

MINUTES
BOARD OF CORRECTION
NOVEMBER 20, 1985

A regular meeting of the Board of Correction was held on Wednesday, November 20, 1985, in the conference room of the Board of Correction. Members present were Chairman Peter Tufo, Wilbert Kirby, David Lenefsky, David Schulte, and Rose M. Singer. The meeting was called to order at 2:17 p.m.

Executive Director Richard T. Wolf reported that Deputy Commissioner Janie Jeffers had reported no objections to the language of the proposed amendment on law libraries. Specifically, the Department accepted having language in the amendment requiring that the libraries be open at least one weekend day, that the Board be given notice in writing concerning any changes in the libraries' schedules, and that on-trial inmates be given priority for extra access to the libraries. The Board voted on and passed the amendment.

Chairman Tufo described a conversation he had had with Commissioner McMickens on the subject of recreation at the Brooklyn Correctional Facility (the Brig). The Commissioner stated that inmates at the Brig, were of a sort who were less interested in recreation than average: older inmates, and those who were to remain in the system for only a short time more. Mr. Schulte asked what the problem was with recreation at the Brig. Chairman Tufo responded that the design for the rooftop recreation was not clearly adequate, and that it was not going to be ready until June of 1986 at the earliest.

Board Counsel Barbara E. Dunkel described the rooftop recreation area as it is currently planned. It will consist of four units, each accessible from a central stairwell area. Each unit will have walls nine feet high, with no windows, and will be covered by a wire mesh. Each unit measures 54' 9" x 24' 7", and is expected to be able to handle fifteen inmates at a time. Any INS inmates housed at the Brig will use the same outdoor recreation space. The construction of the units will allow no view of the neighborhood from the roof, and will minimize air circulation. However, the City entered into a contract with the community giving the community the right to disapprove any construction on the Brig, and this is the only design the community would accept. Mr. Schulte suggested the staff warn the Department not to begin construction without clearance from Judge Lasker, but staff advised that the Brig is not covered under Consent Decrees and, since it houses sentenced inmates, the same standards would not necessarily be applied to it as to detention facilities in any future litigation. Mr. Schulte also suggested that a Board member might attend the next community meeting and try to dispel the residents' fears; Mr. Lenefsky concurred that that would be advisable.

Mr. Wolf reported that the Department had not sent the figures it had promised in reference to the request for a variance from the space standard, and that Special Counsel Robert Daly was coming to make a presentation instead. Mr. Schulte asked for an explanation of the background of the space standard variance, and Mr. Wolf explained that the Department was seeking a variance from the proposed standard which would require at least 60 square feet for every sentenced inmate in a dormitory. Ms. Dunkel made a report using known Department figures on present population and present and anticipated future capacity, and emphasized that with the introduction of Individual Calendar Parts in the courts at the same time as the annual January-February-March population crunch, there was likely to be an abnormal rise in population shortly after the first of next year. Mr. Schulte stated that there was nothing the Department could do to meet the standard, and that therefore, the Board could not insist on it. Mr. Tufo demurred, pointing out that, for instance, the length of stay could be reduced, thus effectively lowering the population. Mr. Lenefsky asked why the length of stay was up. Ms. Dunkel suggested that there was little pressure on the courts to move cases quickly because the Mayor has pledged to provide whatever Correction needs are required, and Mr. Kirby noted that the quality of arrests had improved. Ms. Dunkel also pointed out that there was litigation about C-76 scheduled to go before Judge Lasker in about three months, and that since the State Commission of Correction has a standard requiring 60 square feet for sentenced inmates, it seemed almost certain that the judge would find for the inmates. Mr. Kirby asked how many beds C-76 the standard, and Chairman Tufo replied that there were about 500, of which 280 represented state-ready inmates. Ms. Dunkel summarized, stating that there were two possible solutions: either to move the state-ready inmates out faster, or to reduce the average length of stay. Mr. Schulte suggested writing a letter to the Mayor about the courts' role in the rising length of stay, and in the mean time to grant a temporary variance. Chairman Tufo said that the issue would have to be put off until the next meeting, by which time the Department should have assembled the information requested by the Board. Mr. Kirby noted that after the North Facility Annex dorms were filled, there would simply be no more space to put inmates. Mr. Schulte suggested writing another letter, to point this out.

Chairman Tufo suggested holding a special meeting, without staff, to discuss the wisdom of further building programs in philosophical terms.

Ms. Dunkel noted that the number of incidents in C-76 seemed to be rising, and Mr. Kirby said that the same was true of HDM.

At 3:00 p.m., Special Counsel Robert Daly and Deputy Commissioners Albert Gray, Janie Jeffers, and Sharon Keilin joined the meeting. Chairman Tufo informed them that the amendment on the law library standard had been passed. He also requested that the information on the space standard be forwarded to the Board

well in advance of the next meeting, scheduled for December 12, for analysis by staff.

Mr. Daly made a presentation on the population and capacity factors influencing the request for a variance from the proposed space standard. As of May, 1984, the Department had felt it could meet the standard by July of 1985, for which time it projected a total population of 10,800 and a capacity of 11,800. As it turned out, the actual population was slightly lower than expected -- 10,700 -- but the capacity was also lower, due to slowdowns in new construction. By the time the capacity was available, the population had exploded. Over the last eleven months, the population has gone up by over 2,000 inmates; in the last three and a half months, the population has risen by 1,500 inmates. This had not been projected. Currently, Mr. Daly added, the Department has 970 State inmates, and the population of City sentenced inmates is up by 701. The Department has the current capacity to house 2083 inmates sentenced at standard in CIFM. It currently has 2,568 inmates sentenced in CIFM. It still may be possible to meet the standard by moving parole violators and other State inmates out faster to State facilities, and by moving City sentenced inmates into the Brig as more housing there is completed. However, the feasibility of this plan depends upon the Department's success in prevailing upon the State to take its inmates faster, and in holding the rate of population growth to 6% instead of the current 12% a year.

Chairman Tufo asked whether the increase in population was coming from an increase in remands or in the average length of stay. Mr. Daly said he was unsure, but would try to find out. He also suggested, in response to a question from Mr. Schulte, that partial compliance with the space standard might be possible by giving those inmates who are to be held at C-76 for a substantial period of time 60 square feet, and giving less space to those who were not to be there as long. Deputy Commissioner Keilin also pointed out that the East Facility would open around the turn of the year in 1986/1987, and that the Brig would ultimately be able to hold 610 City sentenced prisoners.

Mr. Lenefsky asked whether there were any problems in compliance with the space standards in jails other than C-76; and Mr. Daly replied that there were not. Mr. Wolf asked about the state of litigation on sentenced inmates, and Mr. Daly explained that the Department was being sued by the Legal Aid Post Conviction Unit on behalf of parole violators who were being housed in City facilities for such periods that, were they in State system, they would have become eligible for new parole hearings and in many cases have been released. The Department is hoping that, as a result of the lawsuit, the State will be forced to take custody of parole violators in a more timely fashion than it does now. Mr.

Daly also said, in response to a question from Mr. Schulte, that the six months in the Department's variance request was intended merely to give the Department time to evaluate its position, and that there was no promise that compliance would be achieved by the end of that period. Ms. Dunkel asked about progress in the suit against C-76 by The Legal Aid Prisoner's Rights Project and asked Mr. Daly for his opinion of the effect that the existing State Commission of Correction standard of 60 square feet for sentenced inmates might have on the litigation. Mr. Daly stated that, in his opinion, the State standard will have little weight in a Federal trial because it does not have constitutional force, and that Legal Aid will have a heavier burden of proof in a case involving sentenced inmates than it did in the suits involving detainees. Mr. Daly continued that it was possible that the Department's inmate population might hit peaks next year as high as 12,900. He stated that the phasing-in of Individual Calendar parts would probably increase length of stay, with a corresponding increase in population at least initially as the new system worked itself out. He added that the administrative judge from Manhattan had been consulting the Department regularly as he worked out his plans for implementing the new system, but that judges in the other boroughs had not done so to the same degree, if at all. He added that the Department was hoping that the system would allow for separate morning and afternoon IC Parts, to reduce the burden on Transportation and the Court Pens.

Mr. Lenefsky asked for a report on the Brig. Deputy Commissioner Jeffers stated that the prospects for recreation in the Navy Yard were not encouraging, but that a Captain Pierce was working on it. She added that she had sent a letter to Mr. Lenefsky in his capacity as Chairman of the Brooklyn Development Corporation. Mr. Lenefsky stated that he had not yet received the letter. Deputy Commissioner Jeffers said that the Department was also planning to increase the availability of "passive" games, such as chess, at the Brig. She stated that the Department had identified a way to reduce the waiting time for those Brig inmates who choose to take advantage of outdoor recreation at the Manhattan House of Detention, by cutting the time that they must wait in holding cells. Mr. Wolf asked if there were records capable of being easily reviewed to document the time that inmates left for recreation and the time they returned; Deputy Commissioner Jeffers replied that she was unsure. She also stated, in response to a further question from Mr. Wolf, that to the best of her knowledge, transportation for Brig inmates going to recreation in Manhattan had not been a problem. Mr. Lenefsky asked whether the negotiations with the community were complete concerning the structural setbacks in the recreation areas at the Brig, and Deputy Commissioner Keilin replied that they were and that the Deputy Mayor for Operations had approved the design. The members of the Department left the meeting at 3:25 p.m.

Mr. Lenefsky expressed disappointment that the Department had not provided the information requested concerning population and capacity prior to the meeting and asked if there were any reason not to grant a one-month variance until the next meeting. Mrs. Singer mentioned that the Department was in the midst of some internal difficulties, and therefore should not be unduly burdened by Board requests for information. Mr. Kirby agreed. Mr. Wolf agreed with the one-month variance; however, he explained that the letter sent by staff requesting the information had been in two parts: one which had asked for information that staff knew the Department had, and one asking for further information if it were available. He said that the letter had been carefully worded so that the Department could not feel that it was being asked to perform new analyses.

Mr. Lenefsky suggested that it would be wise to get the necessary information from the Department well in advance of the next meeting, and then to invite the Commissioner for an informal discussion over lunch at the meeting. To that end, he announced that the next meeting would be held at one o'clock, rather than two, on December 12, 1985.

Ms. Dunkel mentioned the importance of analysing population by classification category, to assure that space would be available where it was needed. Comparisons of total population to total capacity could be misleading.

Mr. Schulte made a request to be provided grievance recommendations for comment before they were forwarded to the Department. Ms. Dunkel stated that this was agreeable to staff, and suggested a discussion of a procedure to meet the timetable within which grievance responses must be acted on. Mr. Schulte stated that his request was not subject to discussion, and insisted upon staff's honoring this request. Mr. Wolf explained the grievance procedure, and asked Mr. Schulte if he wanted the original complaint, or only the staff's recommendation. Mr. Schulte replied that he wanted exactly what Mr. Horan got, and wanted the same time period in which to make comment. Mrs. Singer mentioned that, several years ago, each Board member had an institution for which he or she was responsible, and suggested a return to that policy.

The meeting concluded at 3:40 p.m.