

MINUTES

BOARD OF CORRECTION

June 16, 1983

A regular meeting of the New York City Board of Correction was held on June 16, 1983 at 2:30 p.m. at the offices of the Board of Correction, 51 Chambers Street, New York City.

In attendance were Chairman Peter Tufo, Vice-Chairman John Horan, Mr. Wilbert Kirby, Mrs. Barbara Margolis, Mr. David Schulte and Mrs. Rose M. Singer.

Excused absences were approved for Angelo Giordani and David Lenefsky.

Board staff present were Michael Cleary, Judith LaPook, David Johnson, Judith Ennett, Alison Estess, Laura Limuli, Jeanne Mullgrav, Rolando Torres and Barbara Treen.

Judith LaPook reported on the Mayor's proposal to discontinue funding for the Legal Aid Society's Prisoners' Rights Project and to reassign the eleven attorneys comprising that unit to the Criminal Appeals Division. In the Mayor's view, this move is fiscally necessary since the City is not mandated to fund the Prisoners' Rights Project as it is the Criminal defense and appeals function of the Legal Aid Society. The Mayor's position was made in response to the Legal Aid Society's request for sixty additional attorneys in its appeals division to cut a serious backlog of pending appeals.

Ms. LaPook then reported on the status of the ARDC visiting pilot project. The Department of Correction originally requested a permanent amendment to the Board's visiting standard in order to reduce from five to four the number of visiting days at several facilities on Rikers Island. If granted, this reduction in the number of visiting days would generate savings required by the City's Program to Eliminate the Gap (P.E.G.) One year ago, the Board granted the Department a six month variance to implement this proposal as a temporary pilot project at ARDC. Based on the results of this pilot project, the Board would make a decision whether to permit implementation of this four day per week visit schedule at the requested facilities on a permanent basis. The pilot project has now been operating for a year and the Department has not made a decision whether to implement it permanently at ARDC and at the other requested facilities. Since it was not expanded systemwide as planned in FY 83, the Department obviously did not realize the FY 83 P.E.G. savings it had projected.

Barbara Treen also reminded the Board that the success of this pilot project was predicated, in large measure, on sufficient visit house space to process and accommodate the number of visits in this abbreviated schedule. However, construction recently began at ARDC to renovate the visit house resulting in a loss of visiting space which has significantly increased visitor waiting and processing time.

Staff recommended that the Board press the Department to present its plans, if any, for continuing this project at ARDC or expanding it to other facilities.

Ms. LaPook went on to discuss the current status of the Hart Island work camp and the Department's request for renewal of variances pertaining to Hart Island. As originally planned, "quality of life" offenders would spend up to seven days on Hart Island. Sentenced cadre would spend one week on Hart Island and one week at C-76 and then rotate back to Hart Island. When at C-76, these sentenced cadre would receive additional phone calls, visits and other rights required by the standards to offset the lack of these services while they are on Hart Island.

Since only a small number of prisoners are being sentenced as "quality of life" offenders, prisoners at C-76 sentenced to less than 45 days are being assigned to Hart Island to serve their sentences. In addition, sentenced cadre are spending longer than one week at a time on Hart Island. They are apparently signing a waiver stating that they voluntarily forego certain services as a condition of accepting a Hart Island work assignment, but it is unclear if these cadre know for how long they will be on Hart Island without these services.

Ms. LaPook recommended that the Board not consider renewing the Hart Island variance requests until the Department provided specific information on the average length of stay on Hart Island and the frequency with which the aforementioned waivers are renewed.

At 3:00 p.m., First Deputy Commissioner Peter Seitchik and Deputy Commissioner for Program Services and Legal Policy Robert Goldman of the Department of Correction joined the meeting as did Ted Katz, Jonathan Chasan and Mike Ciaffa of the Prisoners' Rights' Project of the Legal Aid Society. Chairman Tufo welcomed Commissioner Seitchik to his first meeting with the Board of Correction since his recent appointment as First Deputy Commissioner.

Commissioner Seitchik discussed the Department's current efforts to deal with overcrowding through the creation of additional bed space. According to Mr. Seitchik, the Department is due to take over the newly renovated Manhattan House of Detention (Tombs) on July 1, 1983 with full operation being phased in over the next 6-8 weeks.



While the opening of the Tombs will add 426 beds to the system, the Department will be losing 341 beds in the HDM and AMKC as a result of Judge Lasker's recent ruling in the Benjamin case. However, the Department has plans to add additional new bed space to the system either through renovation or new construction. In FY 84, 108 new cells will be added to ARDC. By January 1984, plans call for creating 80 bed spaces in the Manufacturing Industries area. Also, plans call for two new 400 bed facilities to be completed on Rikers Island by the end of FY 84. When completed, these new facilities will constitute the North Facility and Dorms 18A-D will be closed. The North Facility currently consists of Dorms 18A-D. Dorms 15, 16 and 17 are closed. However, approximately 150 bed spaces will be lost in FY 84 as a result of major renovation and maintenance projects in the borough houses of detention. Other options are also being explored to create 100-150 additional spaces elsewhere in the system.

Commissioner Seitchik then discussed plans for the new White Street jail. He indicated that an architect had been selected and that the Department had met with the architect several times to present the requirements for this new facility. In ninety days, the architect is to present four design programs to meet these requirements.

Mrs. Margolis asked that the Board be provided with information on the architect's background and experience to handle such a project.

Mr. Tufo, citing the Board's mandate under the City Charter to make recommendations on correction capital planning, asked Commissioner Seitchik to provide the Board with all details regarding every current Department capital project be it new construction or renovation.

Commissioner Seitchik agreed to provide the information requested.

Mr. Kirby inquired into the impact of the additional 108 beds at ARDC on the service delivery system of that facility.

Commissioner Seitchik acknowledged that additional housing areas are not well programmed at the outset when they are opened rather quickly to alleviate overcrowding. Budgetarily, monies for support services always lag behind the opening of new space. However, the Department recognizes the critical need for support and program services for these new housing areas and is planning to provide for those services.

Commissioner Goldman then presented the Department's request for an amendment from the Board's minimum standard requiring that each detainee in multiple occupancy housing areas be provided with 75 square feet of living space. The Department would like the

square foot requirement revised downward to require 60 square feet per detainee. The request is being made, according to Commissioner Goldman, in order to make maximum use of all available housing space during the current period of serious overcrowding. The Department believes that the Board's 75 square foot requirement is extreme, unattainable, and out of line with other professional standards such as those of the American Correctional Association (ACA). Commissioner Goldman also cited the New York State Commission of Correction's recent modification of its minimum standard from 75 to 60 square feet as evidence of the need to establish a more realistic space requirement. According to Commissioner Goldman, the 60 square foot requirement that is requested is politically and practically achievable, it is a reasonable amount of living space and would provide for a total inmate population that would allow the Department to operate at an efficient and effective level.

Commissioner Goldman acknowledged that there is an existing Federal Court order requiring the same 75 square feet per detainee as does the Board's standard. The Department is not now seeking modification of this court order and is not seeking a change in the Board's standard in an attempt to circumvent the Federal court or to use this amendment, if approved, as an argument in support of modification of the court order in the future.

Chairman Tufo asked if, in fact, the Department's request for an amendment was moot given the existence of the Federal court order. Unless the Federal court were also modified, there would be no immediate practical benefit to the Department since they would not gain any more housing space.

Commissioner Goldman replied that the Department was not seeking additional space through this request but instead was looking for a reasonable, practicable professional standard, irrespective of any court orders, to guide the Department in the future. According to Commissioner Goldman, the Department is asking the Board not to be driven by Federal court orders. In the Department's view court orders deal with specific situations while a standard is more general and would apply where court orders may not.

Commissioner Seitchik added that if the Department should face a significant population increase with the detainee dormitories at 60 square feet, it would be pushed to its operational limits. The situation would be abominable if these dorms remained at 75 square feet per prisoner. According to Commissioner Seitchik, 60 square feet per detainee will not be luxurious, but it is reasonable and realistic. Requiring 75 square feet per detainee is unreasonable.



Judith LaPook reminded the Department that the variance currently in effect allows the Department to house detainees in dormitories at 60 square feet except where the courts have imposed a maximum of 50 per dormitory.

Commissioner Goldman responded that it would be bad management for the Department to operate under a variance in perpetuity. The Department needs a clearly defined and permanent standard. He added that the department wants to operate in good faith and maintain its credibility. The Department can't do that, in his opinion, with a 75 sq. feet standard since it is unacheivable. It could comply with a 60 sq. feet standard and, therefore, not be subject to constant criticism.

Commissioner Goldman added that the current proliferation of conflicting standards (e.g. Board of Correction v. State Commission of Correction) and Federal court orders was overly complicated. The Department was seeking uniformity to simplify the situation.

Chairman Tufo stated that the current variances from the 75 square foot requirement have been granted on a case-by-case basis. They do not apply systemwide since the Board to date has not seen the wisdom of modifying the basic policy as it applies to the entire system. He added that it is not simply a matter of actual living space but also whether the basic insitutional service delivery systems are adequate to support a larger population. Mr. Tufo also cited the American Correctional Association standard which requires 50 square feet per prisoner but allows no more than sixteen prisoners in a dormitory.

Ted Katz of the Legal Aid Society stated that the lawsuit in the Bronx House of Detention was the first case in which the 75 square foot requirement was established. This became the basis of the Board of Correction's minimum standard. According to Mr. Katz, the consent decrees state that after August 1, 1981, the Department of Correction must make a good faith effort to reach the 75 square foot requirement at all other facilities in addition to the Bronx. While the courts have exempted the Department from meeting this standard on an emergency basis at C-95, C-76, and CIFW, the Department has not sought to modify the current order that it must attempt to meet the 75 sq. feet standard.

Commissioner Goldman took issue with the position that 75 square feet per detainee in dormitories was constitutionally mandated. He asked that the Board not be governed in this matter by Federal court litigation. He stated that it would be nice to do what is desireable, but what is desireable is also un-achievable. A reasonable, realistic standard must be set. He implored the Board not to make its minimum standards into maximum standards.

Chairman Tufo suggested that instead of modifying the current standard to 60 square feet systemwide, perhaps square footage could be established facility by facility. Also, if the Board agreed to the Department's request, where 60 square feet was established, a cap could be placed on the total population allowed in those dormitories.

Commissioner Goldman stated that the Department would much prefer a systemwide 60 square foot standard rather than having square footage requirements set for each facility separately. Similarly, he opposed the idea of a standard that would place a cap on the number of detainees in a dormitory stating that, as administrators, the Department is in a much better position to determine where best to house prisoners.

Peter Tufo stated that the 75 square foot standard was set originally to control the number of detainees living in dormitories since generally accepted correction practice states that it is not desirable to house detainees in dormitories.

Discussion then ensued on the Department's variance request for the Hart Island work camp with the Department agreeing to provide additional programmatic and operational information regarding the work camp.

Chairman Tufo asked the Department about the status of the ARDC pilot visiting project.

Commissioner Seitchik stated that he didn't know but he would look into it and report back to the Board.

Commenting on the ARDC visit pilot project, Ted Katz stated that it was originally proposed as a cost saving program during the fiscal crisis. Since the City's current financial situation is very much improved, he saw no justification for continuing the pilot at ARDC or expanding it elsewhere. He also did not see how the ARDC pilot could be justified when the City was able to find additional funds to expand the operation of HDM.

Commissioner Seitchik responded that despite the improvements on the revenue side of the budget, there is an ongoing financial savings program whose goals must be met.

The Board decided to continue the existing variances to the 75 square foot requirement while it continues to analyze the Department's amendment request.

The current Hart Island work camp variances were extended for two months during which time the additional information requested by the Board will be gathered from the Department.



Chairman Tufo stated that the Board would review the ARDC pilot visit project at its next meeting.

The next meeting was set for July 19, 1983 at 2:30 p.m. at the Board's offices.

The meeting was adjourned at 4:15 p.m.