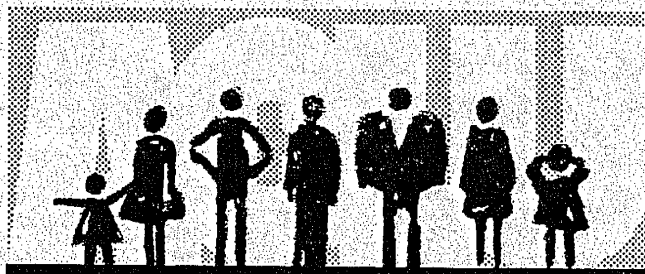


JUSTICE DETAINED

CONDITIONS AT
THE VARICK STREET
IMMIGRATION
DETENTION CENTER



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Varick Street
Immigration
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**A Report By
The ACLU Immigrants' Rights Project**

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This report is the product of a two-year investigation of the Immigration and Naturalization Service's Varick Street detention center by the American Civil Liberties Union Immigrants' Rights Project and the New York Civil Liberties Union. Judy Rabinovitz, staff counsel with the Immigrants' Rights Project, organized and coordinated the investigation, and is the report's principal author. David Stern, while a student at Columbia Law School, undertook much of the initial research and data collection. Lee Gelernt, Project staff counsel, reviewed and edited several drafts of the report, and Arthur Eisenberg, NYCLU Legal Director, contributed valuable suggestions and advice to all aspects of the investigation and report. Harry Snyder and Carl Lewis, Project administrators, spent countless hours preparing the report for publication. Thanks are also due to Jacqueline Bhabha for her background research on INS detention policy and standards, and to Sarah Burr, Dan Kesselbrenner and Lynn Marcus for their comments on an earlier draft of the report.

The investigation was conducted with the assistance of numerous law students at Columbia and New York Universities, who generously donated their time to interview Varick Street detainees. In addition, we are particularly indebted to those law students who interned at the ACLU during the investigation period, and whose responsibilities ranged from conducting follow-up interviews with detainees and researching legal issues to editing portions of the report and checking references: Norma Cañas, Gary Chodorow, Marcia Ellis, Joseph Haaf, Dolly Hassan, Andrew Painter, Rafael Rafaelli, Letitia Volpp and Eric Yap.

On many occasions during the investigation, these students also provided assistance to individual detainees. In one case, a student's efforts helped secure the release of a detainee who had been held at the facility 14 months, long beyond the statutory release period and despite uncontroverted evidence of U.S. citizenship. But throughout the period of our study, we encountered many more detainees who requested our assistance and whom we were unable to help. The absence of attorneys or legal assistance agencies to which to refer these detainees was one of the greatest frustrations for all who worked on this report. When persons like those at Varick Street are detained by the INS without legal representation, they are deprived of an opportunity to pursue their legal claims, and the conditions of their confinement are allowed to continue, invisible to the outside world.

Lucas Guttentag
Project Director

◀ ACLU Immigrants' Rights Project ▶

Judy Rabinovitz
Staff Counsel

JUSTICE DETAINED ► IN BRIEF

Justice Detained: Conditions at the Varick Street Immigration Detention Center is the product of a more than two-year study by the American Civil Liberties Union Immigrants' Rights Project and the New York Civil Liberties Union of the largest New York detention facility maintained by the Immigration and Naturalization Service (INS). It reveals that INS detention policies and practices subject immigration detainees to lengthy periods of incarceration averaging six months, and sometimes extending to three years, in a facility that was designed solely for short-term detention.

Many Varick Street detainees are legal permanent residents with longstanding ties to this country, with family members who are United States citizens, and with bona fide legal claims to remain in this country. Yet, these detainees are imprisoned in large dormitories without any access to fresh air or sunlight, with no opportunity for outdoor exercise, and with minimal activities to occupy their time. They are denied meaningful access to legal representation and are subject to arbitrary and punitive segregation. Even if they are found deportable, they are oftentimes detained for many additional months or years solely because of INS' inability to obtain travel documents and execute their departures.

The conditions documented in the report are not unique to Varick Street. INS detention policy in New York is in many ways a microcosm of INS detention policy nationwide. We hope that the report will call attention to, and prompt action regarding, the substandard conditions at INS detention facilities around the country.** Following is a summary of the report.

BACKGROUND

During the 1980s, INS' detention budget rose from \$15.7 million to more than \$149 million; the average length of detention jumped from less than four days in 1981 to 54 days by 1991. This increase in INS detention was in large part the result of shifts in INS detention policy that called for mandatory detention of many aliens and made it more difficult for others to obtain release from detention. (See pp. 1-5)

The increased length of INS detention has led to increased complaints about

**Prior to the publication of this study, the INS was given an opportunity to comment on our preliminary findings, and to offer any clarifications or rejoinders. INS did not respond to any of the problems raised, nor to our requests for additional information.

conditions at INS detention facilities. In New York, INS was twice sued during the 1980s over such conditions. Varick Street opened in 1984 following one of these lawsuits. Yet within a very short time it was plagued with the same problems that had led to the earlier litigation. A 1986 report by the General Accounting Office (GAO) was highly critical of the facility, noting among other things the lack of outdoor exercise facilities and the poor quality of Varick Street staff. Despite pledges by INS to improve conditions, the problems have persisted without noticeable improvement. (See pp. 1-2, 6)

RESULTS

1) Detention at Varick Street interferes with detainees' ability to pursue their legal rights and to protect themselves from unlawful detention and deportation. While the mere fact of detention makes it more difficult for detainees to pursue their legal rights, specific conditions at Varick Street exacerbate the problem. These include an inadequate law library, insufficient access to telephones, and lack of confidentiality in attorney/client communication. During our investigation we identified a number of individuals who were improperly detained by INS at Varick Street, including several U.S. citizens. Of particular concern to the ACLU are the obstacles these and other detainees faced obtaining documentation and legal assistance to prove their cases. (See pp. 10, 14-29)

2) Living conditions at Varick Street fall well short of acceptable standards of detention. Varick Street provides no access to the outdoors, affords minimal educational or program activities, and imposes an extremely restrictive visiting policy. In addition, detainees routinely complain about poor sanitation, inadequate food, delays in receiving medical care, and arbitrary and punitive use of segregation. (See pp. 29-51)

3) Many of the problems at Varick Street are directly linked to the increased length of detention. Varick Street was initially intended for short-term stays of less than one week; the average Varick Street detainee now spends approximately six months at the facility. (See pp. 11-12)

PRINCIPAL FINDINGS

1. Staffing Problems

Varick Street's staff has been repeatedly cited for misconduct and a failure to meet even minimal standards. An internal INS report prepared in September 1990 estimated that between 20 and 30 of the facility's seventy Detention Enforcement Officers were under

investigation for either personnel, criminal, or civil rights violations. A number of detainees reported abusive treatment by guards ranging from verbal harassment to physical abuse. (See pp. 12-14)

2. Access to Counsel and the Courts

Few Varick Street detainees are able to afford private counsel and few legal services are available for the rest. A 1992 study by the General Accounting Office (GAO) found that 60 percent of Varick Street detainees were unrepresented. The lack of legal representation is due in large part to the fact that aliens have no right to paid counsel in immigration proceedings. (See p. 16) In addition, specific conditions at Varick Street add to the difficulties detainees face in obtaining access to counsel and the courts. Among these are:

► Inaccurate Legal Services List

The legal services list that is provided to Varick Street detainees contains significant inaccuracies, including incorrect telephone numbers. The list prepared in November 1989 was not updated until June 1991. That list was not revised until February 1993 and was still being distributed to Varick Street detainees in its unrevised form as of June 1993. (See p. 17)

► Collect-call-only telephone policy

Varick Street's telephone policy permits only outgoing collect calls and no incoming calls, making it difficult for detainees to make initial contact with an attorney. Notably, out of 12 organizations on the current legal services list only one accepts collect calls. The collect-call-only limitation also adds to the difficulties detainees face in collecting evidence and testimony needed for their cases. (See pp. 18-20)

► Lack of confidentiality in attorney/client visiting

Attorney-client visiting cubicles assure only very limited privacy. Temporary dividers are only five feet high, and the cubicles are open on one side. During the interviews conducted for this report, guards, detainees, and other visitors were always within earshot. (See p. 21)

► Inadequate Law Library

Varick Street's law library is completely outdated and effectively useless. During our site visit in October 1991, no post-1990 materials were available although a

major revision of the immigration laws took place in November 1990. INS told us that materials were "on order." However, recent reports from detainees indicate no improvement. (See pp. 22-23)

► **Lack of information and assistance to detainees with their legal cases**

Varick Street detainees face problems obtaining writing material and copies of legal documents and a general lack of information and assistance with their cases. One detainee tried for more than five weeks to get a letter notarized that was necessary to obtain school records to substantiate his claim to U.S. citizenship. He was told that Varick Street does not provide a notary. (See pp. 25-28)

► **Pressure to "Sign Out"**

Many detainees speak of pressure to "sign out," *i.e.*, to waive their legal rights and simply agree to deportation. They report statements by INS personnel, and even immigration judges, that "if you can't make bail, you should sign out." Given that bonds are outside the reach of most detainees, many detainees agree to be deported rather than face an even lengthier detention. (See pp. 28-29)

3. Inhumane Living Conditions

► **Overcrowding**

When we began our investigation, Varick Street was well above capacity, with female detainees forced to sleep in the library. During our site visit in October, 1991, some of the living quarters we observed were visibly crowded. We asked INS for space dimensions. These have not been provided. (See pp. 29-31)

► **Sanitation and Hygiene**

Many detainees complained about unsanitary conditions. Bathrooms are reportedly dirty and poorly maintained, and mice rampant. An internal INS report prepared in September 1990, recognized "the need for expanded maintenance services." We asked INS to provide us with records of pest control measures and required health inspections. To date none of this information has been provided. (See pp. 31-32)

► **Lack of fresh air and sunlight**

Detainees at Varick Street are deprived of all contact with the outdoors. The facility makes no provision for outdoor exercise. Moreover, the windows are sealed

and covered with a wire mesh, keeping out fresh air or sunlight. A 1986 report on Varick Street by the GAO cited the lack of outdoor exercise as a source of tension. (See pp. 32-34)

► **Inadequate exercise, recreation and activities**

Varick Street offers few recreational or program activities to its detainees. No educational programs are provided nor any significant work opportunities. A 1985 report by the New York City Bar Association stated that Varick Street detainees suffer from "excruciating boredom." (See pp. 34-36) The lack of recreational, educational and program activities is consistent with the fact that Varick Street was intended as a short-term facility. However, detainees now spend considerable time at the facility -- months or even years -- with nothing to do. (See pp. 34-36)

► **Arbitrary and punitive use of segregation**

Many detainees do not know why they are placed in segregation, for what length of time they will remain there, and how they can contest the placement. Many claim that segregation is in retaliation for asserting their rights. Detainees have reportedly been held in solitary cells for as long as several months; deprived of basic amenities such as showers, soap and other toilet items; denied access to legal papers and other reading materials; and on some occasions forced to sleep on the floor. (See pp. 36-42)

► **Lack of a Commissary**

Other than scheduled meals, the only food available to detainees is from vending machines which offer a very limited selection of items and are frequently broken. The lack of a commissary is a particular problem given that detainees may go 15 hours between meals. (See p. 43)

► **Medical Care**

Detainees routinely complain about lengthy delays in receiving medical treatment and a general lack of attention to their medical concerns. One detainee reports waiting 18 months for INS to fill his prescription for eyeglasses. Other detainees claim that INS deliberately delays providing operations or other medical treatment in the hope that the detainee will be deported first. (See pp. 44-45)

► **Limitations on Social Visiting**

Varick Street's visiting policies are unusually and unnecessarily restrictive, especially

given the length of time detainees spend at the facility. Weekday visiting hours are limited to two hours daily. Children are only permitted on weekends, but weekend visiting privileges are limited to 60 detainees. (See p. 46)

► **Lack of Effective Grievance Mechanisms**

Detainees are provided minimal, if any, information about Varick Street's grievance procedures. In addition, there is the general perception among detainees that it is futile to complain, or that such complaints will lead to retaliation. In the absence of functioning grievance procedures, detainees have resorted to other means to resolve grievances, such as hunger strikes. (See pp. 47-48)

► **Processing Delays**

Many detainees remain at Varick Street for months, even years, following their final orders of deportation or exclusion. One detainee, a Chinese national, was held at Varick Street close to two years after her final order of deportation although she had waived an appeal in order to avoid lengthy detention. A refugee from Ethiopia was held at Varick Street close to three years. In the summer of 1991 he decided to waive any further appeals of his case since he did not want to remain in detention any longer. Twenty months later he was still at Varick Street. (See pp. 48-50)

► **Special Concerns of Women Detainees**

Female detainees face special hardships because Varick Street is predominantly male. For example, the facility has no infirmary for female detainees. (See pp. 50-51)

RECOMMENDATIONS TO THE DEPARTMENT OF JUSTICE

INS must insure that conditions at Varick Street do not interfere with detainee access to counsel and the courts and meet basic standards of detention. Among the recommendations to be implemented immediately are the following:

Access to the Courts

INS must provide Varick Street detainees with:

- an accurate and regularly updated legal services list;
- the ability to make non-collect local telephone calls;

- ▶ private attorney-client visitation areas;
- ▶ a complete and up-to-date law library;
- ▶ a paralegal to assist detainees with their cases and ensure that legal materials are regularly updated, and
- ▶ access to a copying machine, writing materials, and a notary.

Living Conditions

- ▶ Program space should not be used for housing except on a very limited basis.
- ▶ All living quarters must meet accepted space requirements.
- ▶ Bathroom facilities must be adequately maintained.
- ▶ Outdoor exercise must be provided for all detainees held at Varick Street more than two weeks.
- ▶ Recreational and program activities must be expanded.
- ▶ All detainees placed in segregation must be provided notice within 24 hours of the reason for the placement and a hearing.
- ▶ Detainees placed in segregation must not be deprived of basic necessities.
- ▶ A commissary should be provided.
- ▶ Medical care should not be delayed for reasons unrelated to health.
- ▶ Visiting hours should be expanded.
- ▶ Detainees must be provided with detailed and specific information regarding grievance procedures.
- ▶ When an order of deportation can not be effectuated, detainees should be released from detention under orders of supervision.

Given the obstacles detained aliens face in obtaining counsel and pursuing their legal claims, the decision to detain has very serious consequences. Ultimately, the Department of Justice must address the problem of the lack of legal representation for detained aliens. In addition, alternatives to detention should be explored that would ensure detainees' appearance at hearings without prejudicing their ability to pursue their legal claims. (See pp. 51-52). These would provide substantial cost savings to INS while enabling detainees to pursue the legal relief for which they are statutorily eligible.

I. INTRODUCTION

During the 1980s, the use of detention by the Immigration and Naturalization Service (INS) grew dramatically. In 1981, the average stay in an INS detention facility was less than four days.^{1/} By 1990, it had grown to 23 days,^{2/} with many individuals detained for more than a year. Most recently, the General Accounting Office's (GAO) 1992 study of INS detention policy found an average stay of 54 days.^{3/} During this same period INS' detention budget grew from \$15.7 million^{4/} to more than \$149 million,^{5/} giving INS the capacity to detain more than 6,000 individuals at any given time.^{6/}

Given the substantial length of time in which individuals now languish in INS detention, it has become critically important that INS take steps to ensure that the conditions at its facilities are suitable for long-term confinement. Yet precisely the opposite has occurred. Coinciding with the expanded use of detention, complaints about the conditions at INS facilities have multiplied. Among the problems reported nationwide are interference with detainee access to counsel and the courts, physical and verbal abuse by guards, lack of recreational and educational activities, inadequate medical care, overcrowding, and unsanitary living conditions.^{7/}

INS detention facilities in New York represent a microcosm of the problems found

^{1/} See ACLU, Church World Services, Lutheran Immigration and Refugee Services, National Council of La Raza, San Francisco Lawyers Committee for Urban Affairs, Detention of Undocumented Aliens at 7 (Oct. 1990) (hereafter cited as "ACLU Rep. at ___"), citing INS Budget Justifications, 1983-87.

^{2/} U.S. General Accounting Office, Immigration Control: Immigration Policies Affect INS Detention Efforts at 2 (GAO/GGD 92-85, June 1992) (hereafter cited as "GAO 1992 Rep. at ___").

^{3/} GAO 1992 Rep. at 26.

^{4/} ACLU Rep. at 5, 7, citing INS Budget Justifications, 1983-87.

^{5/} GAO 1992 Rep. at 12.

^{6/} Id.

^{7/} See e.g., Garcia Ramos and Ortega Linares v. U.S., Civ. No. 91-0908-GT (POR) (S.D. Cal.) (alleging physical and verbal abuse by INS officers at a contract facility for minors in Southern California); Gonzalez Centeno v. U.S., Civ. No. 91-1014 K (P) (S.D. Cal.) (alleging pattern of beatings of detainees by INS officers at detention center for adult men in El Centro, California); Imasuen v. Moyer, Civ. No. 91-C-5425 (JFH) (N.D. Ill.) (alleging inhumane conditions of confinement and denial of access to counsel and the courts for INS detainees in Chicago). See also Minnesota Lawyers International Human Rights Committee and Physicians for Human Rights, Hidden From View: Human Rights Conditions in the Krome Detention Center (April 1991). Despite these concerns, the GAO's 1992 report on INS detention policy failed to do any systematic study of conditions of detention.

nationwide. Twice in the 1980s, INS was successfully sued over conditions at its New York detention centers.^{8/} In 1986, the GAO issued a highly critical report about INS' Varick Street facility, noting among other things that detention officers were "unqualified and unsuited for the job."^{9/} That same year, Senator Alfonse D'Amato described Varick Street as "one of the most poorly run facilities in the country."^{10/}

Despite pledges by INS to improve conditions, the problems have continued without noticeable improvement. In the spring of 1990, Varick Street detainees contacted the American Civil Liberties Union Immigrants' Rights Project (ACLU) complaining of conditions virtually identical to those challenged in earlier litigation. Detainees described months without fresh air or sunlight, lack of meaningful access to legal representation and the courts, arbitrary and punitive use of segregation, and long delays in executing orders of departure. In response, the ACLU and the New York Civil Liberties Union (NYCLU) conducted a two-year investigation of the facility which corroborated many of the detainees' allegations and found, generally, that in some respects Varick Street complied with accepted standards, but in many other respects conditions within the facility fell well short of acceptable standards. This report sets out the ACLU's findings and recommends specific changes that must be implemented to bring INS facilities into compliance with recognized standards of detention.

II. BACKGROUND

A. INS DETENTION POLICY

The dramatic increase in the length of detention at INS' facilities is the direct result of policy shifts initiated during the Reagan and Bush Administrations. Prior to 1980, INS

^{8/} Lam v. Smith, Civ. No. 79-0795 (EHN) (E.D.N.Y.) (challenge to conditions at INS' Brooklyn Navy Yard detention facility resulting in a consent decree governing equipment and procedures at the facility and setting a date by which a new facility would be opened); Gul v. Sava, Civ. No. 88-1220 (JBW) (E.D.N.Y.) (challenge to conditions at private hotels contracted by INS to hold detainees apprehended at JFK Airport resulting in payment of damages to detainees).

^{9/} U.S. General Accounting Office, Criminal Aliens: INS' Detention and Deportation Activities in the New York City Area, at 1,3 (GAO/GGD-7-19BR, December 1986) (hereafter cited as "GAO 1986 Rep. at ____").

^{10/} "D'Amato Seeks Investigation into Drug Dealing in Jail," UPI, August 4, 1986.

detention was the exception.^{11/} Individuals were presumptively eligible for release and were detained only where INS could demonstrate that an individual posed a security risk or was likely to abscond. That practice was consistent with the widely accepted view outside of the immigration context that the risk of absconding and security are the only proper justifications for detaining an individual pending a determination of guilt or innocence.^{12/}

During the 1980s, however, INS policy changed significantly. As a result, many individuals previously eligible for release are now subject to mandatory detention. Others, though not subject to mandatory detention, face inordinately high bonds that make it impossible for them to obtain release.

The two categories of aliens principally affected by these policy shifts have been those apprehended trying to enter the United States without permission ("excludables") and those with criminal convictions ("ex-offenders"). U.S. immigration law generally distinguishes between "excludable" aliens (who are seeking entry into the United States) and "deportable" aliens (who have already entered the United States but are here in violation of law). "Ex-offenders" can fall within either category. Prior to 1980, both excludable and deportable aliens were presumptively eligible for release and could be detained only if shown to pose a security risk or a risk of absconding.

With the influx of Cuban and Haitian boat people in the early 1980s, however, the government turned to detention as a means of attempting to deter illegal immigration.^{13/} Thus, with few exceptions, excludable aliens apprehended without proper documentation are subject to detention unless they can demonstrate that their "parole" into the country is "in the public interest."^{14/} Those who cannot make such a showing remain in detention until their immigration hearings are completed, which often take many months and sometimes years. If they are not granted permission to enter the country after their hearing, they are then subject to indefinite post-hearing detention pending enforcement of their departure.^{15/} Because of the refusal of some countries to allow the return of their

^{11/} See generally Jean v. Nelson, 472 U.S. 846, 849 (1985).

^{12/} See, e.g., United States v. Salerno, 481 U.S. 739 (1987).

^{13/} See generally ACLU Rep. at 2-3; GAO 1992 Rep. at 28-29; Jean v. Nelson, 472 U.S. at 849.

^{14/} 8 C.F.R. §§ 235.3(b), 212.5. Among those whose release may be deemed in the public interest are pregnant women, juveniles, and aliens for whom a close relative has filed an immigrant visa petition.

^{15/} Under current law, an alien with a final order of deportation may be held no longer than six months while INS seeks to effectuate the order. 8 U.S.C. §§ 1252 (c) and (d). The law does not, however, place a time limit on effectuating a final order of exclusion. See, e.g., Bruce v. Slattery, 781 F. Supp. 963 (S.D.N.Y. 1991),
(continued...)

nationals, and the delay in obtaining travel documents, some excludable aliens are detained for years even after receiving a final order of exclusion.^{16/}

The 1980's shift in policy also had a significant impact on alien ex-offenders. These individuals, who have served their sentences in a state or federal prison, are now subject to INS detention pending their deportation or exclusion hearings. Many are legal permanent residents of the United States who have lived in this country for many years. Beginning in the late 1980s, and coinciding with the "War on Drugs," the Bush administration launched a major campaign against such aliens aimed at facilitating their deportation.^{17/}

Under current law, certain categories of alien ex-offenders are now subject to mandatory detention pending their deportation or exclusion hearings.^{18/} Many others are made presumptively detainable. Whereas INS used to have to prove that they posed a security risk or a risk of absconding in order to detain them, now these detainees must prove that they pose no such risk in order to be released.^{19/} Bonds for such aliens are frequently set prohibitively high. Consequently, even individuals with U.S. citizen children and long-term residence in the United States, and who would pose little risk of absconding, now languish in INS detention facilities pending deportation or exclusion proceedings. See §

^{15/} (...continued)

citing Shaughnessy v. U.S. ex rel Mezei, 345 U.S. 206, 216 (1953) (indefinite detention of excludable alien not unlawful).

^{16/} See § III.A.3, *infra*. The policy of detaining all arriving aliens without documents, many of them asylum seekers, came under sharp attack from immigrants' and refugee rights organizations throughout the 1980s. Largely as a result of their criticisms, in May 1990, the INS began a pilot parole project to release detained asylum seekers with "credible" claims to asylum who could meet certain criteria, such as not presenting a threat to public safety, having a place to live, a lawyer, and a job or means of support. GAO 1992 Rep. at 55. In April, 1992, this program was adopted nationally. 69 Interpreter Releases 503-505, 526-28 (April 27, 1992). However, implementation problems remain and, especially in New York, asylum seekers with bona fide claims continue to be detained by INS even when they are unlikely to abscond and pose no security risk. See § III.C.2, *infra*. Meanwhile, the New York INS District claims that it is forced to parole many aliens into the United States who do not warrant parole merely because it lacks sufficient detention space.

^{17/} See, e.g., Anti-Drug Abuse Act of 1988, Pub. L. 660-690, 102 Stat. 1181 (1988); Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978. Under this legislation a new class of alien ex-offenders was created -- "aggravated felons" -- with fewer rights to challenge deportation and detention. Although GAO refers to such aliens as persons convicted of crimes "such as murder, manslaughter, or rape" (GAO 1992 Rep. at 2, 10), in fact, the definition of "aggravated felony" is extremely broad. An alien convicted of any drug related crime, including sale of marijuana, or in some states multiple convictions for possession of a controlled substance, is classified as an "aggravated felon" and hence entitled to fewer protections. 8 U.S.C. § 1101(a)(43).

^{18/} 8 U.S.C. §§ 1252(a)(2)(A), 1226(e)(2).

^{19/} 8 U.S.C. §§ 1252(a)(2)(B), 1226(e)(3)(C).

III.A.3, *infra*.^{20/}

Not surprisingly, these shifts in policy have sparked intense debate over the proper justifications for detention, and more generally, the proper treatment of excludable and ex-offender aliens. This Report does not undertake a comprehensive analysis of these policy shifts. Instead it focuses on the conditions existing at one INS detention facility. However, in light of the drastic consequences of long-term detention, and particularly the way that detention interferes with detainees' ability to pursue their legal claims, the ACLU strongly recommends that Congress and the current Administration conduct its own thorough review of INS detention policy.

B. DETENTION CONDITIONS IN NEW YORK CITY

1. *Types of INS Detention Facilities*

Nationally, INS uses several types of detention facilities. "Service Processing Centers" (SPC's) are detention centers operated directly by INS. "Contract facilities" are privately owned detention facilities, operated for INS by for-profit corporations. In addition, INS regularly uses a large number of county and city jails to detain aliens, reimbursing local governments for this service.^{21/}

In New York, INS uses three facilities to house detainees. Only one of these, the Varick Street Service Processing Center, is directly operated by the INS. The other two facilities in New York City are contracted by INS. Wackenhut, a private detention facility located in Springfield Gardens, Queens, is managed by the Wackenhut Corrections Corporation. The Brooklyn Correctional Facility (BCF) is a New York City Department of Correction facility contracted by INS.

^{20/} In addition, because of INS' delay in obtaining travel documents and executing departures, many ex-offenders spend considerable time in INS detention even after a final order of deportation or exclusion has been entered. A recent district court decision found such delays "unconscionable." Nwankwo v. Reno, Civ. No. 93-959, slip. op. at 6 (E.D.N.Y. March 30, 1993).

^{21/} At present INS has nine SPC's capable of detaining 2,864 people, five contract facilities with space for 653 people, and contracts with county and city jails which provide an additional 1800 spaces. INS also uses a hospital with 110 beds and a federal Bureau of Prison (BOP) facility with 832 beds. GAO 1992 Rep. at 12.

2. *History of Substandard Detention Conditions in New York*^{22/}

The New York INS District has been sued several times over conditions at its facilities. In fact, of INS' three New York City facilities, two opened in the wake of litigation. Wackenhut's opening in 1989 followed a lawsuit challenging conditions at the private hotels previously used by INS to detain aliens.^{23/} Among the charges in the lawsuit were that detainees were handcuffed to other detainees and forced to share beds; were denied medical care, use of telephones and access to legal materials; were deprived of any opportunity for exercise or recreation; and were subjected to verbal and physical abuse by guards.^{24/}

Varick Street's opening in 1984 followed the settlement of a lawsuit challenging conditions at the former Brooklyn Navy Yard SPC.^{25/} Almost as soon as it opened, however, Varick Street was plagued with many of the same problems that had led to the closing of its predecessor. In March 1986, for example, 80 detainees engaged in a hunger strike to protest living conditions at the facility. In December of that year, GAO issued a highly critical report on Varick Street.^{26/} GAO noted that although Varick Street had been intended for short-term detention of less than one week, 49 percent of detainees were held more than a month and 18 percent more than six months.^{27/} Barely two years later, in April 1988, approximately 75 detainees at the facility clashed with guards over conditions virtually identical to those raised in this report.^{28/}

^{22/} This report focuses only on conditions at the Varick Street facility. However, very similar problems have been reported at INS' two other New York City facilities. For example, during the course of this investigation we received complaints about conditions at BCF, including physical and verbal abuse by guards, delays in receiving medical treatment, and placement of detainees in maximum security without due process.

Reported problems at Wackenhut include lack of outdoor exercise facilities, lack of telephone access except through collect calls, overcrowding and lack of privacy in dorm areas, lack of a law library, inadequate recreational programs and facilities, and inadequate medical care.

^{23/} Gul v. Sava, Civ. No. 88-1220 (JBW) (E.D.N.Y.).

^{24/} See Buder, "Aliens File Abuse Suit on Detention," New York Times, April 21, 1988, at B2, col. 3.

^{25/} Lam v. Smith, Civ. No. 79-0795 (EHN) (E.D.N.Y.). The lawsuit was brought by the New York Civil Liberties Union.

^{26/} GAO 1986 Rep.

^{27/} Id.

^{28/} Walt, "Captives in Freedom's Land; Long INS Detention a Hardship for Refugees," New York Newsday, January 15, 1989, at 7.

C. METHODOLOGY OF INVESTIGATION

The ACLU/NYCLU investigation began in May 1990 in response to a letter from Varick Street detainees alleging lack of legal representation and inhumane living conditions. We immediately interviewed detainees in an effort to evaluate these allegations. These interviews were followed by two letters to INS in August 1990 and May 1991 identifying problems and requesting information; a Freedom of Information Act request in May, 1991; additional detainee interviews during 1991 and 1992; and a site visit of the Varick Street facility in October 1991.

The site visit of Varick Street was conducted with the assistance of James E. Murphy, a corrections expert with more than 39 years of professional corrections experience, including work for INS.^{29/} Mr. Murphy judged Varick Street against generally accepted standards of detention articulated by the American Correctional Association (ACA), as well as standards promulgated by INS for the operation of its detention facilities.^{30/} He subsequently prepared an assessment of Varick Street which found that the facility failed in many respects to comply with "either the letter or the spirit of the standards."^{31/}

In June 1992, the ACLU provided INS with a copy of Mr. Murphy's assessment, including recommendations and requests for additional information. We also advised INS that we were preparing a report on Varick Street and invited INS to respond to the issues raised by Mr. Murphy in his initial assessment. On July 30, we received a letter from INS acknowledging receipt of the Murphy assessment but addressing none of the problems it raised nor any of our requests for additional information. INS has not communicated with us or provided any response or information since that time.

^{29/} See resume of James E. Murphy, attached as Appendix 1.

^{30/} These include "INS Standards for Detention" (hereafter cited as "INS Standards § __"), INS' "Operational Manual for Service Processing Centers" (hereafter cited as "OM at __"), and INS "Policy and Procedures Memoranda" for Varick Street. The 1981 consent decree in Lam v. Smith (hereafter cited as "Lam Decree § __") serves as an additional benchmark for conditions at INS detention centers. New York City and State correctional standards are also relevant as are various international agreements.

^{31/} "Initial Assessment of U.S. Immigration and Naturalization Service, Service Processing Center, 201 Varick Street, New York City, NY" at 4 (hereafter cited as "Murphy Rep. at __.")

III. FINDINGS

A. OVERVIEW OF VARICK STREET FACILITY

1. Physical Plant

The Varick Street Service Processing Center occupies the entire fourth floor of a 12-story building in lower Manhattan and has a "rated capacity" of 225^{32/} and an "emergency capacity" of 250.^{33/} Most detainees are housed together in large rooms referred to as "dormitories." The four male dormitories contain 46 beds each, with no partitions between the beds. The one female dormitory contains 41 beds.^{34/} Additional detainees are housed in two smaller spaces referred to as "family rooms" because they were used in the past to house families. Each "family room" holds between five and nine unrelated male detainees.

Each of the male dormitories shares a bathroom and recreational "day room" with one of the adjoining dorms. Each male dormitory also has a small area separated from the rest of the dormitory by a partial wall, which contains fixed tables and chairs. The female dormitory has its own day room and bathrooms. The facility also has an exercise room, library, medical clinic, dining room, and six segregation cells, as well as a processing area for detainees who are brought to Varick Street from other facilities for their court proceedings. Detainees are restricted to their dormitories or the adjoining day rooms unless accompanied by a guard.

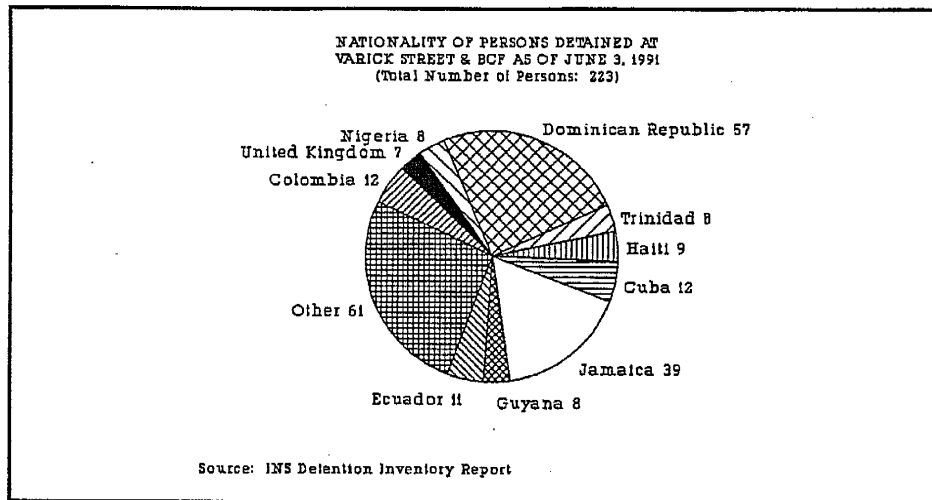
2. Varick Street Population

Detainees at Varick Street come from all over the world, the largest numbers from the Dominican Republic and other Caribbean countries. On June 3, 1991, the population of Varick Street included detainees from 36 countries, including El Salvador, Guatemala, Chile, Haiti, Afghanistan, France, Ireland, Poland, and the United Kingdom. During our investigation we spoke with detainees from more than 20 countries, including the Dominican Republic, China, Bangladesh, Ethiopia, and Haiti.

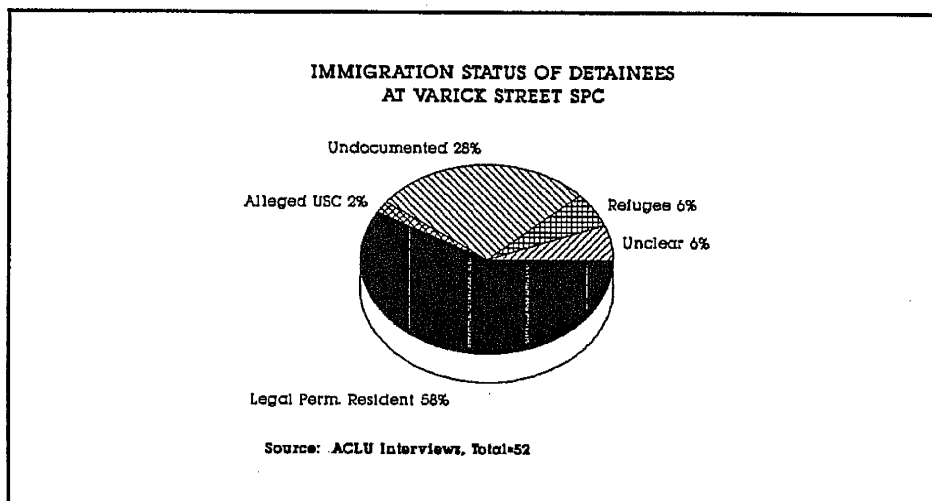
^{32/} Statement of INS during October 1991 site visit of Varick Street. But see Blackman Depo. at 14 (describing 225 as "maximum" capacity).

^{33/} Letter from William Slattery, NY INS District Director, to NYCLU/ACLU (November 16, 1990) (hereafter cited as "INS letter").

^{34/} When we commenced our investigation in April 1991, Varick Street did not have a separate female dormitory. Instead, the few female detainees were housed in the library. When we toured the facility in October 1991, a separate dormitory was designated for women and was occupied by approximately eighteen detainees.



Most Varick Street detainees have lived in the United States for many years, often as legal permanent residents (LPRs). Of the more than 50 detainees interviewed for this report, close to two thirds were lawful residents of the United States.



In fact, U.S. citizens have on occasion been mistakenly detained by INS at Varick Street. At the time of our investigation at least one detainee had already established his U.S. citizenship and two others were in the process of doing so.

Every now and then it happens that they get a United States citizen.

- *Statement of immigration judge at Varick Street, July 1991.*

One detainee spent two months at Varick Street before his mother was able to provide documentation that conclusively established his citizenship. Another detainee spent more than 14 months at Varick Street. He was finally released in August, 1992 "pending verification of citizenship." A third detainee spent more than six months at Varick Street and was ultimately deported to Jamaica despite his claim to be a U.S. citizen. Of particular concern is the difficulties these detainees faced obtaining documentation and legal assistance to prove their cases. See § III.C., *infra*.

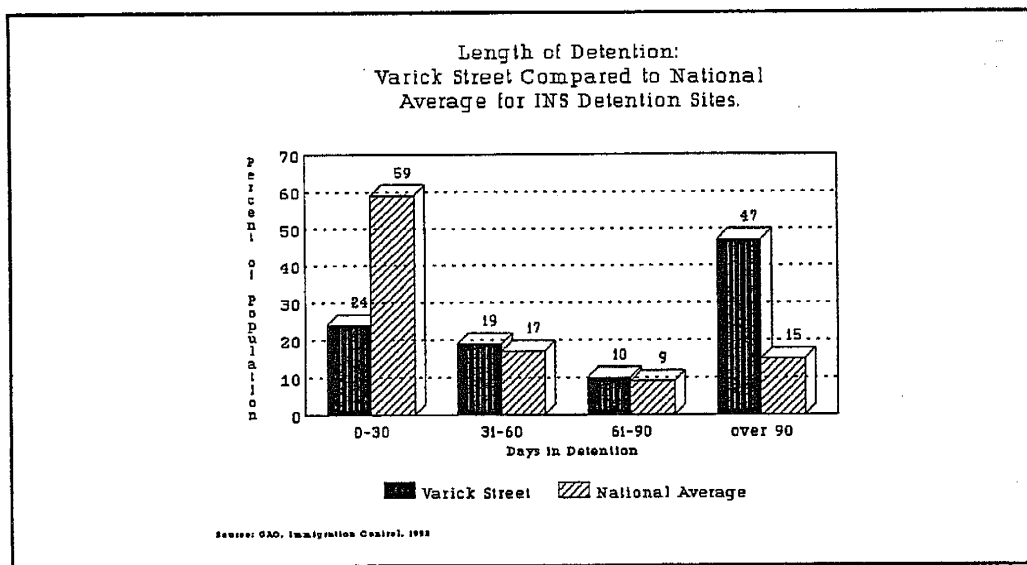
Virtually all of the detainees we spoke with had close family members who were either U.S. citizens or legal permanent residents:

- ▶ Mr. D had lived in the United States for 27 years, 25 as a legal permanent resident. Almost all of his relatives reside in the United States.
- ▶ Mr. C had lived in the United States almost ten years after fleeing from Bangladesh as a political refugee. His wife is a legal permanent resident of the United States and his three children are U.S. citizens.
- ▶ Ms. A had lived in the United States for 22 years, 17 as a legal permanent resident. Her two children are U.S. citizens.
- ▶ Ms. M had been a legal permanent resident for 18 years, immigrating from Haiti with her family at the age of seven. All of her immediate family members live in the U.S., including her nine-month old U.S. citizen daughter.

3. Length Of Detention

The length of time that detainees spend at Varick Street has increased more than twenty-fold since the facility opened in 1984. At that time it was intended to house detainees for no more than one week.^{35/} By October 1985, the average length of stay had jumped to 17 days^{36/}, and by February 1991, to 154 days.^{37/} In October 1991, INS officials reported an average six-month stay. Many of the detainees we interviewed had been detained for well over six months and several for more than two years.

As reflected in the chart below, detainees at Varick Street were detained approximately three times longer than at any other detention facility surveyed by GAO. Nationally the average detainee stay was only 54 days as compared to 154 days at Varick Street.^{38/}



^{35/} GAO 1986 Rep. at 1, 11.

^{36/} Blackman Depo. at 90.

^{37/} GAO 1992 Rep. at 26.

^{38/} Id.

The length of detention at Varick Street is due in part to prohibitively high bonds, which make it difficult for detainees to obtain release from INS custody. Also contributing to the length of detention are the high stakes involved for many detainees. Detainees with long residence in the U.S. and close family ties, as well as those who fear persecution if returned to their home country, are more likely to endure lengthy detention in the hope of winning their cases.^{39/}

- ▶ "Sending me back to the Dominican Republic is like sending me to death," one detainee told us. A legal permanent resident for more than 25 years, he is now 56 years old and suffers from serious health problems. All of his family, with the exception of distant relatives, live in the United States.
- ▶ For a refugee from Bangladesh, deportation meant the threat of persecution as well as separation from his legal permanent resident wife and three U.S. citizen children. At the time of his deportation, all were living in a homeless shelter, having become destitute without his support.
- ▶ "I don't have any family in Panama," one former U.S. Marine told us. "And I don't speak Spanish. If I was to go there with this Marine Corps tatoo I'd probably be killed."

Finally, INS delays in obtaining travel documents and enforcing the departure of detainees with final orders of deportation also contribute to the length of time Varick Street detainees spend in detention. See § II.A, *infra*.

B. STAFFING PROBLEMS

INS' general approach to staffing ignores major developments in detention operations over the past 15 years, which favor a more interactive approach to staffing, including interpersonal communications training and development of "case manager positions."^{40/} As noted in the Murphy Report, "[t]he lack of interaction between staff and detainees [at Varick] contributes to an obvious sense of distance, increased fear and tension, and the

^{39/} Those with few family ties and no fear of persecution are more likely to accept deportation at the earliest opportunity just to escape detention.

^{40/} Murphy Rep. at 28.

development of a 'we-they' attitude."^{41/} During our site visit of Varick Street, INS staff refused to let us enter housing areas occupied by the detainees -- something Mr. Murphy reports he has "never experienced in over 39 years of professional work in facilities including Alcatraz and Marion."^{42/}

Varick Street's use of untrained contract personnel has long been a subject of concern, as has the general low quality of INS' own detention officers.^{43/} The GAO's 1986 Report on Varick Street found that INS detention officers and contract guards were either "unqualified or unsuited for the job," had fostered a "highly dangerous and volatile situation," and had been cited repeatedly for "gross misconduct" including physical and sexual harassment of detainees.^{44/}

A 1986 report by the New York INS District stated that "[t]ime and again [Varick's contract guards] have displayed an inability or unwillingness to perform their duties in such a manner that will meet even minimal standards."^{45/} Problems cited include alleged participation by guards in drug trafficking and smuggling of other contraband into Varick Street, and guards reporting to work under the influence of alcohol.^{46/} The report further noted that 15 guards at Varick Street had been fired for misconduct, including physical and sexual harassment of detainees.^{47/}

Although a comparable assessment of the guard force was outside the scope of this investigation, available evidence suggests continued problems. An internal INS memorandum prepared in September 1990 in response to our investigation, acknowledged that between 20 and 30 of the facility's 70 Detention Enforcement Officers were under some

^{41/} Id. at 27.

^{42/} Id. Poor management also appears to be a continuing problem. (See text at n. 10, supra). During GAO's investigation of Varick Street in 1991, INS was unable to locate one-third of the files for the facility's approximately 150 detainees. The only other facility surveyed by GAO that came close to Varick Street in being unable to locate files was the Port Isabel facility in Texas, where heavy floods had resulted in the unavailability of about one-fourth of the facility's files. GAO 1992 Rep. at 20, Table 1.1.

^{43/} Varick Street is staffed by both employees of INS and employees of a contract guard service. At the time of our tour we were told the facility employed approximately seventy INS uniformed officer staff and twelve private guards.

^{44/} GAO 1986 Rep. at 3, 23-27.

^{45/} Cited in GAO 1986 Rep. at 26.

^{46/} Id.

^{47/} Id. at 25.

sort of investigation for either personnel, criminal, or civil rights violations.^{48/} That same month, *New York Newsday* reported that four INS guards at Varick Street were indicted for falsely promising to help detainees in return for names of undocumented immigrants against whom the guards then committed armed robbery.^{49/} A little more than one year later, in November 1991, an INS guard at Varick Street was sentenced to ten months imprisonment after pleading guilty to beating a detainee.^{50/}

A number of detainees we interviewed reported abusive treatment by Varick Street guards, ranging from verbal harassment to physical abuse. One detainee describes being repeatedly harassed by guards who exposed themselves to him while he was confined in solitary. Several attorneys reported that detainees are routinely beaten by guards if they refuse to board an airplane for their deportation.^{51/}

C. ACCESS TO LEGAL COUNSEL AND THE COURTS

The policies and practices of Varick Street impede detainees' right of access to legal representation and the courts. Such access is of special importance to detained aliens in order to protect them from unnecessary or erroneous detention. Except for those subject to mandatory detention, individuals detained by INS are eligible for release on bond. However, without access to counsel and the courts, there is a real risk that aliens will be needlessly detained because of exaggerated security concerns or prohibitively high bonds in excess of what is necessary to ensure their appearance at future hearings. Moreover, access to counsel and the courts is an essential safeguard against the erroneous detention of U.S. citizens and others who are lawfully entitled to reside in the United States. During the course of our investigation we identified a number of individuals who were unnecessarily or erroneously detained by INS.

^{48/} Memorandum of Information from Vincent J. Clausen, Detention and Deportation Officer, September 12, 1990 at 7-8 (hereafter cited as "Clausen memo at ____").

^{49/} Kempton, "It's a Land of No Escape," *New York Newsday*, September 13, 1990 at 6.

^{50/} McQueen, "Ex-INS Guard Gets Jail Term," *New York Newsday*, November 23, 1991 at 73.

^{51/} Interviews with detainees held at the Brooklyn Correctional Facility (BCF) suggest that abuse by guards is even more prevalent there. On December 1, 1991, four detainees told the ACLU they were stripped and beaten by guards. In October 1992, another detainee says he was beaten by BCF inmates at the instruction of a guard. Three other BCF guards reportedly witnessed the beating but did not intervene. On several occasions BCF detainees subject to disciplinary action allege they were deprived by guards of food and water.

- ▶ Mr. M. spent 14 months detained at Varick Street despite his repeated claim to be a U.S. citizen, born and raised in Brooklyn. Although U.S. immigration law prohibits INS from detaining an alien more than six months after a final order of deportation, Mr. M remained at Varick Street ten months after receiving his final order of deportation. Only after the intervention of counsel was Mr. M released from INS custody.
- ▶ Mr. S spent six weeks in INS custody despite the lack of any legal basis for his detention. A legal permanent resident of the United States, Mr. S was erroneously placed under deportation proceedings because of a conviction which was still on direct appeal. Only after the intervention of counsel did INS acknowledge its error and terminate his case. By this time he had been transferred (at government expense) to an INS detention facility in Oakdale, Louisiana.
- ▶ Mr. R spent ten days at Varick Street, and was fired from his job, before the INS agreed to terminate his case. A legal permanent resident (and a former Marine), he was apprehended at JFK Airport when a computer check revealed an outstanding seven-year-old bench warrant. INS brought him to criminal court where the case was immediately dismissed. But Mr. R remained in INS custody. Only when he obtained the assistance of counsel, who provided INS with a copy of the certificate of dismissal, was he released from Varick Street.
- ▶ Ms. S was detained at Varick Street although she posed neither a risk of flight nor a danger to security. A political refugee from Haiti who had filed for asylum, she was taken into INS custody although INS itself conceded that she satisfied the standard for asylum - - a "well founded fear of persecution." Only after the intervention of counsel did INS agree to parole her out of detention. By this time she had spent two months at Varick Street.

Individuals who are lawfully detained also need access to counsel and the courts to contest their deportation or exclusion from the country. As with detention, only certain classes of aliens are subject to mandatory deportation or exclusion. The remainder may be eligible for either of two forms of relief. First, they may not in fact be statutorily deportable or excludable. Second, even if deportable or excludable, Congress has given the Attorney General discretionary authority to grant especially deserving aliens permission to remain in the country. However, while INS detainees are eligible for various types of legal relief,

including release from detention, they face enormous obstacles pursuing those remedies. Chief among these obstacles is the lack of legal representation. Because immigration proceedings are deemed "civil," not "criminal," aliens have no constitutional right to appointed counsel in their detention, deportation or exclusion proceedings,^{52/} and Congress has chosen not to provide such a right statutorily. Since only a very small number of detainees can afford private counsel, and few legal services are available for the rest, INS detainees generally go unrepresented. Indeed, the GAO's recent study found that 60 percent of Varick Street detainees were unrepresented.^{53/}

Even when represented, detained aliens are less able to pursue their legal claims. Most of the relief that is available in immigration proceedings is "discretionary" and dependent on the alien demonstrating equities that are difficult to establish while in detention, such as gainful employment.^{54/} Moreover, detained aliens face obstacles in marshalling the witnesses and evidence necessary for their cases.

Finally, the mere fact of detention exerts pressure on detainees to abandon valid legal claims. This is particularly true where appealing an adverse decision would require extended time in detention and when conditions of confinement are not suited for long-term confinement.

Given the inherent obstacles INS detainees face in pursuing their legal claims, it is essential that conditions at INS detention centers facilitate detainee access to counsel and the courts. Our investigation found, however, that conditions at Varick Street add substantially to these difficulties. Among the problems we identified were an inaccurate and incomplete legal services list, a telephone policy that permits only outgoing collect-calls and no incoming calls, lack of confidentiality in attorney/client visiting, an inadequate law library, lack of information available to detainees about their legal cases, and pressure on detainees to abandon their legal rights and agree to deportation.

^{52/} See INS v. Lopez-Mendoza, 468 U.S. 1032 (1984).

^{53/} GAO 1992 Rep. at 47. Although the lack of appointed counsel affects all aliens facing deportation or exclusion, it has particularly harsh consequences for aliens in detention because, unable to work, they are less able to afford private counsel. In addition, of the few organizations that provide free or low cost legal services to aliens, even fewer represent those in detention. See § III.C.1, infra, discussing legal services list.

^{54/} This is particularly true for aliens with criminal convictions, who are eligible for relief from deportation only upon a showing of rehabilitation. Matter of Edwards, BIA Int. Dec. #3134 (BIA 1990). Detained aliens who are unable to work, to provide for their families, and to contribute in other ways to the community, are disadvantaged in making this showing.

1. Legal Services List

By regulation, INS must provide detainees with a list of free legal services that are available to assist them with their cases.^{55/} As already noted, this list is particularly important since immigration detainees are not entitled to representation at government expense and are usually unable to afford private counsel. The legal services list provided by INS to Varick Street detainees, however, is incomplete, inaccurate, and virtually useless. Of 12 organizations on the current list, only one offers any significant representation to Varick Street detainees, and it is unable to accept collect telephone calls, the only telephone calls Varick Street detainees are permitted to make.^{56/} See § III.C.2, *infra*. In addition, some of the few organizations that do provide representation to Varick Street detainees are not included on the list. One organization which specifically requested that its name be added to the list was not added until eight months later.

Although INS is supposed to maintain a "current" list,^{57/} the list, prepared in November 1989, was not revised until June 1991 and that list was not revised again until February 1993. Moreover, the superseded June 1991 list was still being distributed to Varick Street detainees as of June 1993.

On several occasions, the ACLU conducted phone surveys of the listed organizations. These surveys revealed incorrect or disconnected telephone numbers, as well as a lack of awareness on the part of some organizations that they were even included on the list.^{58/} Organizations reported receiving frequent phone calls from Varick Street detainees whom they were unable to help. They described referring detainees to other agencies on the list, only to have the detainees call back saying those organizations could not help either.^{59/}

^{55/} 8 C.F.R. § 292a (1992).

^{56/} Two organizations on the list provide no representation at all in deportation or exclusion hearings; another is a union that provides representation only to its members and has over the past three years represented at most three detainees. The one organization that does provide significant representation to Varick Street detainees has only two accredited representatives -- a priest and his legal assistant. Faced with an overwhelming caseload, they are rarely able to pursue appeals beyond the administrative level. Consequently, Varick Street detainees are usually faced with the option of proceeding *pro se* or withdrawing their appeals and agreeing to deportation.

^{57/} 8 C.F.R. § 292a(1992).

^{58/} These problems are not unique to the New York INS District's legal services list. Similar inaccuracies in legal services lists were noted by the GAO in its recent detention report. Of seven legal services lists reviewed for that report, "four included either nonexistent organizations or incorrect phone numbers." In addition, one list contained several organizations that had stopped representing aliens two years before. GAO noted that similar problems had been identified in an earlier report. GAO 1992 Rep. at 48-49.

^{59/} In fact, many of the organizations surveyed asked the ACLU for referral suggestions.

2. Telephones

Varick Street's telephone policy also impedes detainee access to counsel. Detainees can make collect-calls only and no incoming calls are accepted. Moreover, privacy is impossible and the phone system disconnects callers automatically after approximately ten to fifteen minutes. In addition, detainees housed in "family rooms" and solitary cells face special problems obtaining access to phones.^{60/}

Collect-Calls Only -- No Incoming Calls. Many detainees complain that the collect-call-only policy interferes with their ability to contact attorneys. Most private attorneys will not accept collect calls, at least not until they have been retained. Nor will the pro bono organizations on the legal services list that INS distributes to detainees. Only one organization on the current legal services list distributed by INS accepts collect calls.^{61/}

Of the detainees we interviewed who were able to obtain representation, almost all had friends or relatives on the outside who could initiate those contacts. Detainees who were lacking such outside networks had significant difficulty obtaining legal advice. This was especially true for detainees who spoke limited English.

Even when representation is obtained, continued contact and communication between detainees and their representatives is made difficult both by the collect-call-only policy and by INS' refusal to allow detainees to receive incoming calls.

- ▶ One detainee learned of the postponement of his bail reduction hearing only when he spoke to his mother. To find out the status of his case, he relied on a friend who had a phone with a three-way line. He would call his friend collect and his friend would call his attorney and conference him in.

The collect-call-only limitation also adds to the difficulties detainees face in collecting evidence and testimony needed for their cases.

- ▶ One detainee was berated by an immigration judge for failing to contact his U.S.

^{60/} The number of telephones generally does not appear inadequate, with six telephones for each double dorm of 92 male detainees, and four phones for the women's dorm. However, this assumes that most phones are operable. During our investigation we received reports of broken phones. At the time of our site visit, several telephones in the women's dormitory were in fact broken. See Murphy Rep. at 22.

^{61/} A receptionist for one of the other organizations on the list told the ACLU that their switchboard receives an average of 30 collect calls weekly from Varick Street detainees, calls which the organization is unable to accept.

citizen wife to bring in naturalization papers. The detainee's wife was living in a homeless shelter and it was virtually impossible for the detainee to call her collect from Varick Street.

- ▶ Another detainee lost his job because he was unable to telephone his employer and explain why he had not shown up for work. The business did not accept collect calls.

The automated phone system used by Varick Street makes communication even more difficult. Collect calls are placed without an operator, with the detainee's voice on tape. In order to accept a call, the recipient must have a push button phone and press the appropriate button. Consequently, offices with automated answering systems cannot be reached, since the phone call is disconnected before the call is ever transferred to an operator. In addition, recipients of collect calls who do not speak English are often unable to follow the pre-recorded instructions. According to one attorney, the system is so unfamiliar that even close friends and family of detainees are often reluctant to accept collect calls.

During the course of our investigation detainees repeatedly asked us for help in contacting counsel, friends, relatives and government offices.

- ▶ One detainee was unable to call the federal court of appeals for instructions on filing a pro se appeal and motion for stay of deportation.
- ▶ Another detainee was unable to call the New York City Department of Health for information on how to obtain a copy of his U.S. birth certificate.
- ▶ One female detainee asked for our help obtaining phone numbers of organizations that might assist with a child custody issue. Because of the collect-call-only limitation, she was unable to dial directory assistance.

Varick Street's failure to provide for any non-collect calls is at odds with widely accepted detention standards which "emphasize the special importance of telephone access for pretrial detainees,"^{62/} and INS' own standards which state that "pay telephones (coin-operated and charge call) ... shall be available."^{63/} In fact, "many detention facilities have installed free 'local calls only' telephones to facilitate detainee contact with counsel."^{64/} This approach would address INS concerns that coin-operated telephones are not feasible because of detainee vandalism.^{65/}

Absence of Privacy. Telephones at Varick Street lack any privacy panels and conversations are easily overheard by other detainees and guards. On a number of occasions detainees were hesitant to speak with us over the phone.

Ms. M called the ACLU on June 30, 1992, to report that she had been verbally and sexually harassed at Varick Street. At the time of her call, Ms. M was being held in a segregation cell, after asking to be moved for her own protection. The ACLU interviewer pressed Ms. M for more information but she was reluctant to provide details. We later learned that a guard was standing nearby and she feared her conversation was being overheard.

Notably, in its own internal report on Varick Street prepared in September 1990, the INS Central Office instructed the New York INS District to "obtain sufficient [privacy] panels"^{66/} To date, panels have not been installed.

Access to Phones. Access to phones is a special problem for detainees housed in the "family rooms" and segregation cells, since the only phone available to these detainees is

^{62/} Murphy Rep. at 23. See also Orantes-Hernandez v. Thornburgh, 919 F.2d 549, 566 (9th Cir. 1990) (upholding district court injunction requiring access to telephones, and noting difficulty of reaching counsel on collect call telephones).

^{63/} OM at 50. See also INS Standards § 1607; Detention Officers Handbook at 12-4.

^{64/} Murphy Rep. at 22. INS standards also support the need for local non-collect calls.

^{65/} According to INS, the telephone company removed pay phones from Varick Street for this reason.

^{66/} Clausen memo at 7. In Orantes-Hernandez v. Meese, 685 F. Supp. 1488, 1513 (C.D. Cal. 1988), *aff'd*, 919 F.2d 549 (9th Cir. 1990), the Court ordered INS to install privacy panels for detainees. INS standards also require a "reasonable amount of privacy." INS Standards § 1607.

located in the segregation area and cannot be used if the shower is occupied or only one officer is on duty. This appears to violate both ACA and INS standards. ACA standards require that "detainees in administrative segregation or protective custody have access to telephones."^{67/} INS standards require "reasonable and equitable access" to telephones for all detainees.^{68/}

3. Attorney/Client Visiting

Lack of Privacy. The lack of privacy for attorney/client visits is another serious problem. Attorney visits take place in the same room as social visits, with private security guards present at all times. When we commenced our investigation in the spring of 1990, no separate area was provided for private attorney/client communication. Subsequent to our August 1990 letter, INS installed temporary dividers to create two attorney/client visiting cubicles. While these cubicles are an improvement, they assure only very limited privacy. The dividers are only five feet high and one side of the visiting cubicle is completely open. During the interviews conducted for this report, guards, detainees, and other visitors were always within earshot. In a number of instances detainees spoke in low tones or wrote down information so as not to be overheard.

The failure to ensure sufficient privacy for attorney/client visits violates established detention standards, including those set by the INS.^{69/} During our October 1991 site visit, INS stated that plans were underway to build more permanent fixtures to insure attorney/client confidentiality. To date, there has been no improvement.

Limitations on Access. Because there is no system for incoming calls, or for providing phone messages to detainees, attorneys must travel to the facility whenever they need to speak with their clients. In addition, the detention center is unreliable about locating detainees when attorneys do appear for visits.^{70/} Some attorneys report waiting hours for their clients. Others report being told that their clients are not at the detention center,

^{67/} Murphy Rep. at 22.

^{68/} INS Standards § 1607.

^{69/} Murphy Rep. at 20 (failure to assure attorney/client confidentiality "of significant concern"). See also Wolff v. McDonnell, 418 U.S. 539 (1974) (recognizing confidentiality of attorney-client mail in prison context); INS Standards § 1609. OM at 45 ("no officer should be present in the ... interviewing room during an attorney-client interview").

^{70/} Also, because detainees cannot be advised in advance of their attorney visits, they are often unprepared for these visits. Several detainees commented on this during our interviews. One detainee said he would have brought his legal papers had he known we were coming.

when in fact they are. In some instances, detainees have been transferred to other locations, such as the Brooklyn Correctional Facility (BCF) or even Oakdale, Louisiana, without notification to their attorneys.

4. *Inadequate Law Library*

The legal collection is an atrocity. If you were trying to defend your case with these books, the judge would probably decline the case quoted because of the law being revised.

-- *Varick Street detainee*

Varick Street's legal library is "wholly inadequate" under widely accepted standards.^{71/} To be adequate, a law library must be complete and up-to-date, with missing volumes replaced.^{72/} Varick Street's library is deficient in each regard. Barely two shelves are devoted to legal materials, most of these outdated.^{73/}

An adequate law library is essential to guarantee detainees their constitutional right of access to the courts.^{74/} This is especially true for immigration detainees who have no right to appointed counsel and are thus largely unrepresented. Moreover, INS' own standards specifically require law libraries.^{75/}

More than half of the detainees interviewed during the course of our investigation specifically complained about the lack of legal material. These complaints were substantiated during our October 1991 site visit. The legal materials available at that time consisted of a copy of the 1989 immigration statute, copies of the 1980 and 1990 Code of Federal Regulations, an incomplete set of an immigration treatise (which appeared last updated in 1983) and pre-1980 administrative decisions of the Board of Immigration Appeals. Since a major revision of the immigration laws took place in November, 1990, most of the materials in the Varick Street law library were obsolete.^{76/} INS told us that

^{71/} Murphy Rep. at 23-24.

^{72/} Wolfish v. Levi, 439 F.Supp. 114, 131 (S.D.N.Y. 1977), aff'd in part and rev'd in part, 573 F.2d 118 (2d Cir. 1978), rev'd on other grounds sub nom. Bell v. Wolfish, 441 U.S. 520 (1979).

^{73/} The facility's library consists of one room, approximately 15 by 25 feet, with a small selection of books, several tables and chairs, a typewriter and a small copy machine. The typewriter and copying machine are frequently broken. See § III.C.5 *infra*.

^{74/} See Bounds v. Smith, 430 U.S. 817 (1977).

^{75/} See, e.g., OM at 55; Lam decree § XIII.

^{76/} In addition, preparation of an adequate legal argument in an immigration case generally requires access to federal court decisions, which the library does not contain.

materials were "on order." However, recent reports from detainees indicate no improvement.^{77/}

...There are in this center only six volumes of INS Administrative Decisions, from the 20s to 1966. ...Without current immigration books, I am helpless to defend myself. I am indigent and cannot afford a good attorney.

This nation makes a mighty effort to give justice to everyone... Would you, sir, be kind enough to find and send me immigration books or publications to help me fight to stay in this country and not be separated from my family.

- excerpt from detainee letter to ACLU,
May 28, 1993

Access to the library is also a problem. When we began our investigation, the library was completely unavailable to most detainees since it was being used as a dormitory for female detainees. Subsequently, this problem appears to have been corrected.^{78/} However, we continued to receive complaints of insufficient access to the library, particularly from female detainees and those housed in the "family rooms." During our July 1992 interviews, detainees told us they were forced to choose between daily recreation and access to the library, a clear violation of accepted detention standards, including those set by INS.

An additional factor contributing to access problems is the housing of the leisure library in the same space with the legal materials. Reportedly, INS has itself recommended that the two libraries be separated.^{79/} To date, however, no action has been taken.

^{77/} On several occasions INS blamed the lack of legal materials in the library on detainee vandalism. See, e.g., INS letter at 3; Clausen memo at 7 ("The current population" non-conducive to library services. ... Vandalism is an ever present reality. ..."). These assertions are not persuasive since law libraries are an established and required part of even high security prisons. In addition, Varick Street detainees are only permitted to use the library when supervised by a detention officer and may not take legal materials back to their rooms.

^{78/} Following our letter of August 1990, female detainees were moved into a dormitory that was previously used for male detainees. See INS letter.

^{79/} Clausen memo at 7.

5. Access to Copying Machines and Writing Materials

Varick Street detainees face problems obtaining writing material and copies of legal documents. This hampers their ability to prepare legal briefs for the court and to send copies of case-related material to attorneys. Although the library contains a copying machine, detainees report that it is frequently broken and that they must "beg" the guards to do them a favor by copying documents. One detainee reports trying for a week to get some prison release papers copied. Another detainee says he was placed in segregation following an incident in which he asked a guard to have some legal materials copied.^{80/}

At the time of our interview in May 1991, Mr. A had been at Varick Street for almost a year. He had been pursuing various legal remedies pro se and had recently been instructed to provide ten copies of his brief to the court. According to Mr. A, he explained to an INS officer that he needed copies of his brief and she agreed to look into the matter.

Several days later, Mr. A says, he spoke to another officer, showed him his legal papers, and asked for access to a photocopier. According to Mr. A, the officer told him he was crazy and in full view of other inmates, pushed him and told him to wait at his bed. He was subsequently placed in solitary, where he was denied access to his legal papers.

As recently as June 1993, detainees reported that the copying machine had been broken for several months. One detainee told the ACLU that he wrote out by hand two copies of the letter he sent us in order to maintain a record.

Detainees also describe difficulties obtaining writing materials such as paper and envelopes. One detainee referred to "begging" the guards for paper. Others asked ACLU interviewers for paper. INS provides one typewriter for Varick Street detainees, but detainees report that it is frequently broken. During our October 1991 site visit the detention center's one typewriter was missing from the library. We were told that it had

^{80/} Access to a photocopying machine is required by the Lam decree § XIII. See also, OM at 56 (INS must at government expense comply with reasonable requests for duplication of legal research materials.) Detainees report that even when the copying machine is functioning, copies cost 15 cents a page and it is often difficult to get the needed change.

been broken the previous day.^{81/}

6. *Lack of Case Information and Assistance*

The mental strain on detainees is immense because we often do not know what is happening with our cases. We try to obtain information from guards but they tell us very little. We sit and wait, sit and wait. That is the most difficult part of being detained.

-- Varick Street detainee, a legal permanent resident for 27 years and father of two U.S. citizen children

One of the main complaints of Varick Street detainees is that they have no information about their cases. Although each detainee is assigned a "deportation officer" (DPO), these DPOs are often inaccessible or unresponsive, if not openly hostile.

Most detainees report little contact with their DPOs. Some are not even clear how to contact their DPO. "You can ask an officer to call [a DPO], but they never come." Attorneys describe similar problems contacting their clients' DPOs. One attorney estimates that of 50-60 phone calls to DPOs, she has received only one response.

The unresponsiveness of DPO's is particularly troubling given the special obstacles faced by unrepresented detainees in preparing their cases. On several occasions detainees have spent unnecessary time in detention as a direct result of a DPO's inaction.

- ▶ Mr. S, a legal permanent resident, was shipped from Varick Street to INS' facility in Oakdale, Louisiana. Several days before the transfer, Mr. S's wife had brought the DPO proof that her husband's conviction was on direct appeal and therefore not a basis for his deportation or detention. This information was not acted on by INS until Mr. S obtained counsel.
- ▶ Mr. R repeatedly sought assistance from his DPO after the bench warrant which was the basis for his detention was dismissed. Phone calls that his fiancée made to the DPO were never returned.
- ▶ Mr. M sought assistance from his DPO to notarize a letter that was necessary to obtain school records to substantiate his claim to U.S. citizenship. First, he says, he

^{81/} Notably, INS "Policy and Procedure Memoranda for Varick Street" require that detainees using the library be provided with paper and writing implements and that detainees be allowed two copies of any brief or application they prepare to the Court. SPC-VK-17, revised Feb., 1991. The Orantes order requires access to typewriters as well as to pens, pencils, and paper. Orantes, 685 F. Supp. at 1513.

was ignored. Then he was told that the Immigration Court at Varick Street no longer provides a notary.

According to Mr. M, he had been detained at Varick Street for more than a year, and ordered deported after failing to provide the immigration judge with sufficient documentation of his U.S. citizenship. Over the past year, his mother had reportedly provided such documentation to the INS but with no success.

The ACLU interviewer suggested that Mr. M send us copies of these documents so that we could follow up on his case. In addition, we agreed to write a letter to INS on his behalf. The following is a brief summary of what transpired thereafter:

- | | |
|---------------------|---|
| June 15 | ACLU sends letter to INS requesting information on status of Mr. M's case. |
| June 15,
June 22 | Mr. M twice requests to see his DPO to get copies of documents in his file; DPO reportedly ignores him. |
| June 16 | Mr. M's sister learns she needs a notarized letter from Mr. M authorizing the release of his school records to her. |
| June 23 | DPO gives Mr. M copies of his immigration court decisions but will not give him copies of other documents in his file; says he needs to ask Director. Mr. M requests help from DPO to notarize letter authorizing release of school files to his sister. DPO tells him no one at Varick Street is notary. |
| June 29 | Mr. M and his sister try repeatedly to call the organization that represented Mr. M before the Immigration Court, but their calls are not returned; Mr. M still unable to find notary. |
| July 7, 9 | Mr. M writes letters to Deputy Assistant District Director Leroy Fredericks and Supervisory Detention Officer Cyril Lopez, requesting assistance notarizing his letters; receives no response. |

July 13	DPO tells Mr. M that his file is being reviewed and therefore no information can be given to him on his case.
July 23	Mr. M succeeds in finding attorney to notarize his letter. Learns he needs another notarized letter to authorize release of his birth certificate.
August 5	ACLU sends follow up letter to INS requesting information on status of Mr. M's case and release to him of documents in his file.
August 7	INS notifies ACLU that Mr. M has been released from Varick Street pending verification of his citizenship.

7. Pressure to "Sign Out"

People don't have money for bail or an attorney, so they have no choice but to accept whatever's offered to them. People are waiving their rights....

-- Varick Street detainee, a legal permanent resident for 26 years, during which time he never returned to his native country; agreed to be deported after being advised that he was unlikely to win relief

Many detainees speak of the pressure to "sign out," i.e., to waive their legal rights and simply agree to deportation. Influencing this decision are prohibitively high bonds, which virtually ensure that detainees will remain in detention while their cases are pending, and the perception that as long as they remain in detention they will be unable to win their cases. This belief is fueled by a lack of information about their cases, as well as reported statements by INS personnel and even Immigration Judges that "If you can't make bail, you should sign out." In several instances detainees report being pressured by guards, and even DPOs, into signing deportation papers.

... As a Deportation Proceeding Officer he is here to help me to the best of his ability. However, the few visits he had with me to notify me of my deportation proceedings, he has been very abusive towards me. He mentally and morally mistreats me. ... On July 22nd of the present [year] was the last time I saw him. At this time he threatened me that the Immigration is going to press new charges against me where I would be sentenced to ten years imprisonment. He also said that the reason for saying this is because ... I am refusing to sign my deportation paper.

- *Excerpt of letter from female detainee. At time of letter she had been detained at Varick Street for more than one year.*

Finally, processing delays for detainees also adds to the pressure to abandon legal rights. We observed one bond hearing in which a detainee was forced to wait an additional three weeks for another hearing simply because the guards had failed to bring him to the Immigration Court, located one floor below the detention center, in time for his scheduled hearing.

D. LIVING CONDITIONS

The INS guards call Varick "human storage."

-- *Varick Street detainee*

Living conditions at Varick Street fall substantially short of recognized detention standards. Intended for short term processing, the facility is not equipped to handle the long-term detention that has now become the norm. This is evidenced most clearly by the lack of any fresh air or sunlight and the absence of recreational and program activities. Poor sanitation, arbitrary and punitive use of segregation, inadequate medical care, insufficient and poor quality food, abusive treatment by guards, and the lack of functioning grievance mechanisms, further add to the facility's unsuitability for long-term detention. Detainees who have served time for criminal offenses uniformly report that conditions at Varick Street are significantly worse than in the city or state prisons where their sentences were served.

1. Overcrowding

The Varick Street facility is designed to handle overflow on a temporary basis only.

The facility has a "maximum" (or "emergency") capacity of 250. However, the housing of any more than 225 detainees requires conversion of program space by adding relocatable bunks.^{82/}

At the time we began our investigation, the facility was clearly above capacity.^{83/} As a result, female detainees were housed in the library. They described long waits to use the bathroom, limited opportunity to shower, and lack of access to an exercise room.

Ms. C was interviewed by the ACLU on July 11, 1990. At the time of her interview she had been detained at Varick Street more than one month and was awaiting her hearing. She described being housed with several other female detainees in the library area, which was reportedly unventilated. The room had three beds, no television, no radio, and no other furnishings. Often she had to wait an hour to use a bathroom. She had the choice of showering at 3:00 am or foregoing showers completely.

Subsequent to our August 1990 letter, the population appears to have decreased.^{84/} When GAO conducted its survey in February 1991, Varick Street showed a population of only 153. At the time of our October 1991 site visit, the population was still below capacity, at only 186. Without additional statistics, however, it is impossible to assess the degree to which overcrowding remains a problem. The detainee population clearly fluctuates and in April 1992, the ACLU received reports that detainees were once again being housed under "emergency" conditions.

INS maintains that it has never exceeded the "maximum" capacity of 250.^{85/} However, since a detainee population of more than 225 requires use of program space as emergency housing, the facility may be overcrowded even when the population is below its 250 maximum. Under prevailing standards of detention, conversion of program space for housing is permissible on a limited basis only.^{86/} For this reason we requested that INS

^{82/} See INS letter. Double bunking is not possible due to the kind of beds that are used.

^{83/} The population on August 10, 1990 was 234, and had reportedly fluctuated between 225 and 250 throughout the preceding year. See INS letter; Varick Population Record, August 10, 1990.

^{84/} On November 16, 1990, the INS reported that female detainees were no longer being housed in the library.

^{85/} INS letter; Clausen memo at 6.

^{86/} Murphy Rep. at 5, 6.

provide us with data indicating average and peak populations of the facility during each month in 1991.^{87/} INS has failed to produce any data.

INS has also refused to provide us with dimensions for all of the detainee living quarters. During our site visit INS stated that the facility is in compliance with ACA and DOJ standards governing space per detainee.^{88/} However, we were not allowed to enter or measure the "family rooms."^{89/} These rooms, which house between five and nine detainees each, were visibly crowded, with detainees' clothes and personal belongings piled on the floor.^{90/} The lack of space in the "family rooms" is particularly troubling since, unlike detainees in the dormitories, detainees in these rooms do not have access to "day rooms."^{91/}

"We're classified like animals," Mr. M told us, referring to Varick Street's policy of housing certain detainees in the "family rooms," separate from the general population. Mr. M said that he shared his small room with eight other detainees. The room has no windows and no fresh air. Smoking is allowed. The fans do not work.

Being in such a small space makes the men "buggy." In addition, the room is cleaned while detainees are still inside. This makes it impossible to do an adequate job, he said.

2. Sanitation and Hygiene

Many detainees complained about unsanitary conditions at Varick Street. They said that bathrooms are dirty and poorly maintained, that mice are rampant, and that the facility

^{87/} *Id.* at 7.

^{88/} See also Clausen memo at 6; Blackman depo. at 14-17, 33.

^{89/} We were permitted to enter a male dormitory, and this appeared to comply with space standards governing adult detention facilities. Murphy Rep. at 5. However, stricter space standards may apply to detainees held for longer periods of time. *Id.*

^{90/} Murphy Rep. at 7. INS' failure to provide lockers to detainees in these rooms violates both ACA and agency standards. See Murphy Rep. at 7; *Lam* Decree § VII ¶ 2 ("Secure Storage of Property").

^{91/} Detainees in these rooms also reported being denied access to the library, the exercise room, and telephones. See §§ III.C.2, III.C.4, *supra*, and § III.D.4, *infra*.

as a whole is unsanitary.^{92/}

Complaints such as these are difficult to assess without frequent visits to the facility or access to detention center records. However, an internal memorandum prepared by INS shortly after our August 1990 letter recognized "the need for expanded maintenance services." It also stated that the facility had not been painted by GSA since April 1984, "add[ing] to the depressing atmosphere."^{93/}

Shortly thereafter, toilet and shower fixtures were reportedly replaced. The two bathrooms we observed during our site visit contained the requisite number of showerheads, sinks, and toilets for the size of the detainee population. However, several bathroom fixtures were being repaired even as we visited. In addition, we had no opportunity to observe the bathroom facilities for detainees in the "family rooms."

We asked INS to provide us with repair logs for the bathrooms as well as data on what bathroom facilities are available to detainees in the "family rooms" (number of showerheads, toilets, sinks and degree of access).^{94/} We also asked that INS provide us with records of pest control measures and copies of health inspections for the facility.^{95/} Such periodic inspections are required under ACA and the Lam Decree.^{96/} INS has failed to produce these documents.

3. *Lack of Fresh Air and Sunlight*

Detainees at Varick Street are deprived of all contact with the outdoors.^{97/} The facility makes no provision for outdoor exercise. Moreover, "[b]ecause the windows are sealed and frosted, ... detainees are likely to spend their entire period at Varick Street without any fresh air or sunlight."^{98/}

^{92/} In addition, detainees complained of frequent breakdowns in bathroom fixtures, extended periods without hot water, and lack of basic supplies such as toilet paper. A female detainee complained of "mildew everywhere". She said that she had contracted fungi from the showers and that many detainees had athletes' foot.

^{93/} Clausen memo at 6. At the time of our site visit one year later, the facility appeared recently painted and generally clean. Murphy Rep. at 4, 14.

^{94/} Murphy Rep. at 14.

^{95/} Id. at 15.

^{96/} Murphy Rep. at 15, citing ACA Standards; Lam Decree § IX. ¶¶ 3,8.

^{97/} The only exceptions are detainees who require specialty medical services that cannot be provided at Varick Street, or who lack travel documents and must be transported to a consular office for this purpose.

^{98/} Murphy Rep. at 18. The segregation cells and "family rooms" do not even have windows onto the outside.

Lack of Outdoor Exercise. The lack of outdoor exercise has been a longstanding source of tension at the facility. When the facility opened in 1984, detainees were taken to Rikers Island several times a week for outdoor exercise, weather permitting. Even so, a 1986 GAO report on Varick Street cited the lack of permanent outdoor recreational facilities as a source of tension and noted that "many detainees have gone for extended periods of time without any outdoor exercise."

The GAO report also stated that plans were underway to build an outdoor exercise area on the roof of the building housing Varick Street, to be completed by November 1987.^{99/} These plans were subsequently discontinued, and in April 1988 approximately 75 detainees were involved in a disturbance that was attributed largely to frustration over the lack of outdoor exercise.^{100/}

Three years later ACLU interviewers found similar frustrations. More than half of the detainees interviewed for this report specifically mentioned not having been outside the building since their detention began, for some as long as three years. The effect on detainee morale was evident.

The importance of outdoor exercise for the physical and mental well being of detainees is widely recognized.^{101/} Notably, both New York City and New York State correctional standards require outdoor exercise,^{102/} and the only other federal facility located in New York City, the Metropolitan Correctional Center, provides for regular outdoor exercise.

Varick Street is clearly deficient in this regard.^{103/} Since most detainees average several month stays at the facility, this deprivation has serious implications for detainees' physical and mental health.^{104/}

^{99/} GAO 1986 Rep. at 23.

^{100/} Walt, "Captives in Freedom's Land: Long INS Detention a Hardship for Refugees," New York Newsday, January 15, 1989, at 7.

^{101/} See Murphy Rep. at 17-18, citing ACA.

^{102/} Minimum Standards for New York City Correctional Facilities §§ 1-07(a), (b), & (c) (1992); 7 NYCRR 304.3. New York State Minimum Provisions for Health and Morale require one hour of daily outdoor exercise unless "unfeasible," in which case "outdoor exercise shall be provided at least once every other day," and the Deputy Commissioner for Correctional Facilities notified. State of N.Y. Dept. of Correctional Services Directive #4009, May 25, 1988, at ¶ F.2.

^{103/} Murphy Rep. at 18; See also United Nations Standard Minimum Rules for the Treatment of Prisoners, General Rule 21 (hereafter cited as "U.N. Minimum Standards, General Rule 21").

^{104/} Murphy Rep. at 18.

Poor Ventilation, Temperature Problems. The closed ventilation system is another source of detainee complaints. Many detainees note the lack of fresh air. Others maintain that because of air conditioning the facility is cold 24 hours a day; they report covering vents with plastic or pieces of paper to stop drafts and keep the rooms warmer.

Such complaints are impossible to assess without regular visits to the facility and additional data. At the time of our site visit, the temperature appeared comfortable, although a number of vents were noticeably stuffed with paper. We requested that INS provide us with information about the ventilation system.^{105/} INS has failed to provide this information.

4. Inadequate Exercise, Recreation and Activities

There are no educational, social, recreational or counseling services or programs. This dehumanizing process is taking a very heavy emotional toll. The actions and behavior of many men here indicate that they are in need of psychological counseling.

*-- Letter from Varick Street detainees to ACLU,
May 1990*

The problems caused by the lack of outdoor exercise are exacerbated by the minimal indoor activities available to detainees. Varick Street's recreational, exercise, and program activities consist of television, ping pong, cards and dominoes; a weight room (to which detainees reportedly have access for 45 minutes each day); and a small leisure library. No educational programs are offered to detainees nor any significant work opportunities.

The lack of recreational and educational facilities creates "excruciating boredom" for Varick Street detainees, as described by the New York City Bar Association in a 1985 report.^{106/} This was confirmed in our interviews, where the most commonly mentioned activity was "sleep," and the chief complaint, "nothing to do." Moreover, during our site visit of the facility "most of the detainees we observed were lying or sitting on their beds. Many were sleeping."^{107/} Although each dormitory has a small area with built-in tables and chairs for card-playing or board games, "at the time of our visit many of the chairs were broken, making it impossible for two people to share a table. We observed only a few

^{105/} *Id.* at 15.

^{106/} GAO 1986 Rep. at 23.

^{107/} Murphy Rep. at 16.

detainees in this area."^{108/}

Equipment and furnishings were almost totally lacking in the day rooms as well, which are adjacent to the dormitories and intended for recreational activities. ACA standards require that day rooms be a minimum of 35 square feet per inmate and be available to all inmates for reading, writing or table games. "While dimensions of the day room appeared to comply with contemporary space standards for such a facility, lack of furnishings or equipment makes them virtually useless. The ping pong tables were broken. Several televisions were hanging from the ceiling but we observed few chairs and few detainees using the room."^{109/}

Exercise Room Inadequate. The only exercise available to detainees is a "gymnasium" which contains universal gym equipment, exercise mats, and other equipment suitable for large muscle exercise. The room includes no stationary bicycle or running machine, although both are required under the Lam Decree.^{110/} Detainees reportedly have access to this room for 45 minutes each day. However, because a relatively small number (usually 15) are permitted to exercise at any one time, it appears that not all detainees are able to visit the gym every day.^{111/}

The lack of any equipment other than weightlifting machines means, however, that a visit "may not be worth it," as several detainees told us.^{112/} We observed one detainee running around the perimeter of the room, another using the weight machines, and another lifting weights.

Lack of Significant Program Activities. The lack of adequate recreation and exercise opportunities is of particular concern given the absence of any other significant program activities. Educational programs are nonexistent and work opportunities extremely limited. The books we observed in the leisure library were outdated and of limited interest. Moreover, there were no magazines or newspapers. We also found no foreign language

^{108/} Id.

^{109/} Murphy Rep. at 6, 16.

^{110/} Lam Decree § VIII.

^{111/} Murphy Rep. at 17.

^{112/} The Murphy Report suggests that the poor quality of the gym "may explain lack of detainee interest." Murphy Rep. at 17. In order to assess detainees' access to and use of the exercise room we requested that INS provide us with logs or records of its use during 1991. INS has failed to produce these records.

materials of any type.

ACA standards require "a range of programs and services, including a diversified recreational program, . . . access to educational programs, vocational counseling and, when available, vocational training."^{113/} Leisure library materials are supposed to be up-to-date, varied, and "responsive to the interests and educational needs of users."^{114/} Where the detainee population includes non-English readers, "materials should be available in other languages as well."^{115/} INS' own standards require current and informational reading material^{116/} and refer to "indispensable recreational activities" such as free movies, special entertainment, and competitive sports.^{117/} Judged by these standards, Varick Street is clearly deficient.^{118/}

In addition, as noted in the Murphy Report, the failure to provide activities for detainees "leads to a level of tension within the facility that was readily apparent [during our visit]."^{119/} For this reason alone, the Report concluded that "development of more program activities for detainees would be in INS' interest."^{120/}

GAO reached a similar conclusion six years ago when it linked the lack of recreational opportunities at Varick Street to increased tension in the facility. According to GAO's 1986 report, INS itself recognized that "a comprehensive indoor and outdoor recreation program might result in fewer altercations and incidents."^{121/}

5. Arbitrary and Punitive Use of Segregation

Lack of Clearly Defined Classification System. Under accepted detention standards a detainee classification system should be in writing, apply equally to all detainees, and provide objective criteria for classification. In addition, an opportunity must be provided

^{113/} Murphy Rep. at 18-19.

^{114/} *Id.* at 24, citing ACA.

^{115/} *Id.*

^{116/} INS Standards §§ 2001-2005.

^{117/} OM Appendix "Standard Operations Procedures for Recreation Services at Service Processing Centers."

^{118/} Murphy Rep. at 18-19. *See also* NYC Minimum Standards § 1-07 (1992); 7 NYCRR 304.10, 304.11; U.N. Minimum Standards, General Rule 21.

^{119/} Murphy Rep. at 19.

^{120/} *Id.*

^{121/} GAO 1986 Rep. at 23.

to challenge classification decisions.^{122/} The absence of a written and acknowledged classification system at Varick Street "is at odds with accepted classification policy and ... lends itself to arbitrary enforcement and abuse -- for example, use of administrative segregation for disciplinary purposes."^{123/}

Varick Street detainees are subject to segregation from the rest of the detention center population with virtually no explanation or recourse. The facility's two "family rooms" are used to house "Cubans and other problem detainees."^{124/} In addition, six solitary cells -- also referred to as "maximum," "the box" or "the hole" -- are used for both disciplinary and administrative segregation.^{125/} Detainees spend varying lengths of time in maximum; some have reportedly been held in segregation cells for months.

The criteria for placing a detainee in one of these rooms are not clear, nor is the procedure for challenging such a placement. Although INS standards do not require notice and a hearing for administrative segregation, both are required for disciplinary segregation.^{126/} However, since detainees are rarely told whether their segregation is for administrative or disciplinary purposes, it is virtually impossible to determine whether appropriate procedures are being followed.

Many detainees who spoke to the ACLU did not know why they had been placed in segregation, for what length of time they would remain there, or how they could contest the placement. Many claimed that segregation was in retaliation for asserting their rights.

- ▶ Mr. M, a refugee from Ethiopia, says he was in the process of preparing a complaint on an officer when he was in turn "written up" and placed in solitary.
- ▶ Mr. H, a diabetic, claims he was put in "the box" after asking a guard for his special breakfast, which was more than two hours late.

^{122/} Murphy Rep. at 11, citing ACA §§ 2-5352, 5353.

^{123/} Murphy Rep. at 11. See also *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1511 (C.D. Cal. 1988) (enjoining INS placement of detainees in solitary confinement for disciplinary purposes "under the guise of administrative segregation"), *aff'd*, 919 F.2d 549 (9th Cir. 1990).

^{124/} Statement of INS during October 1991 site visit of Varick Street. INS maintained that the Cuban detainees prefer to be housed in the "family rooms." Others housed in the family rooms were variously described as "detainees who need to be separated," "thieves," or "obnoxious."

^{125/} Detainees are also transferred to the Brooklyn Correctional Facility (BCF) for administrative reasons.

^{126/} "Disciplinary Procedures at Service Processing Centers" (included in OM at 28.1-28.6) (hereafter cited as "Disciplinary Procedures § ___, OM at ___").

- ▶ Ms. S, a Haitian detainee being held in segregation pending psychiatric evaluation, claims she was threatened with continued isolation unless she agreed to hand over certain personal documents.
- ▶ Other detainees were reportedly placed in segregation for refusing to board an airplane to be deported, for verbal altercations with guards, or for attempting to organize other detainees.

During our site visit to Varick Street, we questioned the INS about how decisions were made to place detainees in "family rooms" or "administrative segregation," whether these decisions were part of a system of detainee "classification," and whether detainees could challenge their classification. INS maintained that no system of detainee classification exists but admitted that detainees are segregated for a variety of reasons based on administrative discretion, and that these decisions are not subject to appeal.^{127/}

In fact, INS' own standards require that detainees subject to administrative segregation who request a hearing must be given the same kind of hearing provided for detainees subject to disciplinary segregation.^{128/} None of the detainees we interviewed, however, were aware of this right. On several occasions ACLU interviewers advised detainees being held in solitary to submit written requests for hearings. The detainees were immediately released from solitary following these requests, with no reasons or hearings ever provided.

^{127/} According to INS, administrative segregation is based on the need to protect detainees from the general population and/or vice versa, and to ensure security of the facility.

^{128/} Disciplinary Procedures § IV.A, OM at 28.5-6.

Mr. A was placed in "the hole" on May 26, 1991, following an incident with a guard whom he asked for help making copies of his legal papers.

The following day two officers reportedly brought him a paper which said that he had tried to cause a riot. Mr. A. says he was told to sign the paper without having an opportunity to read it fully. He refused and the paper was taken away by the guards.

On May 30, four days after Mr. A had initially been placed in solitary, the ACLU interviewer advised him to write a letter to the INS asking whether he was being held in administrative segregation or in some kind of pre-hearing disciplinary detention, and requesting a copy of the charges against him and information regarding when he would get a hearing.

Mr. A wrote the letter and gave it to INS on midnight the same day. The following morning at 10:00 am he was released from solitary.

Inferior Living Conditions for Segregated Detainees. The denial of equivalent living conditions and privileges is one indication that what is described as "administrative" segregation may in fact be punitive. ACA standards, as well as INS standards, require that detainees subject to administrative segregation be provided living conditions that approximate those of the general inmate population.^{129/} At Varick Street, however, "family room" detainees report they are denied the same access to the library, exercise room, and telephone as provided to detainees in the general population. Detainees housed in solitary cells for administrative reasons raise similar concerns. In addition, these cells are described as "dirty," "damp," "lonely," "roach-infested" and "odorous" (due to proximity to the toilet). Some detainees report being deprived of even basic necessities such as clothing, blankets, water, showers, soap, and toilet paper; denied access to legal papers and other reading materials; and in some cases forced to sleep on the floor.

- Mr. M says he was held for two days in a freezing cell with no clothes, blankets or

^{129/} Murphy Rep. at 12, citing ACA § 2-5115. Under INS' procedures, detainees placed in "family rooms" or in segregation cells for administrative reasons are entitled to the same privileges as the general population, e.g., visiting, mail, newspapers, telephones, library, television, and exercise. Disciplinary Procedures § IV, OM at 28.5-6.

drinking water, in an effort to get him to sign a piece of paper (apparently some kind of admission of guilt).

- Mr. H claims he became ill when deprived of his special diet for two days. He says he was given only one bedsheet and no soap, toilet paper or toothpaste.

We asked INS to provide us with clarification of its classification procedures, statistics on the number of detainees placed in administrative and disciplinary segregation during 1991, data on the periods of time spent by each detainee in administrative or disciplinary segregation, as well as the reasons for each detainee's segregation. INS has failed to produce this information.

Disciplinary Segregation Without Due Process. Even when INS concedes that segregation is for "disciplinary" purposes, detainees often do not receive adequate hearings. For example, following a disturbance at Varick Street in December 1991, at least seven detainees were placed in disciplinary segregation. Five of these detainees told the ACLU in subsequent interviews that they never received hearings. Although INS disputes this allegation, documents provided to the ACLU indicate that, at a minimum, INS violated its own procedures.

On December 27, 1991, detainees staged a hunger strike to protest what they described as "rotten fish." An "incident" ensued in which several detainees and guards were injured. At least seven detainees were subsequently placed in solitary.

ACLU interviewers met with two of these detainees on December 31, and three others on January 9. All of them said they had received no hearing. They also said they had been denied showers and other toilet items, and that access to telephones had been restricted. Some detainees were being housed two to a single cell, with detainees forced to sleep on the floor.

On January 15, 1992, the ACLU wrote to INS requesting information about why the detainees were being held in segregation and the conditions of their confinement. On February 7, INS responded that all of the detainees had been placed in disciplinary segregation and all had received hearings. INS denied the charges relating to conditions.

Subsequently, INS provided the ACLU with copies of "Notice of Hearing," "Notice of Findings of Disciplinary Panel," and "Commitment Form for Maximum Security" for each of the five detainees. These documents indicate the following irregularities:

- ♦ The "Notice of Hearing" -- supposedly presented to each of the detainees on December 30, 1991 at 2:00 pm -- lists the scheduled hearing date as January 2, 1992. However, according to the "Notice of Findings," the hearings were not held on January 2, but rather on December 30 at 4:00 pm, only two hours after notice was allegedly served. This appears to violate the Disciplinary Procedures which require that detainees receive advance notice of charges 24 hours before a disciplinary hearing.^{130/}

^{130/} Disciplinary Procedures § III C.I., OM at 28.2.

- ♦ All of the documents list the exact same date and time for the hearings and show as well that the hearings were conducted before the same officers. This suggests that hearings for the five detainees took place simultaneously or at most a few minutes apart. Either the documents are inaccurate, or the hearings were pro forma at best.
- ♦ Finally, the documents indicate that the officer who brought the charges against each detainee was the same officer who delivered notice of the charges and issued the recommendations at the hearing. This violates the Disciplinary Procedures, which require that disciplinary hearings must be conducted in front of two officers, neither of whom can be the charging officer.^{131/}

6. Food Service

The food service at Varick Street has been a frequent source of tension.^{132/}

More than half of the detainees we interviewed specifically criticized the food, describing it as "tasteless," "awful," "looks sickening," "pre-dried, reheatable," and "soppy wet," and as sometimes making detainees ill. One detainee said that at times the food looks and smells so bad it is inedible.

Most detainee complaints are linked to the fact that all meals are prepared off premises. Although Varick Street has food preparation equipment, none of this equipment is utilized. Meals are prepared off-site, delivered to the facility in styrofoam containers, and reheated by microwave and served to detainees in these same containers. While this has obvious advantages in terms of sanitation, it makes freshness impossible. Moreover, the reliance on styrofoam instead of plates is "highly unusual and extremely unappetizing."^{133/} As noted in the Murphy Report, "this type of food presentation is generally limited to

^{131/} Disciplinary Procedures § III C.3, OM at 28.3. See also INS Standards § 1512.

^{132/} Over the years a number of food actions have been staged by Varick Street detainees to protest the poor quality of the food. In December 1991, detainees staged a hunger strike after being served what a number of them described as "rotten fish."

^{133/} Murphy Rep. at 20. The food delivery system is also costly. We were told that INS currently pays the caterer \$4.20 for each lunch.

dangerous detainees confined to 'special housing.'"^{134/}

Complaints about the quality of the food are more difficult to assess. INS informed us that meals are based on a 35-day menu approved by a dietician. This menu was posted in the food-preparation area during our site visit and appeared to satisfy dietary requirements. The lunch served the day of our visit, however, was different from that listed on the menu. INS assured us that when certain food items are not available, substitutions are made from the same food group. However, without a log of such substitutions, it is impossible to determine if INS actually serves the planned meals and to evaluate whether detainees receive a varied and balanced diet. We requested that INS provide us with this information. INS has failed to do so.^{135/}

Finally, detainee complaints of insufficient food are also difficult to assess. INS assured us that meals provide a caloric intake consistent with the level of detainee activity. However, many detainees claim that the lack of sufficient food makes it difficult to exercise, and several attorneys note that weight loss is common among Varick Street detainees. Notably, detainees may go 15 hours between meals, since dinner is scheduled at 5:00 pm and breakfast not until 8:00 am the following morning. This violates ACA standards which require that no two meals are scheduled more than 14 hours apart.^{136/}

7. Lack of Commissary

Detainee discontent with the food is exacerbated by the absence of a commissary. Other than the scheduled meals, the only food available to detainees is from vending machines, which frequently are broken and in any event offer only a very limited selection of candy and snacks. Several machines were out of order at the time of our visit. In addition, visitors are prohibited from bringing detainees anything but the most basic snacks.

The importance of inmate commissaries is well established. As noted in the Murphy Report, "a commissary can reduce the level of tension and frustration in a facility.... It can also ameliorate detainee dissatisfaction with the food."^{137/} At Varick Street, the lack of a commissary is a particular problem given the length of time between meals.

^{134/} Murphy Rep. at 20.

^{135/} An assessment of detainee complaints of food-related sickness would also require additional information. We requested that INS provide us with health department inspection reports of the kitchen where food is prepared, and sick call charts for the last year. INS has failed to produce these documents.

^{136/} Murphy Rep. at 21, citing ACA § 2-5237. See also INS Standards § 1006.

^{137/} Murphy Rep. at 26.

8. Medical Care

Detainees routinely complain about lengthy delays in receiving medical treatment and a general lack of attention to their medical concerns. These complaints are difficult to evaluate without a systematic review of detainee medical records. During our site visit we were able to observe the medical unit and to speak with medical personnel. However, we were not permitted to speak with detainees to obtain consent to review their medical charts.^{138/}

Reportedly medical care is provided 24 hours a day -- 16 hours by Public Health Service (PHS) staff and eight hours by contract nursing staff. The PHS staff includes a doctor, pharmacist, a physician's assistant and three nurses who alternate days. Contract nurses work evening shifts.^{139/} At the time of our site visit, the physician's assistant position had been vacant for a year and the PHS doctor referred several times to "understaffing." It has since been filled.

Detainees are reportedly seen by a nurse for medical intake screening on the day of their arrival and a full health assessment by the doctor is supposed to take place within 14 days thereafter. Sick call is every day from 9:30 am to 12 noon and 1:30 to 2:30 pm, but detainees must make a written request the evening before. Detainees at sick call are seen by a nurse and referred to the doctor only if additional attention is required. Detainees are referred to local hospitals for diagnostic tests and other conditions that require special treatment. Five infirmary beds are available for inpatient use by male detainees. Because of space limitations, no infirmary beds are available for female detainees.

Delay in X-Rays and Dental Care. Until recently, the lack of on-site x-ray and dental equipment led to lengthy delays in receiving treatment since patients were by necessity referred out for such procedures. When we commenced our investigation, the facility had no x-ray or dental equipment. Subsequent to our letter, INS informed us that the medical area had been renovated and that the facility now provided "an on-site state of the art medical center, complete with dental care and x-ray capabilities."^{140/} However, when we visited the facility one year later, the x-ray equipment was still not operating. We were told

^{138/} Murphy Rep. at 13 ("Because we had no opportunity to speak with patients or review medical records, detainee complaints about the quality of treatment received and delay in receiving treatment cannot be evaluated"). However, Mr. Murphy was generally impressed with the medical unit and the rank of staff assigned there. *Id.* at 4, 12.

^{139/} A medical records technician is also employed.

^{140/} INS Letter.

that the electricity was being altered to allow for installation of the equipment. No explanation was provided for the delay.^{141/}

Interviews with detainees indicate that even after the Varick Street clinic was renovated to provide dental care, detainees continued to experience lengthy delays in obtaining such care.

- ▶ One detainee reports having his teeth extracted but not receiving any dentures.
- ▶ Another detainee says she made repeated requests to see a dentist for an abscess. When she finally showed up for her appointment, it had been canceled.^{142/}

Medical Needs Not Taken Seriously. Detainees also report delays in seeing the doctor or in receiving any specialized medical treatment. They report that medical staff are skeptical when they claim to be seriously ill, and treat their complaints with over-the-counter medication such as Tylenol and cough syrup.

- ▶ One detainee says he repeatedly complained of severe stomach pains before he was finally given a urine test which revealed a serious kidney condition.
- ▶ Another detainee went 18 months without eyeglasses while waiting for INS to fill his prescription.
- ▶ Other detainees were waiting for operations that reportedly had been prescribed many months before. Detainees claim that INS deliberately delays providing operations or other medical treatment in the hope that the detainee will be deported first.^{143/}

Tuberculosis Risk. Like other detention and correctional facilities, Varick Street

^{141/} In our report to INS in June, 1992, we requested information on the status of the x-ray equipment. Murphy Rep. at 30-31. INS has failed to provide any information and we have been unable to confirm from interviews whether x-rays are now being provided on-site.

^{142/} During our site visit of the facility, the dental equipment did appear to be functioning. We were told that a dentist visits the facility two afternoons a week.

^{143/} Two detainees waiting for operations claim they were told that since they would be deported soon, the medical center did not have to address their problems. This is especially troubling given the processing delays at Varick Street. See § III.A.3, supra.

lends itself to the spread of contagious diseases such as tuberculosis (TB). This is especially true given the close quarters and the closed ventilation system and the absence of fresh air. As noted in the Murphy Report, the recent upsurge in tuberculosis in New York correctional facilities underscores the importance of effective medical screening and the ability to separate potential carriers.^{144/} We asked INS to provide us with information on its current TB protocol but no information has been provided.

9. Limitations on Social Visiting

Varick Street's visiting policy also contributes to low detainee morale. Weekday visiting hours are limited to two hours daily (1:00 - 3:00 pm) and only adult visiting is permitted during this time. Visits by children and other special visits are permitted on weekends. However, INS permits only 60 detainees per weekend to have visitors.^{145/}

Many detainees complain that the visiting hours are too short. Visits are usually no more than 20-25 minutes per visitor and on occasion have been limited to only 15 minutes. In addition, the weekend visiting system lends itself to abuse, or at least the perception of abuse. Although INS claims that "weekend visitation is equitably distributed,"^{146/} many of the detainees we spoke with did not understand why they had been denied weekend visiting privileges. One had reportedly applied unsuccessfully five weekends in a row. Others state that some detainees receive visiting privileges sooner than others.^{147/}

As noted in the Murphy Report, "the limitations on social visits are quite severe, especially given the length of time detainees spend at the facility and the lack of other activities. By contrast, visitation at the U.S. Penitentiary at Lewisburg, Pennsylvania -- a high security facility for convicted felons -- is offered seven hours daily, seven days per week."^{148/}

^{144/} Murphy Rep. at 14.

^{145/} INS letter. Detainees must submit a written request on the Thursday before the intended visit. On Friday the INS notifies those detainees who may receive weekend visitors.

^{146/} INS letter.

^{147/} Relatives of detainees also complain that since weekend hours are rarely granted and weekday hours are in the afternoon, visits are usually only possible if they take time off from work.

^{148/} Murphy Rep. at 19.

10. Mail

Detainees report delays in both sending and receiving mail. Because there is no detainee mailbox for sending outgoing mail, detainees often rely on visitors to mail their letters. In addition, the lack of a commissary for purchasing postage stamps means that detainees must rely on friends or family members for postage, although according to INS, "legal" mail may be sent out at no cost to the detainee.^{149/}

11. Lack of Effective Grievance Mechanisms

Varick Street lacks effective and well-publicized grievance procedures. Although the INS Operations Manual prescribes an elaborate set of procedures for resolving detainee grievances,^{150/} detainees are provided minimal, if any, information about these procedures.

For example, the grievance procedure is supposed to be set forth in the detainee orientation pamphlet.^{151/} Yet the pamphlet provided to Varick Street detainees fails to describe the most basic steps a detainee must take to press a grievance.^{152/} It makes no mention that a grievance must be put in writing, that a Supervisory Detention Officer is available to assist detainees in preparing written grievances, that a special grievance committee must be convened within two working days of a written grievance, and that this committee must issue a written decision setting forth the reasons for its decision.^{153/} Nor are copies of the grievance procedures posted in the day rooms, although this is also required under the INS Policy and Procedures Memoranda.^{154/}

^{149/} ACA standards require two free letters weekly for indigent detainees. BOP policy provides five free letters weekly for all detainees. Murphy Rep. at 26-27.

^{150/} OM at 27-28.

^{151/} *Id.* at 28. See also, "Detainee Grievance Procedures," SPC-VK-11, Memo of Jo Ann Whitaker-Beckles, DADD for Deportation and Detention, May 1, 1984 (requiring explanation of grievance procedure upon admission).

^{152/} Prepared in September 1983, the orientation pamphlet describes the grievance procedures as follows:

A detainee may submit a grievance to any detention officer. If a resolution is not arrived at within 24 hours, or, if the grievance is denied, he may appeal the matter to the supervisory detention and deportation officer.

"Admission and Orientation Information Pamphlet," Service Processing Center, September 24, 1983, at 8.

^{153/} OM at 27.

^{154/} "Detainee Grievance Procedures," SPC-VK-11, Memo of Jo Ann Whitaker-Beckles DADD for Deportation and Detention, May 1, 1984.

In addition, there is the general perception among detainees that it is futile to complain, or that such complaints will lead to retaliation. Many detainees told us they were afraid of being seen as "troublemakers," since this might lead to their transfer out of the facility. Apparently "problem" detainees are "shipped out" to the Oakdale facility in Louisiana, to the Brooklyn Correctional Facility (BCF) or to other locations.^{155/} In fact, many detainees expressed hesitancy about talking to ACLU interviewers for this very reason.^{156/} Notably, the original letter of complaint from Varick Street was signed by only one detainee, with an explanation that other detainees were withholding their signatures "for fear of reprisals."

In the absence of functioning grievance procedures, detainees have resorted to other means to resolve grievances. For example, detainees have staged hunger strikes to protest a broken television, the lack of a 24-hour commissary, lack of attention to medical needs, and inadequate food.

12. Processing Delays

Even the ones who sign the deportation order and waive their right to contest it in court ... are held for months after signing out.

-- Letter from Varick Street detainee

Adding to the level of frustration at Varick Street is the fact that detainees often remain incarcerated at the facility for months after their final order of deportation or exclusion. Many detainees who agree to "sign out" of Varick Street to avoid extended detention are still at the facility months later.

Under the immigration statute, INS may not detain an alien more than six months after a final order of deportation, regardless of whether it has been able to obtain travel documents.^{157/} Detention of less than 6 months may also be unlawful if INS is "not proceeding with ... reasonable dispatch."^{158/} However, unless the detainee brings a habeas

^{155/} INS statement during site visit; Blackman depo at 72-73.

^{156/} In January 1992, three detainees were transferred to BCF following speaking with ACLU interviewers.

^{157/} In such situations, INS is required to release the detainee under an order of supervision. 8 U.S.C. §§ 1252(c) and (d).

^{158/} 8 U.S.C. § 1252(c).

corpus action in federal court, he or she is unlikely to be released.^{159/} During the course of our investigation we identified at least three detainees who had been held more than six months beyond their deportation orders. One of these, an alleged U.S. citizen, was not released by INS until ten months after his final order of deportation. Moreover, his release occurred only after the ACLU called attention to his case. Another detainee, a Chinese national, remained at Varick Street close to two years after her final order of deportation although she had waived an appeal in order to avoid lengthy detention.

Ms. Y arrived at Varick Street in March 1991. Unable to make her bond, Ms. Y waived her right to appeal her deportation order. She told the ACLU interviewer she could not bear the thought of remaining in detention if she had chosen to appeal. In addition, she wanted to return to China since one of her parents was very ill. More than two years later, Ms. Y was still at Varick Street.

Excludable aliens are in a particularly difficult situation. Since current law provides no time limit on their detention following an order of exclusion, they can theoretically be detained indefinitely. One detainee, a refugee from Ethiopia, was held at Varick Street close to three years. In the summer of 1991, he decided to waive any further appeals of his case since he did not want to remain in detention any longer. "I'll go anywhere," he told an ACLU interviewer. "I just don't want to be in jail anymore." Twenty months later he was still at Varick Street.^{160/}

^{159/} A recent district court decision held that even three months further detention of alien ex-offenders after final orders of deportation had been issued caused by unexplained administrative delays in forwarding travel documents is "unconscionable," emphasizing the injustice of a *de facto* increase in length of sentence and the cost of incarceration to taxpayers. *Nwankwo v. Reno*, Civ. No. 93-959, slip op. at 6 (E.D.N.Y. March 30, 1993).

^{160/} INS finally released this detainee under an "Order of Supervision" in March 1993.

Mr. M arrived at Varick Street in the summer of 1990, after serving three and one-half months of a five month sentence. A refugee from Ethiopia, he was placed in exclusion proceedings. As an excludable alien, he was not eligible for release from Varick Street on bond.

In February 1991, the immigration judge ordered Mr. M excluded, denying his application for political asylum. Afraid to return to Ethiopia, Mr. M decided to appeal the exclusion order and asylum denial. Three months later, his appeal was denied.

By this time, Mr. M had spent almost a year at Varick Street, during which time he had no contact with the outdoors, no access to educational or program activities, and his health was deteriorating. The facility had failed to provide him with a knee operation or to fill his new eyeglass prescription, both recommended one year before. In addition, he was suffering from bouts of depression.

Because he could not stand the idea of further detention, Mr. M decided to waive further appeal of his case. In February 1993, however, he was still detained. By this time, he had spent close to three years at Varick Street, more than ten times the length of his criminal sentence.

13. Special Concerns Of Women Detainees

Female detainees at Varick Street face special hardships because Varick Street is predominately male. For example, the facility has no infirmary for female detainees, and female detainees are the last to be seen for sick call. Female detainees also report being denied access to the library, the exercise room, and even the vending machines.^{161/} In addition, female detainees are denied even the minimal work opportunities available to the men (such as work in the kitchen or laundry).

I have nothing to read, nothing to do. Therefore, I write my own words so that I can read them later.

- excerpt from journal of female detainee

^{161/} One detainee told us that the vending machines in the women's dormitory are frequently broken and that by the time female detainees receive access to the men's vending machines, those machines are often empty.

Furthermore, restrictive visiting and telephone policies may be particularly harsh on female detainees with children. One detainee claims she was denied visits with her nine-month old daughter four weekends in a row.

One female detainee emphasized the lack of privacy at Varick Street, describing the room she inhabited with many other women as "a human warehouse." Even showers cannot be taken in private as there are no curtains and other women must cross through the showers to get to the toilets.

IV. CONCLUSIONS AND RECOMMENDATIONS

Conditions at Varick Street are seriously deficient. The lack of a law library, obstacles to attorney-client communication, placement of detainees in solitary confinement without due process, and the lack of functioning grievance mechanisms, are a few of the most striking problems identified in our investigation. In addition, the lack of program activities and the absence of contact with the outdoors create debilitating living conditions that violate basic standards of detention.

These conditions are particularly serious given the length of time detainees are incarcerated at Varick Street. Originally intended for only short-term stays of less than one week, the facility now holds detainees for an average of five to six months, three times the national average reported by GAO. These conditions contribute to the high level of tension at Varick Street and the decision of many detainees to abandon valid legal claims.

In addition, much of the detention at Varick Street is unnecessary. Prohibitively high bonds and overly restrictive parole determinations result in the detention of many who are unlikely to abscond and would pose no danger to the community were they released.^{162/} Given the obstacles detained aliens face in obtaining counsel and pursuing their legal claims, such detention decisions have very serious consequences. Ultimately, Congress and the INS must address the problem of the lack of legal representation for detained aliens.^{163/} In addition, alternatives to detention should be explored that would ensure detainees'

^{162/} See, e.g., case examples at § III.A.3, *supra*. In addition, processing delays result in detainees spending months, even years, in detention, waiting for INS to enforce their departures.

^{163/} Whereas in criminal proceedings, these same individuals are entitled to appointed counsel at government expense, in immigration proceedings where they stand to lose "all that makes life worth living," *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922), no counsel is provided.

appearance at hearings without prejudicing their ability to pursue their legal claims.^{164/} Until such time, however, INS must insure that conditions at its detention facilities meet basic standards. The following recommendations should be implemented immediately:

A. ACCESS TO LEGAL COUNSEL AND THE COURTS

1. *Legal Services List*

- ▶ INS must maintain an accurate and updated list of free or low-cost legal services that are available to Varick Street detainees. This list should identify clearly which organizations provide assistance to detained aliens and any limitations on the kind of assistance they provide. The list should be regularly updated, at a minimum every six months. The list should be distributed to all detainees upon their arrival at Varick Street and should be posted in dormitories and day rooms.

2. *Telephones*

- ▶ Detainees must be allowed to make non-collect local telephone calls. This is essential to ensure detainee access to counsel and to other outside organizations, friends, and family.
- ▶ INS must install privacy panels to ensure confidentiality of detainee phone calls.
- ▶ INS should implement a message system so that detainees can receive messages from attorneys, friends, and family. Such a system has been implemented successfully at other INS detention facilities such as El Centro.
- ▶ Detainees in the "family rooms" and segregation cells must have regular access to telephones.

^{164/} These include lower bonds as well as other forms of supervised release similar to those employed in the federal and state criminal justice systems, such as personal recognizance programs with reporting requirements. Such release programs would provide a substantial cost saving to the INS while enabling detainees to pursue the legal relief for which they are statutorily eligible.

3. *Attorney/Client Visits*

- ▶ INS must provide private attorney/client visitation areas.
- ▶ INS must assure attorneys prompt access to their clients. Attorneys must be permitted to call Varick Street in advance of their visits to notify both the detainee and the facility of their arrival.

4. *Law Library*

- ▶ The law library must at a minimum contain a current copy of the Immigration and Nationality Act (8 U.S.C.) and Code of Federal Regulations (8 C.F.R.), a complete set of Board of Immigration Appeals decisions, and copies of the major immigration treatises and paralegal manuals. (See Appendix 2.)
- ▶ Given the large number of detainees who are unrepresented, a paralegal should be employed to assist detainees with their cases and to ensure that the legal materials are regularly updated.^{165/}
- ▶ Given the large number of non-English speaking and illiterate detainees, the library must contain materials in both Spanish and English as well as any self-help videos available. The library should be equipped with a VCR to permit viewing of such materials.
- ▶ Detainees must be assured daily access to both the law library and exercise facilities, and may not be forced to choose between the two.
- ▶ The legal and leisure libraries should be separated to facilitate access.^{166/}

5. *Copying Machines and Writing Materials*

- ▶ The copying machine must be adequately maintained. Detainees should be permitted reasonable free copying of any legal documents.

^{165/} Paralegals are a common feature at Bureau of Prison facilities and are especially important for illiterate and non-English speaking detainees. Murphy Rep. at 24.

^{166/} Since, in INS' view, detainee use of the law library requires supervision (to prevent vandalism), separation of the libraries will lessen demand and make supervision easier. Murphy Rep. at 25. This is consistent with INS' own recommendation in its September 1990 report. See Clausen memo at 3.

- ▶ Detainees must have access to writing materials, including typewriters.

6. *Case Information and Assistance*

- ▶ Deportation officers (DPOs) must be readily accessible to provide detainees with information regarding the status of their cases, e.g. dates of scheduled hearings before the immigration court, INS delays in obtaining travel documents to execute departure, etc.^{167/}
- ▶ INS must assist detainees in notarizing documents and obtaining legal forms (e.g., notices of appeal, petitions for review).

B. LIVING CONDITIONS

1. *Housing/Overcrowding*

- ▶ The population of Varick Street should not exceed 225 except on a very limited, emergency basis. This will eliminate the need to use program space for housing.
- ▶ The "family rooms" must meet accepted space requirements for detainee housing. INS must either reduce the number of detainees housed in these rooms or stop using them altogether.
- ▶ Detainees in the "family rooms" must be given lockers and time outside the room.

2. *Sanitation and Hygiene*

- ▶ Bathroom facilities must be adequately maintained and cleaned.
- ▶ Detainees in "family rooms" and segregation cells must be assured access to showers.
- ▶ Varick Street must be subject to regular health inspections by federal, state, and/or local health authorities.

^{167/} However, DPOs should not provide legal advice or discourage detainees from applying for relief. See Orantes, 685 F. Supp. at 1511.

3. *Lack of Fresh Air and Sunlight*

- ▶ INS must provide outdoor exercise for all detainees held at Varick Street more than two weeks, either on-site or at some other location to which detainees can be transported. Such exercise must be provided a minimum of three times per week.

4. *Exercise, Recreation and Activities*

- ▶ The equipment in the exercise room must be adequately maintained. New equipment should be purchased that provides more diversity, such as an exercise bicycle and running machine, as required by the Lam Decree.
- ▶ Detainees must be assured at least one hour of access to the exercise room each day.
- ▶ INS must repair equipment and furniture in the day rooms. Ping pong tables should be operable; sufficient chairs should be provided to allow detainees to use the room; tables and chairs in the "quiet area" of the dormitory should be fixed.
- ▶ INS must expand recreational and program activities by offering educational programs, more substantial work opportunities, and an upgraded leisure library.

5. *Segregation*

- ▶ Varick Street must have a written and clearly defined classification system that provides detainees with the right to appeal their classification. Detainees in "family rooms" or administrative segregation must be informed of the reason for their placement and how it can be challenged.
- ▶ Any detainee placed in segregation, whether for administrative or disciplinary purposes, must be provided with a 24-hour notice of the reason for the placement and a hearing.
- ▶ INS must include in its Detainee Orientation Pamphlet information about the procedures governing administrative and disciplinary segregation. This information must also be posted in all dormitories, day-rooms, and

segregation cells.

- ▶ Detainees in "family rooms" and administrative segregation must be provided the same access to detention center amenities as detainees in the dormitories, e.g., the library, recreation, visiting, and television.
- ▶ Detainees in administrative segregation must not be deprived of basic necessities such as clothing, drinking water, toilet paper, showers, and bedding.

6. *Food*

- ▶ INS must provide a food service consistent with long-term detention. Food should either be prepared on-site or brought to Varick Street in bulk, reheated, and served to detainees on plates and trays.
- ▶ INS should maintain records of meals served to ensure compliance with dietary requirements.

7. *Commissary*

- ▶ INS, or an outside group, must provide a detainee commissary that sells stamps, food, and other basic items.

8. *Mail*

- ▶ INS must provide postage to detainees, or allow reasonable free mail. INS must ensure that detainees' outgoing mail is promptly dispatched and that incoming mail is promptly distributed.

9. *Medical Care*

- ▶ Detainees must receive prompt medical attention, consistent with recognized standards of care; care should not be delayed for reasons unrelated to health.

10. *Social Visiting*

- ▶ Visiting hours should be expanded.
- ▶ Visiting by children should be permitted on weekdays.

- ▶ Weekend visiting should not be limited to 60 detainees.
- ▶ Each visit should not be limited to less than 30 minutes.
- ▶ Weekday visiting should include some evening hours.

11. Grievance Mechanisms

- ▶ INS should revise the Orientation Pamphlet to provide more detailed explanation of the detainee grievance procedure. This should include instructions on how to file a written grievance and appeal.
- ▶ INS must comply with its own rules requiring the posting of grievance procedures in detainee dormitories.

12. Processing Delays

- ▶ INS should improve its efficiency in obtaining travel documents for detainees with final orders of deportation or exclusion.
- ▶ INS must insure that detainees are not held more than six months after a final order of deportation. Where deportation cannot be enforced, INS must release the detainee under an order of supervision.
- ▶ Excludable aliens subject to a final order of exclusion must be released from detention on "parole" if after a reasonable period INS is unable to enforce the order.

13. Special Issues Facing Female Detainees

- ▶ Female detainees must have the same access as male detainees to the library, exercise facilities, telephones, medical care, work opportunities and other privileges at Varick Street.

C. ADDITIONAL DATA REQUESTED

Certain conditions at Varick Street cannot be assessed in the absence of additional information. These include the extent of overcrowding, poor sanitation, temperature problems, abuse of administrative segregation, poor quality food, and inadequate medical

care. More than one year ago, we asked that INS provide us with additional data to enable us to evaluate these concerns. To date, INS has failed to provide any of this information. Among the data requested were the following:^{168/}

- ▶ Dimensions of "family rooms" and segregation cells.
- ▶ Average and peak populations for the Varick Street facility as a whole, and for the "family rooms" in particular, during each month in 1991.
- ▶ Copies of all health inspections of Varick Street over the last three years, contracts and billing information for vermin and rodent control, and records of bathroom repairs.
- ▶ Data on the ventilation system, its air exchange capacity, and repair records.
- ▶ The number of detainees placed in administrative and disciplinary segregation during 1991 and for what periods of time.
- ▶ Health Department inspections of food preparation areas, and sick-call charts for the last six months of 1991.
- ▶ Copies of medical screening forms used at Varick Street and description of current TB protocol.

^{168/} A complete list of the data requested is attached to the Murphy Report at 31-32.

APPENDIX I

Résumé

James E. Murphy
310-206-5300

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CAREER SUMMARY

Over 30 years of broad operational and administrative experience in detention and corrections, including over 20 years with the Federal Bureau of Prison System in progressively responsible positions from correctional officer in 1952 to the youngest warden of a major federal institution in 1968.

Major assignments during tenure with the Bureau included:

- ▶ Warden, Federal Correctional institution, Ashland, KY;
- ▶ Associate Warden at the maximum security U.S. Penitentiary at Marion, Illinois;
- ▶ Assisted with the closing of Alcatraz;
- ▶ Bureau of Prisons Representative to 1984 Olympic Games (Los Angeles) Emergency Planning Committee;
- ▶ Assistant Director of the Law Enforcement Assistance Administration (LEAA)

For three years, with the Department of the Navy, inspected military confinement facilities in the United States as well as overseas, including ship-board brigs and foreign prisons in which U.S. military personnel were confined.

Served six years with the United States Marshals Service (USMS) developing and monitoring the program under which the USMS contracts with over 750 state and local jurisdictions for the confinement of federal prisoners. Development of the USMS Cooperative Agreement Program (CAP) under which federal funds are made available to local jurisdictions for expanding or upgrading facilities in exchange for space for confinement of federal prisoners.

Advisor-Consultant to many jurisdictions, agencies and groups, including:

- ▶ Commission on Accreditation for Corrections as auditor of Local Adult Detention
- ▶ Facilities and Adult Correctional Institutions
- ▶ National Institute of Corrections
- ▶ American Correctional Association
- ▶ United States Marshals Service

- ▶ Civil Rights Division, U.S. Department of Justice
- ▶ National Institute of Standards & Technology (development of standards for prison and jail equipment).
- ▶ National Sheriffs' Association (primarily as an auditor of county jails and on court security).
- ▶ Chairman, Detention & Corrections Committee of the National Technology Assessment Program Advisory Council, National Institute of Justice, Law Enforcement Standards Laboratory
- ▶ U.S. Immigration and Naturalization Service
- ▶ President's Commission on Law Enforcement and Criminal Justice
- ▶ Robert F. Kennedy Memorial Center for Human Rights; Boston, MA (International Program)

Litigation Advisor and Expert Witness for both plaintiff and defense in several jurisdictions, testify in both state and federal courts. Listing of cases available.

Other offices and activities include:

- ▶ Chairman, Committee on Technology and Design and member, Local Adult Detention Committee of the American Correctional Association.
- ▶ Member, Detention and Corrections Committee of the National Sheriffs' Association.
- ▶ Member, Subcommittee on Detention and Correctional Occupancies, Committee on Safety to Life, National Fire Protection Association.
- ▶ Member, National Fire Protection Association Subcommittee on Detention and Correctional Occupancies (Monitor Fire Safety Code for Jails and Prisons).
- ▶ Bureau of prisons, Special Assistant: Served as Bureau of Prisons Representative on several special projects including a task force with the U.S. Marshals Service and U.S. Immigration and Naturalization Service which designed a National Prisoner Transportation System with the capability of moving in excess of 250,000 prisoners per year.

Education: B.A. Sociology, 1955, St. Martin's College, Olympia, WA.
Master of Social Work, 1958, University of Washington, Seattle, WA.

APPENDIX II

RESOURCES

- 1 ▶ *Immigration & Nationality Act, and Related Acts.* Title 8 of the United States Code, Aliens and Nationality.

Price: \$13.00 to "Superintendent of Documents." *Order from:* Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402
- 2 ▶ *Code of Federal regulations, Title 8.* Regulations in the CFR, Title 8, Aliens and Nationality.

Price: \$13.00 to "Superintendent of Documents." *Order from:* Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
- 3 ▶ *Administrative Decisions Under Immigration and Nationality Laws.* Multi-volume bound set of past BIA decision, plus annual update.

Price: \$855.00 for 19 bound volumes of past decisions. Back files up to 1993, \$145.00. *Order from:* William S. Hein & Co., 1285 Main Street, Buffalo, NY 14209.
- 4 ▶ *1993 Immigration Procedures Handbook*, by Austin T. Fragomen, Alfred J. Del Rey and Steven C. Bell. Includes filled-out and annotated versions of the newest INS forms, as well as draft supporting letters to coincide with the latest INS policies and the trends of decisional law. Updated annually.

Price: \$145.00 for the Handbook; \$50.00 (estimated price) for the 1993 supplement. *Order from:* Clark Boardman Callaghan, 375 Hudson Street, New York, NY 10014.
- 5 ▶ *Immigration Law and Crimes*, 1992 ed., By Dan Kesselbrenner and Lory D. Rosenberg. A comprehensive work on issues in immigration law relating to criminal convictions. Updated annually for a fee.

Price: \$120.00 (20% discount if purchased with *Immigration Law and Defense*). Estimated annual update cost, \$115.00. *Order from:* Clark Boardman Callaghan, 375 Hudson Street, New York, NY 10014.
- 6 ▶ *Immigration Law and Defense*, 1993 ed., by the National Immigration Project of the National Lawyers' Guild. A two-volume comprehensive overview of immigration law and procedure. Updated annually for a fee.

Price: \$220.00 (20% discount if purchased with *Immigration Law and Crimes*). Estimated annual update cost, \$165.00. *Order from:* Clark Boardman Callaghan, 375 Hudson Street, New York, NY 10014.

- 7 ► *Winning 212(c) Cases*, 1992, by the Immigrant Legal Resource Center. A comprehensive publication on preparing applications and arguments for waivers of deportability under INA Section 212(c).

Price: \$50.00. Order from: ILRC, 1663 Mission Street, Suite 602, San Francisco, CA 94103.

- 8 ► *Winning Asylum Cases -- A Practitioners Guide to Representing Clients in Deportation Proceedings*, 1992 ed., by the Immigrant Legal Resource Center. A comprehensive overview of asylum law and a step-by-step guide to procedure in deportation cases from the beginning of the case through the appellate process.

Price: \$80.00. Order from: ILRC, 1663 Mission Street, Suite 602, San Francisco, CA 94103.

- 9 ► *Winning Suspension of Deportation Cases*, 1991, by the Immigrant Legal Resource Center. A comprehensive publication on preparing applications and arguments for suspension of deportation.

Price: \$50.00. Order from: ILRC, 1663 Mission Street, Suite 602, San Francisco, CA 94103.

- 10 ► *Kurzban's Immigration Law Sourcebook*, 3rd ed., 1992, by Ira Kurzban. A condensed reference book covering all of immigration law in outline form, and citing to the regulations, statute, and caselaw.

Price: \$95.00 + \$4.50 shipping and handling. Order from: American Immigration Law Foundation, 1400 Eye Street, N.W., Suite 1200, Washington, D.C. 20005.

- 11 ► *A Guide for Immigration Advocates*, 1992, by the Immigrant Legal Resource Center. A manual covering the basics of immigration law, including relief from deportation, exclusion, political asylum, bonds and detention, and constitutional and statutory rights of immigrants.

Price: \$75.00 Order from: ILRC, 1663 Mission Street, Suite 602, San Francisco, CA 94103.

- 12 ► *The Rights of Aliens and Refugees*, 1990 ed., by David Carliner, Lucas Guttentag, Arthur C. Helton, Wadi J. Henderson.

Price: \$7.95. Order from: American Civil Liberties Union, Pub. Ed. Dept., 132 West 43rd Street, New York, NY 10036.

Also Recommended:

- 1 ► *Immigration Law and Procedure*, 1991 ed., by Charles Gordon, Stanley Mailman, and

Harry Rosenfield, and *Immigration Law and Procedure, Practice and Strategy*, 1991 ed., by Charles Gordon and Gittel Gordon. A comprehensive, 11-volume treatise on immigration law and procedure. Updated four times annually for fee.

Price: \$1,535, Annual update, 1992, \$665.00. (1993 price not yet set). *Order from:* Matthew Bender & Co., 1275 Broadway, Albany, NY 12201.

- 2 ► *Bond Practice Manual*, 1993, by the National Immigration Project of the National Lawyers' Guild. This manual details the steps in securing a bond reduction for a detainee in INS custody. It describes bonding procedures, administrative practice, factors considered in determining bail risk and bond amount, and conditions placed on release. It also contains many unpublished decision regarding bond determinations.

Price: \$40.00, estimated for new edition to be released this summer. *Order from:* National Immigration Project, 14 Beacon Street, Suite 506, Boston, MA 02108.

- 3 ► *Directory of Nonprofit Agencies that Assist Persons in Immigration Matters*, 6th ed., 1992, by the National Immigration Law Center. A national directory that indicates the service provided by each agency listed, as well as the geographic area serviced and the languages spoken by the staff.

Price: \$5.00. *Order from:* NILC, 1636 West 8th Street, Los Angeles, CA 90017.

THE IMMIGRANTS' RIGHTS PROJECT

The ACLU Immigrants' Rights Project engages in litigation, public education, advocacy and professional training to protect immigrants against discrimination and exploitation, and to enforce the fundamental constitutional safeguards of due process and equal protection. The Project works to: protect the rights of political refugees; combat employment discrimination against aliens and American citizens who look or sound "foreign"; enforce due process standards in deportation proceedings; challenge the power of Congress to enact laws that abridge aliens' rights; ensure the right to be represented by counsel, and implement the right to obtain employment authorization.

The Project publishes studies, reports and educational materials for lawyers, advocates and immigrants. Project staff have testified before Congress and other bodies on such issues as the rights of Haitian refugees; the discriminatory effect of employer sanctions; the counterproductive and intrusive effects of proposed national employment identity cards; the hardship caused by legislative penalties against marriages between U.S. citizens and aliens; the conditions at alien detention centers, and the health-threatening impact of mandatory HIV testing of immigrants. The Project also regularly trains immigration attorneys, the private bar and members of the immigrant advocacy community on civil rights and immigration law issues.