

Detention Standards Implementation Initiative

ABA Commission on Immigration

Facility Name: Passaic County Jail, NJ

Date of Tour: July 14, 2004

Tour participants:

§ and §

| ICE Standard | Tour Observation | Source of Observation | ICE Response |
|---|--|---|---------------------------|
| <p>Telephone Access</p> <ul style="list-style-type: none"> III.E "If the facility requires detainees to complete a request form to make direct or free calls, it must assist them as needed, especially for illiterate or non-English speaking detainees" | <ul style="list-style-type: none"> Detainees are not sufficiently notified of the pre-programmed technology available for direct calls (p7, line 31) Direct dial phones are only located in the legal visitation area and permission must be requested (p7, line 27) | <ul style="list-style-type: none"> According to delegation observations | Not noted in 2004 Review. |
| <p>Access to Legal Material</p> <ul style="list-style-type: none"> III.C "The law library shall contain the materials listed in Attachment A" | <ul style="list-style-type: none"> The law library has very limited immigration legal materials (p9, line 22) | <ul style="list-style-type: none"> According to delegation observations | Not noted in 2004 Review. |
| <ul style="list-style-type: none"> III.B "The law library shall provide an adequate number of ... writing implements, paper and office supplies to enable detainees to prepare documents for legal proceedings" | <ul style="list-style-type: none"> Indigent detainees are charged for pens and paper to prepare legal work (p10, line 30) | <ul style="list-style-type: none"> According to detainee interviews and the facility handbook at p. 27 | Not noted in 2004 Review. |
| <ul style="list-style-type: none"> III.J "The facility shall ensure that detainees can obtain copies of legal material" "The number of copies of documents to be filed with a particular court, combined with the number required for INS records and at least one copy for the detainee's personal use will determine the number of copies required" | <ul style="list-style-type: none"> All detainees are charged \$0.10/copy for legal copies, which is prohibitive to indigent detainees (p11, line 1) Limit of 10 pages copies/week (p11, line 6) | <ul style="list-style-type: none"> According to the facility handbook at p. 27 | Not noted in 2004 Review. |
| <p>Recreation</p> <ul style="list-style-type: none"> III.B.1 "if outdoor recreation is available at the facility, each detainee shall have access for at least one hour daily, at a reasonable time of day, five days a week, weather permitting" and III.B.2 "if | <ul style="list-style-type: none"> While facility staff state that recreation is available for 1 hr/day, detainees suggest that they receive very limited recreation (p13, line 30) | <ul style="list-style-type: none"> According to detainee interviews | Not noted in 2004 Review. |

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| <p>only indoor recreation is available, detainees shall have access for at least one hour each day"</p> | | | |
| <p>Medical Care</p> | <ul style="list-style-type: none"> While not specifically addressed in the standards, an issue of concern is that detainees requiring medication to be delivered by medical staff must forgo recreation, law library time and other activities if medication has not been delivered because if they are not in their cell when the nurse comes, the nurse will not return to administer the medication (p14, line 20) | <ul style="list-style-type: none"> According to detainee interviews | <p>Not noted in 2004 Review.</p> |

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MEMORANDUM
August 12, 2004

To: Victor Cerda, Director, Office of Detention and Removal, Immigration and Customs Enforcement
From: American Bar Association Delegation to the Passaic County Jail¹
Copies to: (b)(6) ABA Commission on Immigration
Subject: Report Regarding Implementation of ICE Detention Standards at the Passaic County Jail

This memorandum summarizes information gathered at the Passaic County Jail (the "Jail" or "PCJ") and evaluates the facility's implementation of Immigration and Customs Enforcement ("ICE") Detention Standards (the "Detention Standards"). The information was obtained via observation and through interviews with immigration detainees, PCJ correctional officers and ICE personnel during the delegation's July 14, 2004 tour of the facility.

I. INTRODUCTION

A. ICE Detention Standards

In November 2002, the Immigration and Naturalization Service (INS),² the predecessor to the United States Immigration and Customs Enforcement (ICE), promulgated a set of Detention Standards to ensure the "safe, secure and humane treatment" of immigration detainees. The thirty-six standards contained in the Detention Operations Manual cover a broad spectrum of issues ranging from visitation policies to grievance procedures to legal access. These standards apply to ICE-operated detention centers and other facilities that house immigration detainees pursuant to contracts or intergovernmental service agreements ("IGSA").

¹ The delegation was comprised of attorneys and summer associates from Latham & Watkins LLP, including

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² Effective March 1, 2003, the immigration enforcement functions which previously had been handled by INS were transferred to Immigration and Customs Enforcement ("ICE"), a division of the newly-created Department of Homeland Security.

The Detention Standards constitute a “floor” rather than a “ceiling” for treatment of immigration detainees. In other words, they are designed to establish the minimum requirements to which ICE must adhere at its facilities. Each Field Office or Officer-in-Charge has discretion to promulgate policies and practices affording ICE detainees enhanced rights and protections, above and beyond those provided for by the Detention Standards.

The Detention Standards became effective at ICE-operated detention facilities on January 1, 2001. ICE intended to phase-in the Detention Standards at all of its contract and IGSA facilities by December 21, 2001.

B. The Delegation’s Visit to Passaic County Jail

On Wednesday, July 14, 2004, the members of our delegation traveled to Paterson, New Jersey, to tour the Passaic County Jail. Upon our arrival, we were greeted by Lieutenant (b)(6), (b)(7)(c) of ICE, and several correctional officers and other personnel from the Jail, who accompanied us on the tour.

Prior to touring the facility, we were led into the visitor waiting-area where we were given the opportunity to ask general questions of the officers. We then entered the Jail, and visited the cellblocks, library and classrooms, office of the ombudsman, chapel, gym, and attorney conference rooms. We then interviewed five individual detainees regarding their experiences at the Jail. At the conclusion of the tour, we met with the undersheriff and the assistant chief warden.

This report is a compilation of information gathered during discussions with ICE and PCJ personnel, observations of the facility and interviews with individual detainees. In many instances, detainee reports were consistent with our observations and statements made by facility personnel and, therefore, we were able to conclusively determine the extent to which PCJ policy and procedures conformed to the Detention Standards. In other situations, however, detainee reports and/or our observations conflicted with information provided by the corrections officers. In these situations we were not able to conclusively determine the extent of the Jail’s implementation of the Detention Standards. These instances are noted below.

C. General Information About the Passaic County Jail

The Passaic County Jail has an average daily population of over 1,500, and is considered the most over-crowded jail in New Jersey. The primary function of the Jail is to house prisoners committed to jail by county municipal court judges and inmates remanded to the Jail by the Passaic County Superior Court. However, pursuant to contracts with the ICE and other government agencies, the Jail also houses immigration detainees. According to Jail personnel, all of the detainees housed at PCJ have criminal records, as immigration detainees with no records are sent to other designated facilities.

According to Lieutenant (b)(6), (b)(7)(c) on the date of our visit, the Jail housed approximately 300 immigration detainees, thirty of which were female. We attempted to confirm this information with the assistant chief warden at the conclusion of the tour, but we were informed that, following September 11th, the Jail is not permitted to provide information regarding the number of detainees or their countries of origin.

II. IMPLEMENTATION OF LEGAL ACCESS STANDARDS

A. Visitation

The Detention Standards provide that facilities holding ICE detainees should permit visitations by legal representatives, family and friends of the detainees, the news media and non-governmental organizations (NGOs).³

1. Visitation by Attorneys

Access to legal representation is fundamental to due process and adequate procedures for visits by legal representatives, legal assistants and consular officials is an important step in securing the legal rights of detainees. According to the Detention Standards, legal visitations should be allowed seven days a week for a minimum of eight hours on weekdays, and four hours on weekends and holidays.⁴ **In our opinion, the Jail has effectively implemented this section of the Detention Standards.**

According to the PCJ Inmate Handbook (the "Handbook"), attorney visits are granted without notice during regular visiting hours and upon special request.⁵ Normal or regular visiting hours are defined as Monday through Friday from 8 a.m. until 2:30 p.m., with discretionary visits during the evening hours.⁶ However, PCJ officials informed the delegation that scheduling of legal visits is flexible as legal visits are not limited to normal visiting hours. The only time that the Jail is closed to attorneys is during the lunch and dinner hours, 11 a.m. to 1 p.m. and 5 p.m. to 6 p.m., respectively. If a legal visit coincides with a meal or a routine official count, the attorney may continue the visit. If the detainee misses a meal as a result of the legal visit, he/she will receive a sack meal. If the detainee misses other activities, such as gym time, as a result of the legal visit he/she is not provided with an opportunity to make up the activity.

The Jail does not restrict outside access to detainees. Any attorney may call the records department at PCJ to check if a detainee is housed at the Jail. Officials at PCJ informed the delegation that this information is updated with the local ICE district office on a continuous basis. Following an incident involving failure to accommodate lawyers from the ACLU, PCJ officials agreed to permit access to any attorney requesting it and to accommodate other legal visitors with proper identification, i.e., legal assistants and interpreters.

The Handbook requires that, in order to meet with a client, attorneys must acquire an official ID card issued by the Passaic County Sheriff's Department Identification Bureau.⁷ Such identification cards are issued upon presentation of a bar card at the initial visit and are required

³ Detention Operations Manual, ICE Detention Standards, Standard 17, Section I.

⁴ *Id.* at Section III(I)(2).

⁵ PCJ Inmate Handbook, p. 15.

⁶ *Id.* at 15-16.

⁷ *Id.* at 15.

for all subsequent access. However, PCJ officers suggested that many visiting lawyers are known to the staff and are able to gain access to their clients without obtaining such IDs. PCJ officials further informed us that they no longer require attorneys to submit G-28 forms for pre-representation interviews. Interestingly, Lieutenant (E)(6), (E)(7) the ICE official accompanying us on the tour, was not aware that this rule had changed.

There are twelve attorney visitation rooms at the Jail, each of which provides space for “contact” visits by attorneys. The visitation rooms satisfy the definition of “private” in the Detention Standards, as the rooms allow the attorney to conduct a meeting with possible visible observation, but no audio observation.⁸ PCJ staff cannot hear what is said between the detainee and lawyer once the door is closed. Visiting attorneys and detainees are subject to pat-down searches before and after visitations.⁹ In accordance with the Detention Standards, PCJ staff do not conduct strip searches unless they have reasonable suspicion that contraband has been exchanged. PCJ allows detainees to keep legal documents given to them and does not limit the amount of legal material a detainee may retain. In addition, PCJ provides detainees with access to an audio booth to review their cases. The booth enables detainees to listen to audio transcripts, which is particularly helpful for those who are illiterate or blind.

The detainees that we interviewed indicated that the Jail does not provide sufficient information regarding how to contact *pro bono* legal representation. PCJ officials told the delegation that, as required by the Detention Standards,¹⁰ the names of *pro bono* legal organizations and their phone numbers are listed next to the available telephones. However, two detainees informed us that their attempts to contact a *pro bono* lawyer were unsuccessful because the agencies did not accept collect calls. One of these detainees, a native English speaker, also alleged that the PCJ Office of the Ombudsman failed to follow up on a request for legal representation, despite the fact that the request was made on five separate occasions.

2. Visitation by Family and Friends

The ICE, through the Detention Standards, encourages visits by family and friends in order to maintain detainee morale and family relations. In addition, visitations by the news media and NGOs increase the level of transparency and better informs the public of detention operations.¹¹ The Detention Standards require that all detention facilities allow visitation and establish written visitation procedures.¹² According to the Detention Standards, each facility should permit a minimum of 30 minutes for visitations under normal conditions and is

⁸ Detention Operations Manual, ICE Detention Standards, Standard 17, Section III(I)(9) (“Visits between legal service providers (or legal assistants) and an individual detainee are confidential and shall not be subject to auditory supervision”).

⁹ *Id.* at Section III(I)(11) (SPCs/CDFs should normally subject detainees returning from legal visitations to pat-down searches. Officers may, however, strip-search a detainee reasonably suspected of concealing contraband of any kind).

¹⁰ *Id.* at Section III(I)(14).

¹¹ *Id.* at Section I.

¹² *Id.* at Section III(A).

encouraged to offer more generous limits when possible, especially for family members traveling significant distances.¹³ Each facility, however, must operate within the constraints of its detainee population and security concerns.¹⁴ We believe that the Passaic County Jail implements this section of the Detention Standards, but has established a system that is complicated and often conducted outside the written rules.

The visiting schedule is clearly posted in the front entrance and visitors' entrance at the Jail and is available by phone. The schedule is also included in the Handbook.¹⁵ However, the version in the Handbook does not match the version posted for visitors. The latter represents a complicated system of visitation scheduling that is confusing to visitors and detainees alike. Detainees, like the rest of the inmate population, are provided certain days and hours for visitation according to the first letter of their last name. Whereas the system established in the Handbook is straightforward and easy to follow, the system actually used by PCJ is complicated and highly puzzling for those who are illiterate or unfamiliar with English or the Roman alphabet. To illustrate this point, the visiting schedule for male detainees is listed below:

| Hour | Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-------------------|--------|--------|---------|-----------|----------|--------|----------|
| 7:30 – 9:00 a.m. | M | WXYZ | GH | S | B | NOPQR | A |
| 9:30 – 10:30 a.m. | L | | IJK | TUV | C | | B |
| 1:00 – 2:00 p.m. | R | NOPQ | A | WXYZ | A | LM | C |
| 6:00 – 7:00 p.m. | S | | B | LM | DEF | S | DEF |
| 7:30 – 9:00 p.m. | T | | C | NOPQ | GH | TUV | GH |
| 9:00 – 10:00 p.m. | UV | | DEF | R | IJK | WXYZ | IJK |

Although in conformity with the Detention Standards¹⁶, the system established at the PCJ is likely to create unnecessary confusion among detainees and visitors.

¹³ *Id.* at Section III(H)(1).

¹⁴ *Id.*

¹⁵ PCJ Inmate Handbook, pp. 16-17.

¹⁶ Detention Operations Manual, ICE Detention Standards, Standard 17, Section III(H)(1) (“The facility shall establish a visiting schedule based on the detainee population and demand for visits. [...] To accommodate the volume of visitors within the limits of space and staff availability, and to ensure adequate security, the OIC may restrict visits.”).

One detainee reported that he was not aware of the visiting schedule. Although he had been given a PCJ Inmate Handbook, he is illiterate and unable to locate the necessary information. Moreover, as noted above, the information in the Handbook is inaccurate.

The PCJ Inmate Handbook establishes that detainees are entitled to “at least two non-contact visits for a minimum of 15 minutes each per week depending on time and space availability.”¹⁷ The PCJ Inmate Handbook also provides that visitation periods can be extended as circumstances warrant.¹⁸ PCJ staff confirmed these procedural rules and indicated that detainees are actually given a minimum of 15 to 20 minutes. The delegation was informed that the shift commander on duty often makes discretionary decisions to accommodate visitors who have traveled long distances and visitors for whom normal visiting hours present a hardship.

The length of visits is often determined by the space available at any given time. Currently, PCJ has twelve non-contact visitation booths available. These booths, with Plexiglas dividers, have two phones for use by visitors to communicate with the detainee. Requests of “contact” visits are not accommodated for security reasons. Although the PCJ Inmate Handbook permits only 2 adult visitors at any one time,¹⁹ PCJ officials informed us that the only real limitation on the number of visitors is the small size of the booths. PCJ permits minors to visit detainees as long as they are accompanied by an adult.²⁰

PCJ does not restrict who may visit detainees, with the exception of former inmates who are not permitted to visit those who are currently housed at the Jail.²¹ Detainees who have family members detained at the same facility are permitted to visit their relatives during recreation time. PCJ officials stated that such detainees are often assigned the same recreation schedule to facilitate visitation among family members. Detainees in disciplinary or administrative isolation may receive visitors at the discretion of the shift commander. Accommodation is often granted when visitors travel long distances or when the detainee is determined to be non-violent.

Detainees are permitted to maintain personal accounts in which visitors may deposit money for use at the commissary. Money may be deposited either in person at the front entrance, by mail or electronically. Detainees may also deposit into these accounts the money they earn through voluntary work programs.

B. Telephone Access

The Detention Standards require that facilities holding ICE detainees permit reasonable and equitable access to telephones.²² In order to meet this requirement, facilities must provide

¹⁷ PCJ Inmate Handbook, p. 14.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 15.

²¹ *Id.* (“Former inmates are not permitted visiting privileges unless otherwise authorized by the Administration.”)

²² Detention Operations Manual, ICE Detention Standards, Standard 16, Sections I & III(A).

written telephone access rules to each detainee upon admittance and at least one telephone for every 25 detainees.²³ **The delegation has the following concerns as to the adequacy of the Passaic County Jail's implementation of these standards.**

During our tour of the facility, the delegation observed that detainees have access to payphones in the "day rooms" located just outside the cell blocks. Detainees have access to these phones throughout the day, except during official head counts, transfer to the local immigration court on Wednesdays, and when security concerns arise.²⁴ Telephone privileges may also be terminated if PCJ staff find conditions in the housing areas to be unacceptable.²⁵ The PCJ Inmate Handbook states that, while detainees are not limited in the number of calls that may be placed, telephones should be shared fairly among all detainees.²⁶ Detainees informed the delegation that phones are essentially unavailable because most detainees do not have the funds to use them. Instructions for use of the payphones are posted next to phones. However, PCJ does not provide instructions for illiterate or non-English speaking detainees, who often are left to learn how to use the phones from fellow detainees. Therefore, many detainees are ignorant of available options such as preprogrammed phone technology. Collect calls may be made through the telephones, but the delegation was informed that some service providers will not connect collect calls from PCJ. Many of the detainees were transferred from and have relatives in New York City and Long Island. Unless the recipient has Verizon telephone service, they cannot receive a collect call from the Jail. PCJ officials are aware of the problem, but have not yet addressed it effectively. One detainee informed the delegation that collect calls are very expensive and cost more than \$4.00 per minute. Detainees have the option to purchase pre-paid phone cards from the commissary to make calls to family, friends, legal representatives, etc. These pre-paid phone cards are prohibitively expensive given the indigent status of many detainees. The delegation was informed by a detainee from Mali that calls to New York using the pre-paid phone cards cost \$5.00 for the first minute, making this option untenable for most detainees.

The Jail also provides a station for preprogrammed phones located in the attorney visitation area and in the same booth where detainees may listen to the transcripts of their cases. These preprogrammed phones allow detainees to make direct calls to the local immigration court, the Board of Immigration Appeals and to consular offices, in accordance with the Detention Standards.²⁷ However, detainees are not provided with adequate instructions on how to use these phones, and cannot use them without first obtaining permission from PCJ officials. Two detainees interviewed by the delegation were not aware of this preprogrammed phone technology. One detainee's only contact with his consulate office was facilitated by a fellow Bahaman detainee who dialed the consulate for him and who has now been either released or deported. The detainee has not been in contact with his consular representative since this initial contact and still does not know his deportation status.

²³ *Id.* at Sections III(B) & (C).

²⁴ PCJ Inmate Handbook, p. 12.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Detention Operations Manual, ICE Detention Standards, Standard 16, Section III(E).

PCJ officials assert that all telephones, preprogrammed phones and payphones, comply with the Detention Standards. The delegation was also told that detainees are provided privacy when making phone calls and that the facility prohibits staff from monitoring phone calls electronically. However, several of the detainees interviewed by the delegation expressed concern on this point. Detainees specified that the day rooms where phones are located are open spaces and do not provide detainees with privacy from fellow detainees or from the PCJ staff. A Liberian detainee informed us that detainees often become involved in physical fights in order to silence other detainees during private conversations. Even though the Detention Standards require facilities to take and deliver messages regarding emergency and non-emergency incoming telephone calls to detainees, PCJ staff refuse "to be an answering service," and thus do not take or deliver such phone messages.

C. Access to Legal Materials

The Detention Standards require that all detention facilities shall permit detainees access to a law library. The facilities also must provide legal materials, equipment, document copying privileges, and the opportunity to prepare legal documents.²⁸

The Passaic County Jail facility has successfully implemented some sections of the Detention Standards regarding access to legal materials and the law library. However, the Passaic County Jail has failed to implement several other sections of the Detention Standard; consequently, the delegation believes that the facility fails to provide immigration detainees with meaningful access to legal materials and legal representation.

1. Access to the Library

The Detention Standards require that a detention facility devise a flexible schedule to permit all detainees, regardless of housing or classification, to use the law library on a regular basis for a minimum of five hours per week.²⁹ Furthermore, these five hours a week should not cause a detainee to miss a meal, recreation, or any other planned activity.³⁰

PCJ policies theoretically implement this section of the Detention Standards. However, the reality of detainee access to the law library remains a concern. The PCJ permits detainees to use the law library if they submit a written request to Program Services for scheduling.³¹ Program Services then allocates the use of the law library based on the level of demand expressed by the detainees. PCJ officers stated that priority is given to those detainees who represent themselves or have upcoming court appearances and/or trials. As a result, other detainees are forced to wait several weeks before they are allowed to use the law library.

²⁸ *Id.* at Section III.I.

²⁹ *Id.* at Section III.G.

³⁰ *Id.*

³¹ PCJ, Inmate Handbook, p. 26.

Detainees also reported that they are not always given the opportunity to submit written requests to Program Services for access to the law library, in contradiction to the Detention Standards.

2. Library Conditions

The Detention Standards state that each detention facility shall provide a law library in a designated room with sufficient space to facilitate detainees' legal research and writing. The library shall contain a sufficient number of tables and chairs in a well-lit room that is reasonably isolated from noisy areas.³²

The PCJ facility has implemented this section of the Detention Standards. The PCJ law library is well-lit and reasonably isolated from noisy, high-traffic areas that might interfere with research and writing. The law library is also large enough to accommodate approximately 10-15 people and contains four large tables and several chairs.

3. Materials Identified in the *Detention Standards*

The *Detention Standards* require all law libraries to contain the legal materials listed in Attachment A to the chapter on *Access to Legal Material*.³³ The Detention Standards require that these legal materials also be updated regularly. More specifically, the detention facility must add information on significant regulatory and statutory changes regarding the detention and deportation of aliens in a timely manner.³⁴ Furthermore, stolen or damaged materials must be promptly replaced by the facility.³⁵ The Detention Standards require that the facility post a list of holdings in the law library and designate an employee responsible for updating materials, inspecting them weekly, and maintaining them in good working order.³⁶

The PCJ facility does not meet all of the provisions of this section of the Detention Standards. The PCJ law library contains one copy of each of the following: Federal Reporter, Shepard's, New Jersey Digest, Wright & Miller treatises, Supreme Court Digest, and Federal Supplement. However, the library does not contain many of the other legal reference materials required by the Standards, such as statutes and treatises on immigration and nationality laws, practice guides on immigration, civil procedure treatises and nutshells, and self-help manuals. Detainees also complained that the library was unapproachable to a lay person and difficult to use and that the only available assistance was a fellow inmate who was not very helpful. Additionally, the law library is closed the first two sessions on the second Wednesday of every month so that updating can be completed.³⁷ It is unclear whether the updating procedure for PCJ is sufficient to adequately update the required legal materials for detainees.

³² Detention Operations Manual, Detainee Services, Standard 1, Section III.A.

³³ *Id.* at Section III.C.

³⁴ *Id.* at Section III.D.-F.

³⁵ *Id.* at Section III.F.

³⁶ *Id.* at Section III.A.

³⁷ PCJ, Inmate Handbook, p. 27.

4. Computer Access, Equipment and Holdings

The Detention Standards require that the law library provide an adequate number of typewriters and/or computers, writing implements, paper, and office supplies to enable detainees to prepare documents for legal proceedings.³⁸

The PCJ Inmate Handbook indicates that the facility complies with this section of the Detention Standards. However, based on detainee accounts, these policies are not actually implemented. The law library has five computers; however, only three of the computers were operational at the time of our visit. The officers at PCJ stated that three or four more computers had been ordered. Furthermore, the law library is closed the first two sessions on the second Wednesday of every month so that computer maintenance can be completed.³⁹

The PCJ Inmate Handbook states that inmates shall have access to “legal supplies and material for preparing legal papers, such as writing paper, carbon paper, reproduction equipment, and mailing envelopes.”⁴⁰ One detainee stated that legal materials such as pens and papers are available by submitting a written request to the Office of the Ombudsman. However, they were available at a charge, which is extremely problematic for indigent detainees. Although the PCJ Inmate Handbook states that indigent detainees will receive legal/writing materials at no charge,⁴¹ there appears to be a discrepancy between the policies outlined in the Inmate Handbook and actual implementation of these policies at the facility. Complicating this problem is the fact that, according to the detainees we interview, many detainees never received a PCJ Inmate Handbook, and therefore are unaware that such materials are available.

5. Photocopies

The Detention Standards require that each facility shall ensure that detainees can obtain photocopies of legal materials, when such copies are reasonable and necessary for legal proceedings involving the detainee.⁴² The facility must provide enough copies so that a detainee can fulfill court procedural rules and retain a copy for his records.⁴³ Additionally, facility personnel are prohibited from reading documents that on its face is clearly related to a legal proceeding involving the detainee.⁴⁴

The PCJ appears to satisfy this section of the Detention Standards. In order to make copies of their legal materials, detainees must complete a “Please Give” slip to the staff of Program Services, who will then attach the slip to the legal materials and forward it to the

³⁸ Detention Operations Manual, Detainee Services, Standard I, Section III.B.

³⁹ PCJ, Inmate Handbook, p. 27.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Detention Operations Manual, Detainee Services, Standard I, Section III.J.

⁴³ *Id.*

⁴⁴ *Id.*

Ombudsman's Office for processing.⁴⁵ The cost for photocopying and/or printing legal materials is 10 cents per page, however, which is prohibitive to an indigent inmate.⁴⁶ A maximum of ten pages per week is permitted for each inmate.⁴⁷

6. Correspondence and Other Mail

The Detention Standards require that detainees be permitted to send and receive correspondence in a timely manner, subject to limitations required for the safety, security, and orderly operation of the facility.⁴⁸ General detainee correspondence shall be opened and inspected in the presence of the detainee, but may be opened and even read outside the presence of the detainee when security considerations so require.⁴⁹ Special correspondence—which includes all written communication to or from attorneys, legal representatives, judges, courts, government officials, and the news media—is treated differently by the facility.⁵⁰ Incoming special correspondence can be inspected for contraband only in the presence of the detainee, but it can never be read or copied by the facility.⁵¹ Outgoing special correspondence cannot be inspected, opened or read.⁵²

Based on our interviews with PCJ personnel, PCJ appears to adhere to this section of the Detention Standards. Pages 14 and 15 of the PCJ Inmate Handbook clearly outline the appropriate procedures to be used by the PCJ personnel when handling outgoing and incoming detainee mail.⁵³ These procedures fulfill the requirements set out in the Detention Standards. Correctional officers at the Jail stated that outgoing detainee correspondence to lawyers is not inspected, opened or read by the facility. Additionally, incoming detainee correspondence is only inspected in the presence of the detainee.

7. Notaries, Certified Mail, and Miscellaneous Legal-Related Needs

The Detention Standards require that the facility provide assistance to any unrepresented detainee who requests a notary public, certified mail, or other such services to pursue a legal matter if the detainee is unable to meet the need through family members or community organizations.⁵⁴

⁴⁵ PCJ, Inmate Handbook, p. 27.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Detention Operations Manual, Detainee Services, Standard 4, Section I.

⁴⁹ *Id.* at Sections III. B. & E.

⁵⁰ *Id.* at Sections III.B., E., & F.

⁵¹ *Id.* at Sections III.B. & E.

⁵² *Id.* at Sections III.B. & F.

⁵³ PCJ, Inmate Handbook, pp. 14-15.

⁵⁴ Detention Operations Manual, Detainee Services, Standard 1, Section III.P.

The PCJ appears to adhere to this section of the Detention Standards. The PCJ has notaries on staff at the facility that are available to the detainees. Additionally, the PCJ provides indigent detainees with envelopes, paper and stamps.

D. Group Rights Presentations

The Detention Standards require that facilities shall permit authorized persons to make presentations to groups of detainees for the purpose of informing them about U.S. immigration law and procedures consistent with the security and orderly operation of the ICE facility.⁵⁵

The PCJ appears to satisfy this section of the Detention Standards, although detainees are not always notified about such presentations. Personnel at the PCJ facility stated that “Know Your Rights” presentations have been conducted at the facility for the past three years, generally on Tuesdays. However, these presentations are not made at the Jail every week. Rather, there are an average of two presentations per month, and occasionally a month or two will lapse between presentations.

One detainee remarked that he had been notified of group rights presentations twice during his two month stay at Passaic County Jail. However, another detainee reported that he had never been informed of any group rights presentations during his seven months at the facility. Brian Lonegan, an attorney in the Immigration Department of Legal Aid in New York has indicated that he has been responsible for presenting the “Know Your Rights” seminars at PCJ. While the Jail used to allow him to make a presentation on the first Tuesday of every month, he has not had access to the facility in the past few months.

III. OTHER PROVISIONS OF THE ICE DETENTION STANDARDS

A. Site-Specific Detainee Handbook

The Detention Standards require that all detention facilities provide their immigration detainees with a site-specific handbook. The purpose of the handbook is to provide an overview of, and guide to, “the detention policies, rules, and procedures in effect at the facility,” as well as “the services, programs, and opportunities available through various sources.”⁵⁶ The handbook must be translated into Spanish, and, if appropriate, into the next most-prevalent language(s) among the facility’s detainees.⁵⁷ All detainees are to receive a copy of the handbook upon admission to the facility.⁵⁸ **The Delegation believes the Jail’s practice with respect to access to the Handbook is the most significant and troublesome lapse in implementation of the Detention Standards, as a detainee’s understanding of his or her rights likely would go a long way in remedying other issues discussed in this memorandum.**

⁵⁵ *Id.* at Standard 9, Section I.

⁵⁶ *Id.* at Standard 5, Section I.

⁵⁷ Detention Operations Manual. Detainee Services, Standard 5, Section III.E.

⁵⁸ *Id.* at Standard 5, Section I.

The PCJ has an “Inmate Handbook” which is available in English and Spanish. While the Handbook is supposed to be provided to all detainees, most of the detainees with whom we spoke indicated that they had **never received a copy**. Furthermore, the Handbook suffers from several flaws. First, the Handbook is not specific to immigration detainees—it is designed for all inmates at the jail. For that reason, it fails to address certain concerns specific to immigration detainees, such as information about ICE. Second, despite the fact that officers point to the Handbook as the ultimate source of information for detainees, no effort is made to communicate the contents of the Handbook to those who cannot read English or Spanish (which is prevalent among immigration detainees), or who cannot read at all. Third, the many sections of the Handbook are not accurate or are at odds with the way the policies are practiced. For example, the Handbook explains that all detainees are guaranteed a minimum of one hour of recreation/exercise per day,⁵⁹ but from our interviews it appears that, in reality, detainees receive less than the promised one hour. Additionally, as noted above, the visiting schedule listed in the Handbook differs significantly from that posted in the jail.⁶⁰

B. Recreation

The Detention Standards require that all facilities provide immigration detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.⁶¹ Every effort is to be made to provide outdoor recreation facilities, but lacking such, the recreation room must be large, with exercise equipment and “access to sunlight.”⁶² All facilities shall also have an individual responsible for the development and oversight of the recreation program. According to the Detention Standards, exercise areas should offer a variety of fixed and movable equipment and cardiovascular exercise should be available to detainees for whom recreation is unavailable.

The PCJ fails to meet, in large part, the Detention Standards regarding recreational programs and activities.

There are several recreation facilities available to detainees at PCJ, including an indoor gym, an outdoor, rooftop recreation area, and various days rooms with games, books, and televisions. Although the officers at the Jail stated that detainees are provided at least one hour of exercise/recreation per day, including one hour per week on the rooftop recreation area, individual detainees reported that they receive far less. One detainee reported that he was allowed access to the outdoor recreation area for a half hour three times per week and to the indoor gym for a half hour twice a week. Another stated that he did not receive daily recreation. In addition, one detainee explained that after waiting in line to sign in, detainees only have twenty minutes of recreation. According to another detainee, he was prevented from going to the gym or rooftop recreation area because if he was absent from his cell when the nurse brought his HIV medication he would not receive any medication that day.

⁵⁹ PCJ, Inmate Handbook, p 32.

⁶⁰ *Id* at 16.

⁶¹ Detention Operations Manual, Detainee Services, Standard 13, Section I.

⁶² *Id.*

C. Access to Medical Treatment

The Detention Standards require that all detainees have access to medical services that promote detainee health and general well-being.⁶³ Each facility is required to have regularly scheduled times, known as sick call, when medical personnel are available to see detainees who have requested medical services.⁶⁴ For a facility of over 200 detainees, a minimum of five days per week is required.⁶⁵ Facilities must also have procedures in place to provide emergency medical care for detainees who require it.⁶⁶ With respect to emergency care, the Detention Standards state that in a situation in which a detention officer is uncertain whether a detainee requires emergency medical care, the officer should immediately contact a health care provider or an on-duty supervisor.⁶⁷ If a detainee is diagnosed as having a medical or psychiatric condition requiring special attention (e.g., special diet), the medical care provider is required to notify the Officer-in-Charge in writing.⁶⁸

Passaic County Jail has a medical facility on-site staffed by nurses 24 hours a day. Doctors and/or nurse practitioners are available 5 days a week, according to the warden. It is quite cramped but, according to the warden and officers, a new facility is being built.

Medical treatment is slow and unreliable according to many of the detainees interviewed. Detainees told of medical complaints that were ignored, or that were inappropriately treated, such as offering Tylenol for chest pain and Benadryl for flu-like, non-allergy symptoms. Detainees also face difficulties in receiving medication. One HIV-positive detainee explained that he skips recreation and other activities (e.g. library, group rights presentations) because if he is not in his cell when the nurse comes with his medicine he will not get it. According to the warden, the nurse is "supposed to" come back if a detainee is not in his cell, but according to the detainee that does not happen.

D. Dental Treatment

The Detention Standards require detainees to have an initial dental screening exam within 14 days of the detainee's arrival and require the facility to provide a number of services, including emergency dental treatment and repair of prosthetic appliances.⁶⁹ For detainees who are held in detention for over six months, routine dental treatment may be provided, including amalgam and composite restorations, prophylaxis, root canals, extractions, x-rays, the repair and

⁶³ Detention Operations Manual, Health Services, Standard 2, Section I.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at Section III.A, D. and G.

⁶⁷ *Id.* at Section III.H.

⁶⁸ *Id.* at Section III.J.

⁶⁹ *Id.* at Section III.E.

adjustment of prosthetic appliances and other procedures required to maintain the detainee's health.⁷⁰

According to the warden at PCJ, detainees are given dental examinations upon arrival and a dentist is available at the jail regularly. At least one detainee with whom we spoke, however, had not received a dental exam when he arrived at Passaic County Jail. Nevertheless, no detainee with whom we spoke complained of dental problems.

E. Detainee Classification

The Detention Standards require that detention facilities use a classification system and physically separate detainees in different categories.⁷¹ A detainee's classification is to be determined on "objective" criteria, including criminal offenses, escape attempts, institutional disciplinary history, violent incidents, etc.⁷² Opinions, unconfirmed and unverified information, and physical characteristics and appearance are not to be taken into account.⁷³ Classification is required in order to separate detainees with no or minimal criminal records from inmates with serious criminal records.⁷⁴ According to the Detention Standards:

By grouping detainees with comparable records together, and isolating those at one classification level from all others, the system reduces noncriminal and nonviolent detainees' exposure to physical and psychological danger.

* * *

When it becomes necessary to house detainees of different classification levels the following guidelines shall be followed:

1. Level three detainees will not be housed with level one detainees.
2. Levels one and two may be mixed, and high level twos and level threes may be mixed, when a facility is at or above full capacity.
3. Under no circumstance will a level two detainee with a history of assaultive or combative behavior be placed in a

⁷⁰ *Id.*

⁷¹ *Id.* at Standard 3, Section I.

⁷² *Id.* at Section III.D.

⁷³ *Id.*

⁷⁴ *Id.* at Sections III.A & III.E.

level one housing unit.⁷⁵

Additionally, all facility classification systems shall allow classification levels to be re-determined and include procedures by which new arrivals can appeal their classification levels.⁷⁶ Finally, the detainee handbook's section on classification must include (1) an explanation of the classification levels, with the conditions and restrictions applicable to each, and (2) the procedures by which a detainee may appeal his classification.⁷⁷

Based on information provided by PCJ personnel, the PCJ has failed to implement this section of the Detention Standards. During the question and answer session at the conclusion of the tour, the delegation was told that the facility did use a classification system that consisted of three levels: minimum, medium, and maximum, presumably based on the security required for the detainee based on his/her criminal record. However, PCJ personnel stated that this is a relatively new system that was only implemented after a one-year investigation of the facility by the Department of Justice. The personnel claimed that the classifications are not set by the facility, but rather the ICE is responsible for determining upon which factors the detainees' classifications are based and for determining the ultimate classification of each detainee. PCJ personnel did state that the ICE informed them of the aforementioned rules regarding co-mingling of various classifications. According to PCJ personnel, non-criminal detainees are kept separate from all other detainees. However, PCJ officers believe that all the detainees sent to the facility have criminal records.

Further, interviews with detainees and a review of the PCJ Detainee Handbook suggest that PCJ fails to properly implement the Detention Standards. First, PCJ fails to adequately explain the classification system in the Handbook. The Handbook does not explain the classification levels, with the conditions and restrictions applicable to each, nor does it explain the procedures by which a detainee may appeal his classification. In fact, the Handbook only lists the factors upon which the detainee will be questioned, with no guidance as to how these answers are then used to establish the detainee's classification. The Handbook states that inmates will be separated based on various factors, such as aggressive versus passive/dependent tendencies, only when "possible."⁷⁸

In addition, the detainees we interviewed were not only unaware of their own classification, but they were unaware that a classification system existed at all. Only one of the five detainees had received the Handbook. **Even if the Handbooks were provided and contained the necessary information, half of the detainees we interviewed were not fluent in English and some were illiterate.**

Furthermore, PCJ fails to properly separate detainees according to classification. During the detainee interviews, one detainee stated that while he was detained for a minor crime, selling stolen CDs, some of his previous cellmates have served up to 15 years for violent crimes prior to

⁷⁵ *Id.* at Section III.E.

⁷⁶ *Id.* at Sections III.G. & H.

⁷⁷ *Id.* at Section III.I.

⁷⁸ *Id.* at Section II.D.

coming to PCJ. In explaining this situation, despite limited English language skills, the detainee stated that sharing a cell with these detainees is difficult because they have a different mindset and this is a negative influence on his own mental health. Such action is in direct conflict with the requirement that detainees with Minimum Level classifications be segregated from detainees with Maximum Level classifications.⁷⁹

F. Voluntary Work Programs

The Detention Standards require all facilities with work programs to “provide detainees the opportunity to work and earn money.”⁸⁰ Detainees who are physically and mentally able to work must be provided the opportunity to participate in any voluntary work program.⁸¹ As for those detainees who are physically or mentally challenged, the Detention Standards require facilities to allow those with less severe disabilities to have the opportunity to undertake “appropriate work projects.”⁸² Facilities cannot deny “work opportunities based on non-merit factors, such as social group, race, religion, sex, physical or mental handicaps, or national origin.”⁸³ The Detention Standards also state that detainees must receive monetary compensation for work completed in accordance with the facility’s standard policy.⁸⁴

The PCJ has implemented this section of the Detention Standards. PCJ officials informed the delegation that detainees are provided with work opportunities such as cleaning the day room or assisting with laundry services. For these services, detainees are paid approximately \$4/week and \$10/week respectively. One detainee stated that detainees buff floors for 8 to 9 hours a day, seven days a week and are only compensated \$5 for the week.

G. Detainee Grievance Procedures

The Detention Standards require that every facility develop and implement standard procedures for handling detainee grievances and encourage that the facility initially seek to resolve grievances informally before having to engage in a more formalized procedure.⁸⁵ Translating assistance for both formal and informal grievances must be provided upon request.⁸⁶ The Detention Standards also require that each facility establish a reasonable time limit for: (1) “processing, investigating, and responding to grievances;” (2) “convening a grievance committee to review formal complaints;” and (3) “providing written responses to detainees who filed formal grievances, including the basis for the decision.”⁸⁷ All grievances must receive supervisory

⁷⁹ *Id.* at Standard 3, Section III.E.

⁸⁰ *Id.* at Standard 17, Section I.

⁸¹ *Id.* at Section III.A.

⁸² *Id.* at Section III.G.

⁸³ *Id.* at Section III.F.

⁸⁴ *Id.* at Section III.K.

⁸⁵ *Id.* at Standard 8, Sections I. & III.A.

⁸⁶ *Id.* at Sections III.A.1. & 2.

⁸⁷ *Id.* at Section I.

review, include guarantees against reprisal, and allow for appeals.⁸⁸ Further, the Detention Standards require that detainee handbooks provide an explanation of the grievance procedures, including (1) the procedures for appealing decisions to ICE, and (2) the opportunity to file a complaint about officer misconduct directly with the Department of Justice (including the Department's phone number and address).⁸⁹

The delegation has concerns regarding the facility's implementation of this section of the Detention Standards. The Handbook provides for an inmate grievance procedure. However, as previously stated, several detainees never received the Handbook; therefore, many of the detainees were not aware that such grievance procedures exist. According to the staff in the Office of the Ombudsman, as well as other officers at PCJ, minor complaints are often first addressed to the guards or officers in the cellblock. The guards will then attempt to resolve the issue if sufficiently minor. Otherwise, the detainee may be brought to the Ombudsman Office to speak with a member of the staff. The Office does make grievance forms available to the detainees. Once these forms are filled out by the detainee, with assistance if necessary, the forms are passed to the Ombudsman office. Again, the Office will attempt to solve the problem without formal proceedings, by investigating the complaint and meeting with the detainee. Sometimes, the Office will also contact the detainee's attorney. If the Ombudsman Office is unable to adequately address the grievance, the form will be forwarded to administration. With regard to appeals, the Office stated that they do have an appeal procedure in place whereby detainees are able to appeal directly to administration. If the issue concerns ICE services, the Office will forward the grievance to the ICE.

Despite the Handbook's brief description of the policy, individual detainees were not familiar with their rights or options in this area. Most of the interviewees had never attempted to file a formal grievance and some did not know whom to contact should they want to file a grievance. One detainee did have experience with the formal grievance procedure and he stated that it can take up to a month to receive a response. Even informal grievances do not receive prompt responses from PCJ personnel. As one detainee explained, even when informal grievances are made to the officers, the stock response is, "we will see," with no follow up.

Moreover, it does not appear that translating assistance is available for either formal or informal grievances. Even if it is available, detainees are unaware of this option. Finally, although the Handbook provides for a grievance procedure, the Handbook does not provide the procedures for appealing decisions to ICE or the opportunity to file a complaint about officer misconduct directly with the Justice Department.

H. Religious Services

The Detention Standards require that detainees of different religious beliefs be provided with reasonable and equitable opportunities to participate in the practices of their respective faiths.⁹⁰ According to the Detention Standards, these "opportunities will exist for all equally,

⁸⁸ *Id.* at Sections I. & III.C.

⁸⁹ *Id.*, at Section III.G.

⁹⁰ *Id.* at Standard 14, Section I.

regardless of the number of practitioners of a given religion, whether the religion is 'mainstream,' whether the religion is 'Western' or 'Eastern,' or other such factors. Opportunities will be constrained only by concerns about safety, security, the orderly operation of the facility, or extraordinary costs associated with a specific practice."⁹¹ Moreover, a facility's staff shall make "all reasonable efforts to accommodate" special food services required by a detainee's particular religion.⁹² Detainees in confinement must also be permitted to participate in religious practices, consistent with the safety, security, and orderly operation of the facility.⁹³

PCJ has not fully implemented this section of the Detention Standards. According to PCJ personnel, services are available on weeknights, two or three times per week. Christian church services are available throughout the day on Saturday and during the first shift on Sunday. The officers also indicated that at least one service per week is provided for the following faiths: Protestant, Muslim, Catholic, Christian Scientist, and Jewish. Additionally, PCJ staff informed the delegation that requests can be submitted if a desired religious service is not provided. Detainees are also permitted to pray in their cell blocks. However, for security reasons, detainees are not able to wear religious clothing except in the chapel. If a detainee requires special clothing or other objects for prayer, officers will provide these items when the detainee is praying in the chapel. With regard to dietary restrictions due to religious beliefs, PCJ officers claim that they do accommodate dietary requests, providing either kosher or vegetarian meals.

During interviews with detainees, however, the delegation discovered several inconsistencies with regard to how often religious services are provided. In contrast to the statements by the PCJ officers and the Handbook,⁹⁴ detainees stated that each service was offered once every two weeks. Also, there are times when a detainee will request to attend religious services, but his/her request is not honored. Since services are not offered every day, one detainee attempted to pray with a group of Muslims in the day room, but there is not enough space to do so. Several interviewees stated that detainees are not permitted to wear religious clothing at any time and one detainee stated that he came to PCJ with a Bible, but that the Bible was confiscated upon his arrival and kept with his personal possessions to which he does not have access. Another detainee complained that his dietary requests have not been honored. The detainee said he is often given pork, despite his repeated reminder to the guards that he is Muslim and cannot eat it. When he complains, he is given a vegetarian meal, but the portions are small.

I. Clothing and Personal Hygiene

The Detention Standards require regular exchange of clothing, bedding, linens and towels.⁹⁵ At a minimum, underwear should be exchanged daily, outer garments should be

⁹¹ *Id.* at Section I.

⁹² *Id.* at Section III.M.

⁹³ *Id.* at Section III.O.

⁹⁴ PCJ, Inmate Handbook, p. 31.

⁹⁵ *Id.* at Standard 10, Section III.A.

exchanged at least twice weekly and bedding, linens and towels should be exchanged at least weekly.⁹⁶

The Passaic County Jail fails to meet these standards. One detainee indicated that, while the official schedule provides for twice weekly laundering of outer garments, bedding, linens and towels, one of the two weekly exchanges often is skipped. Another detainee indicated that he thought the official schedule for linen washing was once a week. This feedback was corroborated by one of the facility's officers, who indicated that laundry exchange occurred "once or twice" a week. Finally, one detainee indicated that because the laundry facilities are in the day room, other people "help themselves" to the clean laundry, leaving him with older clothing that often does not fit.

As to the temperature appropriateness of the outer garments provided to detainees, detainees and staff alike indicated that the same outer garments are worn year round, but that during the colder months inmates are given jackets during their outdoor recreation time. One detainee indicated that he had only been given one set of outer garments, leaving him with nothing to wear while his clothes were being laundered. He noted that it was not only embarrassing that he was forced to wrap himself in a sheet while his clothes were at the laundry, but it was also an impediment to his attendance at group rights presentations and to his participation in recreational activities. Officers at the facility indicated that long underwear is available for purchase at the commissary.

J. Educational Opportunities

The Detention Standards do not expressly address the question of educational opportunities for detainees. The Passaic County Jail does include a classroom which offers GED and "advanced learning" classes. However, officers were able to provide little information regarding what constituted "advanced learning" (i.e. they could not confirm whether the facility offered drug and alcohol treatment programs, English classes, etc.). Officers added that the classroom and library were stocked with educational video and audio tapes focused on rehabilitating inmates, and that a "mobile library" circulated around the Jail to provide detainees with an opportunity to check out books even if they cannot easily get to the classroom.

It appears that detainees at the Passaic County Jail are not reaping the full benefit of the facility's educational opportunities, in part because of an inadequate response to language barriers. One detainee, a native French speaker from Mali, was unaware of the facility's educational opportunities. Another detainee laughed when asked about classes and claimed they did not exist. The Jail's educational opportunities are mentioned in the Handbook, but, as described above, two detainees indicated in their interviews that they had never received the Handbook, and another, who spoke English but was illiterate, indicated that he had never received assistance in reviewing the information contained in the Handbook. This same inmate also said that his request to participate in drug and alcohol treatment programs had not been honored.

⁹⁶ *Id.* at Section III.E.

K. ICE Presence at the Facility

Officers at the facility asserted that ICE staff are present almost daily to speak with detainees.

Officers at the Jail also indicated that they do not take or give written messages on behalf of detainees, which contravenes the Detention Standards' requirement that detainees "have the opportunity to submit written questions, requests, or concerns to ICE staff." While complaints can be submitted in writing to an Ombudsman, it takes approximately a month to receive any sort of response.