Although there were no specific recommendations on victimless crime, gun control, improvement of methods for defending indigents in criminal cases, and court reform, the Association continued to support legislation advocating the principles of recommendations submitted in past years on these issues.

RECOMMENDATION NO. I SENTENCING AND PAROLE RELEASE

The Correctional Association of New York urges the Legislature to reform the criminal law so as to provide standards for and limitation on the exercise of judicial and parole board discretion in sentencing and parole release respectively.

Discussion. Under the present system's reliance on judicial discretion, the sentence given to someone convicted of committing a crime may depend more on the personality and disposition of a particular judge than upon the nature of the crime. There is a tremendous variation from judge to judge in sentencing. We believe that the State should consider mechanisms such as pre-sentence consultation and appellate review to limit sentencing disparities.

We also believe that, as an interim measure pending reconsideration of the entire parole situation, the parole board should be required to release any prisoner to parole at the expiration of his minimum sentence or at the expiration of one-third of his indeterminate sentence unless it has established sufficient reason, in accordance with published standards, not to do so. It is within the authority of the judge at the time of conviction to take into account the seriousness of the crime and the defendant's prior criminal record in setting the sentence; it should not be within the authority of the parole board also to take these factors into account at the expiration of the minimum sentence. The only behavior within the correctional institution justifying parole denial should be that resulting in criminal charges, whether pending or proved in a court of law, and/or major enumerated infractions of prison regulations. An inmate appearing before the parole board should be permitted representation by a lay advocate — such as a minister, social worker or institutional employee — or an attorney at the inmate's expense.

Finally, we believe that parole conditions should be simplified and reduced. There should be a legislatively mandated maximum period for parole (unless extended by parole violation), at the expiration of which the parolee is released from parole. It should not be necessary for parolees to consult a parole officer prior to obtaining a marriage license; nor should warrantless searches be permitted.

The Correctional Association was encouraged that two bills introduced in 1975 — one requiring that a prisoner be informed in writing of the reasons for

parole denial, and the other establishing equal requirements for parole eligibility — became law.

Action in the Legislature. A bill was introduced by Assemblyman Stanley Fink to establish a three-member board to review criminal sentences to determine whether they should be reduced. The bill was never reported out of the Codes Committee. Several bills were introduced in both Senate and Assembly to provide for parole eligibility after 3 to 5 years of incarceration, and in cases of certain convictions to reduce the period of sentence from 15 to 9 or 11 years before eligibility. All of these bills died in committee.

RECOMMENDATION NO. II — SECOND FELONY OFFENDER LAW

> The Correctional Association of New York strongly recommends that the 1976 Legislature repeal the second felony offender law on the demonstrable ground that it does not offer the protection it was intended to provide. It fails to deter crime and it works unfair hardship on offenders who could be more efficiently and economically punished by non-prison sentences, particularly probation.

Discussion. The second felony offender law, enacted in 1973, provides that a defendant indicted for a felony who has been convicted of a felony within the previous ten years may not plead guilty to a misdemeanor, as was common practice in the past, and upon conviction of a subsequent felony must be sentenced to prison.

This law was enacted in the belief that the threat of long prison sentences would serve as a deterrent to prior offenders. However, felony arrests continue to climb. Burglary arrests in 1974 were up 23.5 per cent over 1973, assault arrests up 14.3 per cent for the same period. Trial rates in the state have risen both because of the restrictions on plea bargaining and the reduction in guilty pleas. From 1971 to 1974 statewide trial rates rose from 4.6 per cent to 9.6 per cent. Median time for felony case disposition by trial is 381 days; by plea, 210 days. The Supreme Court in New York City alone added 983 felony cases to its backlog in 1973; its caseload that year increased 8.7 per cent over 1972. In spite of increased arrests, felony conviction rates statewide dropped from 83.4 per cent to 77.2 per cent from the first to last quarters of 1974. Since September 1, 1973, the effective date of the law, the daily prison population of sentenced felons has risen from 12,444 to over 15,600. The rate of incarceration per 100,000 of total state population has risen from 23.9 in 1970 to more than 35 in 1975, while at the same time pre-conviction detention populations are rising.*

* Statistics in this section were gathered by the New York State Coalition for Criminal Justice, largely for a project funded by the Institute for Public Policy Alternatives of the State University of New York.

As an interim reform, the Association would support statutory change to permit selected felony offenders to become eligible for special high intensity probation caseloads as proposed for a Probation Demonstration Project by the State Division of Probation. Such action should be permitted on an experimental basis in cooperation with sentencing judges, prosecutors and offenders.

Action in the Legislature. A bill was introduced by the Senate Rules Committee to reduce from 10 to 5 years the period in which a sentence must have been imposed on a defendant for a previous felony in order for the individual to be determined a second felony offender. The bill was never reported out of the Codes Committee.

RECOMMENDATION NO. III — RIGHTS OF PRISONERS

> The individual's 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 other inmates and staff of the institution, should be allowed and protected in law.

Discussion. The Association recommends that all remnants of the civil death concept presently found in New York State statutes be repealed. 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.

The Association further recommends 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 public safety and national standards as to incarceration promulgated by organizations such as the American Correctional Association. In addition to provisions guaranteeing 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. For example, 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 be opened only in the presence of the inmate or his designee. Once the 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, unless the superintendent has reason to believe that a particular

visit would jeopardize the security of the institution. 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. To enable inmates to maintain contact with lawyers, family and friends, free access to a telephone should be permitted at all times, consistent with the orderly functioning of the institution.

Numerous bills were introduced into the 1975 Legislature relating both to civil rights of inmates and conditions of incarceration. Among these were bills to 1) permit an inmate to institute court action on matters other than those arising out of his arrest, trial, conviction or detention; 2) make mandatory the payment of a rate not less than prevailing minimum wage for work performed during imprisonment; 3) grant the right to confer in private with visitors of the inmate's choice, including attorneys, clergy, and representatives of news media, subject to reasonable regulations; and 4) permit inmates to send and receive unlimited unopened and uncensored mail, subject to reasonable regulations to prevent receiving of contraband. None of the above was passed by the 1975 Legislature.

Action in the Legislature. In 1976 numerous bills were introduced regarding the sending and receiving of uncensored mail, the right to free practice of religion, visits by spouses in private rooms and the right to private conferences with attorneys and news media representatives. None of these bills passed either house of the Legislature.

RECOMMENDATION NO. IV EMPLOYMENT OF EX-OFFENDERS

The present statutory bars to employment of ex-offenders should 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; also, a clearly defined process should 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/her crime, a released felon cannot work in any capacity in a place where alcoholic beverages are sold for on-premises consumption,* 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

* Permission may be granted for employment by the State Liquor Authority, provided the licensee is willing to go through the necessary application procedures.

** This restriction is not mandatory. However, licensing for the medical profession

bearing on the employment sought, so as to constitute a possible threat to his/her welfare or the welfare of others, exclusion should be discretionary rather than mandatory, with a clearly defined process of appeal from any such decision.

Over half a dozen bills were introduced in the Legislature in 1975 to correct the existing job discrimination against ex-offenders. These would have 1) made it unlawful for an employer or labor organization to discriminate against an individual because of prior incarceration; 2) prohibited a person or agency from inquiring as employer or prospective employer as to record or history of arrests of any person applying for employment; 3) prohibited such inquiry of an applicant either verbally or in writing by an employer, credit or finance company, financial institution or bank.

Only one of the bills introduced on these subjects reached the Governor's desk for signature. It provided that a "person shall not be disqualified from employment by state or political subdivision, nor shall a person whose civil rights have been restored by disqualified to practice, pursue or engage in occupation, trade, profession or business for which license, permit or certificate is required solely because of prior conviction of felony or misdemeanor, except if felony or misdemeanor for which convicted relates thereto." Regretfully, this bill was vetoed by the Governor.

Action in the Legislature. In 1976, S-4222-c was introduced by Senator Ralph J. Marino and co-sponsored by Senators Lloyd H. Paterson, Roy M. Goodman, Emanuel R. Gold, Robert Garcia and Joseph L. Galiber. This bill removed, under specified conditions, bars to employment imposed automatically by conviction of a crime, and prohibited denial of application for license for employment because of a previous conviction or the finding of lack of "good moral character" based on a previous conviction. This bill, which the Association supported, was passed under a Message of Necessity from the Governor and is now Chapter 931 of the Laws of 1976.

RECOMMENDATION NO. V DEATH PENALTY

The death penalty should be eliminated from the penal law.

Discussion. In the absence of any definite evidence that the death penalty is a deterrent to crime, the Correctional Association urges that there be no law imposing the death penalty as both the efficacy and morality of such a sentence are questionable.

requires proof of good moral character, and a felony conviction may be considered prima facie evidence against this. It is possible, though difficult, to obtain a license, except in cases of rape, murder, arson, kidnapping and drug use, for example, where a license cannot be obtained.

Action in the Legislature. Several bills were introduced to expand the number of offenses subject to the death penalty. None passed either house of the Legislature.

The Correctional Association's Legal Services Bureau, operating since 1971, provided free legal assistance on civil matters to inmates of New York City detention and correctional institutions. In the course of their work in the city's institutions, the Bureau's staff attorneys came to realize that many of their clients' problems are insoluble because of existing statutes. As is the case with the majority of recommendations suggested below, the statutory impediment is often the result of failure to anticipate all the consequences of a particular piece of legislation, rather than the embodiment of a deliberate legislative intent.

RECOMMENDATION I-LS [Legal Services] RIGHTS OF PRISONERS

To insure adequate representation of the rights of prisoners, CPLR 208 should be amended and expanded to toll all statutes of limitations for incarcerated plaintiffs.

Discussion. In 1973 when the Legislature amended §79 et seq of the Civil Rights Law to extend to persons in state correctional facilities the right to initiate and prosecute civil lawsuits in any court in the state, it concurrently amended §208 of the Civil Practice Law and Rules (CPLR) to remove the provision which tolled all statutes of limitations for incarcerated plaintiffs. While this was logical in view of the granting of the right to sue, the practical realities of the condition of confinement, as a general rule, make it extremely difficult for prisoners to exercise their new rights within ordinary time limitations.

As a result, prisoners now find themselves in a worse position than they were in previously. They must now move quickly to find attorneys (either by themselves or through the help of their families, often many miles away) to represent them while they are incarcerated, or be forced to represent themselves. Even if the prisoner is lucky enough to find an attorney, the attorney may be unable to prepare his/her client's case because of the distance which separates them.

We believe the rights of prisoners would best be served by recognizing that they need protection while they remain under the care and custody of the state or local authorities. We therefore believe that while the attack on the concept of civil death should continue, CPLR 208 should be amended once again in light of the difficulties of instituting lawsuits during confinement. Accordingly, we recommend that the old language of this section be restored and expanded, as necessary, to guarantee incarcerated plaintiffs their day in court on causes of action arising during their incarceration and on those causes of action that arose prior to incarceration. To continue the present language of CPLR 208 is inequitable as it has the effect of allowing civil defendants to

benefit from a prisoner's incarceration on matters which are generally separate and apart from the reasons leading to incarceration.

Further, the Legislature should also create tolls of the various short statutes of limitations which generally require the service of Notice of Claims or Intention to Sue the state, local municipalities, authority or board within ninety (90) days of the time the cause of action accrues, and the institution of a lawsuit within one year and ninety days from the accrual of the cause of action. The rationale for these short statutes of limitations has always been to allow the public corporation to make a timely investigation, to protect against fraudulent and stale claims and to allow preparation of cases while witnesses' memories are fresh. Once again, the difficulties in preparing and filing a Notice of Claim can be insurmountable when one is incarcerated — especially since most prisoners do not have regular access to attorneys who can advise them of this necessary prerequisite to the institution of a lawsuit.

Statutes such as General Municipal Law §50e (which requires the filing of a Notice of Claim within ninety days after the accident occurs) were never tolled by CPLR 208. Generally, cases which argued that incarceration amounted to a physical disability under General Municipal Law §50e (5)(1) or its equivalent statutes so as to allow the filing of a late Notice of Claim were unsuccessful. Interestingly, the Courts, in reviewing filing procedures under The Court of Claims Act (which requires the filing of a Notice of Claim or the Notice of Intention to File a Claim within ninety days of the accrual of the course of action), did not recognize CPLR 208 as a toll of this statute, but did recognize the civil death statute as one. This obvious discrepancy was never worked out, but no doubt, if today presented with the question, the courts would have to rule that the Court of Claims Act could not be tolled for any reason since civil death is no longer applicable.

Action in the Legislature. None.

RECOMMENDATION NO. II-LS BAIL

In order to allow pre-trial detainees the opportunity to have forfeited bail remitted, the present requirement that an application for bail remission be made within one year should be amended.

Discussion. At the present time, §540.30 of the Criminal Procedure Law sets out the provision for remission of forfeited bail. Subdivision 2 of this section states that "the application must be made within one year after the forfeiture of the bail is declared..." Courts have held that the one-year period is absolute and in the reported cases it has not been extended for any reason. However, it has been the experience of the Correctional Association's Legal Services Bureau that arrestees may have great difficulties in meeting this very short and very strict statute of limitations.

In some cases it has been found that while the person might know his

bail has been forfeited, he does not have the information needed to bring on the motion — such as the date it was forfeited, where it was forfeited, what judge forfeited it — and the painstaking process involved in acquiring all of this information will sometimes require more time than the one-year period. In addition, the statute and the courts do not recognize a case where the one year passes while an inmate is commited to a correctional facility for the criminally insane. Further, where an inmate is released on bail on one charge and is rearrested on another so that he is not produced in court on the first charge, his bail is forfeited. The process of erasing the bench warrant and recouping the bail can be complicated by the problems indicated above.

Accordingly, it is our recommendation that §543.30(2) of the Criminal Procedure Law be amended to state simply that the entire period of incarceration shall not be included as part of the one-year period.

Action in the Legislature. None.

RECOMMENDATION NO. III-LS CONCURRENT AND CONSECUTIVE TERMS OF IMPRISONMENT

Multiple sentences of imprisonment shall run concurrently unless the court directs otherwise at the time of sentencing.

Discussion. The current law became effective on September 1, 1967 and provides that a definite sentence runs concurrently with a sentence imposed at the same time and consecutively with any other sentence unless it is provided otherwise at the time of sentencing. Generally, all other sentences run concurrently.

The reason for distinguishing between indeterminate and definite sentences in this respect is unclear. However, one rationale appears to be that a sentencing judge will be aware of prior definite sentences through pre-sentencing reports but unaware of indeterminate sentences — and as former Commissioner Preiser points out in the Practice Commentary to §70.25 of the Penal Law,

> "...definite sentences are often imposed without any investigation, and in a busy jurisdiction the judge may not be aware of prior sentences. This is especially true of the City of New York, where a person who is under detention can appear in different parts of the criminal court, held in the same or different counties, and can be sentenced by more than one judge on the same or on consecutive days. The rule places a burden upon the defendant to draw the court's attention to other sentences and request a specification with respect to the present sentence."

There have been many cases of this kind occurring in the penal institutions, especially in the City of New York, where communication is often

inadequate and the courts are overworked. In addition, it places an undue burden upon the defendant who may be represented by two or more attorneys. The attorneys may not realize that they should ask for the sentences to run concurrently, and as a result the judge may not specify that the definite sentences are to run concurrently. Therefore, it is recommended that a definite sentence should run concurrently with any other sentence unless it is provided otherwise at the time of sentencing.

Action in the Legislature. A bill was introduced by Senator Joseph R. Pisani to amend Penal Law §70.25 to require a sentencing judge to specify whether a new sentence should run consecutively with or concurrently to an old sentence and to explain his decision in a sentencing memorandum which should be available for future reviews; it strikes out provisions describing the running of a sentence where the court does not specify the manner in which the same is to run. The bill was passed in the Senate, but died in the Assembly Codes Committee.

RECOMMENDATION NO. IV-LS CREDIT FOR JAIL TIME

The Correction Law should be amended to allow for jail time to be credited against the minimum period of imprisonment in all cases.

Discussion. Penal Law §70.30(3) provides that in the case of an indeterminate sentence with a fixed minimum period set by a court in excess of one year, jail time must be deducted from the minimum period of imprisonment. Correction Law §212(2) gives the Parole Board the power to make a determination as to the minimum period to be served in any case where a prisoner is serving an indeterminate sentence and the court has not fixed a minimum period of imprisonment. However, the Parole Board takes the position that it need not consider jail time accumulated by inmates with such sentences in setting the minimum period of imprisonment which must be served prior to an initial Parole Board hearing. The Board's view was upheld in People ex re. Robert Johnson v. Montanye, 42 AD 21041 (4th Dept. 1973), where the court contrasted the flexible and discretionary function of the parolee release process with the inflexibility of the mandatory minimum sentence imposed by a court. However, the contemplated change in jail time credit would merely fix a minimum period of imprisonment prior to an initial hearing for parole release and would in no way hamper the Board from taking into consideration at the hearing the wide range of factors it considers relevant in deciding when to release a prisoner. The prisoner's case would come before the Parole Board after the same total period of incarceration as that of the prisoner who was able to raise bail. By reducing the maximum sentence, the prisoner will have spent no more time incarcerated than called for by the sentence. Therefore, Correction Law §212(2) should be amended to correct the illegality that presently exists and, in conformance with the mandate of P.L. §70.30(3), it should require the Parole Board to deduct jail time in setting the date for a prisoner's initial parole hearing.

Action in the Legislature. Several bills were introduced in the Senate and

the Assembly to provide that jail time spent in custody before commencement of definite or indeterminate sentence shall be applied against such portion of the minimum period of imprisonment as exceeds one year whether the minimum has been fixed by court or by Parole Board, instead of only in cases where it has been fixed by the court. None of these bills passed.

Other Legislative Action

The Association was asked by Counsel to the Governor for its position on two bills, both of which were given recommendations of support and both of which became law. One provided that the good behavior time allowance for a person serving a definite sentence be not in excess of one-third, instead of one-sixth, of the term imposed. The second was to amend the existing law in relation to expansion of work release programs, establishment of furlough programs, and granting of compassionate and medical leave from state correctional institutions.

The Association also submitted recommendations to committee chairmen and appropriate legislators on the following bills:

S-142/S-4949: Required baccalaureate degree conferred by a post-secondary institution for appointment as a probation officer or to a position involving the duty of supervising a probation officer. Supported. Failed to pass.

S-1224: To allow court imposing sentence of imprisonment not in excess of six months, instead of 60 days, to also impose sentence of probation or conditional discharge. Opposed on the grounds that such a change would violate the intent of the original law which presumes that there are individuals for whom excessive jail terms are deemed unnecessary. Passed in the Senate, died in Assembly Codes Committee.

S-8005: To forbid the use of noxious materials on prisoners secured in their cells. Supported. Failed to pass.

In March the Association sent Mailgrams to the Governor and the Chairman of the Assembly Ways & Means Committee urging them to oppose the proposed closing of the Arthur Kill Rehabilitation Center on Staten Island. The Center remained open.

In July the Association wrote to selected legislators urging positive action on the following court reform measures, both of which were passed at a special session called by the Governor in August:

1. A bill mandating state assumption of all county and city court costs on a graduated basis over the next four years. Senator Carol Bellamy has estimated that this state financing will free New York City from $88 million a year in the cost of running its Supreme Court, County, Family and Surrogate's Courts, Civil and Criminal Courts, the County Clerk's Office, and local district and city courts.

2. First passage of a proposed constitutional amendment on court reform to provide for a) appointment of judges to the Court of Appeals by the Governor at the recommendation of a bipartisan nominating commission, subject to the advice and consent of the Senate; b) centrally supervised court administration under a court administrator acting on behalf of the Chief Judge and subject to standards and policies of the Court of Appeals; c) simplification of judicial disciplinary proceedings by substituting the Court of Appeals for the Court on the Judiciary.

The Association had been recommending passage of the first measure since 1971 and of the second since 1967. Should the second bill be passed in the 1977 session of the legislature, it will appear on the ballot in November 1977 for approval by the voters.

Testimony

Association President Adam F. McQuillan presented testimony at numerous hearings on a variety of subjects concerning criminal justice in New York State. Testimony marked with (*) was submitted in writing. Mr. McQuillan appeared in person at all other hearings.

1976

January 15: New York State Assembly Standing Committee on Child Care: Public Hearing on Juvenile Justice

Recommended agency similar to National Youth Administration of the 1930s that provided pocket money for indigent youngsters working in a variety of government projects. Urged community treatment for non-dangerous youthful offenders.

*January 20: New York State Senate Select Task Force on Court Reorganization: Public Hearing on "Elective or Appointive Selection of Judges - Local Option"

Recommended that in order to secure the best qualified individuals to administer the laws of the state, and to insure that they are kept free of political pressure, the elective system be replaced by an appointive one. Outlined structure of a nominating commission for screening of candidates with appointing authority (Mayor for New York City, Governor for rest of the state) to make final selection. The Correctional Association has supported such legislation since 1967 (see above).

February 23: New York State Senate Standing Committee on Crime and Correction: Public Hearing on Appointment of Herman Schwartz as Chairman of the New York State Commission of Correction

Urged the confirmation of Mr. Schwartz's appointment as Chairman of the State Commission of Correction, pointing to his priorities of dealing with squalid

overcrowding, poor medical care, irrational rules and regulations, and poor training and compensation of correction officers.

March 4: New York State Assembly Standing Committee on Codes:
Public Hearing on Firearms Legislation

Recommended the following steps until strong federal controls are enacted: a) limit sale of ammunition to those individuals with a permit for the appropriate weapon; b) license all firearms; c) require permit for purchase of rifle or shotgun; d) restrict convicted felons, minors and those with a history of drug addiction or confinement in mental institutions from possession of firearms; e) establish a central state registry for registration of all firearms.

June 21: New York City Board of Correction:
Hearings on Minimum Standards in City Correctional Facilities

Outlined thirteen proposals for minimum standards for correctional facilities in New York City, and responded to questioning by Chairman Peter Tufo and members of the New York City Board of Correction.

*November 9: Subcommittee on Bail Practices of the New York State Assembly Standing Committee on Codes:
Public Hearing on Legislative Revision in the Area of Bail

Discussed discriminatory aspects of the present bail process in relation to indigents, and submitted three recommendations relating to custody and supervision, and release on recognizance.

1977

February 16: Subcommittee on Alcoholism of the New York State Senate Standing Committee on Mental Hygiene and Addiction Control:
Public Hearing on Combining Offices of Alcoholism and Drug Abuse; Impact of Proposed Cuts

Opposed the combining of the two offices and proposed cuts in facilities on the basis that services to alcoholics would be reduced in relation to those provided to drug addicts. Pointed out the relationship between alcohol abuse and crime, which is overshadowed by publicity given to drug-related crimes.

April 29: New York State Assembly Standing Committee on Codes:
Public Hearing on New York State Parole Reform

Presented the position that the primary issue is comprehensive sentencing reform. Stated that although some proposals under discussion were worth adopting, they should not distract from the larger task of reform. Presented Association position on bills before the Committee.

Public Information

The President addressed senior classes at several New York City high schools, public and private, on issues of criminal justice. He also spoke before graduate classes at Long Island University composed of probation and parole officers, and at several training sessions of the Labor Volunteer Youth Program of the Central Labor Rehabilitation Council of New York to discuss how volunteers might work with young people to help reduce the incidence of juvenile delinquency.

Mr. McQuillan appeared on the WNYC radio program, "Crime and Punishment," where he was interviewed by Mark Rosen, Executive Director of the New York City Board of Correction. He prepared a statement on community treatment of non-dangerous offenders for the Channel 5-TV series, "The Cost of Crime," hosted by Peter Tufo, Chairman of the New York City Board of Correction.

In the fall of 1976 the President appeared on two panels. The first, on October 16, was part of a two-day seminar on terrorism sponsored by the Criminal Justice Center of John Jay College of Criminal Justice, and the Pinkerton Foundation. Mr. McQuillan chaired the workshop, "The Terrorist in Prison." Panelists were Morris Oslyn, a former warden with the New York City Department of Correction, and the Honorable Stephen J. Chinlund, Chairman of the New York State Commission of Correction. Participants in the workshop were representatives of the academic world and of the field of correction from this and other countries. The second panel appearance was as an instructor for the institute, "Unequal Justice," at the 77th Annual Conference of the New York State Association for Human Services on November 18. Moderator was Lynn Walker, attorney for the Legal Defense Fund. Other instructors were Professor R. Haywood Burns, association professor of law at New York University Law School, and Donald Grajales, Director of the Puerto Rican Bar Association. Mr. McQuillan's opening statement dealt with the injustices suffered by those who come into contact with the criminal justice system.

Direct Services

Legal Services Bureau

From October 1975 through the Bureau's termination on February 28, 1977, a total of 528 inmates were interviewed. Of these interviews 428 (81%) resulted in civil legal cases, and 70 lawsuits were instigated. Cases handled by the Legal Services Bureau break down as follows:

56% Issues arising from arrest and incarceration (e.g., posting bail, obtaining possessions from police property clerk)

32% Domestic relations issues (e.g., marriage, divorce, child custody)

7% Personal finances, consumer protection, landlord/tenant problems, problems with former employers

5% Relationships with official agencies (e.g., immigration, social security, social services)

Although most of the cases handled by the Legal Services Bureau were of a routine nature, there were some instances of problems that went beyond the realm of a simple legal matter.

One such case was that of Mr P, whose life literally hung in the balance. Although the problem was not a legal one, the senior social worker at Rikers Island Hospital did not know where to turn except to the Legal Services Bureau, with whose work he was familiar.

Mr P learned he was suffering from cancer of the kidneys. He was informed that leukemia chemotherapy was necessary, although even with it his prognosis was grim. Since the required therapy could not be provided by the institution, the Hospital physician recommended that efforts be made to obtain Mr P's release and wrote a letter to this effect to the judge sitting in Mr P's case.

The Legal Aid attorney promised that at Mr P's next court appearance he would present the problem to the court in an effort to obtain either a bail reduction or release on Mr P's own recognizance. Because of his prior record and the nature of his crime, Mr P's request was rejected. The judge suggested an administrative transfer to the local hospital prison ward, but the Department of Correction contended that no beds were available. A transfer to a regular city hospital ward was rejected by DOC since the expense of maintaining 24-hour security to prevent escape would be prohibitive. The court finally issued an order for chemotherapy treatment based on the attending physician's letter of necessity, but never specified details for its delivery. After ten days Mr P had still received no treatment.

The Legal Services Bureau attorney told the social worker that little could be done legally. He would, however, attempt to use the contacts he had made at DOC in the course of his work as a Bureau attorney. He called the warden at the Hospital who confirmed the social worker's statement that all manner of obstacles had been raised by DOC which had prevented Mr P from obtaining the chemotherapy he so desperately needed. The warden himself was at a loss as to what to do.

The attorney called a member of the Legal Department of DOC who agreed to submit a directive to the warden to bring Mr P to a hospital for chemotherapy: this would speed up the process initiated by the court order. The Correctional Association president, himself a former warden, spoke with persons in authority at DOC, as did the Legal Aid Society Prisoners' Rights unit, at the request of the Bureau attorney.

The final obstacle of poor transportation scheduling was overcome by the

attorney's visit to DOC, following which the social worker advised him that the schedule had been rearranged and Mr P's problem of obtaining needed therapy were resolved.

The Legal Services attorney who handled the case of Ms L, this one legal in nature, derived a feeling of personal satisfaction from the result. Ms L had killed her husband while defending herself against his attack. In the three years before her case came before the court, all the witnesses who could have supported her story had disappeared. On her lawyer's advice she pleaded guilty to second degree manslaughter rather than go to trial without witnesses. Since she had previously been released from incarceration, she was sentenced to "time served" in lieu of further incarceration.

Following her plea, but before she was sentenced, Ms L learned that her mother-in-law had instituted proceedings to collect on her son's double indemnity insurance policy which was payable to Ms L. In her claim the mother-in-law denied Ms L's existence, and the existence of the child of the marriage.

Ms L turned to the Legal Services Bureau for help. The Bureau's attorney intervened, alleging that the mother-in-law's statements were perjurious, and the court agreed that the woman had acted improperly. The attorney argued further that the insurance company should honor the double indemnity clause, since the deceased husband could not have foreseen that his actions would lead to his death. The insurance company argued to the contrary, and with the aid of the court it was agreed to settle for an additional $2,500 rather than litigate the question of double indemnity. To avoid the legal ramifications of whether she herself could take the money since she had been involved with her husband's death, Ms L waived all rights to it and the money will now go to her child. The Children's Aid Society agreed to act as guardian of the property without a fee and will insure that the money is not dissipated before the child reaches her majority.

Family Service Bureau/Correctional Social Services Bureau

A primary goal of the work of these two bureaus is to keep families intact during the period of incarceration of a family member. This is achieved through work on the outside with family members — counseling; dealing with schools, welfare offices and other city agencies; providing emergency financial assistance — and in the institutions to help the inmate maintain his/her position and responsibilities as spouse and parent, assisting with the myriad problems arising on both sides of the wall because of the enforced separation. Unmarried inmates have their own specific family and/or community problems with which they need assistance. Beyond serving as counselor for individual problems, the caseworker serves as a liaison with the prison administration to help resolve institutional problems. In this area the Association president is available for problems which require his expertise in corrections.

The children of the client families are very special charges of the Family

Service Bureau. The social worker has stressed that they are welcome to call her at any time they feel a need to talk with someone about a problem, an achievement, a decision, etc.

This year the Bureau conducted two Christmas parties, one for young children, the other for teenagers. About 50 small children attended a Saturday morning party, complete with Santa Claus, heaps of presents, and refreshments, including hundreds of cookies baked by an Association member. Toys and sodas were donated, and the Association's good neighbor, Con Edison, offered the use of its employees' cafeteria for the party. The teenagers had a skating party during the holiday week. Twenty-two youngsters had a two-hour skating session at the Wollman Rink which had been donated by the Parks Department, followed by an all-you-can eat lunch at a nearby cafeteria, made possible by a generous personal donation. A "snow-check" was taken on a promised hayride which had to be cancelled because of icy conditions that were dangerous for the horses. The youngsters are looking forward eagerly to a Central Park hayride later in the year.

The 24-hour emergency service is a unique aspect of the Association's direct services. An example of its work is the case of Mr K, a former client who had managed to stay out of trouble for ten years. He had been separated from his wife for some time, but still loved her and expected one day to be reconciled. Then suddenly he was served with divorce papers from her. The actual process of divorce caused something to snap, and Mr K became very nearly suicidal. He sought help from the social worker and spent 18 consecutive hours pouring out his heart and assuaging his feelings of rage and frustration. Finally he was able to go home and sleep. In his words, he felt "like a great weight has been lifted." The immediate availability of the caseworker was crucial in preventing Mr K from doing harm either to himself or to another.

Sometimes a little financial assistance can prevent a small difficulty from snowballing into a major problem. Ms C, wife of a state prison inmate, came to the Association's social services unit in her ninth month of pregnancy. She had worked until required to stop by her employer, and had recently applied for Public Assistance to supplement her unemployment insurance benefits. The City Department of Social Service had erred in the calculation of her budget and refused to reconsider the error until the Association caseworker intervened. Because of the delay in opening her Public Assistance case, Ms C had no funds to buy a layette. With her delivery time approaching, she unwisely decided to use the money set aside for her utility bill to purchase the clothing she so desperately needed for her unborn child. This resulted in a utility turn-off notice for which the Department of Social Services refused to pay since it had already issued funds for payment of the bill. The Association provided money to pay the bill, and Ms C was then able to manage her finances very ably. Less than two weeks later she delivered a healthy baby girl. Through the efforts of the social worker the father was granted a furlough from the correctional facility so that he could be with his wife at the birth of their first child. This intervention relieved an already overburdened expectant mother

from additional stress, eased the anxieties of an incarcerated prospective father, and helped lay the foundation for a stable new family unit under conditions that were certainly far from propitious.

From November through April 1977 (the period since the last report) the Social Services Unit provided the following services:

Clients seen in office	660
Home Visits	48
Visits to clients, spouses and relatives in institutions	199

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(1) Resigned 1976
(2) Resigned 1977

* Staff members of Legal Services Bureau which terminated February 28, 1977