

LEGAL ASSISTANCE

AVAILABLE TO MINORITY

PRISONERS IN DELAWARE

DELAWARE ADVISORY

COMMITTEE TO

THE U.S. COMMISSION

ON CIVIL RIGHTS

This summary report of the Delaware Advisory Committee to the U.S. Commission on Civil Rights prepared for the information of the Commission. Statements and responses in the report should not be attributed to the Commission or to the Advisory Committee, but only to individual participants in the community forums where the information was gathered.

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THE UNITED STATES COMMISSION ON CIVIL RIGHTS

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 6(c) of the United States Commission on Civil Rights Act of 1983. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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UNITED STATES
COMMISSION ON
CIVIL RIGHTS

Eastern Regional Division
1121 Vermont Avenue, N.W. Rm. 710
Washington, D.C. 20425

LETTER OF TRANSMITTAL

Delaware Advisory Committee to the
U.S. Commission on Civil Rights
February 1989

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Melvin L. Jenkins, Acting Staff Director

The Delaware Advisory Committee submits this summary report for the purpose of advising the Commission on minority prisoners' access to legal assistance. The report summarizes information received at a community forum conducted by the Advisory Committee in Wilmington on December 3, 1987. Appropriate background work was carried out by staff in preparation for the forum. Every effort was made to assure a balanced perspective on issues by inviting participation from representatives of governmental and community organizations and from knowledgeable citizens with differing points of view.

On September 15, 1988, during a followup meeting with two of the original forum panelists as well as three representatives of the Delaware Department of Correction, all 10 Advisory Committee members voted unanimously to approve this report. Some members speculated that a measure of progress reported in the followup meeting could be credited to the Committee's timely interest.

For example, just prior to the December 1987 forum, a corrections budget had been proposed without certain legal assistance items; after the forum, the budget was modified to contain some of the items. Such progress--plus areas still in need of improvement--are noted by the September 1988 meeting participants in their letters, which comprise the appendices to this summary report.

Respectfully,

HENRY A. HEIMAN, Chairperson
Delaware Advisory Committee

**Delaware Advisory Committee to the
U.S. Commission on Civil Rights**

Henry A. Heiman, Chairperson
Wilmington

Emily G. Morris, Vice Chairperson
Dover

Emperatriz Alaix
Wilmington

Helen C. Skinner
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Ralph A. Figueroa
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Lynn D. Wilson
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Blanche M. Fleming
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Robert A. Young
Lincoln

Acknowledgements

The Delaware Advisory Committee wishes to thank the staff of the Commission's Eastern Regional Division for its help in the preparation of this summary report. The forum and the report were the principal assignment of Tino Calabria with support from Linda Raufu and Tina James Martin. The project was carried out under the overall supervision of John I. Binkley, Director of the Commission's Eastern Regional Division.

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Committee's Prior Interest in Corrections

On June 1, 2, and 6, 1973, the Delaware Advisory Committee to the U.S. Commission on Civil Rights held a series of factfinding meetings in Wilmington and Smyrna involving administrators of the Delaware Division of Corrections, inmates and former inmates, and representatives of community organizations. The Committee "found many problems within the State's four institutions, including insufficient and poorly trained staff, overcrowding, housing of men awaiting trial with those serving sentences, inadequate medical care, and general neglect of female prisoners," as the Committee reported in The Delaware Prison System, issued in November 1974.¹

Ten years after release of that report, the Committee held a statewide conference in Wilmington, and the December 1985 report of the proceedings and other information included a three-page section on corrections. That section opened with observations by former Governor Pierre S. du Pont that only two other States were incarcerating more people per capita than Delaware² and also that 7 percent of the State's budget was spent on corrections as of January 1985 in contrast to only 3 percent in 1977. "Despite its great cost, and the promise of more increases to come," wrote the Governor, "the present system might be largely acceptable if it were working properly. But it isn't. . . ." ³

¹Delaware Advisory Committee to the U.S. Commission on Civil Rights, The Delaware Prison System (November 1974), p. iii.

²According to the Sept. 14, 1986, News Release, No. BJS 86-210, of the Bureau of Justice Statistics of the U.S. Department of Justice, Delaware incarcerated 301 persons per 100,000 population, and was ranked fourth among all States for its rate of incarceration.

³Delaware Advisory Committee to the U.S. Commission on Civil Rights, Report of a November 1984 Conference (December 1985), p. 38. Governor du Pont's statement originally appeared in U.S. Department of Justice, Expanding Sentencing Options: A Governor's Perspective, by Pierre S. du Pont for the National Institute of Justice (Washington, D.C., January 1985), p. 2. In a three-part series on State prisons, the Christian Science Monitor opened by referring to the Delaware State Penitentiary; it reported that "To incarcerate [a prisoner] for a year, the State of Delaware spends \$15,890, about the same as a year at an Ivy League college." Jim Bencivenga, "State Prisons: Crucibles for Justice--Inside Looking Out," Christian Science Monitor, July 26, 1988, p. 17.

Discussions in 1987

In the planning segment of its July 9, 1987, meeting, the Committee heard one Committee member discuss problems affecting incarcerated offenders seeking legal assistance, and the Committee decided to organize a forum on the question.⁴ Accordingly, in Wilmington on December 3, 1987, the Commissioner of the Delaware Department of Correction, the Executive Director of Delaware's American Civil Liberties Union (ACLU), a Delaware Law School professor and Director of the School's Post-Conviction Clinic, and a Criminal Systems Specialist from the Delaware Council on Crime and Justice provided data to the Committee and shared their views.⁵

Ralph A. Figueroa, the Committee Member who had originally drawn the Committee's attention to the issue, prefaced the presentations of the guest panelists by mentioning that he is Chairperson of the Prison Committee of the Governor's Council on Hispanic Affairs. In that capacity, he had received allegations about difficulties encountered by prisoners trying to obtain legal assistance. For example, Mr. Figueroa said that about 1200 inmates are held in the Smyrna facility, and yet only one half-time legal aide is there to serve them. Hispanics and Haitians appearing in court reportedly do so without adequate language help, if they speak little or no English. The variety of ethnic subgroups among Hispanics involves differing idioms and dialects, further complicating translation issues. As for Haitian prisoners or detainees awaiting trials, many are sent to the Smyrna facility instead of being held in the Georgetown facility, where they would be closer to the Haitian community which could provide translation help.⁶

⁴U.S. Commission on Civil Rights, "Report of Official Advisory Committee Meeting," by Tino Calabia, July 27, 1987, p. 2.

⁵This summary report is based on the official transcript of a Dec. 3, 1987, forum on file in the Washington, D.C. office of the Eastern Regional Division. To consolidate related comments, some discussion here appears in a sequence different from the actual order in the transcript. Other supporting documents are cited throughout this summary report.

⁶Mr. Figueroa's comments appear in the official transcript as well as in a two-page undated memorandum, "Problems, Suggestions, Recommendations for the Delaware Prison System," which Mr. Figueroa circulated to all forum attendees.

Need for Expanding Library System and for Translators

State Corrections Commissioner Robert J. Watson declared at the outset⁷ that "unrestricted access to the court system and to legal advice" is critical for inmates and supported by the U.S. Supreme Court; not resolving such matters is not good for the prisoners or for the administrators and staff. He also acknowledged that there is a part-time employee at the Smyrna facility advising inmates in the legal library where inmates can do research by appointment and check out some of the books. For maximum security unit inmates or prisoners outside of Smyrna, there is a book check-out system; but in light of the U.S. Supreme Court's Bounds⁸ decision, "you need practically another legal library," the Commissioner believed.⁹ Although lacking adequate space, particularly at Georgetown and Gander Hill, "we're moving in that direction," he said.¹⁰

On the day before the forum, Commissioner Watson received a two-page memorandum from the Hispanic/Haitian Counselor at the Smyrna facility, Francisco Rodriguez. The Commissioner shared the memo with all forum attendees, noting that "[M]ost of it agrees with Mr. Figueroa's comments,"¹¹ specifically those regarding the need for certified court interpreters, Spanish-speaking probation and parole officers, a volunteer Hispanic legal aide from the inmate population and a volunteer Creole interpreter, a full-time legal aid employee, better access to public defenders, and affording Haitian prisoners or detainees closer contact with their community in Sussex County. On the last point, the Commissioner explained that the Haitians could be transferred from Kent County to Sussex County if they were in Kent County because of overcrowding at the Georgetown facility. However, the inmates would not be moved to

⁷From the transcript, "Forum on Legal Assistance Available to Minority Prisoners," (hereafter cited as Transcript), as prepared by Marshall Reporting and on file in the Eastern Regional Division office in Washington, D.C., p. 9.

⁸Bounds v. Smith, 430 U.S. 817 (1977).

⁹Transcript, p. 11.

¹⁰Ibid. In July 1988, it was reported that the State recommended increasing its draft budget for prison law libraries and legal services by \$115,000. Jeff Montgomery, Dover Bureau Reporter, "Court Agrees to Improve Prison Conditions," Wilmington News Journal, July 2, 1988, p. A-7 (hereafter cited as "Court Agrees.")

¹¹Transcript, p. 12.

Sussex County if they were convicted, committed a crime, or were to be tried in Kent.¹²

Regarding a need for native Spanish-speaking probation and parole officers, the Commissioner stated that he learned that two staff members were given Spanish lessons. However, the Commissioner agreed that that did not solve the communications problem, as Mr. Figueroa had earlier argued. Committee Vice Chairperson Henry A. Heiman noted that at the top of his memo Mr. Rodriguez identified himself as the Hispanic/Haitian Counselor, but in his text, Mr. Rodriguez described himself as the full-time Hispanic Counselor. Mr. Heiman asked whether Mr. Rodriguez is the Haitian counselor by default, and the Commissioner replied that the responsibility for Haitians was added upon the transfer of Haitian prisoners to the facility served by Mr. Rodriguez. Commissioner Watson also agreed that the added responsibilities did not imply that Mr. Rodriguez was conversant with the language or dialect of the Haitians.

Limitations of Libraries and Paralegals

Professor Larry J. Connell, the head of the Post-Conviction Relief Clinic of the Delaware Law School, listed three groups of legal problems affecting inmates: 1) complaints about conditions in the prison;¹³ 2) disputes about the validity of the conviction of an inmate; and 3) miscellaneous problems related to family, property, or debts. The Clinic was established in January 1986 to assign law students to assist inmates in determining if a constitutional claim would justify the setting aside of convictions. But the Clinic receives many letters from inmates concerning complaints about conditions which Clinic students are not prepared to handle.

Also the Director of the Civil Clinic of the Law School, Professor Connell said that the Civil Clinic is associated with the Delaware Volunteer Legal Services (DVLS), which has received communications from inmates about the third group of miscellaneous problems. He

¹²Transcript, pp. 56-57.

¹³For a recently proposed court settlement on remedying complaints about prison conditions, see Montgomery, "Court Agrees," p. A-7. See also appendix B of this summary report.

stated that this group presents serious difficulties for inmates; no one is "at the individual prisons who can assist the inmates in pursuing petitions for visitation, petitions for modification of support" and the like.¹⁴ DVLS previously had on staff a paralegal who would visit and interview inmates and carry back information to DVLS attorneys to assess what might be done. However, DVLS no longer has a paralegal. Director Shirley Horowitz of the Pro Bono Project of DVLS agreed with Professor Connell's brief description of DVLS' function and confirmed the status of resources at DVLS.¹⁵

Professor Connell continued by stating that Civil Clinic students occasionally follow up on an inmate's letter and will interview him or her. However, other inmates are on their own. As for law libraries at the prisons, Professor Connell said that:

[U]nrestricted access to the law library . . . [is] useless to the vast majority of inmates because they have no idea how to use a library, number one. And even if they do know how to use the library, and I have quite a few clients who do, they don't have the legal expertise to be able to apply that which they are able to read.¹⁶

As for the deployment of paralegals, Professor Connell added:

I have some reservations about letting paralegals loose, so to speak, without supervision by attorneys, because those paralegals give misinformation just as much as fellow inmates can. I'm not sure what a solution to that would be, but . . . if paralegals are employed in any degree, there needs to be some connection to a lawyer who can monitor and supervise that which the paralegal comes up with.¹⁷

During the question and answer session, Mr. Connell explained that a paralegal in the prison itself might help some inmates prepare pro se petitions, although Mr. Connell believed that paralegals "in the post-conviction habeas corpus area . . . have so little knowledge of that area that they are essentially useless in terms of assisting the inmates to prepare pro se petitions."¹⁸

¹⁴Transcript, p. 15.

¹⁵Transcript, pp. 36-37.

¹⁶Transcript, p. 16.

¹⁷Transcript, p. 17.

¹⁸Transcript, p. 30.

Need for Orienting Inmates and Improving Libraries

Sharon A. Letts, a Criminal Systems Specialist at the Delaware Council on Crime and Justice, described the Council as a private, nonprofit agency which receives 80 percent of its funding from the United Way. Other funds come from the Federal Government, churches, and individuals.

She then told the Committee that pretrial detainees and inmates--especially those from minority populations and those who may be illiterate or limited English speaking--are not knowledgeable about their own rights, the legal system or the kind of hearing at which they may be scheduled to appear or the hearing's effect on them in the future. "And the public defender's office doesn't have the time to spend in saying, 'This is what you can expect to happen.'" For this reason, Ms. Letts stated that both pretrial detainees and inmates should be oriented and educated about these matters.¹⁹

As for prison libraries, Ms. Letts said that the only one "that comes close to being adequate" is the one in the Smyrna facility, the Delaware Correctional Center (DCC.) She added that, as a paralegal herself, she "could not do legal research at the [other] institutions at all if I tried. The only way that you can work that is being able to access the library at DCC." Even there, books are requested one at a time with each being returned before the next arrives, explained Ms. Letts, "and that's no way to do legal research."²⁰

Shortage of Paralegal Help

Ms. Lett further noted that the only paralegal at DCC is paid half time although "he works full time or more,"²¹ volunteering the unpaid time. The Department of Correction has requested another paralegal position, but she doubted that the request would remain

¹⁹Transcript, pp. 43-44.

²⁰Transcript, pp. 20-21.

²¹Transcript, p. 21.

in the budget and expected that "we will probably end up with no paralegal to provide help to the inmates."²² She pointed out that the paralegals were intended to assist not just the 1,200 inmates at DCC but all 2,800 inmates in the system. Ms. Letts herself taught a 13-week paralegal course at DCC, a task made difficult because of the inmates' low educational level and the complexity of legal thought that inmates must comprehend.

Nonetheless, the Council envisions developing a legal clinic with paralegals from Widener University and Wesley, stated Ms. Letts. The paralegals would work on grammatical corrections, phraseology for legal forms, and assist inmates with their own legal research. As backup, a volunteer attorney from the community would be sought who might also screen cases for practical merit. The Council is already developing an interpreters' program for the various prison facilities, engaging students in the Linguistics Department of the University of Delaware and its interpreters' program, reported Ms. Letts. Her hope was that the program could be expanded into the court system, saying that, to her knowledge, no Hispanics or Spanish-speaking persons work there.

Shortage of Public Defenders and Judges

When Executive Director Judith E. Mellen of the ACLU noted that there were no minorities in the Public Defender's Office, Ms. Letts observed that "not only do we have a language problem, I think we have a cultural problem there."²³

Ms. Mellen went on to say that the logjam in the courts was due to the fact that there is an inadequate number of public defenders and judges. "So there really is quite a delay getting into court, and 120 days which is their goal is practically never met."²⁴ Even after a person is assigned a public defender, the person may see a different public defender at different stages of the proceedings. This kind of "horizontal system," which does not exist in many States, requires constant readjustment to different persons, she

²²Ibid.

²³Transcript, p. 24.

²⁴Transcript, pp. 25-26.

said, and language barrier problems worsen matters.

Committee Member Emily G. Morris, recalling a Delaware State News article, said that "if you would listen to the public defenders themselves, they will tell you they don't feel very good about it either. . . . They know that they're not adequately representing the people, and they're concerned about it."²⁵

Volunteer Attorneys in Criminal and Civil Cases

In general, explained Ms. Mellen, the ACLU is not a provider of legal services, though:

[A]lmost exclusively my written mail comes from the prison. . . . However, most of those letters, or a large percentage of those letters, deal with areas that we cannot help them with. As Mr. Connell was saying, they deal with civil matters, or they deal with areas related to their criminal trial, in which case he refers his letters to me, and I refer my letters to him. . . . [Prison conditions] is one area that we can, in some cases, do something about. Most frequently how those are handled, or when they feel that there has been some kind of constitutional violation, we are able to assist . . . by asking them to file a grievance, or very frequently a phone call. . . . The wardens at the prison have been very receptive to a phone call. . . .²⁶

To carry out some of the ACLU's legal work, there is a very large number of attorneys, some of whom have volunteered their time on criminal justice matters. At least two attorneys have offered to begin assessing the possibilities of organizing legal assistance in the prisons through engaging bar association volunteers on a rotating basis, reported Ms. Mellen.

Ms. Horowitz, the DVLS Pro Bono Project Director and the Delaware Advisory Committee's former Acting Chairperson, mentioned that her project engages private attorneys in representing inmates in civil matters. A current problem relates to carrying out the intake interviewing to identify meritorious cases. The Pro Bono Project

²⁵Transcript, p. 44.

²⁶Transcript, pp. 26-27.

is still able to represent inmates, and when a determination can be made on the basis of letters from an inmate, then an attorney can proceed. However, if visits to a prison are needed for intake, the project becomes stymied without a paralegal.

Lack of Spanish- and Creole French-Speaking Advocates

Vice Chairperson Heiman and Committee Member Blanche M. Fleming focused on the availability of attorneys who are fluent in either Spanish or Creole French. They could only identify five Spanish-speaking attorneys and guessed that there might be one who could converse in Creole French. Professor Connell added that in one case a Hispanic defendant charged with a felony had an English-speaking attorney but no interpreter and consequently "had no idea what even transpired in the course of the trial. How does an inmate prepare for trial with English-speaking attorneys if there is no interpreter to facilitate the communication . . . ?"²⁷

Ms. Letts added that many inmates can function in English on the street but that they must miss many nuances in legal matters. She further noted that in the office of one judge it sometimes happens that an Hispanic bailiff interprets for Spanish-speaking persons appearing there; she questioned the propriety of having such a State official engaged in this manner with a defendant. Rosendo Medina, a member of the Governor's Council on Hispanic Affairs, observed that in many discussions on the need for interpreters the call is for volunteers. "[W]e never say we need professionals. . . . [However,] we need professionals to do the job."²⁸

Valerie Fox, a member of the audience who introduced herself as a future attorney, pointed out that in addition to limited English-speaking Hispanics and Haitians there are also blacks for whom "a very similar problem exists . . . in that in the beginning, from arrest on, there are similar language barriers due to illiteracy, or just language differences. . . . I would like to suggest . . . that the black population has the same needs." Marion L. Harris, a member of the Delaware Human Relations Commission who was also

²⁷Transcript, p. 39.

²⁸Trancript, p. 40.

in the audience, brought to the attention of the Committee the case of a black inmate with a medical problem. Ms. Harris thought that the inmate needed immediate medical care at a level not available at the facility.

Budgeting for Priorities

Dr. Fleming pointed out that the discussion touched upon several issues and that she wished to know from Commissioner Watson what his planning or budget priorities were regarding these issues. He replied that the kind of legal services under discussion was not in his recently submitted budget, but during the next budget cycle he hoped to provide for a grievance system, set up a link to the legal community, improve the conditions of female offenders, and fill in any gaps with Federal or foundation funds.²⁹

He mentioned his experience as the State Corrections Commissioner in Oregon, where the State system held 3,300 inmates as compared with Delaware's 3,000 inmates. In Oregon, trained inmates carried out research under the supervision of outside attorneys; this was useful because some inmates trust neither staff nor outsiders. For other inmates, there also were volunteer attorneys available. And for certain civil matters, a full-time juvenile service worker was employed in the women's prison to handle custody cases, escort inmates to court on visitation issues, and the like. Commissioner Watson stated that what all this would cost was not easy to gauge, "but I think it's fundamentally a responsibility we have and a fundamental need, and we are certainly working in that direction," adding that he would have "the next cycle to examine fully all the ramifications of this, and I would include the women in it particularly."³⁰

Corrections Issues Related to Civil Rights?

Committee Member Raymond Wolters stated that he found the forum discussion interesting and that there appear to be real problems.

²⁹Transcript, pp. 45-46.

³⁰Transcript, p. 53.

He added, however, that he has not been persuaded that every social problem is a civil rights problem and that he wished to have some Committee discussion as to whether what has been heard during the forum is a civil rights question. In this regard, Committee Member Morris inquired about statistics on the racial and ethnic composition of those incarcerated and information on why a disproportionate number of blacks may be incarcerated. She believed that someone in the criminal justice system must know how many whites are arrested compared to the number of whites imprisoned and the numbers on other racial and ethnic groups. In any event, Ms. Morris stated that she would need such data in order to enter into the kind of discussion suggested by Dr. Wolters.

Ms. Letts said that the Statistical Analysis Center in Dover would probably maintain the statistics mentioned. She added that on the civil liberties/civil rights aspects of the issues a Puerto Rican detainee recently called her agency. He had been held for seven months and begged for help in winning release. Upon questioning, he did not know what stage of the process his case was in but knew that he had not yet been indicted. Ms. Letts's agency doubted the caller's information and doublechecked; in fact, the man had not been indicted. Her agency brought the case to the attention of the Attorney General, and the caller was released the next day.

Ms. Letts asserted that "this is not unusual to sit in jail for three and four months at a time without being charged for a crime. And that is a civil liberties issue. And that in part comes from a lack of understanding on the part of the client"31

Language Barriers; Disproportionate Impact

Professor Connell appreciated Dr. Wolters' concern about knowing which problems under discussion are civil rights issues, but he also agreed that the lack of interpreters for Hispanics clearly affects a specific minority group. Vice Chairperson Heiman argued that an inability to receive a fair trial is a civil liberties issue and might also be a civil rights issue. Committee Member

31 Transcript, pp. 63-64.

Wilson noted that, should the type of statistics called for by Ms. Morris show a disproportionate and adverse impact on minorities, then both a civil liberties issue and a civil rights issue exist.

Ms. Morris added that such reasoning has been accepted by the courts for some time, and Vice Chairperson Heiman stated that he believes that there is a disproportionate impact. Mr. Heiman also asked about how pretrial release--in terms of the ability to pay bail--affects minorities. Commissioner Watson replied that it is probably a disproportionate percentage of minorities who cannot make bail because their bail may be higher, and they may have fewer resources and contacts. He further stated that "Statistics also show if you're in jail prior to trial and you're convicted, you're more likely to get a jail sentence than you are to be released."³²

Commissioner Watson informed the Committee that he could send the members some national data including racial statistics on Delaware related to incarceration rates. He also mentioned that the State Corrections Administrators maintain an annual report and that a document called "What Color Are American Prisons?" was published by the Unitarian Universalist Church; the latter illustrates the disparity in arrest rates and convictions. The Commissioner said that he would try to share these with the Committee as well.

The only information later received from Commissioner Watson was an undated table entitled "Incarceration Rates for Persons by State, Race and Ethnicity," showing that Delaware had the fourth highest incarceration rate in the U.S., or 248.0 persons for every 100,000 persons in Delaware. The table further indicated that, of every 100,000 white males in the State, 112.3 were incarcerated, although of every 100,000 black males, 965.1 were incarcerated. While containing some statistics on Hispanics, the table noted that Delaware was one of nine States for which no data on Hispanics were given. The source of the statistics in the table or the table's date were not evident from the material provided.³³

³²Transcript, p. 58.

³³From the U.S. Bureau of Justice Statistics, Eastern Regional Division staff obtained two tables dated Feb. 4, 1988 and March 23, 1988. The first indicates that, of 2,823 inmates held in

Summary

A panel of representatives of agencies intimately involved with the Delaware prison system discussed legal assistance available to minority prisoners. All agreed that access to legal assistance is inadequate, especially for Haitian and Spanish-speaking prisoners.

The Post-Conviction Relief Clinic director stated that, even if the law library resources were adequate, the vast majority of prisoners would remain helpless without attorneys or paralegals supervised by attorneys. The DCCJ spokesperson added that the DCCJ envisions setting up a legal clinic with paralegals supported by volunteer attorneys; DCCJ is also developing an interpreters program for the prison which might later expand into the court system, where, to her knowledge, no Spanish-speaking persons work. The Delaware ACLU executive director told the Committee that the ACLU is not a general provider of legal services, but the bulk of her mail comes from prisoners who complain of prison conditions or who have problems dealing with civil matters beyond the prisons.

On September 15, 1988, the DCCJ spokesperson, the ACLU executive director, and three representatives of the Delaware Corrections commissioner met with the Committee to brief the Committee on new developments touching upon legal assistance. Each of them also subsequently filed letters for the record which comprise the appendices of this summary report.

 Delaware jails and prisons on Dec. 31, 1986, **whites comprised 41.4 percent, and blacks, 58.4 percent.** The second indicates that **Hispanics comprised 3.2 percent.** From "Table 5.6: Prisoners Under State or Federal Jurisdiction, by Race, 1986," and "Table 5.9: Prisoners Under Jurisdiction of State or Federal Correctional Authorities, by Sex and Hispanic Origin, 1986," received on June 16, 1988, from Larry Greenfeld, Corrections Unit, Bureau of Justice Statistics, U.S. Department of Justice. (Hispanics can be of any race.)



APPENDIX A

OFFICE OF THE
BUREAU CHIEF

STATE OF DELAWARE
DEPARTMENT OF CORRECTION
80 MONROVIA AVENUE
SMYRNA, DELAWARE 19977

PHONE (302) 736-5601

October 25, 1988

Mr. Tino Calabia
Delaware Advisory Committee
United States Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Dear Mr. Calabia:

This letter is a follow up to our meeting with the Delaware Advisory Committee on matters related to legal assistance available to minority inmates. The following information will be a summary of our presentation at the meeting, and actions taken to make legal services more accessible to inmates.

Two (2) Legal Assistant positions were approved in the Department of Correction's (DOC) FY 89 budget to provide legal services to inmates at the Delaware Correctional Center (DCC), and the Sussex Correctional Institution (SCI). While waiting for the State Personnel Office to finalize establishment of the two positions, the DOC hired Francene Kobus in a Casual/Seasonal Paralegal position to monitor inmates' accessibility to the Law Libraries although the ACLU Agreement is not final. After the two Legal Assistant positions are established and filled, the Casual/Seasonal Paralegal position will be reassigned to provide additional legal services to inmates at the Women's Correctional Institution.

The Multi-Purpose Criminal Justice Facility (MPCJF), WCI, and SCI, have received the materials listed in Attachment C of the ACLU Agreement. Most of these books have been shelved and more shelving is to be ordered to provide shelving for the remainder of the volumes.

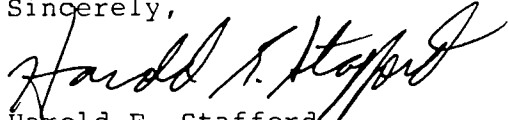
Satellite libraries have been developed for Pre-Trial and the Maximum Security Unit (MSU) at DCC, and shelving for the satellite libraries is under construction. A complete inventory of material and forms available through the main Law Library at DCC has been sent to each building for inmates' reference. Materials from the inventory may be ordered through the mail by use of request forms provided. Forms will be available in the satellite libraries.

WCI, SCI, and MPCJF inmates may receive paralegal assistance by filling out the provided request form and sending it to the attention of Francene Kobus, Paralegal DCC Law Library. As soon as the Paralegal's schedule will allow, there will be regular visits to each institution including MSU and Pre-Trial.

Finally, when a Spanish speaking inmate requests assistance from the Law Library and there appears to be a language problem, the Spanish speaking counselor is called and he provides interpreter services without hesitation.

If you have further questions regarding this matter, please contact me.

Sincerely,



Harold E. Stafford
Chief, Industries and Services

HES:ye

cc: Henry A. Heiman, Chairperson
Delaware Advisory Committee
Bruce Hobler, Principal
Francene Kobus, Paralegal



Max S. Bell, Jr., Pres.
Gary W. Aber
Barbara M. Beckler
Barbara A. Bernard
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Charles Leslie
Ocie Lindh
Bayard Marin
Mary M. McDonough
Robyn Menin
Ellen S. Meyer
Olga Ramirez
B. Wilson Redfearn
Joan L. Rosenthal
Sheldon N. Sandler
Sonia S. Sloan
Toby Weiner
James C. Welch
Mrs. James W. Williams
Lynn D. Wilson

October 12, 1988

Tino Calabia
Delaware Advisory Committee
U.S. Commission of Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

Dear Mr. Calabia:

I am sorry for the delay in submitting the document I spoke of at the September 15, 1988 meeting of the Commission. It is enclosed with this letter.

Pages 9 and 10 of the proposed settlement deal with legal access, the subject in question at the meeting. A hearing on the settlement is scheduled for November 22, 1988. However, certain aspects of legal access have already been addressed, specifically the purchase of the books and the hiring of a full-time paralegal.

If additional information is needed, please contact me.

Sincerely,

Judith Mellen
Judith Mellen
Executive Director

American Civil Liberties Union
903 French Street
Wilmington, Delaware 19801
302-654-3966
Judith E. Mellen, Executive Director

SETTLEMENT AGREEMENT

WHEREAS, there is currently pending a class action lawsuit in the Delaware Chancery Court, Dickerson et al. v. DuPont et al., C.A. No. 838, (1980), filed against the State of Delaware, its Department of Corrections (the Department) and various State officials on behalf of prisoners currently incarcerated by the Department in which the prisoners are represented by Community Legal Aid Society, Inc. (Legal Aid) and the National Prison Project of the American Civil Liberties Union (ACLU); and

WHEREAS, the terms of this agreement encompass the four major prisons operated by the Department: the Delaware Correctional Center (DCC), the Multi-Purpose Criminal Justice Facility (Gander Hill), the Sussex Correctional Institution (SCI) and the Women's Correctional Institution (WCI); and

WHEREAS, the parties in this case, through their respective attorneys, have been engaged in extensive negotiations regarding the proposed settlement of this action; and

WHEREAS, an agreement between the defendants and Legal Aid and the ACLU has been reached regarding the proposed settlement of the pending action; and

WHEREAS, a proposed notice of the terms of this agreement will be given to all prisoners of the 4 institutions described above;

IT IS THEREFORE AGREED by the undersigned counsel for the parties that the following constitutes their full and complete understanding regarding the proposed settlement of the pending action; and

IT IS FURTHER AGREED that the pending litigation will be dismissed with prejudice at the end of three years (and remain inactive during the interim) if the defendants comply with the following terms of the settlement:

I. OVERCROWDING

Gander Hill

1. By October, 1988, the defendants will permanently eliminate housing inmates in the non-housing areas at Gander Hill which consist of the 8 classrooms and 2 multi-purpose rooms. The defendants will also remove up to 40 inmates from double bunking.

SCI

2. By January, 1989, the defendants will permanently remove all inmates from non-housing areas at SCI. For purposes of this agreement, the non-housing area consists of Receiving 4. In pursuit of the January, 1989 deadline, the defendants will reduce the number of inmates in the general receiving area, which consists of Receiving 1, 2, 3 and 4, by 15 to a maximum of 35 inmates.

3. To eliminate the practice of inmates sleeping on mattresses on the receiving area floor, single beds (not double-bunked) will be installed in the receiving area by October, 1988.

4. The removal of the remaining inmates in Receiving 4 will be accomplished when the new 200 bed facility at SCI opens in January, 1989, which will result in the relocation of the entire receiving area.

WCI

5. Due to the extent of crowding at WCI and the urgent need for interim relief, the defendants will take the following action by October, 1988: a) the permanent removal of the 2 inmates currently housed in the beauty parlor of Banton Building; b) the permanent removal of one inmate from each of the 14 multiple resident rooms in Banton Building; c) the permanent removal of 4 inmates from A Dorm in Banton Building which currently houses 8 inmates; and d) the permanent removal of 3 inmates from C Dorm in Banton Building which currently houses 6 inmates. These 23 inmates will be transferred to the women's work release unit at Plummer House in New Castle County which the defendants will expand from a capacity of 20 to 48 women inmates by October, 1988.

6. By January, 1989, a unit with the capacity for 37 women will be established in the new 200 bed facility at SCI which will house both work release inmates and SENTAC Level IV sentenced inmates from Sussex County.

7. The major long term response to overcrowding at WCI will be through either the expansion of the existing facility by the construction of a single large building or by the construction of

a new institution. The funding for either option has already been budgeted and approved. The projected completion dates are July, 1990 for expansion and December, 1991 for the construction of a new facility. The total capacity for housing women inmates will be expanded to 285 through either option.

DCC

8. By October, 1988, triple bunking in cells that were originally intended for one inmate will be permanently eliminated at DCC.

9. The target for further reductions will be the removal of inmates from two 50 bed dormitories that were originally intended as space for prison industry programs.

10. The next priority at DCC will be the reduction of double bunking.

II. MEDICAL

11. The defendants agree to commit an additional \$650,000 in fiscal year 1989 (FY89), July 1, 1988 - June 30, 1989, to the Department's budget for health care services for prisoners. This funding will provide an additional 16 staff positions in FY89. These positions are included in the recommendations made by Dr. Steven Safyer, the Deputy Director of Montefiore-Rikers Island Prison Health Services in his preliminary report (May 12, 1988) on the health care in Delaware's prison system, Attachment A. The 16 staff positions to be added in FY89 are as follows:

- 1 clinical psychologist
- 4 mental health workers
- 1 mental health secretary

- 1 physician
- 3 registered nurses
- 2 nurse practitioners or physicians assistants

- 1 dentist
- 1 dental hygienist
- 1 dental assistant

- 1 dietician

12. In FY90, the defendants agree to request the necessary funds for half of the costs of a Psychiatric Director position as well as the full costs of an x-ray technician. In FY90 and FY91, the defendants also agree to work in good faith to continue to improve medical care. In this endeavor, the defendants will give careful consideration to the recommendations contained in Dr. Safyer's final report. The Department will recommend budget appropriations in FY90 and FY91 that will include the objectively justifiable staff positions recommended by Dr. Safyer.

13. In FY89, defendants will establish a mental health observation unit at Gander Hill consisting of twenty beds (one pod).

14. In FY90, the defendants will establish a second special needs housing unit in the southern part of the state. The Commissioner will determine which special needs population (ie. mentally retarded, mentally ill, etc.) will be housed in this downstate unit.

15. As a result of the Department's increased medical budget, the defendants agree to apply for continued medical accreditation

through the National Commission on Correctional Health Care by October, 1988.

III. ENVIRONMENTAL

16. The defendants agree to allocate \$350,000 for maintenance projects during FY89 based on the environmental inspection report of the Delaware prison system prepared by Robert Powitz, Ph.D., M.P.H., a sanitarian and professor at Wayne State University. (See Dr. Powitz's report, Attachment B.) The specific projects which will be undertaken by the defendants at the 4 prisons encompassed by the terms of this agreement are as follows:

DCC

- Repair kitchen serving line
- Install vacuum breakers on water lines to the steam jacket kettles in the kitchen
- Install pot washer sanitizer in kitchen
- Install dishwashing room windows
- Install lighting in C Building to provide 20 foot candles of light at each bunk
- Install windows and ventilators in C Building showers
- Replace all inmate toilets in B Building Receiving Room
- Improve lighting in B Building Receiving Room to insure 20 foot candles of light at each bunk
- Replace all missing shower heads in dormitories
- Improve lighting in dormitories (T1 and T2) to insure 20 foot candles of light at each bunk

Gander Hill

- Repair roof/expansion joint
- Obtain engineering study to be shared with Dr. Powitz regarding ventilation in the entire institution
- Improve lighting in cells to ensure 20 foot candles of light at each bunk
- Repair all exit lights that are out
- Eliminate roach infestation by crack and crevice treatment
- Insure that the hot water temperature in cells does not exceed the recommended maximum temperature of 120 F.
- Paint housing pods

SCI

- Correct hot water temperature in minimum II by installing two 80 gallon hot water heaters
- Obtain engineering study to be shared with Dr. Powitz regarding ventilation in Minimum II bathroom and Receiving 1, 2 and 4 and infirmary.
- Improve lighting on A & B tiers (Minimum I) to insure 20 foot candles of light at each bunk
- Repaint Minimum II bathroom and shower
- Replace Minimum II floor tiles
- Replace light fixtures in Minimum I shower area
- Install antisiphon device on water line to steam jacket kettle in kitchen

- Install new water filter on ice machine monthly
- Install vacuum breaker on fill line to coffee urn
- Install backsiphonage protection on scullery sinks
- Install 6 new light fixtures in the infirmary

WCI

- Replace chipped lavatories and toilets in Banton Building
- Replace water fountain in Banton Building
- Install fire alarm systems in Banton, Holly and Maple Buildings.
- Install 18 battery operated emergency light kits for Banton, Holly and Maple Buildings
- Correct stained ceiling tiles in Banton, Holly and Maple Buildings
- Make an operational change at WCI to assure that prisoners are not routinely prohibited from using available bathrooms and showers simply to assure easier supervision.
- End the current limitations on the issuance of toilet paper and sanitary napkins for WCI prisoners.

17. The Department also agrees to clean and balance the ventilation systems at all 4 institutions.

18. The Department will replace all non-fire retardant mattresses with fire retardant mattresses within FY89 and will insure that all mattresses are clean and usable.

19. The defendants agree to seek additional funds in the FY89 Bond Bill to cover the renovations of E Building, A Wing at DCC.

These renovations will include the replacement of toilets, sinks and mirrors; the installation of light fixtures that will provide 20 foot candles of light at each bunk, and locks, wiring, windows and screens; as well as painting. The Department will complete the renovations in E Building listed in this paragraph in FY90.

20. The defendants agree to create a position in FY89 for a qualified sanitarian in the Department whose primary responsibilities will include the ongoing monitoring of the environmental conditions at all of the institutions operated by the Department to insure that health and safety standards are met.

IV. LEGAL ACCESS

21. In FY89, the defendants will add \$115,000 to the Department's budget to address the legal access needs of prisoners according to the following terms:

22. The defendants will provide \$64,000 for improving the law library collections at WCI, SCI, Gander Hill and, if necessary, at DCC. The books to be purchased will be drawn from the list compiled by the Department, Attachment C. Additionally, the defendants agree to purchase the most recent "Prisoners' Self-Help Litigation Manual" for each of the law libraries at the 4 prisons.

23. The defendants will also provide \$36,000 for a full-time library technician at SCI and a full-time paralegal to assist illiterate prisoners with legal research. This paralegal will be based at DCC but will have the responsibility of assisting illiterate prisoners throughout the State.

24. The defendants will allocate \$15,000 for contractual services to provide for attorney supervision of staff paralegals in their provision of assistance to prisoners.

25. In FY89, the defendants will also create a position for an inmate librarian at WCI and will add a third inmate librarian at DCC. The defendants will provide 40 hours of legal training to all inmate librarians and will supplement this training periodically.

26. In FY90, the defendants will request \$35,000 to complete the necessary law library collections identified in Attachment C.

27. The defendants also agree that inmates will be assured access to the libraries at each of the four institutions for a minimum of six hours a day and one evening a week at DCC.

V. MONITORING

28. The Department will continue its practice of having its food services operations inspected by State Public Health Department sanitarians.

29. The defendants will assure that the food services operation in each of its institutions receives a minimum inspection score of 70 and that all 4 and 5 point violations are corrected within 30 days subject to necessary delays for equipment repair or replacement.

30. The defendants agree that the law libraries will be inventoried on a semi-annual basis using a standardized inventory form to be provided by plaintiffs.

31. The Department will provide periodic reports related to compliance with this agreement to counsel for the plaintiffs, including the following reports with the frequency of reporting noted below:

- population reports - monthly
(with non-housing areas designated, if in use)
- medical audit reports - monthly
- prisoners' medical grievances - monthly
- medical accreditation reports - as generated
- food services reports - monthly
(by Delaware Division of Public Health)
- water quality reports - monthly
(by Delaware Division of Public Health)
- prison sanitarian's reports - quarterly
(by the Department's qualified sanitarian (or more often,
to be hired as part of this agreement) if so generated)
- law library inventories - semi-annually

32. For the purpose of monitoring this settlement, the Department agrees to permit meetings of representatives of Legal Aid and the ACLU with groups of inmates of no more than 10 inmates at a time on a monthly basis at the four institutions addressed in this agreement. This provision will, in no way, interfere with the right of plaintiffs' counsel to meet with their clients on an individual basis.

VI. IMPLEMENTATION

33. This settlement contemplates action over three fiscal years - FY89, 90 and 91. The defendants promise to work in good faith to implement the actions contemplated in this settlement but the parties understand that the defendants cannot commit the State of Delaware to any activities in subsequent fiscal years.

34. If the defendants achieve and maintain compliance with this settlement, the plaintiffs agree that the pending litigation will be dismissed with prejudice after three years and that the plaintiffs will not proceed with other litigation in either the State or Federal Court on the subjects addressed by this settlement during the time period covered by this agreement.

35. If the defendants, despite good faith efforts, fail to comply with the terms of this agreement, the plaintiffs' commitment to refrain from litigation on the issues covered by this settlement is revoked. Further, the plaintiffs will not be required to dismiss the pending case.

36. This settlement does not preclude any individual litigation by inmates and no party may introduce this settlement for any purpose in any other litigation.

37. In consideration of the defendants' agreement to this settlement, Legal Aid and the ACLU waive any right to attorneys' fees and costs with regard to work performed in connection with

this litigation, including the negotiation process. This waiver shall not apply, however, if the defendants fail to comply with the terms of this settlement and further court proceedings occur because of such violation.

W. Laird Stabler, III
Counsel for the Governor

Charles Oberly, Attorney General
Richard Hubbard, Deputy Attorney General
Counsel for the Department of Corrections

Alvin J. Bronstein
Elizabeth Alexander
Mark Lopez
ACLU National Prison Project
Counsel for Plaintiffs

Mary McDonough
Neilson Himelein
William E. Moore
Community Legal Aid Society, Inc.
Counsel for Plaintiffs

Of Counsel: ACLU - Delaware Affiliate

by Ben T. Castle
Cooperating Attorney



DELAWARE COUNCIL ON CRIME AND JUSTICE

701 SHIPLEY STREET • WILMINGTON, DELAWARE 19801 • TELEPHONE (302) 658-7174

September 29, 1988

Tino Calabia
United States Commission on Civil Rights
1121 Vermont Avenue N.W.
Washington, D.C. 20425

Dear Mr. Calabia:

You have asked that I write to identify those problems that still exist with legal access for minorities. The problems can be divided into two areas: problems of sentenced offenders, and problems of the pre-trial population.

Sentenced Offenders

As you heard in the last meeting, the Department of Correction has come a long way in improving its legal services for minorities. But they still have far to go. Delaware Correctional Center (DCC) is the largest institution in Delaware, housing upwards of 1500 individuals. Most of the improvement in services has occurred there where it will have the biggest impact, with the least staff.

While the Department has upgraded its law libraries in the other three main institutions, there are very few additional services that would address the minority offenders in those institutions. The total population of those three institutions is approximately 1250 offenders. I believe that the Department is working towards improvement in these institutions for minority offenders. But without strict monitoring of this process, interest in pursuing these improvements could wane.

[30]

APPENDIX C

BOARD OF DIRECTORS

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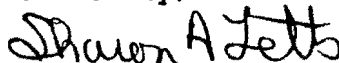
Pre-trial Offenders

These minority offenders have little in the way of services provided for them. Many of these individuals, especially those that do not speak English, do not have any knowledge of how the criminal justice system works. Even if they have street knowledge of English, any explanation in English will miss many of the nuances of the process. These individuals are especially vulnerable, to having their rights violated, because they don't know what they are or how to invoke them. Many times public defenders do not have the time or language skill to explain the intricacies of the court process. Their fate is often in the hands of a public defender who has explained little to their client or knows little about their client because of the language barrier.

Law books are no help to those individuals who either can't read at all or can't read English. At other than DCC, institutions there is an almost total lack of assistance for the pre-trial, non-English defendant. This client often has little time to learn the ins and outs of the criminal justice system before trial and sentencing. This population needs the most attention to address its needs.

Thank you for allowing me the opportunity to express my concerns. I hope this has been helpful to you.

Sincerely,



Sharon A. Letts
Criminal Systems Specialist

SAL:vw1