

MINUTES

BOARD OF CORRECTION

JUNE 28, 1984

A regular meeting of the New York City Board of Correction was held on June 28, 1984 at the offices of the Board of Correction, 51 Chambers Street, New York, New York.

Members present were Chairman Peter Tufo, Vice-Chairman John Horan, Mr. Wilbert Kirby, Mr. David Lenefsky, Mrs. Barbara Margolis, and Mrs. Rose M. Singer.

Excused absences were approved for Mr. Angelo Giordani and Mr. David Schulte.

The meeting was called to order at 1:30 p.m. Chairman Peter Tufo stated that discussion was continuing on the promulgation of the Minimum Standards for Mental Health. Executive Director Richard Wolf announced that he had met with Commissioner Sara Kellermann from the Department of Mental Health and a representative of Victor Botnick from the Mayor's office to determine the City's readiness to proceed with implementation. \$2.4 million has been budgeted to bring mental health services into compliance with the Standards. It is unclear whether this allocation includes monies for the Brig and fiscal 1985 construction projects. Mr. Wolf reported that minor changes need to be made to the draft Standards and that the revision process will begin very soon. The agencies contacted for comments who have not yet provided responses will be contacted again. The Standards may be published for comment at the end of the summer. Chairman Tufo expressed his expectation that the Standards will be promulgated by the end of 1984.

Chairman Tufo requested a report from the Personnel Subcommittee on its investigation of hiring practices within the Department. Mr. Kirby stated that the Board had reached a milestone in successfully recommending to the Department that two female correction officers who had been fired during their probationary period be reinstated. Mr. Wolf reported that in examining the Department's reasons for failing the two black women, it was found that their attendance records were somewhat better than those of several white female officers on probation at the time who had passed probation. The Personnel Subcommittee expressed its intention of remaining involved in the issue surrounding this case.

Chairman Tufo reported that Board staff had completed the second monitoring period of a thorough investigation of the proposed 5-day law library schedule. Mr. Wolf discussed staff findings. He stated that staff had worked many hours of overtime, completed complex questionnaires for each library, and interviewed dozens of

officers and hundreds of inmates to evaluate the new schedule. Since the Department had planned, under the 5-day schedule, to deliver better services by providing more steady officers, increased security, improved schedules within the facilities, and other improvements, Board staff monitored the program to determine whether improvements had been made. The overall environment throughout the law library system was shown to have improved under the new schedule, although Mr. Wolf noted that it was unclear whether the improved environment was due to the fact that the library was open only five days or that DOC was enforcing regulations more rigorously because of its desire to run a successful 5-day program. Unrest and violent incidents in the library have decreased, as have use of the library by inmates who were attending only to congregate. Law library services are running less well in ARDC and CIFW. The recall procedure, which allows inmates with a schedule conflict to use the library at another time, was not running as effectively as it should. The information recorded in each law library on the 24-hour reports was often insufficient. Mr. Wolf stated that Board staff was not receiving 24-hour reports in timely fashion. The period during which the variance has been in effect will end on July 23. At that time the Department might ask for an extension of the variance.

Counsel Barbara Dunkel introduced Jonathan Weiss, summer management intern with the Board. Ms. Dunkel reported that the Supreme Court would hand down its decision in the near future on Block v. Rutherford, in which the Board had submitted an amicus curiae brief. She suggested that should the decision support the Board's position, that it release a statement on the decision to the press. Ms. Dunkel further reported that the Board would have to answer an appeal for Eve Rosahn, who had applied to DOC for a legal assistant pass and was denied. Ms. Rosahn has been twice incarcerated, once for contempt for refusing to testify before a grand jury, and once for charges stemming from the "Springbok" demonstration. Papers are to be submitted by Ms. Rosahn and the Department by August 1. All pertinent papers will be circulated shortly thereafter and Board members will be polled by telephone for their views.

Ms. Dunkel discussed the Board's monitoring of the Brig variances concerning outdoor recreation and law library. Both services are to be temporarily provided to Brig inmates at other facilities. The existing records on inmates which are brought from the Brig to the Brooklyn House for recreation are inadequate for auditing purposes. Certain Brig inmates who work in the Tombs are not able to receive outdoor recreation in the Tombs due to Court Pen restrictions. Board staff has held discussions with the Chief and the Deputy Warden of the Manhattan Court Pens in order to clarify procedures. Board staff will continue to monitor the provision of recreation and law library services.

Chief of Operations Gloria Lee, Counsel Devora Cohn, Assistant Commissioner Janie Jeffers, and Assistant Commissioner Jermone Pasichow, joined the meeting at 2:00 p.m. Assistant Commissioner Jeffers reported on the Department's pilot program for the 5-day law

library schedule. The Department's Office of Compliance and Field Audits had monitored the operation of each institution's law library for a portion of each month the variance has been in effect. Ms. Jeffers reported that the second of the two periods had shown a great improvement in operations. She distributed the Department's documentation of its findings in the two periods. Mrs. Margolis asked whether the recall mechanism sufficiently addressed the needs of those inmates who were unable to attend their regular law library sessions. Ms. Jeffers reported that some problems in the recall mechanism remained at CIFW, where a more efficient escort system is needed for male inmates, and at ARDC, where access is a problem for inmates who work. The Department plans to resolve those problems by the next monitoring period. Mr. Wolf asked about DOC plans to improve the quality and timeliness of the 24-hour reports and backfilling for absent legal coordinators. Ms. Jeffers said that a legal coordinator will be installed as a "floater" to fill in for absent law library coordinators. The sign-up procedure and calling procedure in HDM does not run efficiently enough, but inadequate training seems to be the cause. The HDM administration will be directed to provide such training.

Chairman Tufo inquired why the Department had asked for an extension on the variance for the Brig law library. Assistant Commissioner Pasichow reported that items requested by the Department that require Board of Estimate approval had not been scheduled on the Board of Estimate calendar by the Department of General Services. These items include all volumes for the Brig library. Ms. Dunkel asked why the Department had not maintained sufficient contact with DGS to ensure approval and delivery of the law books. Commissioner Pasichow said that he had inadequate staff to track requested items through DGS. He hopes that he will soon have another staff member. Ms. Cohn reported that the Department had attempted to have books loaned or donated from other sources when it became apparent that the requested books would not be scheduled for approval, but time had been too short.

Mr. Wolf asked how the Department could be sure its requests would be on the next Board of Estimate calendar. Ms. Cohn said this would not be clarified until the calendar was published.

Chairman Tufo responded that approving the variance could set a dangerous precedent for the pending construction of new facilities, by permitting non-compliance for administrative delays that might have been prevented.

Ms. Dunkel stated that it had been difficult for Board staff to verify that inmates who signed up in the Brig for law library were actually being provided services in Brooklyn. Ms. Cohn stated that services were being provided adequately. Ms. Dunkel responded that tracking library use by individual inmates through Department sign-up and logbook procedures was not possible, and recommended that record-keeping be amended to record individual usage. Mr. Wolf reported that inmate sign-out from the Brooklyn House library was deficient due

to inmates running to catch the elevator. The Department promised to address this problem. Ms. Cohn stated that DGS said it could deliver the books within three weeks of Board of Estimate approval. Ms. Dunkel inquired if the Department planned to notify the book company that its order should be sent immediately upon approval by the Board of Estimate. Ms. Cohn reported that the vendor would take no action until they received payment.

Chairman Tufo stressed the danger of the Board's allowing delays for requested items that would cause lengthened periods of non-compliance. Although delay in receiving law books may seem to be a small issue, the Board must anticipate the larger problems associated with approving this type of variance. Ms. Cohn and Mr. Pasichow responded that the Department had become aware of problems associated with requesting and receiving items through its renovation of the Brig, and it was prepared to take steps to minimize such problems in the future.

Department staff stated that drinks were being provided to visitors of the Brig, and that a contract was planned with the vendor who serves other Department facilities.

Ms. Dunkel raised the issue of coordinating outdoor recreation for the sentenced cadre inmates housed in the Brig who worked in the Manhattan Court Pens. DOC staff responded that these inmates should receive outdoor recreation in the Tombs. Warden Bussetti is supposed to be providing an order to that effect. An improved system for tracking inmates' use of outdoor recreation should include a sign-up sheet which would accompany the delivery of each group of Brig inmates to their respective outdoor recreation sites.

Chairman Tufo requested an update from the Department on the Gerges litigation concerning the Brig. Ms. Cohn reported that the trial had concluded last Friday. The parties will submit post-trial briefs. The legal capacity of the Brig was permitted to be raised to 500, from its current limit of 225. In a hearing before Eastern District Federal Court Judge Sifton, the plaintiffs' request for preliminary relief voiding the sale and closing of the Brig was denied. The City and the Brooklyn community surrounding the Brig have held meetings to attempt to arrange a settlement, but a successful settlement does not appear to be imminent. A Community Impact Statement (CIS) is in preparation, which does not include the study of alternative sites, but will list the specific environmental improvements that should be implemented.

Mr. Pasichow reported that DGS is currently completing construction of the Brig's third floor. Breaker gates, locks, finished stairwells, and floor drains will be finished by June 28. The third floor is wired for telephones. Use of the third floor will be phased in from July sixth through ninth.

Mr. Wolf inquired whether the Health Department had successfully obtained its pharmacy licence and was told the licence had just been obtained.

Ms. Dunkel asked whether transportation service was adequate for the Brig. The Brig relies heavily on one bus for transportation. Chief Lee responded that the Department would probably need an additional bus or van.

Ms. Dunkel inquired whether the repair to the Queens House roof had begun. Commissioner Pasichow responded that the contractor had been ill for a recent period of time, which had delayed the start of the project. Mr. Pasichow stated that preparation for the actual construction was underway, and that construction itself may have commenced within the past couple of days.

Ms. Cohn reported that almost 200 inmates from Pilgrim State had been returned to Department facilities beginning June 8 causing a significant population increase. Other factors which will influence the Department's population management plans are the probable summer court delays due to the vacations of court staff. Judge Betty Ellerin has stated that extra court work may be done on weekends. Department staff stated that population is under control at CIFM which has decreased from 123.9% of capacity in recent months to current levels of 100%. Assuming that the Department can continue to house inmates in the Brig, housing for sentenced population throughout the system will be eased. Department staff further reported that violent incidents and injuries throughout all institutions have decreased in past months.

Department staff left the meeting at 2:40 P.M.

Chairman Tufo requested that staff present a grievance appealed by an inmate in the Bronx House of Detention on lack of square footage.

Ms. Dunkel stated that the Bronx had been one of the first facilities to be designated with a specific square footage requirement in 1976 in the case Ambrose v. Malcolm. Judge Lasker set a capacity of 29 inmates per housing area in the Bronx in order to afford each inmate 75 square feet of space. His calculations were incorrect due to an error in total square footage. The Department and the Board agree that each dormitory can house 22 inmates at 75 sq. ft. or 28 inmates at 60 sq. ft. measuring wall to wall in the living area. However, in calculating space footage in the sleeping area, Board staff subtracted a standard allowance for a single main traffic corridor consisting of an area of 3 feet wide multiplied by the length of each corridor. Using this standard measurement, Board staff determined the capacity of each Bronx dorm to be 26 beds. The Bronx has housed 29 persons per area by placing three beds in each traffic corridor along the wall of the officer's catwalk. Board staff's observation of the sleeping areas, and discussion with Bronx grievance personnel, indicate that beds in this area would not afford privacy to the occupants. Board staff recommends that the capacity be reduced to 26.

Mrs. Margolis asked how the Department had addressed recent complaints that overpopulation at Harts Island was causing inmates to suffer unsanitary conditions. Mr. Wolf reported that Health Department sanitarians inspected and found conditions to be in compliance with the Health Code.

Ms. Dunkel reported that the Bronx dorm had not experienced appreciably higher or lower incident levels than other institutions, but that incident levels should not be the deciding factor in bringing Bronx dorms into compliance with the space standard.

Chairman Tufo suggested that the Department be allowed to make a presentation to the Board on the issue before the Board made its decision. Vice-Chairman John Horan suggested that the grievance mechanism called for the Board to make a recommendation which is presented to the Commissioner for final decision. Mr. Horan expressed the view that the Department is included in the grievance resolution process and that there is no precedent for a Department presentation prior to Board submission to the Commissioner. Mr. Horan further suggested that the Department was out of compliance with the standard in terms of numbers alone, and that any justification they could make would not affect the fact that they did not comply. Mr. Tufo responded that compliance in the Bronx was desirable, but that giving the Department an opportunity to respond before the Board made a formal recommendation was appropriate. He further stated that the identity of this grievance and the pending square footage amendment required particularly careful deliberation by the Board.

The Board agreed to discuss the Bronx grievance with the Department at its next meeting. The Board agreed to grant the Department a limited law library variance for the Brig until August 12, one month after Board of Estimate approval.

The next meeting was set for July 11 at 12:00 p.m.

The meeting was adjourned at 3:15 p.m.