

ORIGINAL

BOARD OF CORRECTION

CITY OF NEW YORK

PUBLIC HEARINGS ON THE
PROPOSED STATE TAKEOVER
OF RIKERS ISLANDOctober 10, 1979
New York County
Lawyers Association
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P R O C E E D I N G S

(Time noted - 9:30 o'clock a.m.)

MR. TUFO: Good morning.

This is the second day of hearings of the New York City Board of Correction regarding the transfer of Rikers Island to the State of New York.

Our first witness this morning is Archibald Murray, who is the Executive Director of the Legal Aid Society, City of New York.

Mr. Murray, we welcome you here today and thank you for taking the trouble to appear before us.

Sitting with him is Michael B. Mushlin, head of the Prisoners' Rights Project, who has appeared before us on a number of occasions.

MR. MURRAY: Thank you very much.

As the Executive Director and Attorney-In-Chief of the Legal Aid Society, I can tell you we are particularly interested in the subject matter of today's hearing.

We are the public defender in the City, State and Federal courts in this city, and therefore the people about whom we are speaking are principally clients of the Legal Aid Society. Michael Mushlin,

1
2 sitting on my left, is the attorney in charge of our
3 Prisoners' Rights Project and has been the leading
4 attorney in much of the litigation that we have con-
5 ducted on behalf of clients who are now incarcerated
6 on Rikers Island and in other facilities in the City
7 of New York.

8 He will therefore have a great deal of in-
9 formation regarding some of those specific items of
10 litigation, should the occasion arise.

11 Rikers Island was a mistake; it never should
12 have happened.

13 Each year, thousands of men, women and
14 adolescents not convicted of any crime are banished
15 to that small island constructed on landfill in one of
16 the more remote regions of the City of New York.

17 The sole purpose of their detention is to
18 assure that they are present in court for their trials.

19 It is not to isolate them from their
20 families or their lawyers, nor is it to render them
21 unable to participate effectively in the defense of
22 their cases.

23 Yet, if an imaginative sadist sought to
24 accomplish this result, he would be hard pressed to
25 find a place within our City's borders that is as

1 isolated from our courts, that is as difficult to
 2 reach by public transportation, and that is as far
 3 removed from the families of most of this City's
 4 defendants as is Rikers Island.

5
 6 If that same person were commissioned to
 7 design an institution in which to hold the men con-
 8 signed to the Island, he could well feel satisfied
 9 if he diagrammed the House of Detention for Men, the
 10 major detention facility on the Island. Its structure is of enormous cell blocks,
 11 each the length of a football field; its three-story
 12 high tiers, its forty square foot cells, and its
 13 limited program facilities would delight the most
 14 diabolical of planners.

15
 16 The Legal Aid Society, through its
 17 Prisoners' Rights Project, as counsel for pre-trial
 18 detainees who are held at HDM and the other major
 19 detention facilities on the Island, has brought and
 20 continues to pursue a series of civil rights class
 21 actions which have as their objective the establish-
 22 ment of humane and constitutional conditions of con-
 23 finement for the City's pre-trial detainees.
 24 Central to that end is the elimination of
 25 Rikers Island as a pre-trial detention center.

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20 The evidence showed that HDM was not even
 21 designed to be a pre-trial detention facility, yet it
 22 is today by far the largest jail in the City, holding
 23 about forty percent of the City's detention population.

24 The facility is, and for years has been,
 25 overpopulated and understaffed, and its design is

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1
2 I would like briefly to share with you some
3 of the evidence produced at the trial of one of those
4 actions, Benjamin v. Malcolm, because I believe that
5 it will be useful to this Board in its consideration
6 of the Mayor's proposal to transfer the Island to the
7 State.

8 That evidence, which is set forth in the
9 300-page memorandum prepared by our attorneys, and
10 which we would be happy to provide to you, described
11 conditions at HFD.

12 MR. TUFO: Excuse me, Mr. Murray. Could you
13 please provide it?

14 MR. MURRAY: Yes, we will provide it.

15 The voluminous trial record includes
16 testimony of inmates, correction officers and wardens,
17 records of the Department of Correction, and the
18 opinions of nationally-known correctional and psycho-
19 logical experts.

20 The evidence showed that HDM was not even
21 designed to be a pre-trial detention facility, yet it
22 is today by far the largest jail in the City, holding
23 about forty percent of the City's detention population.

24 The facility is, and for years has been,
25 overpopulated and understaffed, and its design is

1
2 beyond remedy.

3 The facility's seven major cell blocks are
4 cavernous. The windowless cells are far smaller than
5 the minimum required by national standards.

6 As a consequence of its structure, adequate
7 supervision of detainees is, in the words of a former
8 Commissioner of Correction, Benjamin Malcolm,
9 "Extremely difficult, if not impossible."

10 Four years ago this Board reached the
11 conclusion that HDM has "an outmoded and inappropriate
12 institutional layout creating hazards to correction
13 officers' safety and discouraging the delivery of
14 services."

15 At the trial your Chairman, Mr. Tufo,
16 testifying as an expert, stated that HDM was "unsafe
17 for its officers and unfit for its inmates."

18 Mr. Tufo's conclusion that even if HDM
19 underwent structural alterations it would remain
20 "unsuitable for continued use as a long-term detention
21 facility," is clearly supported by the evidence at the
22 trial.

23 The evidence showed that far more is wrong
24 with HDM than structure alone; the location of HDM on
25 Rikers Island also causes inestimable harm.

The evidence showed the visiting rate at HDM to be only a fraction of the rate at the mainland jails. Because of HDM's remoteness and inaccessibility, detainees at HDM were shown to receive one-fourth as many visits as detainees at the Bronx or Queens Houses of Detention, and one-third as many visits as detainees held in Brooklyn.

And, despite the restrictive visiting hours and oppressive conditions which characterized the Tombs, detainees in that facility at the time it was closed received visits from loved ones at twice the rate of visits to HDM detainees.

Visits from lawyers -- essential to the attorney-client relationship and the preparation of the proper defense of a criminal case -- occur much less frequently at Rikers than at the City's mainland jails.

At the Benjamin trial, William Leibovitz, a private attorney who is now Chairman of the Mayor's Judicial Selection Committee, testified that the location of Rikers Island created such a barrier to adequate representation of detainees held there that he felt compelled to limit the number of such detainees whom he could represent.

1
2 Of course, our attorneys do not have that
3 option. We must and we will represent defendants
4 wherever they are held.

5 And our attorneys do their jobs well. But
6 the housing of our clients on the Island was shown by
7 evidence in the Benjamin case to place a severe and
8 unnecessary burden on such representation.

9 The evidence also showed that the system for
10 transporting detainees from Rikers Island to court is
11 protracted, difficult, and dangerous.

12 Courtbound detainees are awakened early in
13 the morning -- often before sunrise -- then crammed
14 for hours into a receiving room to await transport
15 vehicles. They must then endure a long and arduous
16 journey, during which they are handcuffed together,
17 often seated on narrow benches in windowless vans.

18 They are finally delivered to court, but,
19 in many instances, long after they were scheduled to
20 appear.

21 The court appearance is still not the end of
22 their trial by transportation. Detainees often are
23 not returned to Rikers Island until many hours after
24 their court appearance and many times they reach the
25 Island late at night.

1
2 Thus, the evidence presented at the Benjamin
3 trial makes inescapable the conclusion that the con-
4 ditions outlined above cannot help but impede the
5 ability of detainees to listen carefully, to think
6 clearly, to make reasoned choices; in short, to par-
7 ticipate effectively in their own defense.

8 A review of the problems at HDM led the
9 staff of the State Commission of Correction to make
10 the following statement:

11 "Conditions at the New York City House of
12 Detention for Men have defied solution through
13 ordinary measures for many years. Throughout those
14 years many thousands of men detained prior to trial
15 and conviction have experienced the degradation and
16 humiliation of these conditions. It is time for
17 drastic remedies."

18 The Board's minimum standards and the
19 partial consent judgments recently entered into by
20 the City and the Legal Aid Society represent signif-
21 icant steps in the effort to improve conditions in
22 the City jails, but they do not resolve the difficult-
23 ies which have just been discussed.

24 The proposal to relocate the New York City
25 detention population away from Rikers Island offers a

1
2 potential remedy for their problems.

3 While we are not in a position to evaluate
4 the cost estimates for implementing the proposal, we
5 support it because it offers a common sense alter-
6 native to a system whose liabilities cannot be over-
7 stated.

8 However, in announcing our support for
9 this proposal, it is appropriate that we make the
10 following observations:

11 First, unless accompanied by careful
12 planning to avoid repetition of past mistakes, the
13 transfer from Rikers Island will not be beneficial.
14 We must never again build huge, dungeon-like
15 Bastilles such as HDM. We all surely know by now
16 that such places rob their inhabitants, both inmates
17 and custodians, of their dignity and threaten their
18 safety. Replacement facilities must provide decent
19 living environments and must be located in areas near
20 the courts and accessible to detainees' families;

21 Second, we must continue to seek ways to
22 improve the workings of our criminal justice system
23 so that the number of people in detention is kept to a
24 minimum. For example, a large number of detainees are
25 held for only a few days before they make bail and are

1 released. Ways must be found to identify these people
2 before they are incarcerated;
3

4 Third, during the lengthy transition period
5 until new facilities are opened, we must ensure that
6 detainees are not deprived of essential rights. A
7 solution that will take five years to implement is
8 small comfort to a person caged on Rikers Island today.

9 In the interim, there must be vigorous
10 enforcement of the Board's minimum standards and
11 scrupulous compliance with the consent judgments.

12 In addition, essential steps to ameliorate
13 the inaccessibility of Rikers and the overpopulation
14 of HDM can and must be taken.

15 New York uses outdated prisons, many located
16 in remote corners of our State. By this I mean the
17 State of New York, not the City of New York. For a
18 New York City resident incarceration at Attica or
19 Clinton is virtual banishment.

20 Aside from its inhumanity, this practice
21 makes extremely difficult what is universally recog-
22 nized to be among the most important factors in the
23 prevention of recidivism: contact with one's family.

24 The State takeover of Rikers Island can be
25 an important step towards the restructuring of the

1
2 State system to eliminate this abuse. But to fulfill
3 this promise, the State must rehabilitate the institu-
4 tions on Rikers Island, and reduce the population of
5 its upstate facilities by phasing out its use of out-
6 moded and poorly located prisons.

7 The State must acknowledge the obvious fact
8 demonstrated by study after study, that the crime
9 problem is not solved by increasing the prison popu-
10 lation.

11 In summary, the plan which you consider
12 today presents a unique opportunity for the City to
13 adopt a thoughtful, creative remedy for a critically
14 ill system.

15 We believe it deserves your consideration
16 and support.

17 I thank you.

18 MR. TUFO: Thank you very much, Mr. Murray,
19 for those thoughtful remarks.

20 Are you familiar with the so-called Working
21 Document of the Rikers Island Project?

22 MR. MURRAY: I have seen it, yes.

23 MR. TUFO: The administration in that
24 document lays out an alternative plan in the event
25 that the Rikers Island transfer is not approved, and

1 states in it that the City will have to spend \$112
2 million to rehabilitate existing facilities in order
3 to meet the requirements of the Board of Correction's
4 minimum standards and the consent decrees to bring it
5 into compliance with other court decisions.
6

7 Have you had an opportunity to evaluate that
8 alternative proposal and can you comment on its
9 suitability in the event that the Rikers Island pro-
10 posal is not passed?

11 MR. MURRAY: I would not say that I am in a
12 position to evaluate as carefully as it deserves.

13 However, there is one glaring shortcoming in
14 that proposal. To use Rikers Island as a detention
15 center is just simply not acceptable, because there is
16 no way of providing reasonable access for the person
17 who represents that client who is being held on Rikers
18 Island.

19 A detention facility that is a pre-trial
20 detention facility [that is a pre-trial detention
21 facility] really ought to be located reasonably close
22 to the court house, and there is no way of bridging
23 that shortcoming in the case of Rikers Island.

24 I don't think we are about to move the courts
25 to Rikers Island.

1
2 MR. TUFO: That proposal would include a
3 reconstruction of HDM to make it a smaller facility
4 and to add programs, space, and recreation space and
5 improve visiting space.

6 MR. MURRAY: While those steps would ob-
7 viously ameliorate conditions somewhat, I think they
8 fail to address one of the major shortcomings of using
9 Rikers as a detention facility, and I therefore would
10 urge the plan rather than the alternative.

t.16
11 MR. TUFO: In the event that the plan was
12 not approved and renovations had to be sought re-
13 garding the borough facilities that did go forward,
14 would that make any difference in your analysis of the
15 necessity of pursuing litigation regarding the
16 borough detention facilities?

17 MR. MURRAY: As long as inmates are held
18 at Rikers in pre-trial detention, if the City abandons
19 the effort to remove them from the Island, it seems to
20 me that we would have no alternative but to pursue our
21 remedies in the litigations regarding the physical
22 conditions under which our clients are being held at
23 Rikers.

24 On Friday there was a discussion --

25 MR. TUFO: Excuse me. I was referring

1
2 specifically to the litigation regarding borough
3 facilities.

4 MR. MURRAY: Let me ask Michael to say
5 something about what happened on Friday in the Rikers
6 Island litigation, and perhaps we can tie the two
7 pieces together.

8 MR. MUSHLIN: If I can, on the borough
9 houses, to begin with, as you know, our office has
10 pursued a series of cases about all three of the major
11 borough houses in various stages of litigation, one
12 of which has been fully tried and is awaiting decision
13 by the Court.

14 But for the negotiations which we entered
15 into with the new City Administration, the plan that
16 I saw in the working document does not address the
17 fundamental deficiency in the borough houses, which
18 is not that different from that which existed in the
19 Tombs.

20 By that I mean the exclusive use of maximum
21 security in cells, a design characterized by the over-
22 whelming reliance on steel, and by the availability of
23 living space which is less than half that which is
24 recognized by every professional group in the country.

25 So that if the sale, Mr. Chairman, did not

1
2 go through, then I believe we would have no choice
3 but to pursue that litigation, seeking essentially the
4 same renovations which are now in the offing for the
5 Tombs.

6 If the transfer did go through and if the
7 City was committed to using those outmoded facilities
8 for limited uses, which I see the working document does
9 make a statement about, then there would be reevalua-
10 tion as to what we would ask the Court to do or what
11 a Court might do in that instance.

12 But absent the plan and the continued use of
13 those facilities, which in our view is nothing more
14 than the continuation of the scandal which has
15 characterized the system, we feel that those
16 facilities have to undergo major renovation, far more
17 than the \$7 million for improvement of recreational
18 facilities.

19 On Friday, Judge Lasker was asked at a
20 conference about -- was informed about prospects for
21 sale of Rikers Island, and he made a statement to the
22 parties on the record, a copy of which could be pro-
23 vided to this Board if the Board wished.

24 Which, to paraphrase -- and I think you
25 should have a full copy of it -- Judge Lasker did

1
2 commend the City for making an effort to resolve the
3 problems that have been caused by the New York City
4 pre-trial detention facilities, of which he is well
5 aware and acquainted for almost a decade now.

6 He did make a comment that he felt that the
7 history of the Tombs litigation had been "singularly
8 counterproductive."

9 He talked about how, in the situation with
10 the Tombs, the ^{Lindsay} Cassidy administration was able to
11 evade its responsibilities for renovating the Tombs
12 by simply transferring people to Rikers Island.

13 Judge Lasker pointed out that if he is
14 forced to rule on the litigation on Rikers Island
15 and if, indeed, he did have to find that some aspects
16 of that institution are unconstitutional -- I might
17 add that he did not say what he would do, of course --
18 but if that were to happen, there is no longer any
19 place to hide, and therefore he urged that a solution
20 be found and pointed out that if a solution were not
21 found, he, of course, as a Federal Judge, had the
22 responsibility to act and decide the case, and he
23 would.

24 MR. TUFO: We will make Judge Laker's
25 statement a part of the record in this hearing.

1
2 Have you made any estimate of the cost that
3 would be involved in bringing the borough houses of
4 detention up to the standards that you are seeking to
5 enforce in your litigation?

6 MR. MUSHLIN: No, we haven't. We are not
7 really equipped nor in the business to make estimates
8 as to cost.

9 I have seen the figure used of a hundred
10 million dollars. I don't have any way of commenting
11 on whether or not that is adequate.

12 MR. TUFO: What is that figure presented by
13 the City in litigation?

14 MR. MUSHLIN: I saw that in the early state-
15 ment by the City evaluating the fiscal implications of
16 the sale.

17 The only thing I would point out, Mr.
18 Chairman, is that the object of our litigation --

19 MR. TUFO: Excuse me. I would just like to
20 clarify for the record, are you referring to the cost
21 for renovating the borough houses now of a hundred
22 million dollars in the event that sale did not go
23 forward and it was necessary to meet what you had
24 sought in your litigation regarding the borough houses
25 of detention?

1
2 MR. MUSHLIN: That's correct.

3 MR. TUFO: Thank you.

4 MR. MUSHLIN: The only thing I would say
5 about cost is that the objective we seek -- and as we
6 see the borough houses, what we see, and our judgment
7 about the applicable law -- is that these facilities
8 require renovations similar to those which are re-
9 quired in the Tombs; that, in their essential
10 qualities, those facilities do not differ from that
11 of the Tombs.

12 The Tombs was an extreme example of a bad
13 design that we find throughout the City, so that our
14 legal judgment is that we would seek similar renova-
15 tions to those which are required in the Tombs, and
16 the latest estimate I saw about the Tombs -- again, I
17 have no way of commenting on their reliability or
18 not -- was something between \$20 million and \$30
19 million.

20 MR. TUFO: I believe the correct estimates
21 are in excess of \$30 million and you then apply those
22 to the other three detention facilities off Rikers
23 Island.

24 MR. MUSHLIN: That's correct.

25 MR. TUFO: The working document suggests

1
2 the conversion of the existing borough houses into
3 short-term detention facilities and using new
4 facilities to be constructed for the longer-term
5 detention inmates.

6 Do you have a reaction to that proposal, to
7 assist us in evaluating the overall plan?

8 MR. MUSHLIN: Well, I have to say that we
9 are in discussions with the City about that now, and
10 our discussions, through agreement, have been con-
11 fidential and off the record, and the only thing I
12 can say about that is that is a proposal we would
13 seriously consider.

14 There have been no conclusions to those
15 negotiations yet.

16 I would point out that if those facilities
17 are continued to be used to house human beings, there
18 are clearly things that have to be done to them,
19 regardless of how long.

20 By that, I could just point out several of
21 them: There is no question that the heating and the
22 ventilation systems, the noise problems and the
23 window problems -- these things that Judge Lasker said
24 can determine whether or not a living environment is
25 tolerable -- are in my judgment intolerable now in

1
2 those institutions and must be made so that they
3 function.

4 Right now it is our judgment that they don't.
5 Noise levels are excessive, heating systems don't work,
6 ventilation systems are not proper, and, as you know,
7 there are no windows in those facilities.

8 So that in any event if those facilities are
9 going to continue to be used, those sorts of things
10 have to be done.

11 In addition, there has to be improvement of
12 recreational facilities, and there can no longer be
13 a characterization of those facilities by way of
14 saying that there is no activity.

15 Regardless of how long a person stays, a
16 person cannot be subjected to the idleness which
17 characterizes our system. It is our judgment that we
18 cannot compromise in this respect.

19 The question of whether or not there needs
20 to be a massive overhauling of the structure of the
21 facilities if they are used for short term is some-
22 thing that we certainly can and will discuss, and I
23 think certainly can and will influence any court that
24 will decide the issue.

25 MR. TUFO: Mr. Horan.

1
2 MR. HORAN: Have you litigated or is it now
3 before Judge Lasker the issue of access to your
4 clients?

5 You mentioned or referred to Bill Leibovitz,
6 who had to reduce the number of clients he could
7 represent.

8 Has Legal Aid faced any such problem in your
9 representation and have you pressed the City through
10 litigation and through other avenues for better access
11 to Rikers Island, either through some special trans-
12 portation or some other proposal?

13 MR. MURRAY: There are two answers to that.

14 It was part of the litigation but we have
15 also attempted to deal with the problem in the
16 Criminal Defense Division by out-stationing people at
17 Rikers Island, to facilitate that communications
18 problem.

19 On the status of the claim in litigation,
20 Michael will probably be better able to address it for
21 you.

22 MR. MUSHLIN: Well, the claim in litigation
23 was that the location, as you know, is so inaccessible
24 that it does have an effect that can imperil peoples'
25 ability to participate in a trial.

1
2 At the trial of the hearing, a number of
3 attorneys testified that they do the best they can
4 with the situation that they have, and that they do
5 make efforts to try to overcome it, but there is a
6 certain inherent problem that exists and that, given
7 the caseloads people have, the responsibilities that
8 people have and the fact that to see a client at
9 Rikers Island, unlike seeing a client at the borough
10 institutions, it requires an odyssey which doesn't
11 exist any more.

12 And it is not our contention, or the
13 attorneys that testified, that they weren't able to do
14 everything they could to overcome it; in their judg-
15 ment they did provide professional representation.

16 But it is our contention, in the aggregate,
17 that those problems are unnecessary, that they do
18 clearly have an effect on a person's ability to par-
19 ticipate effectively in ways that maybe cannot be
20 identified, so that one can determine in a particular
21 case whether a conviction is invalid or not, and that
22 may be something that future courts in other pro-
23 ceedings, in the 1983 actions, are going to have to
24 grapple with.

25 But in the context of the 1983 class action,

1
2 the claim was that in the aggregate the barriers were
3 there, that they needn't be there, that the purpose,
4 the very purpose of a pre-trial detention system is
5 not to place them there, and that therefore they are
6 unconstitutional.

7 MR. LENEFSKY: Mr. Murray, do you think that
8 inherent in this difficulty in having access to the
9 inmates of Rikers Island, do you think that there is a
10 tendency, a time for a hard-pressed Legal Aid attorney,
11 in fact, not to go to trial but to seek disposition of
12 the case by other means, negotiating a plea?

13 MR. MURRAY: It can have some impact on the
14 way the case is handled.

15 I would not say that it causes the resolu-
16 tion to be that of a plea rather than a trial, but it
17 does have some effect on the nature of the resolution
18 pursued by the lawyer. The lawyer does, in fact, get
19 to see his client, but the point is that if the lawyer
20 uses up most of a day just getting to see one client
21 at Rikers Island, it is obviously done at the expense
22 of other work that might have been done, in court or
23 elsewhere, on behalf of other clients, and that has
24 a cost.

25 MR. LENEFSKY: How many trials did Legal Aid

1
2 attorneys do for inmates on the Island, say, in 1977;
3 do you know offhand?

4 MR. MURRAY: No, that would be difficult to
5 estimate.

6 The number of trials is not normally measured
7 by where the client is. The client may have been at
8 Rikers at some point during the course of the pre-
9 paration; he may be on Rikers at the time of the trial.

10 MR. LENEFSKY: Those who are on the Island
11 at the time of the trial.

12 MR. MURRAY: That we would have to go back
13 and examine each case folder to find out.

14 We just don't keep records in quite that
15 fashion.

16 MS. LaPOOK: Mr. Murray, certain of the
17 plans contained in the working document that relate to
18 improved security in the new placement facilities
19 seem to depend on the institution of an increased or
20 expanded classification system.

21 Would you be able to say whether the imple-
22 mentation of such a system would raise any legal prob-
23 lems?

24 MR. MURRAY: You are talking about the
25 classification system as applied by the State to

1
2 the sentenced inmates?

3 MS. LaPOOK: The system as contained in the
4 working document is really not expanded upon. We
5 don't find too much, but there is reference to
6 classifying the detainees by their degree of risk.

7 MR. MURRAY: I don't really have an answer
8 for you.

9 MR. MUSHLIN: I think it is, first thing I
10 would say is, it has been our contention and the
11 courts have held for years now that the reliance on
12 maximum security custody that has been the hallmark of
13 the past is unconstitutional and unacceptable, so that
14 we have got to move away from the maximum security,
15 however it is defined.

16 That is the first and I think the most
17 important thing.

18 I think so far there has been a lot of dis-
19 cussion about that, but we sit here today and the
20 system is maximum security almost entirely.

21 So that the plan, one of the positive
22 attractions of the plan is that it offers a method
23 to move away from that.

24 Once we have moved away from that we will
25 be in a legal situation different than ever before;

that is to say, we will have people who are no longer held in maximum security, and therefore we will have people who are held in maximum security and those who are denied the opportunity to be in maximum security, and what the legal rights and obligations of that group are I think we will have to wait and see.

I think there may be litigation on that, and I think we may have to have courts decide that, or we may work that out through arrangement, but I think that is a new situation legally, one that has never existed in the past, and I think it is murky as to what the legal responsibilities of the City will be and what the rights of detainees will be.

MR. TUFO: Mr. Kirby.

MR. KIRBY: I, too, have hang-ups about, I see witness after witness, "security," "security," and "security" expressed by the witnesses.

I am of the opinion that the pre-trial detainees are really persons you hold because they don't have the ability to meet bail, and then, in my opinion, they are all classified in one way, not maximum, medium, and I have some hang-ups with that.

I have another hang-up: I hear a person raise the question that we will use the borough jail,

1
2 the jails, the ones that exist today, for short-term
3 prisoners as opposed to the ones being use for long-
4 term prisoners.

5 I would like someone to explain to me how
6 you make that determination in dealing with a detainee.

7 How will it be known who is a short-term or
8 a long-term? Does the DA, does the Legal Aid, know in
9 front that we are going to hold this person?

10 I remember going back to the Tombs, there
11 were charges of people being held as hostages.

12 Are we still in that system, where the DA
13 would know, for lack of plea bargaining, this person
14 would come in and be held for two years?

15 Do we have a way of determining it? I
16 don't know what you mean by "short-term."

17 A detainee is a person awaiting trial and
18 I think trial is supposed to be as expeditious as
19 possible, so I am trying to determine that.

20 MR. MURRAY: I agree with you.

21 Planning for long-term detention does have
22 within it some seeds of disappointment. We are not
23 really planning to detain people for a long period.

24 We ought to be planning to give them speedy
25 trials. I agree with you on that score.

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2 Where the City is thinking of drawing the
3 line and how they will draw that line I am not sure
4 how that will work, but clearly we ought to be giving
5 people speedy dispositions of their matters rather
6 than planning to house them in detention indefinitely.

7 MR. TUFO: Mr. Murray and Mr. Mushlin, thank
8 you very much for your assistance.

9 Our next witness is Judge E. Leo Milonas,
10 Administrative Judge, City of New York.

11 Judge, thank you for being with us today.
12 I am sorry we were delayed in getting underway.

13 Thank you for your patience.

14 JUDGE MILONAS: It's the weather. As we are
15 delayed with the weather, so are prisoners delayed
16 with the weather from day to day.

17 MR. TUFO: You are right.

18 JUDGE MILONAS: Basically, I just wish to
19 state my support of the Rikers Island project.

20 I have heard Arch Murray speak, and he has
21 laid forth many of the traditional arguments in favor
22 of this type of prison facility, and I agree with his
23 comments.

24 But in supporting Rikers I am supporting it
25 based upon the following assumptions:

1
2 The first assumption is that the office of
3 the Criminal Justice Coordinator has accurately
4 assessed the projected needs for both prisoners in
5 detention awaiting trial and the prisoners who are
6 serving City time. I just called the office a little
7 while ago and got a figure now, for your information,
8 that currently, as of two or three days ago, we had
9 some 7,361 prisoners in New York City facilities in
10 both categories. So I am assuming that the projections
11 that have been made will adequately, properly be able
12 to handle number of this type, this kind.

13 MR. TUFO: Judge, for your information,
14 yesterday we questioned Criminal Justice Coordinator
15 Sturz and Commissioner Ward on that question quite
16 closely, and they agreed to supply supplemental infor-
17 mating regarding their projections, and we will make
18 that available to you once we receive it.

19 JUDGE MILONAS: The next assumption I am
20 making is that the current plan will make provision
21 for expansion as need arise without great cost or
22 great expense.

23 It is perhaps much easier to expand a
24 facility if it is located in a Rikers-type of location
25 than it is a pocket prison, if you can call it that,

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a pocket detention center, and I trust that provision will be made for expansion if that need does arise;

The third assumption that I am making is that the turnover time, that is, the time when local institutions will be ready and the time that the State will be taking over Rikers, has been coordinated so that there will be no adverse effect on our operations, the court operations.

I assume that there will be a smooth transition, as so planned;

The fourth assumption that I am making is that the facility is allocated from borough to borough, so allocated that we don't have to move, or move in the future, prisoners borough to borough and therefore defeat the purpose of this program.

I question whether the facilities in Brooklyn, for example, are sufficient as projected here. I don't believe that the numbers of prisoners to be detained in Brooklyn, the facilities are sufficient for the demands of Brooklyn at this time.

MR. LENEFSKY: Insufficient?

JUDGE MILONAS: Insufficient, yes.

So if we have to house Brooklyn prisoners in Manhattan then we might as well house them in

1
2 Rikers. We are back with the same problem again.

3 Now, having made these assumptions, I am
4 in support of the Rikers Island project.

5 I think that it would have a positive impact
6 on the criminal justice system by meeting the State's
7 needs and of course meeting the City's correctional
8 needs.

9 We, the courts, would be directly,
10 beneficially affected by having our prisoners,
11 especially the pre-trial detainees, housed in the
12 court buildings in which they must make their re-
13 peated appearances.

14 The production of defendants in court would
15 be far less dependent on such vagaries as weather and
16 traffic conditions.

17 I am sure you have heard this a million
18 times already, but when you are sitting in court at
19 11:00 in the morning and the van is stuck in traffic
20 by LaGuardia Airport, and you are coming in from that
21 area -- you are not talking about one prisoner but
22 thirty or forty prisoners -- the jury is awaiting,
23 the lawyers are waiting. And it happens daily.

24 This, of course, would go a long way to
25 alleviating problems of that kind.

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2 Of course, we have had much more flexibility
3 in moving prisoners on an almost hourly basis in and
4 out of detention facilities as we need them. The
5 argument has been made by Arch Murray, and I concur
6 with him, that having prisoners accessible to lawyers
7 and families of course would be of great benefit to
8 the defendants, and it would be, certainly, a much
9 more civilized way of handling prisoners.

10 I have had a statement prepared, but Arch
11 Murray basically went into the arguments that make me
12 in favor of it.

13 I concur with him. I don't want to take more
14 of your time reading a statement of things you have
15 heard over and over again.

16 MR. TUFO: Has your office made any
17 estimate of the cost to the courts of late delivery of
18 prisoners?

19 JUDGE MILONAS: No, we haven't.

20 First of all, it is hard to keep your finger
21 on it. We have hundreds of Parts throughout the City
22 which are effected by it, and we do keep statistics
23 on opening and closing of courts, the times they open
24 and the times they close, but we haven't really gotten
25 to the point yet where we have been able to

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2 specifically identify the reasons they are opening
3 and closing.

4 We are now in the process of preparing such
5 statistical information. We are preparing forms for
6 each courtroom to fill out on a daily basis which
7 would indicate the time that the prisoner was de-
8 livered, the time that the prisoner was returned, the
9 time the Judge took the bench, and a lot of other
10 factors, which I think would give us a much better
11 picture as to where the breakdowns occur and why they
12 are occurring.

13 And -- as a matter of fact, I completed
14 this yesterday -- hopefully within a couple of weeks
15 we will be able to put this in all the courts in the
16 City.

17 MR. TUFO: Would it be too great a burden
18 to ask if it is possible for your office to conduct a
19 survey for a period of a week that attempted to
20 quantify the amount of time that the court was de-
21 layed as a result of late delivery of prisoners?

22 JUDGE MILONAS: No problem, but there are
23 different weeks. You have got to take a sampling of
24 various periods.

25 If you take a week in mid-December or

1
2 January, if you take a week where there is a snow-
3 storm -- it varies week-to-week.

4 MR. TUFO: I understand that.

5 JUDGE MILONAS: I will get it for you.

6 MR. TUFO: The benefit of the information
7 would be if it is available before a final decision
8 has to be made by the Board of Estimate on this
9 problem.

10 JUDGE MILONAS: I will do it for you.

11 MR. LENEFSKY: Judge, it would be helpful to
12 get your views on determinate sentencing, that is
13 presently before the State Legislature.

14 It could significantly impact on the popu-
15 lation that we now house in the City correctional
16 system.

17 Are you clear in your own mind about the
18 current discussion of changing the sentencing scheme
19 from the indeterminate one to the determinate one?

20 JUDGE MILONAS: Yes. I have read the
21 report.

22 MR. LENEFSKY: Could you share your views
23 with us?

24 JUDGE MILONAS: I am in favor of determinate
25 sentencing, certainly.

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2 Again, the argument is very clear and very
3 simple. Fixed, determinate sentences are, A, pre-
4 dictable: A prisoner knows what he is getting, the
5 Judge knows what the sentence is in advance.

6 There is less left to the wind with parole
7 boards. There are standard arguments that you know as
8 well as I do.

9 I am certainly in favor of determinate
10 sentences.

11 MR. LENEFSKY: Does your office have any idea
12 of the possible increase in population that might
13 arise from determinate sentencing, if any?

14 JUDGE MILONAS: I am not sure that would
15 increase or decrease prison population.

16 What has increased prison population is
17 obviously the predicate felony laws. That type of
18 legislation has, I think, impacted on the prisoner
19 population; add the drug law, where you have a man-
20 datory sentence, mandatory punishment.

21 That has impacted. The difference between
22 determinate or indeterminate sentencing, the zero-to-
23 five or a two-year sentence or whatever you are going
24 to call it, I don't think would have an effect.

25 MR. LENEFSKY: But there are some determinate

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2 sentencing schemes that would reduce greatly the
3 possibility of probation, and those kinds of schemes
4 add some sort of mandatory jail sentence to them.

5 They therefore would increase the population.

6 JUDGE MILONAS: But what you are trying to do
7 is guess what the determinate sentences, what the
8 prisoner is going to do, and as you know, we have had
9 many dealings together in the courtroom, and what we
10 always do is try to figure out what does this really
11 mean, and it may mean something today and something
12 different a year from now, and it meant something
13 different a year ago.

14 But at the point in time when we are im-
15 posing sentence, or agreeing on the sentence, counsel
16 and the Court, we try and figure out what it means in
17 real terms today.

18 So I think the final result is the same.

19 MR. LENEFSKY: Thank you.

20 MR. TUFO: Any other questions for Judge
21 Milonas?

22 Judge, we appreciate your being here.

23 JUDGE MILONAS: I will get that information
24 for you.

25 MR. TUFO: And we will make that part of the

1
2 record, and we will look forward to the survey, if you
3 can give us the results.

4 Our next witness is Diane Gordon, Vice-
5 President for Technical Services at Citizen Action
6 National Council on Crime and Delinquency.

7 Thank you for being with us today.

8 MS. GORDON: I appreciate very much the
9 opportunity being given me to testify with regard to
10 Rikers Island.

11 Because I am a little bit late, I will try
12 to be brief and take a few questions.

13 My name is Diane Gordon. I am Vice-President
14 of the National Council on Crime and Delinquency.

15 The National Council on Crime and Delinquency
16 is a seventy-year-old private organization which ad-
17 vocates programs and policies that reduce the social
18 and economic costs of all types of crime.

19 It works to make the juvenile and criminal
20 justice system more equitable and effective. It also
21 advocates responses to crime that avoid the criminal
22 justice system wherever possible, and to turn instead
23 to processes in the community.

24 NCCD carries out research, publishes a
25 number of journals in the criminal justice field,

1
2 develops policy positions on criminal justice issues,
3 and attempts to educate both laymen and professionals
4 on issues of juvenile, criminal and social justice.

5 For many years, NCCD has evaluated the
6 effect of incarceration. Along with many other groups,
7 both inside the correctional system and others, it
8 has concluded that incarceration rarely corrects the
9 behavior of those subjected to it, or reduces crime
10 outside the prisons.

11 I do not need to cite the mounting evidence
12 that prisons are themselves criminal-genic and that
13 non-institutional, community-based sanctions often
14 yield recidivism results which are better than those
15 of imprisonment.

16 You have immediate local evidence of the
17 futility of harsh sentences. Governor Carey has
18 pointed out that the 1973 Drug Laws have not reduced
19 the drug traffic.

20 As we understand the reasons for the pro-
21 posed takeover, the State seeks to incorporate Rikers
22 Island into its system in order to ease over-crowding;
23 the City seeks to replace old facilities far from the
24 courts with new institutions in the boroughs more con-
25 venient to the courts and to the communities where the

families of a large proportion of the inmates live.

If one accepts those terms for discussions, it would be hard to oppose the recommended takeover.

It is hard to be against reducing overcrowding, and no one could quarrel with the City's desire to improve the efficiency of transporting inmates to court and to make it easier for prisoners' families to visit.

But both policy preferences rest on the underlying assumption that both the State and the City will continue to rely on incarceration as a primary response to arrest and conviction.

It is because of this underlying policy assumption that we at NCCD oppose the State takeover at Rikers Island as presently planned.

We are unalterably opposed to increasing the number of jail and prison beds in the State of New York and the City of New York, and at present it seems likely that the release of Rikers Island facilities will produce precisely that outcome.

If both the State and City were approaching the transaction on different terms with a different kind of planning, we might well support the proposal.

Let me elaborate both as to the rationale for

1
2 opposing the present terms of the takeover and some
3 assumptions for alternative ways of dealing with the
4 policy problems currently confronting both the State
5 and the City.

6 The State proposes to acquire thousands of
7 new prison cells in order to handle its over-crowding
8 problem. We question whether a long-term problem
9 really exists, and even if it does, whether this is
10 the right way to handle it.

11 According to the United States Census
12 Bureau, Victimization Survey, the nation's crime rate
13 has remained stable, with minor fluctuations, since
14 1974.

15 We are not currently experiencing a crime
16 wave. Furthermore, the most crime-prone age in the
17 population, the eighteen to thirty group, has been
18 proportionately decreasing. By 1983 there will be
19 a halt to the expanding prison population, according
20 to former New York State Correction Commissioner and
21 City Commissioner Benjamin Ward.

22 The prison population may also swing, as
23 legislation revises the harsh New York State laws
24 which created the dramatic increase in the first place.

25 But let us assume for the moment that the

1
2 State population problem, long-term and short-term,
3 is real, and that the City also has locational prob-
4 lems with Rikers Island as it is.

5 I can imagine that shared use of Rikers
6 Island might play a creative role in solving those
7 problems, but that would require approaching the
8 problems from a different perspective than has been
9 done here.

10 It would require on the part of the State
11 an acknowledgement that many inmates do not need
12 maximum security confinement and that the first re-
13 course to over-crowding should be to step up the flow
14 of people in and out of the correctional system, to
15 empty beds more rapidly, rather than install new ones.

16 It would require that the City, for its
17 part, think first about how to keep a maximum number
18 of pre-trial detainees from having to spend any time
19 at all in secured confinement, and then to base its
20 plan around such assumptions as that bail wouldn't be
21 used except to insure defendants' appearance in court,
22 that many pre-trial functions can be further de-
23 centralized, and that the presumption of innocence
24 requires that defendants remain in their communities
25 whenever possible.

The present plan for leasing Rikers Island gives every evidence of having been undertaken from the more conventional approach of throwing good money after bad.

Incarceration has been generally ineffective for sentenced inmates and unfair to most detainees, but perhaps "more of the same will make it better."

That accusation is, of course, to some degree, unfair in that it does not take account of the practical difficulties of an entirely new perspective in corrections planning.

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I am aware of the political problems of moving some of the functions of courts and corrections out of the communities of New York, but some of those problems obtain even without a new perspective.

Site selection for the proposed borough jails may prove to be every bit as difficult to sell in the neighborhoods of New York as a more diffuse approach, as expanded desk appearance tickets, bail hostels and other mechanisms for eliminating the absurd practice of holding people simply because their bail money is inaccessible on a Friday, over a weekend.

For example, the third-party release

arrangement. Currently more than half the City's detainees are held for less than ten days.

Surely fewer immense political problems would be encountered if ways were developed to keep those people out of confinement altogether.

The State, furthermore, has a number of ways available to it, not particularly hazardous politically, that could reduce prison population over the short term: Releasing offenders who have reached parole eligibility; establishing marginally earlier parole dates; increasing grants of clemency to inmates approaching parole eligibility; liberalizing the bases on which prison good time is calculated, something which many states have done.

Longer-term solutions would, of course, require educating judges and legislators to the futility of incarceration, to the possibilities of non-institutional sanctions, such as day houses, community services, and restitution -- admittedly, a difficult task at a time when fear of street crime makes us all jumpy.

But I don't know how long we can use our short-term crises, such a prison overcrowding, to mask the long-range need to educate the public about the futility of imprisonment and to get society behind a

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2 program which marshalls community resources to prevent
3 crime and resolve conflicts that arise within a com-
4 munity before they come to the attention of the
5 criminal justice system.

6 Sooner or later, the staggering cost of the
7 expanding institutions of criminal justice will force
8 that public education campaign and alternative policy
9 development upon us, but how much better it would be
10 if change could come about as a matter of considered
11 public policy.

12 That leads me to another major concern about
13 the present plan, and, incidentally, about all plans
14 that rely so heavily on confinement: Its costs,
15 especially to the City.

16 Estimates of the costs of replacement cells
17 have varied widely, with the latest estimate from
18 City Council President Carol Bellamy's office being
19 about \$200 million above the \$200 million to be received
20 from the State.

21 Both the studies sponsored by NCCD and under-
22 taken by Coopers & Lybrand, and the soon-to-be-released
23 study by the Citizens' Inquiry On Parole and Criminal
24 Justice put the operating cost of confining a New York
25 City inmate at close to or over \$25,000 a year, and

the Coopers & Lybrand study projects the City's cost, assuming no increase in the jail and prison population, at a billion dollars a year by the middle of the 1980s.

Adding new debt service costs to those amounts and being unsure of how long it will take to get approval for the sites of the new facilities and to build them, the concerned observer becomes more concerned.

Mortgaging our future for jails seems a particularly bitter pill to swallow in light of the current plan to close City hospitals.

I once did some research and writing on the planning of the now-infamous Third City Water Tunnel.

Like the present undertaking, it was conceived of as a very expensive way to provide for increased capacity that might or might not be needed.

Its dimensions were determined more by immediately bureaucratic needs than by rational planning or policy analysis.

It has proved to be a great albatross around the City's neck, a powerful image of urban waste and danger.

I am concerned that the City's post-Rikers plan may develop some of the same aura. But given

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2 that matters have progressed this far, what is to be
3 done?

4 My prescriptions are limited, perhaps
5 because my perspective at this point is the national
6 one that comes from my organization, and I do not live
7 with the managerial problems that many of you live
8 with every day, but I would recommend delaying approval
9 of the lease and developing a more careful plan, based
10 on a sounder analysis, that gives primacy to reducing
11 or eliminating short-term detention.

12 I understand that last week the National
13 Institute of Corrections funded a proposal for a short-
14 term detention study to be undertaken by the Criminal
15 Justice Agency. Increasing resolution of such prob-
16 lems as family assault -- some of this is already
17 undertaken through the Institution for Mediation and
18 Conflict Resolution, but more could be done. Stepping
19 up early case assessment and adopting other managerial
20 reforms could reduce the need for the complete replace-
21 ment of the cell capacity at Rikers Island.

22 I would recommend that the City put pressure
23 on the State to review its classification scheme, with
24 an eye to filling the several hundred beds in the
25 work release facilities that are currently empty in

1
2 the work release facilities before it develops new
3 capacity.

4 Also that the State use Rikers Island for
5 pre-release programs for the many inmates that come
6 from upstate institutions back to New York City
7 communities, and most of all -- and I realize that
8 this is very general but I think it is the general
9 policies that underlie all of the analysis and planning
10 that we do need to consider -- most of all, I think,
11 the City should make and keep a pledge to reduce
12 reliance on confinement and to educate New Yorkers
13 to the wisdom of such a policy.

14 Thank you.

15 MR. TUFO: Thank you.

16 I have just one question as a clarification.

17 The cost study you referred to, is that a
18 study which your organization released some time ago
19 regarding the cost of the present system?

20 MS. GORDON: Yes, the Coopers & Lybrand
21 Study.

22 MR. TUFO: Any further questions?

23 Thank you very much for your comments.

24 Next witness will be Allen G. Schwartz,
25 Corporation Counsel for the City of New York.

1
2 We welcome you here today as Corporation
3 Counsel and as the first correction officer to
4 testify in the course of these hearings on the future
5 of Rikers Island.

6 MR. SCHWARTZ: I appreciate your invitation.
7 I am delighted to be here.

8 I have with me on my right Lloyd Deutsch,
9 who is the head of the real estate section in my
10 office and who has been principally responsible for
11 involvement in the negotiations regarding the agree-
12 ment with the Facilities Development Corporation and
13 leasing arrangements with the State.

14 On my left is Leonard Koerner, who is the
15 chief of the Commercial Litigation Division, who has
16 been principally responsible for handling the litiga-
17 tion with the Prisoners' Rights Unit and the Legal Aid
18 Society, and who is very familiar with the decrees
19 and the arrangements that have been made with counsel
20 for the defendants, and with the courts.

21 I do not have a prepared statement. I
22 believe that the City's position has been made known
23 to you by Mr. Sturz and by Commissioner Ward.

24 But I am here prepared to answer any question
25 questions or make any statements that you think you

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2 require to clarify what the City has said so far.

3 Suffice it to say that the City, of course,
4 is wholly supportive of the proposal ^{we} and the believe
5 that it is something both in the City's interest and
6 in the interest of the public, and therefore all of us
7 on the City's side are, as a matter of policy, com-
8 mitted to carrying forward this program within the
9 shortest time frame, and are cooperating with each
10 other, the agencies are, in order to expedite the
11 conclusion of the arrangements that will get this
12 project underway.

13 MR. TUFO: Mr. Schwartz, we have had a great
14 deal of testimony regarding the benefits of the pro-
15 posed transfer of Rikers Island to the State and the
16 development of new detention facilities in the
17 boroughs. We are also trying to focus our questioning
18 on the consideration of the alternative which is pre-
19 sented in the Administration's Working Document, which
20 is that, in the event of no transfer, certain steps will
21 will have to be taken and costs incurred.

22 From your perspective as the person prin-
23 cipally responsible for dealing with the various law-
24 suits, on behalf of the City, developing the City's
25 detention facilities, can you give us some estimate of

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2 the consequences to the City in the event that the
3 proposed transfer does not go forward?

4 MR. SCHWARTZ: Well, I think that the
5 document that was provided by Mr. Sturz and by
6 Commissioner Ward details the essential elements of
7 what the City will have to do.

8 We all of us recognize that HDM, specific-
9 ally, is in immediate need of change, and that Rikers
10 Island as a whole is really insufficient to meet
11 current needs in correction by anybody's standards.

12 There has been substantial discussion in
13 the City with regard to the changes that would have
14 to be made on Rikers Island, and the principal changes,
15 of course, would include increasing the cell sizes at
16 HDM by converting three cells into two, repairing the
17 foundation of that facility, the preparation of pro-
18 grams and the creation of recreational space,
19 separating housing floors, and all in all redoing
20 Rikers Island in ways that would not only address
21 certain of the major security problems but provide
22 facilities that serve the purpose that the facility
23 is there for, and that is to provide a place that is
24 not only secure and safe but congenial to the housing
25 of mass numbers or large numbers of prisoners, and

that provides a place in which correction officers can work safely and hospitably.

And in truth we believe that Rikers Island is just inadequate to the task and there will have to be a massive infusion of monies there in order to make Rikers Island functional, more functional than it currently is.

Obviously there are other expenditures that are underway right now, including the Tombs project, of which you are very familiar.

There obviously will have to be some arrangements made during the period of any construction or change on Rikers Island, to house inmates who are displaced during the period of construction.

There obviously will have to be some commitment of funds to meet the minimum standards that we have agreed to, that were promulgated by this Board.

There will have to be some monies spent, some substantial amount of capital funds spent, to create the facilities that are anticipated by the consent decrees.

There are obviously going to be additional cost factors and impact on the operating budget if we

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2 stay at Rikers Island, because of the way the Island
3 is structured.

4 You simply need more people to do the tasks
5 that would be done if we stay at Rikers Island, as
6 opposed to moving to more modern facilities, where
7 fewer people can do the task in a more modern facility.

8 Essentially, what we have been looking at
9 with a hard eye is bringing down the operating costs
10 by creating other facilities that are off of the Island,
11 and in fact that has been a major theme because, as
12 you know, we have operating expenses that have been
13 skyrocketing or at least rising steadily, both as a
14 result of inflation, primarily keyed to personal
15 services expenditures.

16 The City has a mandate under State Law to
17 go to a balanced budget under GAP by fiscal 1982,
18 and keeping its expense budget under control is a
19 major theme, and this project, if it is done right,
20 can enable us to make gains in that specific area.

21 So there will be both capital expenditures
22 and increased operating costs if we stay in the
23 facilities or on the Island, as at present.

24 MR. TUFO: Again focusing on the alternative
25 to no transfer, in the event that there is not a

1
2 transfer and the litigation regarding borough
3 facilities is decided adverse to the City, do you
4 consider that the expenses in renovating the borough
5 facilities to meet that kind of a decision would be
6 of the magnitude that has been expended to convert
7 the Tombs to meet the decision of the Court in that
8 case?

9 MR. SCHWARTZ: Well, I don't know if it
10 would be of the magnitude of the expenditures made at
11 the Tombs, but certainly there would be substantial
12 expenditures.

13 I think it would be helpful to you if
14 Leonard Koerner, who was active in the negotiation
15 of the most recent partial judgment, talked to that
16 issue, because that has been the subject of some
17 discussion with Judge Lasker, and he was present and
18 I was not, so perhaps I ought to turn it over to
19 Leonard Koerner for that purpose.

20 MR. KOERNER: The borough facilities are
21 still the subject of negotiations, though we have not
22 pinpointed what would be required in the event of no
23 sale.

24 What is contemplated, and I think has been
25 mentioned by the Legal Aid Society, is if there is a

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2 sale the borough facilities would be used for a short-
3 term detention facility, based on a classification
4 system.

5 In the event of no sale, there would have to
6 be a substantial renovation, starting with the out-
7 side structure with respect to air and light, et
8 cetera.

9 Heating facilities would have to be
10 changed. The overall structure in the institutions
11 would have to be altered. But the major problem would
12 not be with the borough facilities; it would be with
13 HDM, because even if, as Mr. Schwartz suggested, there
14 were substantial renovations to HDM to permit it to be
15 used, it would still have to meet the approval of the
16 Judge who now has jurisdiction, and there is some
17 substantial question as to whether he would approve
18 even the suggested renovations in the brochure that
19 has been prepared by Mr. Schwartz which outlined his
20 budgetary changes.

21 MR. TUFO: The Executive Director of the
22 Legal Aid Society testified this morning regarding
23 the statement that Judge Lasker had made in open
24 court, in that litigation last Friday.

25 Could you comment on that statement and its

impact on this question?

MR. KOERNER: Yes. I attended that conference, and Judge Lasker indicated that, based on the facts which had been presented at trial in the HDM proceeding, that he would be prepared to issue a remedy.

He didn't indicate the magnitude of the remedy but he made it very clear that there are very substantial structural deficiencies with HDM he would have to see remedied before he would allow it to be used in the long run as a permanent detention facility for pre-trial detainees.

MR. TUFO: Sir, you mentioned the renovations that would occur in borough facilities.

Were you referring to the renovations that were to occur regardless of the outcome of the litigation, or as you perceive, in any event?

MR. KOERNER: Let me just bifurcate that.

If we sold Rikers Island to the State and we would be permitted to develop on-site facilities, then the present condition of the facilities would not be as substantial an issue if we would be able to work out an agreement amenable to Legal Aid which would allow the borough facilities to be used as a

1 short-term detention facility.

2
3 If the sale does not go through and the
4 borough facilities are intended to be used as in their
5 present condition, there would have to be substantial
6 renovation, yes.

7 For example, the recreation opportunities
8 for the on-site borough institutions are severely
9 deficient, and that would have to be altered.

10 MR. TUFO: Are you familiar with the
11 Working Document that refers to changes in the
12 borough facilities?

13 MR. KOERNER: Is this the document?

14 MR. TUFO: Yes.

15 MR. KOERNER: Yes.

16 MR. TUFO: Are your comments directed to
17 changes beyond those that are specified?

18 MR. KOERNER: No, but as I want to indicate
19 again, each of these suggestions there is that element
20 of unpredictability.

21 In no case would these proposals be put
22 forward to any court, these proposals as to whether
23 they would satisfy constitutional requirements.

24 MR. TUFO: One further questions regarding
25 the Facilities Development Corporation and its role

1
2 in this project.

3 We heard testimony from New York State
4 Department of Correctional Services Commissioner
5 Coughlin yesterday that in his experience as
6 Commissioner of Mental Hygiene for the State of New
7 York he had significant problems in utilizing the
8 FDC as the developer of mental hygiene facilities.

9 Do you feel that sufficient safeguards
10 have been included in the proposed arrangements with
11 FDC to insure that FDC would be responsive to the
12 City's needs and would be capable of meeting the
13 timetables set out in the Rikers Island plan?

14 MR. SCHWARTZ: We do. Our experience with
15 FDC -- although when I say "our," the whole City
16 experience has not been singly or entirely satis-
17 factory -- but with regard to this particular trans-
18 action, we think that there are certain safeguards
19 that have been built in, and those safeguards include
20 an active City involvement and input and, indeed,
21 requirement that FDC obtain the consent of the City
22 with regard to material elements that, in fact, assure
23 us that this situation as structured, given the City
24 role, the way in which the agreements have been de-
25 veloped, should eliminate or at least minimize the

1
2 problems that have been experienced in the past.

3 We are satisfied with the FDC arrangement.
4 In fact, we think it will expedite the conclusion of
5 the total program.

6 MR. TUFO: Could you amplify for the Board
7 why you believe it is to the City's advantage to
8 spend the \$9 million that would be the fee paid the
9 FDC rather than to have the City manage the con-
10 struction projects on its own?

11 MR. SCHWARTZ: Maybe I ought to let Lloyd
12 Deutsch talk to that, because he is dealing with FDC.

13 (Continued on next page.)
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2 MR. DEUTSCH: The fees to be paid
3 to FDC are not, in the true sense, fees; they
4 represent their actual overhead and management
5 expenditures, actual staff expenditures.

6 It does not represent a profit, so
7 in that sense it would merely be replacing either
8 City contract employees or City civil servants,
9 so there would not be a duplication of cost.

10 Only to amplify Mr. Schwartz's
11 prior statement, there has been an agreement
12 in principle by FDC to permit the City to have
13 a joint process with FDC for the selection of
14 contractors, architects, designers and planners,
15 so that the people in the criminal justice field
16 are reasonably satisfied that there will be
17 sufficient City input into the project to re-
18 sult in a facility or series of facilities suitable
19 to the City's needs.

20 MR. SCHWARTZ: Perhaps I can amplify
21 just a little bit.

22 I don't know whether you have had
23 occasion to see the memorandum of Richard A.
24 Brown, the Counsel to the Governor, which is
25 annexed to the legislation recently being enacted,

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but in that memorandum he makes clear -- and what he says is -- that the FDC will have to add additional staff to handle this new program in the City.

The cost of such staff will be recouped from the City through the fee agreement with FDC.

That is what the 9 million dollars is particularly keyed to, and obviously there is another side to that coin, which is that, given the specific nature of this transaction, the City will have to take on certain operating expenses of its own if it didn't work through FDC, so the 9 million dollars is not just merely outflow to FDC; it would be something the City will have to, in whole or in part, pick up for itself.

Secondly, with regard to the FDC and the assurances that we have built into the arrangement, the FDC provides certain services.

It assists in the preparation of applications for assistance to the Federal and State governing agencies, and its relationship to the State obviously has significant benefit to

1
2 the City.

3 Secondly, it assists in the prepar-
4 ation of such studies, surveys, abstracts, ap-
5 praisals and other studies and reports as may
6 be necessary to the acquisition, planning, de-
7 sign, construction, renovation, rehabilitation,
8 furnishing equipment and completion of the pro-
9 ject.

10 It provides, makes provision for the
11 estimating budgeting part of control, auditing and
12 accounting services in relation to the project,
13 and in this agreement the FDC agrees to contract
14 with a consultant selected by the City to provide
15 all or any part of the services I have referred
16 to.

17 It agrees to other items, such as
18 the appointment and retention of architects,
19 engineers, and other consultants chosen by the
20 City, and the selection, appointment and re-
21 tention of building contractors and vendors
22 approved by the City.

23 Given the City's substantial ex-
24 perience on its own side in capital projects,
25 we believe -- and I won't go through the whole

1 agreement -- that these elements that put the
2 City in this almost primary position operate
3 both to secure us against problems that may arise
4 if we merely left the project to a State entity
5 without our input or control; and second, that op-
6 erating with the FDC will have certain expeditious
7 characteristics that will bring this thing to an
8 early conclusion, and obviously time is a key
9 element of this proposal.

10 MR. TUFO: Any questions from the
11 Board members?

12 MR. LENEFSKY: I wonder, Mr. Schwartz,
13 from a legal point of view do you have any
14 particular concern, any concerns that raise a
15 reservation in your mind about what is likely to
16 happen in the next five years during this tran-
17 sitional phase?

18 What is the thing you are most con-
19 cerned about, from a legal point of view?

20 MR. SCHWARTZ: There are two things
21 we are all concerned about, you and ourselves.

22 One is the question of the time that
23 this program can be concluded in.

24 Second and probably most important
25

1
2 is the cost. When there are certain uncertain-
3 ties that are just built into this program be-
4 cause of the time element and because it is ob-
5 viously a unique development and we have spent
6 a tremendous amount of time trying to be as
7 certain as we could that the costs were within
8 the limits prescribed, and that has sometimes
9 meant redoing certain of the estimates and
10 getting subsequent updated analyses and more
11 expert input to assure that the cost elements
12 are as they have been represented.

13 Third, when I talk about "time," I
14 am talking about difficulties that can occur
15 at any level, and I could, for example, just in-
16 dicate to you that site selection alone presents
17 a question, and I don't know what the response
18 will be as sites are selected in every community
19 or of every constituent element.

20 That may have an interest in how
21 this project develops, but obviously there is
22 an uncertainty as to the time and there is an
23 uncertainty as to the cost, and no one can cate-
24 gorically indicate to you that the time will be
25 specific to a day or the cost will be specific to

1
2 a dollar.

3 But, given the work that has gone
4 into this project and the information that has
5 been developed by Mr. Sturz, Commissioner Ward,
6 people at OMB, we are satisfied that this is,
7 on balance, a project that is very well worth
8 pursuing.

9 But the legal problems I anticipate
10 are primarily keyed to the two elements you have
11 just mentioned: The time and cost factors.

12 MR. LENEFSKY: Do you think you have
13 any flexibility in renegotiating any of these
14 if you run into problems in cost and time?

15 MR. SCHWARTZ: Well, the State statute
16 is specific; it puts an outer limit, 200 million
17 dollars, on the State appropriation.

18 There is also the possibility at some
19 point down the road, you can go back to the State
20 in the event that the cost went above what you
21 had anticipated, to ask additional appropriation
22 and present a case that will justify some ad-
23 ditional funds or some additional assistance.

24 I don't know whether that provides
25 us with flexibility. There is always the

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opportunity to present a case, but the statute creates a defined limit, and that limit is 200 million dollars, and as far as I am concerned, that is the limit under which we are operating and will be operating.

MR. HORAN: Mr. Schwartz, I am not exactly clear, maybe Mr. Koerner can explain this: What the role of Judge Lasker will be in the transitional period in the event there are not delays which break down the whole transfer.

Has he indicated or have you talked to him in ways you could let us know?

MR. KOERNER: Yes, we have entered a consent decree with the Legal Aid Society which will provide an interim procedure pending the ultimate transfer of Rikers Island to the State, and basically what it does is, until the conclusion of the sale it provides for an easier visitation process, it provides for some additional officers in HDM to alleviate the overcrowding problem.

But it does not provide for any substantial changes, and that would be trade that

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we received in return for the sale.

Judge Lasker will continue to monitor it, because it is only an interim decree, and if the sale is not consummated he retains jurisdiction over HDM.

MR. TUFO: Mr. Schwartz, one of the major concerns we all have is that for some unforeseen reason the transaction will go under way and then be aborted, and somewhere midway in the process of the City, it having given up jail facilities to the State, for some reason the State will no longer agree to finance the City's construction of new detention facilities, or a change in City policy will result in the City being unable or unwilling to meet its commitments to the new construction, in which event we might be left with a situation in which our detention space was substantially decreased and there was at that point no alternative for the City detention prisoners other than crowding them into existing facilities.

What legal steps have been taken or would be taken in order to assure that that would not occur?

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2 MR. SCHWARTZ: Let me say that there
3 is no final released document that has been draf-
4 ted, and that subject you have described is still
5 one that is taking up a fair amount of time.

6 The general concept is that we will
7 not turn over the facilities until we have a
8 substitute facility.

9 There is in the Memorandum of Under-
10 standing a provision in regard to what could take
11 place in the event of an early termination.

12 The bottom line is that there is a
13 certain amount of good faith that is built into
14 any agreement. The agreement is only as good
15 as the parties and the commitments that they have
16 to the transaction, and I would say that the
17 State, having in effect foregone the building
18 of all the facilities, is totally committed to
19 that transaction; so the City, we are taking
20 every step as expeditiously as can be done to
21 expedite design and development and site selection.

22 And I have no reason to believe that
23 there will be this early termination, but I will
24 also tell you that we have no intention of
25 reducing the number of cell spaces or facilities,

1
2 the amount of facilities, until we have assured
3 ourselves that we have facilities available.

4 What I am really saying is that we
5 are not turning over facilities without first
6 having alternate facilities available, and that
7 is why this phased-in project has been developed.

8 MR. TUFO: I am sure you are aware and
9 concerned with this problem, but the present
10 phasing schedule calls for the City to turn over
11 its two newest facilities on Rikers Island, the
12 Womens House of Detention and the Adolescent
13 Remand Detention Center, to the State by next
14 July, and at that point the City will have no
15 alternative facility off-island available other
16 than the Tombs' projected 445 in that facility.

17 So there would be a net decrease to
18 the City of some 1,155 beds by next July, and
19 the interim facilities that are met to deal with
20 that interim problem are C-71 and C-95 and HDM,
21 but, as we all know, there are substantial prob-
22 lems in each of those facilities and it would
23 be acceptable, I am sure, to this Board only
24 on an interim basis.

25 Can you comment on that eventuality

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2 and possibility of retaining possession of the
3 two facilities that they would give up in the
4 event of a break down in the agreement?

5 MR. SCHWARTZ: Well, I don't know
6 what to say in regard to a comment.

7 My understanding is that the State
8 is committed to make substantial expenditures
9 to renovate space on the Island, solely to the
10 State's cost, so that we would have additional
11 facilities on the Island for City detainees
12 during the period that the State would be open-
13 ing the Women's House and the Adolescent Remand
14 Shelter, and while we are in the process of
15 designing and developing these off-Island fa-
16 cilities, I expect that, given the fact that
17 the City will have obtained an interim benefit
18 in terms of what the City's appropriations and
19 expenditures would be, the State would be com-
20 mitted to going forward, the City will be com-
21 mitted to go forward, and we will all do what we
22 have to do.

23 If there comes a time that the
24 agreement breaks down and the State fails to
25 go forward, then obviously we would then exercise

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2 the right given to us in the agreement and re-
3 lease, which has not yet been completed, to
4 retake those facilities that have been turned
5 over to the State, and, obviously, as you know,
6 we have recourse to the Courts under the Memorandum
7 of Understanding, and directed all the way up to
8 the top.

9 I don't expect that any of these
10 things will happen, but you are right, there is
11 that uncertainty if the State should decide at
12 some time or other to renege or alter or modify
13 its commitment to this transaction.

14 MR. TUFO: I think my greater concern
15 is what happens in the event that the City fails
16 to meet its commitment and, as a result of no
17 fault of the State, is forced to abandon the plan.

18 In that event, would the City still
19 be able to retake possession of the two facilities
20 it had made available to the State?

21 MR. SCHWARTZ: Well, that is currently
22 under negotiation in the discussions with regard
23 to the lease.

24 To tell somebody that in the event
25 that you decide to breach an agreement and then

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take back the benefit after they have spent all the money, is a difficult thing to carry forward.

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Obviously we would have to give the State time to deliver its prisoners back. We would have to give them back the facilities they turned over to us in the condition in which we received them.

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And we would also have to make arrangements to return to them or at least give them replacement for moneys that they had invested. And we would have to satisfy all of the agencies and the Court that has an interest in the standards and conditions of the facilities that we are using to house detainees.

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I think the problem is a potential, but I don't think that is one that I can really answer for in full without having a full view, at least in negotiation.

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I am suggesting to you that all of those things will have to take place, and the City will obviously need a safety valve to re-take the facilities in the event of some development down the road that I can't presently foresee.

But it would obviously have to

1
2 satisfy all the agencies and make provision for
3 the return to the State of the money, and give
4 the State the opportunity to retransfer its
5 prisoners and put itself back in the status quo.

6 I think that the City can potentially
7 do that, but I don't look to that as a likely
8 event.

9 MR. TUFO: Are you in a position to
10 tell us what steps must be taken from this point
11 to a point of final agreement with the State?

12 MR. SCHWARTZ: Well, there is a
13 draft of the facilities, the FDC agreement.

14 There is an agreement of lease that
15 is being prepared by now, being drafted in our
16 office by Lloyd Deutsch.

17 We expect that that agreement will be
18 fully drafted within the next couple of weeks.

19 We are hopeful that the agreement
20 of the lease will be executed no later than the
21 end of this year.

22 We expect that the ULURP process,
23 hopefully will be concluded within seven months.

24 We don't expect to be doing any
25 condemnation until there has been this com-

2 pletion of the ULURP process, because under the
3 Eminent Domain law you have got to complete all
4 of those elements before you can take property.

5 But we are hopeful that somewhere
6 in the mid or late part of next year we will have
7 completed all that had to be done preparatory to
8 condemning any properties that have to be con-
9 demned and preparatory to putting anything to
10 the ground.

11 Let me just add to the answer I just
12 gave you, and that is that obviously -- of course,
13 we will be going to the Board of Estimate as soon
14 as the agreement of lease between the City and
15 State Department of Correctional Services has
16 been completely negotiated and is in a form to
17 present to the Board.

18 And we will of course at the same
19 time and in the same proceeding be submitting to
20 the Board of Estimate the agreement with the
21 Facilities and Development Corporation for the
22 acquisition, planning and design of the place
23 for the facilities.

24 Now, those two agreements obviously
25 have to be acted upon by the Board of Estimate

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2 before all the other events that I have described
3 take place, and we are hoping to do that reasonably
4 soon.

5 A lot of it depends on work to be
6 done by Mr. Sturz and Commissioner Ward, but we
7 expect that that will be done within the next
8 number of months, 60 days, 90 days.

9 At present, there is only the Memorandum
10 of Understanding between the City and the State,
11 signed by the Secretary of the Governor and by
12 Mr. Sturz.

13 The side letter, which you are aware
14 of, which was signed by the Governor and the
15 State Legislature, which appropriated the 200
16 million dollars -- once the two key agreements
17 have been completed, they will go to the Board
18 of Estimate.

19 All of the things that I described
20 are to take place as soon as the Board of Estimate
21 gives its approval.

22 Once that happens, of course, we will
23 be going through all of the other steps, which
24 include site selection, design, development, the
25 ULURP, the condemnation, letting of contracts,

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2 construction, et cetera.

3 I mean, that is obviously the first
4 key step, the Board of Estimate approval for the
5 two key agreements.

6 MR. TUFO: Mr. Schwartz, I know when
7 you took office there was a considerable amount
8 of litigation in your office regarding jail
9 facilities in New York City.

10 Is it your expectation that the
11 successful completion of the Rikers Island
12 transfer would end that current litigation?

13 MR. SCHWARTZ: Yes, it is our
14 expectation, and, as you know, we have entered
15 in a whole host of consent decrees keyed pri-
16 marily to items that were not capital items,
17 and by that I mean didn't required us to make
18 substantial expenditures for capital construction.

19 And, for example, we entered consent
20 decrees with regard to possession and receipt of
21 clothing items, inspection of clothing, possession
22 of inmate jewelry, laundry receipts, possession
23 and receipt of packages, receipt of publications,
24 correspondence, confiscation of property, pro-
25 cedures as to cell searches, body cavity searches,

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2 operation of commissary, dayroom access, rotating
3 outside cells, windows, return visiting, programs
4 and religious services, and due process pro-
5 cedures for segregated detainees, environmental
6 health, food preparation and distribution, per-
7 sonal hygiene, significant family events -- we
8 are letting inmates attend significant events,
9 which is, funerals, weddings, et cetera -- housing
10 for homosexuals, law library, lock-in/lock-out
11 time, optional lock-ins telephone, noises --
12 items of that nature, which, although they do in-
13 clude some relatively modest capital commitment,
14 they don't anticipate becoming the kind of major
15 capital commitment that we would require if we
16 were to take HDM and redo it to the extent that
17 I earlier described.

18 Those events really have abided the
19 resolution of the City's policy on this particular
20 project.

21 With this project we believe we will
22 be meeting the overwhelming bulk of what is
23 involved in these litigations, the essential
24 consideration of the question of the condition
25 under which detainees are housed.

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2 And we believe that with the
3 construction of these other facilities and the
4 withdrawal of the City from Rikers Island, we
5 will have put to bed, put to rest the concerns that
6 are at the root of the litigation, and will end
7 the litigation for the City.

8 MR. TUFO: Mr. Schwartz, I thank you
9 for your testimony.

10 I want to add on behalf of the Board
11 that we are quite aware that it is in large part
12 the insights you have had as to the need for
13 detention facilities in New York City and your
14 skill as a negotiator that have brought to con-
15 clusion some of the lawsuits pending in the City
16 for so long.

17 We all are very appreciative of the
18 efforts of you and your staff in bringing that
19 about.

20 MR. SCHWARTZ: I appreciate your com-
21 ment and the kind remark, but I also think it is
22 only fair to say that the Board -- much of what we
23 did in negotiating the consent decrees was tailored
24 to and directed at meeting the New York minimum
25 standards that have been promulgated, so I think we

1
2 owe you a vote of thanks.

3 Thank you.

4
5 MR. TUFO: The next witness is Richard
6 Gottfried, who is the Assistant Majority Leader
7 of the New York State Assembly and former Chair-
8 man of the Assembly's Codes Committee, which was
9 primarily responsible for the criminal justice
10 system in the State of New York.

11 And he also serves with me as a member
12 of the Association of the Bar of the City of
13 New York Special Committee on Criminal Justice.

14 Assemblyman Gottfried, we welcome you
15 here today.

16
17 ASSEMBLYMAN GOTTFRIED: Thank you,
18 and good morning.

19 I hesitate to say that we were respon-
20 sible for the criminal justice system in New
21 York State. We did have some relation to it,
22 certainly.

23 My name is Richard N. Gottfried.
24 I represent Manhattan's 67th Assembly District
25 in the New York State Assembly, where I am the

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2 Assistant Majority Leader.

3 During 1977-78, I was Chairman of
4 the Assembly's Codes Committee, and in that
5 capacity I helped develop and sponsor the
6 original legislation for the Rikers Island project.

7 I am also a member -- as is your
8 Chairman, Mr. Tufo -- of the Implementation
9 Committee of the Special Committee on Criminal
10 Justice of the Association of the Bar of the
11 City of New York, chaired by Whitney North Seymour,
12 Jr.

13 I speak here today both as a State
14 legislator and in behalf of the Special Committee.

15 I am pleased to testify in support of
16 the present proposal by the City to lease the
17 Rikers Island Corrections complex to the State,
18 with the City receiving lease payments up to
19 200 million dollars to help finance new City
20 detention facilities in the Bronx, Brooklyn,
21 Manhattan and Queens.

22 In early 1977, I toured C-71 and C-95
23 buildings on Rikers Island with then State
24 Corrections Commissioner Benjamin Ward.

25 The idea at that stage was a limited

1
2 one: To relieve the City of the cost of two
3 buildings it had found it did not need and could
4 not support, and to give the State some additional
5 prison beds it urgently needed and that would be
6 close to the communities the inmates came from.

7 The idea made eminent good sense.
8 The complicated negotiations and arrangements have
9 taken some time, but in that time the plan has
10 grown and has been transformed into a much more
11 ambitious and important undertaking -- important
12 to the City, the State, and the inmates and the
13 staff.

14 The State Correctional system needs
15 increased capacity. Existing capacity will not
16 accommodate anticipated prison populations, and
17 effective programs for work, education, and other
18 rehabilitative opportunities require housing
19 flexibility for moving inmates.

20 Furthermore, it has been a long-sought
21 goal to house inmates from the New York City area
22 in or near New York City.

23 This would help strengthen their
24 family ties, make it easier to operate rehabili-
25 tative programs, and encourage employment of

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2 minority staff.

3 The transfer of Rikers Island to
4 the State system will help achieve all these
5 goals.

6 A few months ago, the Special
7 Committee on Criminal Justice issued a series
8 of recommendations aimed at making New York
9 City's Criminal justice system function more
10 effectively and efficiently, based on the
11 Committee's two year study of the system here
12 and in several other major cities.

13 As you know, Mr. Chairman, among the
14 sources of waste, delay and frustration we found
15 were serious problems relating to the housing of
16 detainees on Rikers Island and in police precinct
17 houses.

18 In addition to the ever-increasing
19 costs of driving inmates back and forth from
20 Rikers Island to the courthouses in the boroughs,
21 there is the even more serious problem of court
22 proceedings being delayed or adjourned because
23 the defendant has not been delivered to the
24 court on time.

25 This means wasted time for judges,

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2 lawyers and other personnel, delays that can be
3 intolerable for innocent defendants and their
4 families, and inconvenience and frustration for
5 victims ^{AND} as witnesses who all too often simply
6 give up, allowing the guilty to go free.

7 Therefore, the Special Committee's
8 recommendations include:

9 1, That detention facilities as well
10 as booking facilities and complaint rooms be
11 located adjacent to the courthouses;

12 And 2, that pre-arraignment prisoners
13 be confined with the Department of Corrections
14 rather than being held overnight in police station
15 houses.

16 The Rikers Island transfer will make
17 it financially possible for the City to implement
18 both these recommendations and thus help relieve
19 the serious problems in our criminal courts.

20 We all know that the very existence
21 of jails and prisons is a monument to failure with-
22 in our society, like every society known in human
23 history. Society can and must do more to ensure
24 that fewer of our neighbors end up in the criminal
25 justice system.

1
2 And for those who do commit crime,
3 we urgently need alternatives to conventional
4 prosecution and incarceration.

5 Much of my own work in the Legis-
6 lature, and several of the Special Committee's
7 key recommendations, respond directly to those
8 concerns.

9 But we must not ignore the unpleasant
10 fact that large numbers of our fellow New Yorkers,
11 for whatever reasons, cannot be allowed to live
12 freely with the rest of us.

13 Fortunately, the Rikers Island
14 transfer proposal will not only enable the State
15 and the City to accommodate the anticipated prison
16 and jail populations, but also enable both systems
17 to function more effectively and efficiently and
18 with increased opportunities for rehabilitation.

19 Before I conclude, I have three con-
20 cerns to express.

21 First, it is imperative that the peri-
22 meter of Rikers Island and the new City buildings
23 in the boroughs be made thoroughly secure. Open-
24 ness within a facility can serve valuable pur-
25 poses, but protection of the densely populated

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New York City community requires external security.

Second, having modern buildings is not enough. As the new replacement facilities are designed, and once they are opened, we must bear in mind that real people will have to live and work in them, and that inmates will sooner or later return to our neighborhoods.

Sensible, humane design is required, and so is sensible, humane administration.

Third, the plan is drafted with a very tight time-table in mind. I certainly hope it can be met, but we all know that the City's land use review procedures and necessary environmental reviews can take longer than anticipated.

I would urge that contingent planning be done, if it has not already, with respect to the increased costs from delay as well as the basic problem of moving out of Rikers before new facilities are ready.

In conclusion, the many City and State officials who have worked on this project have given us a great opportunity to improve the functioning of our courts, accommodate our prison and jail populations more efficiently and with better

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2 opportunities for rehabilitation, and ease the
3 City's financial burdens as well.

4 Governor Carey, Mayor Koch, and the
5 people in their administrations are to be com-
6 mended for their leadership, perservance and
7 ability in developing this project.

8 For myself and the City Bar Associ-
9 ation's Special Committee, I urge its approval.

10
11 MR. TUFO: Thank you.

12 Any questions?

13 MR. KIRBY: Yes. I see witness after
14 witness come before the Board, and they are so
15 emphatic in their prediction that a large number
16 of folks will be detained or remain in jail.

17 I wonder how we come to that? Does
18 it have something to do, I am wondering, with
19 the makeup of the prisoners?

20 Most of the prisoners are Black and
21 Puerto Rican, and I am wondering what the Legis-
22 lature is doing about this.

23 It would appear to me that if it is
24 so predictable about the incarceration of people,
25 surely the State Legislature can move to do

1 something about that. It just bothers me when
2
3 I hear people say they are predicting that more and
4 more Blacks and Puerto Ricans will be incarcerated.

5 We are talking about detainees, people
6 who have not yet been found guilty of a crime,
7 and it bothers me about how we are so certain
8 about this predictability; and I would like to
9 know from you, since you said it, what causes this
10 prediction.

11 ASSEMBLYMAN GOTTFRIED: Well, I think
12 the main factor here that is predictable, un-
13 fortunately, is the continued increase in the
14 population in the State prisons.

15 That trend has certainly continued
16 unabated. We now have close to twice the number
17 of people in our prisons that we had just eight
18 years ago in our State facilities.

19 One reason why we can expect that
20 number to keep increasing is recent legislation
21 which -- I think there is no prospect of having
22 reversed -- recent legislation which is going to
23 result in those people who go to prison, many of
24 them spending a lot longer behind bars; and as
25 you increase average stay for the same number of

1 people entering the system you increase the total
2 population, because they are staying longer.

3 As for the City's --well, it is a part
4 of the rationale for the Rikers transfer that the
5 State needs more beds.

6 It is heavily overcrowded at the
7 moment, and I think the most sensible place,
8 from the point of view of both the kind of staff
9 that we can employ and from the point of view of
10 where the inmates come from, it makes the most
11 sense to try to locate those increased beds within
12 the City of New York.

13 And, as I said, that has long been a
14 goal of everyone concerned with that system.

15 I don't know that there will be, but
16 apparently there is reason to believe -- based on
17 what I read in Deputy Mayor Sturz's report --
18 there is reason to believe that there will be
19 a continued increase in the detention population;
20 but I don't think the rationale for the City part
21 of this program is necessarily an expectation of
22 increased detention population.

23 If we give up Rikers Island, even if
24 there were going to be no increase in potential
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2 population, we would have to build disbursed
3 facilities to replace Rikers Island.

4 How big those facilities are to be --
5 in response to whether there would be an in-
6 creased detention population -- and then the
7 question would be, should the facility in the
8 Bronx have 400 beds or 350 beds, and that is
9 the question I really have no particular exper-
10 tise on.

11 But I am not confident that -- unless
12 there is some major change in behavior trends in
13 society, I see no expectation of that, and we
14 are going to have more people spending time in
15 our State facility.

16 All ought to be done to prevent that
17 kind of increase in crime, and I think every
18 person in the community has got to devote their
19 efforts towards that end; but I think we also have
20 to understand that because there are many people
21 in the political process who are not willing to do
22 the kinds of things that I think you and I both
23 think are necessary to reduce the number of
24 people committing crimes, then we have to antici-
25 pate that we are going to continue to need a

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2 substantial prison system.

3 MR. LENEFSKY: Assemblyman Gottfried,
4 in your opinion will a change to a determinate
5 scheme of sentencing increase our City population
6 and State population?

7 ASSEMBLYMAN GOTTFRIED: That depends
8 very much on how that determinate sentencing
9 system is written, and that's one of the things
10 that scares me about determinate sentencing.

11 I think you first have to make a
12 decision, or at least the Legislature has to,
13 whether or not we want to enact a statute that
14 is going to double or triple or quadruple the
15 average length of time a person is going to
16 spend in prison, because if you will adopt a
17 system that allows certain Upstate judges and
18 probably certain New York City judges to give
19 someone a determinate sentence of 25 years for
20 a Class B felony instead of a maximum of 25, you
21 are going to have a lot of people spending a lot
22 more time behind bars.

23 The Morgenthau recommendations --
24 the Morgenthau Commission's recommendations --
25 seek to avoid that result by having a Sentencing

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2 Guideline Commission, which would be instructed
3 to set guidelines that would at least start out
4 aiming at keeping future average time behind
5 bars comparable to present average time behind
6 bars.

7 If that is done, then it should not
8 make much difference. If the legislation ends
9 up being what I would call getting out of con-
10 trol, then it has a very dangerous potential
11 for drastically multiplying our prison popu-
12 lation, which, I think, most responsible people
13 in the Legislature do not want to do..

14 But things occasionally run away from
15 us, which is why I am very nervous about the
16 whole determinate sentencing concept.

17 MR. KIRBY: Since the State Legislature
18 has at its disposal a certain thing that could
19 remedy the incarceration of people, for instance,
20 the predicate felony law -- it's not working, your
21 drug law, it's surely not working -- so it is
22 hard for me -- see, I am hoping that Rikers Island,
23 the sale of Rikers Island would better the system
24 rather than increase the system -- they would
25 have a moratorium of one person to a cell -- so

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2 I am saying that if we paralleled the system then
3 maybe we can make people in the system to deal
4 with those alternatives, bail systems, things of
5 that nature, rather than increase that system.

6 If you increase that system, you will
7 find more and more people awaiting trial incarcer-
8 ated, and what brings to my mind that is the
9 Panther case of some years ago, where folks re-
10 mained in jail for two years awaiting trial and
11 who were acquitted in 90 minutes.

12 That bothers me, so then I don't want
13 to enlarge that system.

14 ASSEMBLYMAN GOTTFRIED: Right.

15 MR. TUFO: Mr. Gottfried --

16 ASSEMBLYMAN GOTTFRIED: Well, let
17 me just add that I think the prospects of the
18 State Legislature dismantling or substantially
19 reducing either the multiple, the second, or
20 persistent felony laws, or the recent predicate
21 felony legislation, is not at all bright.

22 I mean, it is one thing for the
23 Legislature to decide that a good many solid
24 citizens who have no criminal record and get
25 ensnared in a drug selling act, and as a result

2 face life behind bars, ought not to -- it is one
3 thing for that kind of case to grab the Legis-
4 lature's sympathy.

5 It is quite another to expect reason-
6 ably that the Legislature in the next few years
7 is likely to turn around and start reducing
8 sentences for people who are either multiple
9 felony offenders or violent felony offenders.

10 That is just not likely to happen.

11 As for reducing the number of people
12 who end up in detention, and for speeding up trial
13 processing, there is a lot that can and should be
14 done in that direction, but however well our
15 efforts in that direction succeed, we are going
16 to continue to need detention facilities, and we
17 don't have them on Rikers Island.

18 We are going to have to build them
19 in the boroughs, and that is where they belong.

20 MR. TUFO: Assemblyman Gottfried, if
21 just a few years from now in the midst of this
22 proposed transfer the City finds itself unable
23 to complete construction of the borough detention
24 facilities for the lack of funds, and approaches
25 the State Legislature for additional funds to

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2 complete the project, can you give us an estimate
3 based on your many years of experience in the
4 Legislature, what the prospects of such an appeal
5 would be.

6 ASSEMBLYMAN GOTTFRIED: That would
7 depend on a variety of factors. I think it would --
8 first of all, when the City comes to Albany asking
9 for assistance in general, when the City comes to
10 Albany asking assistance the City has been well
11 received.

12 This year the Mayor came to Albany
13 wanting 200 million dollars and he got it so fast
14 that by the end of the session he forgot we had
15 been so generous and issued some rather cutting
16 remarks about us.

17 In addition to that, there is a sense
18 in Albany that the City has been doing a tremendous
19 amount on its own to tighten its belt.

20 Second of all, when you come to
21 Albany asking for money for the "Get-Tough" side
22 of the criminal justice process, if you will,
23 sadly, you find the Legislature much more willing
24 to respond than when you come to Albany asking
25 for funds for what some of us might regard as the

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more progressive alternative part of the system.

(Continued on next page.)

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2 So I think that for these two reasons,
3 I think you would find a very good reception in
4 Albany.

5 It would depend, of course, on the
6 City's financial credibility at that point, both
7 being able to document that its finances in general
8 warranted tight control, and particularly with
9 respect to this project.

10 If Albany thinks that the City has
11 money in its pockets or that it has been throwing
12 money away, the City will have problems.

13 MR. TUFO: Yesterday, Commissioner
14 Coughlin testified that the State had little or
15 no alternatives to the Rikers Island project and
16 that it would have to follow through with it; that
17 it was unlikely that the State would break its
18 agreement and fail to meet the terms that had been
19 negotiated.

20 Are you in agreement with that
21 conclusion?

22 ASSEMBLYMAN GOTTFRIED: I think that
23 is true. The State would have only two alternatives
24 to the Rikers Island transfer.

25 One is to somehow cut down on the

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2 prison population, and I see no likelihood of that
3 happening; and the alternative would be an extensive
4 expansion of the out-of-City facility capacity.

5 The State has been working on that
6 latter alternative about as fast as it can, and has
7 all sorts of plans under way.

8 They need Rikers Island on top of
9 what the best hopes are for upstate expansion.

10 MR. TUFO: Any further questions?

11 Senator Gottfried, thank you very
12 much for your testimony.

13 We will have a short recess.

14 (Recess taken.)

15 MR. TUFO: We will call as our next
16 witness the President of the City Council, City of
17 New York, Carol Bellamy.

18 Thank you very much for joining us
19 today. We know your long interest in the criminal
20 justice system and your efforts on behalf of the
21 criminal justice system within the State Legisla-
22 ture and since you have been City Council President.

23 We welcome you to the hearing and
24 look forward to hearing your remarks.

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2 MS. BELLAMY: My term in the Legis-
3 lature was remarkable for the lack of success of
4 most of its efforts.

5 First of all, I would like to express
6 my appreciation to the Queens Citizens Organization
7 going ahead of its scheduled speaker, and I thank
8 you very much.

9 I have asked for the time remaining
10 also somebody from my office who will listen to
11 the statements, so I appreciate it.

12 I know it can be frustrating when
13 the elected public officials come down and end up
14 moving down, so I appreciate it. I also thank you
15 for the opportunity to appear before this Committee.

16 I think the last time I came before
17 the Board of Correction was way back in 1971,
18 shortly after the difficulties when we were talking
19 about a detainee population of something in the
20 vicinity of 14,000, and that was a long time ago,
21 although it seems to me that many of the problems
22 still remain.

23 Today we are going to discuss the
24 proposed -- or you are discussing and have been --
25 the proposed State takeover of the Rikers Island

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2 facility, a proposal that has widespread implications
3 for both New York City and State.

4 I find myself in basic agreement with
5 the broad goals of the planners of this project.
6 Who can deny that our prisons must meet professional
7 and constitutional standards, that they must make
8 better use of modern design and management tech-
9 niques, that they ought to be managed to make them
10 as economical, secure and humane as possible?

11 And who can dispute the specific
12 goals of the proposed takeover?

13 Of course, we would like to build
14 additional correctional facilities and locate them
15 so they are accessible, for the good of the judi-
16 ciary, the police, the Bar, the community as a
17 whole, and the inmate.

18 In the best of all possible worlds,
19 these are progressive goals which all of us share
20 in common. The questions we must consider, however,
21 relate, I think more specifically, to one that I
22 will raise here, and that is whether we in New York
23 today are, indeed, living in the best of all possible
24 worlds; and whether these commonly agreed upon goals
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2 are realistic and are realizable.

3 Is the proposed Rikers action appro-
4 priate, given the precarious fiscal condition of
5 New York?

6 And, in that context are both New York
7 City and New York State. As we struggle to close
8 a budget deficit of more than a billion dollars,
9 can we risk such a venture?

10 Are the cost savings now identified
11 with the proposed takeover real and are they
12 achievable?

13 In this regard, I certainly cannot
14 fault the logic of the recent Working Document on
15 Rikers. If we have faith in its figures, then we
16 see how the City can fiscally as well as programmatic-
17 ally, benefit from the takeover.

18 Progressive correctional goals will
19 be realized at a cost which is insignificantly
20 higher than we are now paying. My major concern,
21 however, is that the figures, both capital and oper-
22 ating, have changed dramatically, and they seem to
23 change every time you ask about them.

24 I shall review the latest figures,
25 received by my office only last week, carefully,

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2 with several concerns and questions in mind.

3 We in New York City must treat an
4 idea as grandiose as the one before us today with
5 considerable humility. We have failed too many
6 times in the past to complete construction projects
7 on time or at a cost even remotely resembling
8 original estimates.

9 These failures continue to haunt the
10 City; as my office and others have pointed out,
11 serious delays continue to plague many of our
12 capital improvement projects.

13 With regard to projected operating
14 costs as well, the latest document appears well-
15 reasoned, but again we shall need additional
16 information -- at least I will -- before supporting
17 its conclusion wholeheartedly.

18 Current operating projections are now
19 considerably lower than previous estimates, as a
20 result of management reforms and improvements now
21 envisioned if a takeover is instituted.

22 Here again, however, local history
23 gives reason for at best cautious optimism with
24 regard to management reform.

25 We are wise to subject the specifics

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2 of these management improvements to far greater
3 scrutiny before agreeing on the savings they are
4 intended to produce.

5 I have a number of other outstanding
6 questions about the proposal, and again, my primary
7 question is one of cost, both -- as I indicated --
8 from an operating and a capital construction per-
9 spective.

10 But I would like to raise a couple
11 of others with you today. One has just been men-
12 tioned in passing, in discussion with Senator
13 Gottfried: How will these recommendations of Dis-
14 trict Attorney Morgenthau and his Committee with
15 respect to determinative sentencing affect your
16 projections, and have these been factored in?

17 These recommendations will inevitably
18 place an additional burden on the Court system and
19 on the prisoners, because of increased number of
20 trials and longer periods of punishment.

21 What is the current debt service on
22 the Rikers Island facilities, and will the city
23 continue to have to pay this should the state lease
24 go through?

25 Why must the money that is going to

1
2 the City go through the FDC at a cost of three
3 percent to the City, and ultimately, in my opinion,
4 at the loss of City autonomy?

5 Why are women detainees and inmates,
6 who have traditionally been given short shrift when
7 it comes to work release programs, training, rehab-
8 ilitation projects, et cetera -- and that's being
9 optimistic -- why are they being given the least
10 consideration in this plan?

11 And finally, why hasn't the City
12 bargained with the State for the State to assume
13 much greater if not total responsibility for
14 corrections?

15 Couldn't the City leverage such a
16 deal, using Rikers as the trump card, given the
17 fact that State facilities are operating in most
18 cases at a hundred percent of capacity.

19 Again, I thank you for the opportunity
20 to appear before you on the issues I find problematic.

21 Criminal Justice Coordinator Herbert
22 Sturtz and Commissioner Ward have been most coop-
23 erative with my office in discussing the takeover,
24 and for that I want to state publicly that I am
25 most appreciative.

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2 I will continue to study this latest
3 document carefully, with the conviction that public
4 discussion of the proposal is the responsibility
5 and the obligation of all parties concerned.

6 I thank you.

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8 MR. TUFO: Thank you very much.

9 Have you had an opportunity to review
10 the documents submitted by Commissioner Ward and
11 Criminal Justice Coordinator Sturtz as far as it
12 relates to the cost that they project will be in-
13 curred by the City in the event that the proposed
14 Rikers Island transfer does not go through?

15 MS. BELLAMY: The most recent report
16 is the one from last week. It has come into my
17 office; my staff has looked at it.

18 I was not in the office last week
19 and so I briefly looked at it this week.

20 The costs, certainly, if we compare
21 them with the earlier figures are quite different.
22 Figures can change, and I understand that, and I
23 am not suggesting that there isn't merit to the
24 figures.

25 The figures can change so dramatically

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2 in this discussion that I am troubled, and I am
3 troubled on the basis of a historical perspective
4 as well as the capacity of the City to meet these
5 kinds of figures; so my answer to you is that I
6 reviewed them briefly, and I would feel uncomfortable
7 commenting at this time as to how accurate I think
8 they are.

9 I am not optimistic about the City's
10 capacity to keep to them.

11 MR. TUFO: I was referring specifically
12 in my question to the cost to the City in the
13 event that the transfer did not go through, not in
14 the event that the transfer did go through.

15 MS. BELLAMY: I have looked at the
16 figures, and there is no question in my mind that
17 it would cost the City if the transfer did not go
18 through, but I think the question is, the cost to
19 the City if the transfer does not go through in
20 terms of meeting what are responsible actions the
21 City must take and the cost to the city, given the
22 transfer.

23 MR. TUFO: I would ask you to comment
24 on that. There has been testimony this morning by
25 both the Corporation Council ^{sel} and by the Executive

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2 Director of the Legal Aid Society that in the
3 event that the transfer does not go through there
4 will have been expenditures made in addition to
5 those that are enumerated in this document on
6 Rikers Island to renovate off-Rikers Island facilities
7 in order to meet current standards, consent decrees,
8 and likely court orders and pending litigation,
9 and that those amounts most likely would be similar
10 to those that have been spent to renovate the Tombs
11 to bring it up to constitutional standards.

12 If you project that amount, which is
13 some thiry million dollars, and add it to the
14 facilities in Queens, Brooklyn, and the Bronx, that
15 would add another ninety million dollars to the
16 City's already projected cost of a hundred and
17 twelve million dollars just to maintain its current
18 facilities.

19 Just for the moment assuming those
20 cost estimates are accurate --

21 MS. BELLAMY: Your question, I think
22 that is one of the major questions that has to be
23 considered by your Board as well as by myself, in
24 my role as a City official -- the accuracy of the
25 cost estimate.

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2 Let's only look at it when referred
3 to the cost estimates of the Tombs in just the past
4 nine months. I could begin to worry about the
5 accuracy of any of the figures that we see.

6 MR. TUFO: I understand that, but my
7 concern is that these are costs that the City
8 administration has said will have to be incurred,
9 regardless of the outcome of this transfer proposal,
10 or in the event that this transfer proposal does
11 not go forward.

12 And my question to you is, what would
13 be your attitude as to what it would take the Board
14 of Estimate to pass on these cost proposals as to
15 the City spending amounts of this magnitude in
16 order to maintain the present system?

17 MS. BELLAMY: There is no question
18 in my mind that if the Rikers Island -- if the
19 proposal as presently before us -- it's not clear
20 to me that we do not have a better proposal before
21 us -- so there are a variety of scenarios.

22 One is a different proposal, that is,
23 that's one; two, is the proposal before us; three,
24 is neither of those two but the City has to do
25 something.

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There is no question in my mind as a City official and a member of the Board of Estimate that in order to meet basic human needs the City will have to spend some dollars to maintain, renovate some of the facilities.

There is no doubt in my mind, and I will be prepared to pass the vote, in that respect, that is.

As to the commitment in terms of figures, I am not prepared to make a statement at this point. I think it is a matter of basic standards for one -- what has already been agreed to in the consent decrees, additional court orders -- a matter of negotiation by the Corporation Council ^{sel} and Legal Aid in this respect; so that the figures are open figures, but I do accept the proposition at present that there would have to be change and some dollars spent.

I don't at this point, however, accept the proposition that we are talking about equating dollars.

MR. TUFO: That isn't an essential question, because the magnitude of these estimates, whether they are off by twenty or thirty percent,

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2 the magnitude of the estimates to maintain the
3 present system makes those estimates the same or
4 in excess of the cost that would be incurred by
5 the City in order to go forward with the Rikers
6 Island transfer.

7 If those estimates are wrong, then
8 we have a different question before us, but if they
9 are similar then I think the Board needs guidance
10 as to the City's willingness -- and the willingness
11 of officials such as yourself -- to go on subsidizing
12 the current system that we have of potential facil-
13 ities on Rikers Island, and have the maximum security
14 facilities that we have in the boroughs without
15 achieving as a result of those expenditures a
16 measurable change in the criminal justice process
17 that we are operating under.

18 MS. BELLAMY: Again, I speak on behalf
19 of myself as one member of the Board of Estimate,
20 my two votes on the Board of Estimate, so I don't
21 represent the City's position.

22 I can give you the position of the
23 Office of the Council President. We -- I am talking
24 about something that you are all quite aware of --
25 we are talking about the capital expenses, the

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2 preliminary occasions for borrowing these days, and
3 the implications of which one might provide dollars
4 to repair, maintain, and for new construction --
5 talking about the delays in the attempts to locate
6 sites for construction, as contrasted with the
7 ability to move forward with renovating already
8 existing institutions, we are talking about operating
9 expenses.

10 It has been my observation, as I
11 review technological changes and managerial changes
12 aimed at reducing costs, that in most cases -- and
13 I am not suggesting there is something wrong with
14 this -- but in most cases the new technology of
15 the day in general costs are to be higher operating
16 costs rather than lower operating costs.

17 Again, that may be inappropriate,
18 but I think the timing component makes a substantial
19 difference, causes there to be a substantial differ-
20 ence in terms of the cost we are talking about,
21 as far as the rehabilitation and construction.

22 I don't think there is any question
23 about it. One need only take a look at the indus-
24 tries to understand what the cost implications
25 would be in terms of the siting of new institutions.

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2 MR. TUFO: Perhaps I am not making
3 myself clear. I am not asking your estimate regarding
4 construction costs or debt service costs.

5 Rather I am asking you if you could
6 focus on the question of the alternatives between
7 maintaining and spending substantial sums to main-
8 tain the present system or the alternative of
9 spending substantial sums to create a new system.

10 MS. BELLAMY: And the question is,
11 if you were going to have to spend the same --

12 MR. TUFO: Is it better?

13 MS. BELLAMY: That is a question that
14 at this point, in my opinion, is not the question
15 before us, because I am not convinced that that
16 is the appropriate question.

17 I realize that is the manner in
18 which the issue is being discussed by some, and
19 that is why I think that one has to take some care
20 in the figures.

21 I don't believe we are talking about
22 the same numbers of dollars. Now, that doesn't
23 mean you can't talk about that. Maybe one ought
24 to, in theory, be prepared to spend additional
25 dollars because of a commitment to a criminal justice

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2 system that is good and the best we can provide.

3 I am trying to say in my testimony,
4 in the best of all possible worlds one wants to
5 provide the best that exists.

6 The City of New York, and in fact the
7 State of New York, is not presently situated in
8 the best of all worlds, and maybe the choice before
9 us is to do the best we can, given the conditions
10 that prevail at this point.

11 That -- I don't mean to be talking
12 in circles -- I really think there are substantial
13 cost discussions that have to go on and I also
14 think there are some philosophical policy discussions
15 that have to go on.

16 Both of them have to occur, and I
17 have tried to raise some of the issues.

18 I think that, as a City official,
19 if we do do what is proper we will have to add
20 additional dollars; we will have to put some dollars
21 into our facilities.

22 MR. TUFO: Thank you.

23 Just for your information, it was
24 testified this morning that Judge Lasker stated
25 on the record last Friday in the course of liti-

1
2 gation over the future of HDM . that he was
3 prepared to issue an order that was going to
4 require substantial renovations in that facility
5 if the transfer did not go forward; and there are
6 cases pending regarding each of the other borough
7 facilities where similar relief has been sought.

8 In addition, this Board has the
9 responsibility, as you know, of setting minimum
10 standards for jails in New York City.

11 We have set sixteen standards and have
12 further ones under consideration.

13 I think, for the record, as this
14 proposal is considered, you must realize that we
15 will set standards consistent with the court
16 orders, the outstanding decisions regarding minimum
17 standards, acceptable conditions in the detention
18 facilities, which will probably require the City
19 to expend funds, even though the transfer does not
20 go forward.

21 Any questions from any of the Board
22 members?

23
24 (Continued on next page.)
25

2 MS. SINGER: One of our great
3 concerns, and I know you have given it considerable
4 thought, is the acceptance of penal institutions
5 by the community.

6 What research is being done along
7 these lines?

8 MS. BELLAMY: I am not sure I am
9 in a position to respond to that question. I
10 would think that it is better directed -- I am
11 willing to answer the question, but I can only
12 answer it "I don't know" -- that would be my
13 answer.

14 I would think that the question is
15 better put to Criminal Justice Coordinator Mr.
16 Sturtz.

17 I can give you my personal opinion
18 again, as a public official, and that is that we
19 in the City and State are a community and there
20 are many parts to that community, which include
21 institutional parts as well as non-institutional
22 parts.

23 So my position is not one where I
24 believe there should not be siting of institutions
25 in communities.

2 As it is, I live three blocks from
3 the Brooklyn House of Detention, in a community
4 that manages to be surviving quite well with the
5 Brooklyn House of Detention right down the
6 street.

7 There is no question in my mind
8 that there ought to be provision for public
9 input; there ought to be widespread information
10 available to the communities; and communities ought
11 to have the opportunity to have their questions
12 responded to in terms of siting.

13 But I am not opposed as a policy
14 to siting of institutions in the communities.

15 We are all human beings and have
16 a right to live in our communities whatever our
17 status might be.

18 As to research, I would say that
19 that issue is better answered by Mr. Sturz. My
20 office at present is not involved in researching
21 the implications of siting prison institutions;
22 but we have been involved in reviewing information
23 as to the issue of homes for the mentally retarded,
24 because in my role as Omsbudsman I have been
25 involved in that role, and this would raise the

1
2 issue of the depreciation of real estate values.

3 There seems to be no substantiation
4 of that issue, and for those who would raise other
5 issues of negative impact on neighborhoods in
6 general, there has been no negative impact on
7 neighborhoods in terms of homes for the mentally
8 retarded, and that is the only kind of research
9 my office has handled to date.

10 MS. SINGER: Community acceptance;
11 you have not found any serious --

12 MR. BELLAMY: Oh, I guess one finds
13 great difficulties, and I think that's why it's
14 important that there be as widely available an
15 opportunity as possible for the community to be
16 able to sit down and to ask questions, to have
17 their questions responded to, so that there's at
18 least a sense of having a statement of what is
19 going on in the community.

20 That doesn't mean the community runs
21 the Department of Correction, but at least it
22 doesn't feel it is excluded from knowing what is
23 happening in the community, so there is no question
24 in my mind that siting will end up being a very
25 controversial issue.

1
2 And I don't know of any magic solution
3 to avoid that controversy.

4 One can deal with that controversy by
5 trying to be available to people with as much
6 information as possible.

7 MR. LENEFSKY: I am wondering if
8 you would care to expand on your comments on the
9 bottom of page 3 about womens' programs.

10 MS. BELLAMY: That is not really an
11 issue before you.

12 MR. LENEFSKY: I realize that; you
13 are the only one that has raised it here -- a
14 series of programs for women built into the new
15 facilities.

16 MS. BELLAMY: Again, I raised it
17 near the end of my testimony now not because I
18 don't think it's important, but whenever I sit
19 on that end I always find it difficult when some-
20 body comes and talks about an issue that is not
21 on the point --

22 MR. LENEFSKY: You could submit an
23 opinion.

24 MS. BELLAMY: It's hard to find an
25 ex-offender program for women today, and if you

1
2 are talking about trying to keep them from be-
3 coming repeat offenders then ex-offenders become
4 important.

5 It is, if one looks at job training
6 programs, as difficult as it is to find adequate
7 job training programs for male offenders -- and I
8 am not suggesting that I think the male population
9 is being adequately responded to, either -- but
10 for female offenders it is assumed that they will
11 go out and assume their traditional role -- it's
12 hard for me to understand that -- and that offi-
13 cial role is a role that feels that at the most
14 they are given some ability to use their hands --
15 that would be sufficient -- so there's very
16 little in the way of job training programs for
17 female ex-offenders.

18 It is an area that has not been
19 dealt with adequately for male offenders, but
20 even less adequately for female offenders, and
21 as you know, the population of female offenders
22 is an increasing population, if you compare
23 past statistics.

24 One would like to try to assure
25 that once one is an ex-offender one is not an

1
2 offender again, so that we have some responsi-
3 bility to all members of the population.

4 I'll be glad to provide you with
5 some information. I saw a review of programs
6 that presently exist.

7 MR. LENEFSKY: Thank you.

8 MR. TUFO: Any further questions?

9 MS. BELLAMY: And I might say
10 in the context of this particular issue, from the
11 discussion, the Fulton facility, the Bayview
12 facility -- the present discussion of not being
13 last on the Island, again seems to me to be that
14 this has been a population -- if this proposal
15 moves forward -- which will have been proportion-
16 ately lost in the shuffle.

17 MR. TUFO: The testimony was yes-
18 terday that the present plan is that women de-
19 tainees would remain in the Women's House, but --

20 MS. BELLAMY: Yes, that is the
21 latest. That is after someone else took a look
22 at Fulton and Bayview, I suppose.

23 MS. SINGER: Yes.

24 MR. TUFO: Thank you very much.

25 Our next witness is on behalf of the

1
2 Queens Citizens Organization, Maryann Gangi.

3 Yes, Father.

4 FATHER CAMPBELL: Honorable Chairman
5 Mr. Tufo, distinguished Board members. My name
6 is Thomas Campbell. I am the pastor of the
7 Church of St. Francis of Assisi in the Steinway-
8 Jackson Heights area of Astoria in Northwest
9 Queens.

10 It is a Roman Catholic community
11 of three thousand families, ten thousand people.

12 The Land Bridge access to Rikers
13 Island facility is through our community. My
14 role today, happily, is limited to introducing
15 Mrs. Maryann Gangi, who is a member of our
16 parish, and to assure you that her remarks have
17 my full support and they have been confirmed by
18 our parish council.

19 Maryann Gangi.

20 MR. TUFO: Thank you very much,
21 Father.

22 Welcome, Maryann Gangi. We are
23 pleased to have you here today.

24 We are sorry you had to wait.
25 Thank you for your patience.

1
2 I know the amount of interest you
3 have had in this proposal from its inception. We
4 met with you a month ago at the parish and you
5 accepted our invitation at that time to testify
6 and I am glad you are here.

7 MS. GANGI: Thank you for the
8 invitation I had at that time.

9 I am here today on behalf of our
10 parish, who I am representing as spokesperson.

11 Besides being a parish of ten
12 thousand people, we are also affiliated with the
13 Queens Citizens Organization, which is made up
14 of twenty-six congregations representing forty
15 thousand families all living in Queens. We have
16 the approval of these, our other member congregations,
17 to support the position we are assuming
18 today.

19 As you know, we have spent the
20 summer researching the impact of having New York
21 State correctional facilities on Rikers Island.

22 During September we held information-
23 al meetings and negotiations with both the State
24 and City correctional officials to try to get
25 reasonable assurances as to what the actual impact

2 to our community would mean and what our community
3 is being asked to accept.

4 The meeting on September 15, I was
5 chairperson for that meeting as well, and we had
6 proposed that St. Francis of Assisi parish and
7 the Queens Citizens Organization would accept
8 a State prison on Rikers Island if the City and/or
9 State of New York would agree to a series of
10 conditions acceptable to our community.

11 And we were to have this agreement
12 prior to October 9th and 10th.

13 As I stated, we had gone through
14 negotiations, and I have agreements signed by
15 the City and State but not signed by our parish
16 representatives and the Queens Citizens Organiza-
17 tion.

18 I will present those.

19 MR. TUFO: Do you want to make it
20 part of the record?

21 MS. GANGI: These are the agreements.
22 I have one for each of the members of the Board
23 of Correction.

24 These include the City and State
25 agreements, and, as I said, we have not agreed to

1
2 them. We have not gone along with it and signed
3 on it.

4 Still to today our fears have not
5 been allayed. Although we have been given agree-
6 ments approved and signed by both the State and
7 City Departments of Correction, our Parish
8 Council voted this past Friday not to accept
9 these "agreements."

10 Therefore our position today must
11 be one of opposition to the proposed State
12 takeover of Rikers Island.

13 The following reasons are in the
14 documents that were given out:

15 "Number One, we sought a liaison
16 committee attended by the top administering offi-
17 cials from the City and State for Rikers Island.

18 "What we were promised was a liaison
19 committee with those sitting on it to be the
20 Deputy Commissioner for Rikers Island or his
21 designee and/or representatives of the State and
22 City Departments of Correction.

23 "This is unacceptable to us because
24 we will not sit on a committee such as this
25 where the chief decision makers are not present."

1
2 We feel that if meetings were set up we
3 should have the top officials and, if not, they
4 could be scheduled, but we would like this written
5 in the agreement.

6 "Number Two, it took until this
7 past Thursday evening at 9:30 p.m. to be given
8 any number at all as to the population of
9 prisoners to be housed by the State at Rikers
10 Island after the proposed takeover is completed."

11 The number given, five thousand
12 four hundred and eighty, as a ceiling, "-- is
13 totally unacceptable because we were informed
14 that the intention of the State was to house a
15 population less than that housed by the City.

16 "Statistics given to us by the
17 Criminal Justice Department were as follows:

18 " ' Total number of inmates present
19 at the end of 1977 were four thousand seven
20 hundred; on 7/9/79, four thousand eight hundred
21 and ninety; on 7/20/79, four thousand eight hundred
22 and nineteen; 7/23/79, four thousand seven hundred
23 fifty-eight; 7/24/79, four thousand seven five five;
24 and on 7/25/79, four thousand seven hundred
25 ninety-nine. ' "

1
2 The five thousand four hundred
3 and eighty-nine number given to us is not
4 acceptable, and it is almost twice as much as
5 that of any other State prison in the country.

6 We also asked the City to give us
7 a number as to how many would be housed on
8 Rikers Island during the transitional period,
9 and as yet we have not been answered, but from
10 what I have heard in previous testimony, they
11 are figuring on about eleven hundred.

12 Was that the number that was given
13 just before?

14 MR. TUFO: I don't think the total
15 figure was given.

16 MS. GANGI: No, the total additional
17 to what the City had on the Island now, and would
18 bring in and using the facilities of the Women's
19 House of Detention and the Adolescent Remand
20 Center there was -- I don't know if that figure was
21 in addition to what's there now.

22 MR. TUFO: I don't recall a specific
23 figure but that plan would require that there be an
24 additional amount of inmates during that transi-
25 tion phase.

1
2 MS. GANGI: Okay.

3 My third point: As to the housing
4 of adolescents on Rikers Island after the first
5 takeover, we had questioned both the City and
6 the State on this and they had said that there
7 were "no current plans."

8 This is unacceptable. We need
9 guarantees, not these statements that they have
10 "no current plans" to house adolescents, because
11 housing adolescents would take on other ramifi-
12 cations as to how they can be treated on the
13 Island in accordance with separate treatment from
14 the adult inmates.

15 "Number Four, we were told that
16 the intention of the State was that Rikers would
17 house male prisoners with unsatisfactory conduct
18 who resided within the New York City Metropolitan
19 Area and would spend fewer than two to two and a
20 half years on Rikers before release consideration."

21 This was their intention, that they
22 would have these good prisoners, prisoners who
23 have gone through part of their term and it has
24 been proven that they haven't tried to escape or
25 whatever; and this is what was told to us by the

2 State, and in the agreement only eighty-five
3 percent were to follow these criteria, so that
4 leaves eight hundred and twenty-two prisoners,
5 or fifteen percent to follow no criteria.

6 This is not acceptable.

7 "Number Five, we have been asked
8 by the State to trust them to deal effectively
9 with the situation of visitational policy on
10 Rikers Island, and I quote from the State's
11 statement:

12 'The number of visitors will not
13 exceed our capacity to effectively process and
14 monitor activities!'

15 Proposed policy for visitation as
16 was stated at our meeting by the State was that
17 they would allow three visits per week, three
18 visitors per visit.

19 This could possibly mean -- with
20 a five thousand four hundred and eighty number --
21 that there would be over seven thousand visitors
22 per day using a hundred and forty buses a day.

23 Our community will not stand this
24 amount of traffic passing through every day.
25 We need to know what limitations if any will be

1
2 There has been testimony and infor-
3 mation provided to us that stated the State's
4 intention was not to build any new facilities,
5 and, two, to reduce the size of the House of
6 Detention for Men.

7 And if that were the case, I don't
8 know how they could even reach this number.

9 MS. GANGI: We have been asking that
10 question all along as to numbers. I know both
11 City and State officials in the Correction Department
12 have gone over Rikers Island again, sent their
13 recommendations to Albany, and they have been
14 discussed, and it was supposedly the reason we
15 had to wait until that night, Thursday night, after
16 waiting for the agreement to come in. They had
17 been working on it for at least a couple of weeks.

18 I feel it is important that we know
19 exactly, not to the number, the exact number, but
20 have a very good idea of what would be coming
21 into the community.

22 We feel that with the problems that
23 are inherent in the City system that is on Rikers
24 Island now, and the fact that there aren't any
25 other state prisons which handle this number, that

1 security would be a problem, and at one of our
2 meetings with the City and State we got home and
3 found out that eight prisoners had escaped while
4 we had the City and State correction officials
5 right in our parish, positioned right there.
6

7 MR. TUFO: We share your concern
8 about that.

9 Thank you, and we will be in touch
10 with you as this develops further.

11 And thank all your colleagues for
12 being so patient and attentive here today. I am
13 glad to see you here today.

14 MS. GANGI: We would like to excuse
15 ourselves from today's hearing. We have a bus
16 waiting for us to take us back.

17 MR. TUFO: Of course.

18 MS. GANGI: Thank you.

19
20 MR. TUFO: Is Mr. Ryan here?

21 MR. RYAN: Yes.

22 MR. TUFO: Our next witness will be
23 Mr. Gerry Ryan, Director of the Prison Litigation
24 Unit of the Attorney General's Office of the State
25 of New York.

1
2 imposed on this kind of visitational policy.

3 "Number six, as to the matter of
4 work release, we again have no guarantees. As
5 stated, 'If a work release program is planned it
6 will be fully discussed with the liaison committee
7 which will have input into the final decision
8 with the goal of avoiding any community problems'.

9 "This stipulation by the State
10 gives us no definite power in the decision
11 making process with regard to the critical issue
12 of work release for Rikers inmates into our
13 community.

14 "In conclusion, those whom I repre-
15 sent would ask the Board of Correction to direct
16 both State and City Departments of Correction to
17 readdress these issues and renegotiate on a
18 serious level.

19 "Until that time, when we have an
20 acceptable written agreement, we have no choice
21 but to organize and mobilize our forces to oppose
22 this State takeover of Rikers Island."

23 Thank you.

24 MR. TUFO: Do the Board members have
25 any questions for Ms. Gangi?

1
2 You said that as a result of not
3 being able to reach an agreement you were planning
4 to "mobilize your forces" to oppose the takeover.

5 Would you elaborate on what your
6 plans are?

7 MS. GANGI: We would ask that the
8 Board of Correction direct both City and State
9 agencies to continue to renegotiate on these issues.

10 MR. TUFO: We must certainly take
11 your request very seriously, and at the next oppor-
12 tunity the Board will consider it.

13 But for my part, I can say that I
14 will urge both the State and the City to continue
15 to try to reach a satisfactory result with the
16 community.

17 MS. GANGI: Our reason for it is
18 we have been given intentions and promises all
19 through the different meetings we have had with
20 the City and State, and we feel that they are
21 saying it in good faith but, as we know, things
22 do move around differently.

23 If there isn't some kind of an agree-
24 ment -- and this is what we are waiting for -- we
25 will continue to come to the hearings, the public

1
2 hearings in Queens.

3 If we don't have an agreement before
4 the next meeting then we will have to begin opposing
5 the State takeover.

6 Thank you.

7 MR. TUFO: One other question. Would
8 it be possible for you to give priority -- I wrote
9 down seven objections that you have at this time.
10 Just for our guidance, can you list the priorities
11 which seem to you to be most important?

12 MS. GANGI: The number is first
13 priority.

14 MR. TUFO: The total number of the
15 inmates on the Island?

16 MS. GANGI: Yes. We feel that the
17 fears, not only of our parish but of other members
18 of the community, are that there would be upwards
19 of 10,000 or whatever.

20 If we can be shown that there is
21 some kind of ceiling on what would come into our
22 area from the prisons, we feel that that is top
23 priority; it would allay their fears and our fears.

24 MR. TUFO: I don't know that the
25 State arrived at the figure of 5,480 you mentioned.

1
2 Mr. Ryan, thank you for coming here
3 today.

4 MR. RYAN: Thank you, Mr. Chairman.

5 MR. TUFO: Are you speaking on behalf
6 of Attorney General Abrams?

7 MR. RYAN: Yes, I am, and in the area
8 of prison litigation, since he took office Mr.
9 Abrams instituted a prison litigation unit in the
10 New York City office.

11 It centralized the resources and
12 manpower and womenpower, and prison litigation --
13 at present about seventeen attorneys working on
14 this -- and it is to defend State officials and
15 State agencies, mainly, in suits brought by inmates
16 housed in the State institutions or to be housed
17 after parole revocation.

18 We have about thirty five hundred
19 cases a year.

20 In the interests of exploring all
21 the aspects of having a large State facility in
22 the New York City area, there has to be made some
23 comment, and specifically that this would create
24 a lot more lawsuits in which we would be involved.

25 Generally we are involved in -- after

1
2 an inmate is convicted in the local courts he is
3 sent to state institution, and after he exhausts
4 his appeal and commences his Federal habeus corpus
5 case -- and this is one area we are very much involved
6 in; we get about sixty cases a month, either Federal
7 habeus corpus or alleged civil rights violations.

8 This is in the Southern District,
9 and I think the State inmate population stands at
10 about twenty thousand, maybe twenty one thousand.

11 It was in connection with the previous
12 witness, we had a little bit of a difficult time
13 trying to find out how many persons are to be
14 housed.

15 At one time I had heard thirty eight
16 hundred; now I hear five thousand.

17 These numbers fluctuate; so do our
18 projections in terms of having more attorneys and
19 support staff we would need to conduct the litigation
20 in this part of the state.

21 Heretofore, we have not really had
22 much litigation in administrative matters wherein
23 suits were brought by inmates seeking evaluation
24 of jail time, good time, work release, temporary
25 release programs, et cetera, simply because there's

1
2 no State institutions found here, other than
3 one or two minor ones.

4 And with five thousand inmates
5 challenging that, it will certainly generate a
6 lot more litigation for us in the State courts,
7 litigation which, as I say, heretofore was really
8 not conducted at all.

9 It's hard to project when you are
10 talking about having an institution with four
11 thousand or five thousand, because these inmates
12 are going to reduce the populations of other State
13 institutions throughout the state; or is this
14 going to be in addition?

15 I think this opens up a lot of ques-
16 tions because, as I understand the city planners,
17 they foresee for demographic reasons a drop in
18 prison population in the early 1980s.

19 Whether this four thousand or five
20 thousand is going to be part of the twenty thousand
21 or whether it is going to be in addition to the
22 twenty thousand is something we can't tell.

23 It will undoubtedly add more liti-
24 gation State-wide, and essentially in New York City.
25 It may require a shifting of resources to the

1
2 Attorney General, and certainly an addition of
3 resources in terms of manpower to handle this
4 kind of litigation.

5 Whatever the plans are, if they
6 include the courtrooms in that they will make our
7 lives easier.

8 MR. TUFO: The District Attorney,
9 Bronx, yesterday said there would be more.

10 MR. RYAN: Absolutely. We have about
11 fifteen hundred parole violation cases in the
12 Bronx and those are because Rikers technically
13 is in the jurisdiction of the Bronx -- each year --
14 and just parole violations not including all the
15 other -- transfer questions and so on, and in
16 addition prison condition cases that will undoubtedly
17 arise here.

18 Certainly we hope that they have
19 that kind of facility available.

20 I think that will conclude my remarks.
21 I won't get into the fiscal end.

22 MR. TUFO: Mr. Ryan, has the Attorney
23 General taken any position in support or opposition
24 to the planned transfer?

25 MR. RYAN: We have talked about it.

1
2 I don't think there is any firm position right
3 now by the Attorney General.

4 I could, when I get back, check and
5 have a statement available, in terms of his position.

6 MR. TUFO: We would appreciate that.
7 We would like to put that in the record as well.

8 From your point of view, do you see
9 any alternatives to the State for new prison facil-
10 ities other than Rikers Island at this time?

11 MR. RYAN: I don't see any in terms
12 of this part of the state.

13 I think it is probably something that
14 should have been done a long time ago -- that's a
15 personal opinion -- myself having been involved in
16 the criminal justice system for the last fifteen
17 or more years, since I was with Mr. Osten's office
18 and private practice and with the Attorney General's
19 office.

20 I certainly -- talking to the members
21 of the Bar -- and I am sure you have heard a lot
22 about it there, having clients out there -- it is
23 just a desperate situation as far as any type of
24 efficient use of their time and the Board's time.

25 In the name of judicial economy they

1
2 have got to have them in closer quarters.

3 MR. TUFO: Any questions from members
4 of the Board?

5 We very much appreciate your remarks
6 and look forward to any further testimony you have
7 on behalf of the Attorney General.

8 MR. RYAN: Thank you.

9
10 MR. TUFO: Our next witness is Alfred
11 Mandanici, President of the Correction Captains'
12 Association of the Department of Correction of New
13 York City, and he is one of the senior members of
14 the Department of Correction.

15 We welcome you here.

16 CAPT. MANDANICI: Mr. Chairman, Mr.
17 Tufo and members of the Board of Correction. I
18 am proud of the Chairman and the Board of Correction
19 for the input they put for the speakers.

20 It was outstanding. And I don't want
21 to get into conflict between the two units. When
22 Mr. Seelig speaks --

23 MR. TUFO: Mr. Seelig is scheduled
24 to speak at 1:30 this afternoon.

25 CAPT. MANDANICI: If I am available --

1
2 MR. TUFO: If you are here I will
3 certainly call upon you after that.

4 We will break for lunch.

5 (Luncheon recess: 12:30 p.m.)
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13

14 A F T E R N O O N S E S S I O N

15 (Resumed: 1:40 p.m.)
16

17 MR. TUFO: Our first witness this
18 afternoon is Philip Seelig. He is the President
19 of the Correction Officers Benevolent Association
20 of the City of New York.

21 Mr. Seelig, I am glad you are here
22 to testify for us today. You have testified before
23 the Board of Correction in the past, and your point
24 of view has always been very persuasive and illumi-
25 nating, and I am sure it will be today.

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1
2 MR. SEELIG: Mr. Chairman, members of
3 the Board. Thank you for inviting me here to speak
4 at this hearing on the proposed Rikers Island state
5 takeover.

6 The word "hearing" implies that some-
7 one is listening. I believe no one on this Board
8 is listening, since none of the members of the
9 Board took public exception to the remarks made by
10 Mr. Tufo on September 26 at his reappointment cere-
11 mony as Chairman of your Board.

12 If you weren't listening to him at
13 that time, permit me to advise you that your Chair-
14 man endorsed the Rikers Island State takeover. I
15 know the Board did not meet to vote on this matter
16 prior to Mr. Tufo's reappointment.

17 Since Mr. Tufo's statement preceded
18 this hearing, and did not represent a vote by the
19 entire Board, I must conclude that his support for
20 the Rikers Island State takeover was the price he
21 paid for his reappointment.

22 This is not a hearing; it is a sham.

23 MR. TUFO: Do you have any evidence
24 to support that allegation?

25 MR. SEELIG: Because I am criticizing

1
2 you you are trying to interrupt this testimony,
3 and I state to you that this is a public hearing
4 and I have a right to voice my sentiments without
5 interruption, so if I may continue:

6 This is not a public hearing -- it
7 is not a hearing at all; it is a sham. I and my
8 men know that the findings of this Board will reflect
9 the biased political position of Mr. Peter Tufo.

10 Mr. Tufo's continuing interference
11 in the administration of the New York City prison
12 system has caused the decay of the daily operations
13 of our institutions.

14 Peter Tufo is the father of modern
15 escapes in the New York City prison system. He
16 has fathered a rash of vicious assaults on custodial
17 and civilian personnel.

18 Peter Tufo's minimum standards have
19 resulted in maximum escapes, assaults, and property
20 damage in the New York City prison system.

21 Under the guise of promulgating
22 minimum standards, Peter Tufo justifies his existence
23 by inventing unnecessary standards that cater to
24 the whims and comforts of the inmates.

25 At a time when hospitals are closing,

1
2 at a time when the City is cutting the budgets of
3 educational programs for our children, at a time
4 when the City is in financial trouble, the criminal
5 is being rewarded for his crimes with excessive
6 conveniences, unwittingly paid for with public funds.

7 I will not participate in this charade.
8 I will not discuss the Rikers Island ripoff with
9 a man who has already made his biased political
10 decision public. My criticisms will be given to
11 members of governmental and public forums who have
12 not sold their integrity for a political appointment.

13 MR. TUFO: Mr. Seelig, would you
14 care to answer any questions?

15 Is there any member of the Correction
16 Officers' Union who has the courage to sit here
17 and answer questions about Mr. Seelig's position,
18 since he does not?

19 The next witness will be the President
20 of the Correction Captains' Benevolent Association,
21 Alfred Mandanici.

22 MR. LENEFSKY: Mr. Chairman, I would
23 like the record to reflect that I am absolutely
24 outraged with the behaviour of Mr. Seelig; not only
25 at his personal attack against you but the manner

1
2 in which it was delivered.

3 MR. TUFO: Mr. Mandanici.

4 CAPT. MANDANICI: Thank you, Mr.
5 Chairman, for calling me back.

6 I am sorry we were a little late.
7 I didn't hear Mr. Seelig's complete statement which
8 I have from you and which I will be reading, and I
9 will state two points:

10 One, as a professional employee of
11 the Department of Correction; and one as the President
12 of the Correction Captains' Association for the
13 last fifteen years.

14 One, the staff of Rikers Island: I
15 will give my comments on it.

16 Number one, I started on the job May
17 2nd, 1949 and went to Raymond Street Jail, a small
18 jail, well built, well run.

19 When I went into this jail with six
20 other brand new officers, we went into a jail that
21 had people five to ten to fifteen to thirty years
22 of service and we caught hell because we were
23 learning the job.

24 After five years, I was transferred
25 to the Transportation Division for approximately

1
2 seven years; and we caught hell in the Transportation
3 from judges, lawyers, the Department itself, when
4 vehicles broke down and everything else.

5 After seven years in Transportation,
6 I went into the Adolescent Division, C-71. After
7 working one year in the Adolescent Division I was
8 sent to Manhattan -- HDM, which is the old pen.

9 I worked under Warden Thomas, who was
10 the inside Captain of Industry, of which I was a
11 construction captain on the outside in the young
12 days.

13 In the early sixties a captain was
14 a captain, and I saw all functions of the Department,
15 how it works.

16 I ended up in the Queens courthouse
17 which on many occasions the Judge will say --
18 it's in the Italian capital of the mustache and
19 pipe -- "I want to give him thirty days in prison"
20 -- they used to explain to the Judges that the
21 vehicle breakdowns -- they would say, "We don't
22 give a damn that it broke down; we want the prisoners
23 in here."

24 That's my thirty-one years experience.

25 As I see it, myself, number one, once

1
2 the City takes over Rikers Island and they build
3 the facilities I think it will be a benefit to
4 everyone in the Department plus the inmates.

5 The only thing I can see as the
6 President of the Correction Captains' Association
7 which I cannot endorse at this time is -- once I
8 have some answers to some of the questions is:
9 job security for my personnel; two, what would
10 happen if we do not have the facilities built in
11 Queens, Brooklyn and the Bronx? What would happen
12 if we have to share Rikers Island half-and-half?

13 Who's the boss? What procedures
14 are we following? What rules and regulations are
15 we following?

16 When you have two separate departments--
17 you call them separate departments, department of
18 State and the City -- with different salaries,
19 different benefits, and everything else that goes
20 with it, I think we will have problems.

21 If the State and the City could live
22 up to their agreement to have the jails all built ,
23 all that are concerned, the City, the State, my
24 membership, the Department of Correction -- will
25 be greatly rewarded, because when you build some-

1
2 thing new you are building for the inmates, you
3 are building for the correction officers, the
4 correction captains, and everyone else.

5 I want to praise the Board again,
6 like I said this morning. It is true that a lot
7 of questions have been asked of the speakers.

8 If you have any questions to put to
9 me I will answer them to the best of my ability.

10 MR. TUFO: Do any members of the Board
11 have questions?

12 MR. HORAN: Yes. What is the primary
13 benefit, from the correction officers' point of
14 view, of the transfer?

15 CAPT. MANDANICI: I don't know.

16 MR. TUFO: Could you elaborate on your
17 statement to some extent regarding your feelings
18 upon the completion of the Rikers Island transfer
19 and what you would foresee for the Corrections
20 Department as an effect of that transfer at that
21 point?

22 CAPT. MANDANICI: Well, I am going
23 to go back in time now. If and when they do build
24 a brand new jail, my estimation would be approx-
25 imately five hundred inmates, I think you will have

1
2 more security.

3 I think it will cut down on escapes.
4 I think it will cut down on hangings. And when
5 you are in a small place you know every inmate.
6 Like I said before, when I worked the Raymond Street
7 Jail I knew every inmate by his first and last names,
8 I knew their wives if I had the visiting post, lawyers.

9 I knew the inmates habits when I worked
10 in the receiving room. So it is a benefit to have
11 small prisons .

12 I believe in it; and if and when the
13 City and State complete, I think it will benefit
14 everyone else.

15 MR. TUFO: Mr. Mandanici, the concept
16 of a transfer includes, as you know, building off-
17 Island detention facilities and replacing the fa-
18 cilities that are on the Island.

19 In so far as the convenience and
20 safety of the correction officers are concerned,
21 do you see any benefits to construction of smaller
22 off-Island facilities to the correction officers?

23 CAPT. MANDANICI: Yes, I do. It
24 would benefit everyone. It's just like moving into
25 a brand new house. When you go into a brand new

1
2 house everything is up to date.

3 The inmates will have bigger cells,
4 more recreation. The officers, the brass, will
5 have better locker rooms, shower facilities, better
6 mess hall facilities, better security and everything
7 else.

8 That's what their job is about: care,
9 custody and control of prisoners, and the same
10 thing, care, custody and control, applies to them.

11 MR. TUFO: Captain, have you worked
12 in the facilities on the Island?

13 CAPT. MANDANICI: Yes, I did.

14 MR. TUFO: Could you describe to us
15 the working conditions for officers in the House
16 of Detention for Men.

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18 (Continued on next page.)
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2 CAPT. MANDANICI: Well, the
3 Captain has the toughest job in the State of New
4 York, bar none.

5 The inmates today -- which a lot
6 of people would disagree with -- the prisoners
7 we had twenty, thirty years ago -- on Rikers
8 Island, I think, the prisoners that we have today
9 I don't think is appropriate at all, the respect
10 is gone between the inmates and the staff.

11 MR. TUFO: Specifically, looking
12 at the conditions of the largest facility on
13 Rikers Island, the House of Detention for Men,
14 do you think that the heating and ventilation
15 and the noise levels and the hygienic conditions
16 at that prison are acceptable working conditions
17 for the correction officers or correction captains?

18 CAPT. MANDANICI: At this stage of
19 the game, the answer is no, sir, not humane for
20 anyone, staff or inmates.

21 MR. TUFO: Do you believe that under
22 the construction of the House of Detention for
23 Men, which requires correction officers and
24 captains to supervise sometimes over two hundred
25 inmates in one housing area, that the safety

1
2 precautions are adequate for correction officers
3 or correction captains?

4 CAPT. MANDANICI: The answer is no.

5 MR. TUFO: Do you believe that the
6 House of Detention for Men should continue to be
7 a facility used for jailing inmates in New York
8 City?

9 CAPT. MANDANICI: As an employee
10 and as the President of the Correction Captains'
11 Association, that is the best institution on
12 Rikers Island today.

13 MR. TUFO: How do you square that
14 with your other comments about working conditions?

15 CAPT. MANDANICI:: I just made a
16 statement before that if we had -- if these
17 prisoners today were the prisoners of thirty
18 years ago, there would be no problem.

19 The reason I state that, going back
20 to the early 1960's -- 61, 62, 63 -- myself as
21 an individual person, captain, I used to run the
22 whole house, the three thousand inmates, one
23 captain.

24 When I says to do something, they
25 done it.

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They respected you.

Today, you could have ten captains in HDM and the respect is gone. They are a different type of people, and that's what this Board has to learn: That prisoners of thirty years ago are not the prisoners of today.

You cannot handle the prisoners of today. No way.

I can give them a steak every single day and on a Saturday or Sunday, they will tell me "The steak was too small" or "too cold."

MR. TUFO: Are conditions in the borough facilities superior to the conditions that you have described in the House of Detention for Men?

CAPT. MANDANICI: You would have to work with me, because I don't know. It is getting tougher and tougher.

I go on tours of inspection and I get a lot of complaints. You just can't control it.

Even if you had five more captains in the House, I would doubt it. There is a lot of construction has to be done to improve it.

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2 The HDM, the Bronx, they should be
3 cut down better than in half.

4 In other words, an actual correction
5 officer should have no more than, say, fifty
6 inmates or less; and today's inmates, you need
7 more than one, you need two, three.

8 The records will prove it if you
9 want to check it -- the assaults, the assaults
10 are there.

11 MR. TUFO: Could you tell me what
12 your greatest concerns are for the captains working
13 under the Department of Correction, as the
14 proposal for this Rikers Island transfer proceeds;
15 what assurances would you like to see in those
16 proposals?

17 CAPT. MANDANICI: Well, what I
18 would like to see is, one, if the new institutions
19 are built I think it would benefit everyone else
20 in the Department -- inmates, the officers, the
21 captains, the wardens, the Department -- if the
22 City of New York built small, secure prisons.

23 MR. TUFO: If there are no other
24 questions, thank you for your testimony today.

25 CAPT. MANDANICI: Thank you.

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2 MR. TUFO: We are expecting former
3 Commissioner Benjamin Malcolm to testify. He
4 is flying up from Washington, and I am informed
5 that his plane is delayed.

6 We also had scheduled an inmate
7 from the Women's House of Detention, who has not
8 yet arrived.

9 I guess the transportation is
10 pretty tough from Rikers Island today. And so
11 we will take a break until either the next witnesses
12 appear or until there is another development which
13 would cause us to reconvene.

14 We will take a fifteen minute break
15 right now.

16 (Recess taken.)

17
18 MR. TUFO: Reconvening the second
19 day of hearings of the Board of Correction con-
20 cerning the proposed State takeover of Rikers
21 Island.

22 The Board had invited a number of
23 witnesses to appear, some of whom were to appear
24 today. However, because of conflict they have not
25 been able to appear but have submitted statements

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2 and I would like to include those statements in
3 the record.

4 (The statements comprise an
5 addendum to the record.)

6 The first statement is from Judge
7 Milton Mollen, who is the Presiding Justice of
8 the Appellate Division Second Department in the
9 City of New York, and he has submitted a statement
10 in support of the proposed transfer of Rikers
11 Island to the State.

12 A second statement has been sub-
13 mitted by Robert Morgenthau, District Attorney
14 for New York County, which I would also like to
15 have included in the record, and that statement
16 is in support of the proposed transfer of Rikers
17 Island to the State.

18 A third statement submitted jointly
19 by the three Commissioners of the New York State
20 Commission of Correction, Chairman Stephen
21 Chinlund, Commissioner Joseph Wasser, and Katharine
22 Webb, the third Commissioner; and the three
23 Commissioners all submit a joint statement in
24 support of the proposed transfer.

25 I will give these statements to the

1 Court reporter and ask that they be included in
2 the transcript of these hearings.
3

4 Yesterday we asked that one of the
5 witnesses who appeared with Commissioner Ward appear
6 today to answer a few further questions, and
7 Mr. Herbert Tessler of the Domus Group has
8 returned to answer a few questions that remained
9 at the time we recessed the hearings yesterday.

10 Mr. Tessler, thank you for coming
11 back.

12 The one area that we have not had
13 an opportunity to review was the arrangement
14 between the Department of Correction and the
15 Facilities Development Corporation that has been
16 proposed.

17 Could you please describe the
18 role that the Facilities Development Corporation
19 will play if the proposed transfer is approved
20 and the reason that the City believes it is
21 necessary to have that agency involved in this
22 project.

23 MR. TESSLER: The role of FDC is
24 basically as the managing agent for the City in
25 the design and construction process of the entire

1
2 program.

3 FDC was selected because of its
4 past experience on projects and the fact that
5 FDC has all the required disciplines under one
6 roof to make the project go.

7 Within the City, to move a project
8 through step by step you are constantly going from
9 Department to Department to Department.

10 It is all done within FDC, within
11 one entity.

12 The procedures to make the five
13 year program come to reality could not be done
14 in the City's normal procedure, and so we looked
15 to UDC and we looked to FDC.

16 We discussed it with both agencies.
17 The FDC was more willing to do the project, was
18 more capable of doing the project, and so we
19 decided on using them to do the project.

20 MR. TUFO: The arrangement is that
21 the FDC would be paid three percent of the total
22 construction cost; is that correct?

23 MR. TESSLER: There is no contract
24 yet with FDC. The three percent is an estimate
25 that FDC uses on all their projects in terms of

1
2 what it will cost.

3 *Here is no (?)* The FDC basically works on a --
4 this is all profit involved.

5 They get paid for the amount of
6 people they put on the job. Whatever the costs
7 are, they estimate at three percent.

8 MR. TUFO: In your experience, would
9 those costs be costs that could be borne by the
10 City if FDC were not involved, because of its
11 need to provide the same services that FDC would
12 provide?

13 MR. TESSLER: The cost to the
14 City would probably be borne at three percent if
15 FDC's number is correct, because the number of
16 people involved in the project with FDC would be
17 much less than what is the other people involved.

18 Let's take another project, The
19 Tombs. Just because of the number of departments in
20 the City that get involved in the project and the
21 number of people working with FDC, I believe the
22 FDC costs are much lower than the others.

23 MR. TUFO: At what stage would
24 FDC assume a role in this?

25 MR. TESSLER: Well, we are hopeful

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2 that within the next two months we will be
3 working with FDC and developing the first phase of
4 the contract with FDC, which would be for the
5 design portion of the job.

6 And we would be working with them
7 over the next two months in setting up all the
8 projects and setting up all the procedures and
9 setting up the people that would be working on the
10 job, the consultants that would be involved.

11 So basically FDC is our thought
12 now; they have been attending some of the
13 meetings; there still is not a contract with them
14 but, for all practical purposes, they are working
15 on the job now.

16 MR. TUFO: What can you tell us
17 about FDC's experience that would qualify them
18 to take on this important role?

19 MR. TESSLER: Well, FDC has been in
20 business as long as I can remember, maybe in and ^{NOT} ?
21 out under the name of FDC but under various
22 names that that agency has gone under, and they
23 have done projects of this magnitude in the past.

24 I can't specifically say "Project
25 ABC" was comparable to this one, but they have

1
2 done hospitals, they have done prisons before, they
3 have done a whole series of other types of work
4 and projects of this same size that we are
5 talking about, which is anywhere from a thirty -
6 five million dollars to a sixty-five million dollars
7 project.

8 We could get you a list of FDC's
9 prior projects if you are interested.

10 MR. TUFO: My question was, you
11 were interested in their experience.

12 MR. TESSLER: I checked with people
13 that worked with FDC in the past -- I have never
14 personally worked with FDC -- in determining
15 their capability in processing a project; and
16 everyone I spoke to said to me that there have
17 been problems with FDC, as there are with any
18 agency, but that there is a desire to get a
19 project done, to keep a project moving and to
20 get a project constructed.

21 They have had varied successes, like
22 everybody else, in terms of budget and schedules
23 but we feel that we can control that ourselves
24 by making sure that the proper people within the
25 agency -- or, if necessary, hired by the agency --

1
2 will be placed upon this project.

3 And we have spoken to FDC about
4 this, and we have agreed that we would have final
5 say on the agreement on the staff, the agreement
6 on anyone that would work on this particular
7 project.

8 So we feel sure that FDC, with the
9 powers and the staff that they have, with the
10 staff that they were set up with, that the project
11 will move and the project can be done.

12 So I don't know if I have answered
13 your question, but I think I am completely con-
14 vinced they can do the job.

15 MR. TUFO: Would the City's General
16 Services Administration be involved in the
17 project in any capacity?

18 MR. TESSLER: We may borrow one or
19 two people from the General Services Administration
20 who have been helping us on The Tombs project,
21 to use as consultants to us on the FDC contract.

22 One person in particular who has
23 been very helpful in knowing the City's procedure
24 and knowing his way around the City, who is now
25 working as a consultant to the Department of

1
2 General Services, and if we could get his services
3 on a part time basis on this job we think it would
4 be very helpful -- so there may be one or two
5 people within GSA who would be assigned or in
6 some way loaned to this project on a day by day
7 basis.

8 MR. TUFO: Do any Board members
9 have questions?

10 MR. KIRBY: Yes. While we are
11 on the contract, I would just like to ask a
12 question as to whether or not there are plans to
13 include minority contracts in this large piece
14 of building they are going to do?

15 MR. TESSLER: The answer to your
16 question is yes, there are plans.

17 One of the things that we will be
18 asked to do is to ensure that FDC does have a
19 minority ^{OR} contracted program and a minority
20 employment program on the job.

21 MR. LENEFSKY: Do you know if FDC
22 has any history of overruns, cost overruns?

23 MR. TESSLER: Yes, FDC has a
24 history of cost overruns.

25 MR. LENEFSKY: Could you document

1
2 that for us?

3 MR. TESSLER: Well, I guess the
4 best example is the hospital on Broadway in
5 Brooklyn. I don't even remember the name of the
6 hospital.

7 All the word around town is that
8 they had a tremendous overrun, I'm sure, but we
9 sat down with FDC and they would tell us, "Well,
10 the program was changed, the design was changed,
11 a million things happened in there."

12 I have found that on all cost over-
13 run projects it is almost impossible to determine
14 who was at fault. Everybody is pointing to some-
15 body else and saying, "He made the change and
16 did this and did that," and you can never pinpoint
17 whether it was a City fault or FDC fault or
18 program change or whatever it was.

19 I ^{have} ^{ATTEMPTED} never tempted to do it with
20 the FDC projects.

21 MR. LENEFSKY: Before, you said you
22 would provide us with a list of FDC projects.

23 I wonder if you would include in that
24 list such cost overruns, without trying to allocate
25 any responsibility for it?

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MR. TESSLER: All right.

I still say you have got to be very careful, you know. Without going into a detailed analysis of each job, but in considering a cost overrun, the original project was ten million dollars and the cost comes in at twenty million dollars.

It may not be a cost overrun; it may be that they have doubled the size of the facility. But everybody remembers the ten million dollars figure at the initial date and the fact that it came out twenty million dollars five years later.

And it immediately rings a bell as cost overrun. But if you get down and do the research on the project itself, it may not be a cost overrun; there may be a series of strikes within the construction period which have caused the extra on-the-job.

And so just to give you a list of jobs with cost overruns is not that easy. I can give you a list of jobs -- initial budgeting, final costs -- but I wouldn't swear they were overruns --

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2 MR. LENEFSKY: That would be
3 helpful.

4 MR. TESSLER: -- in saying that,
5 "Hey, the job is now twice as much as it originally
6 was."

7 MR. TUFO: What plans are there
8 for the City to maintain cost controls?

9 MR. TESSLER: Basically, that's
10 why we were hired, to oversee the work of the
11 FDC. We are a fairly new group in the private
12 sector doing this type of work, but prior to
13 establishing Domus, which happened about three
14 years ago, both myself and my associates-- let's
15 see, some of the projects we were in around town,
16 the basic same relationship as this one, the
17 Port Authority World Trade Center, which is right
18 outside this building, we were in charge of the
19 planning, the budgeting, and the scheduling on
20 that job.

21 We did three airports for the
22 Port Authority, also basically in a project
23 management role. We did close to two billion
24 dollars for UDC, in charge of development, design
25 and construction, with a record of less than a

1
2 three percent overrun on all the projects.

3 For the last year, we have been
4 doing work for people like the Swiss Bank,
5 International Paper Company, and the City of
6 New York, on other projects.

7 The basic method of keeping -- I
8 guess -- of keeping these projects within the
9 budget we are talking about is setting the budget
10 in advance at reasonable numbers, setting the
11 schedules in advance at reasonable dates, and then
12 constantly monitoring those two items.

13 And when we say "monitoring," we
14 don't take the report by the building agency,
15 but we send people out into the field to check
16 and make sure the reports we get back are complete.

17 The second thing is to identify
18 problems well enough in advance to be able to do
19 something about the problems, so that we can
20 design our way around cost overruns, cost delays,
21 and of course schedule delays.

22 MR. TUFO: Are there any further
23 questions from the members of the Board?

24 MS. SINGER: Is there a feasible
25 way of planning in advance or assessing Union

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2 costs, assessing other costs in labor, and is
3 there any quota if it is not finished by a
4 certain day that there will be --

5 MR. TESSLER: There are ways which
6 we have planned in advance for what we think the
7 cost will be on this project.

8 We have looked at costs of projects
9 of this type; we have determined what we think
10 the escalation costs will be over the next five
11 years; we have looked at other projects of similar
12 size and of similar type.

13 And without a set of drawings at
14 this time -- which we do not have on any of the
15 facilities -- all we can do is use past experience
16 to project costs on this project.

17 We think we have enough of a
18 contingency item within those costs to cover up to
19 a year's delay in the project; and we carry that
20 as a contingency item.

21 I am completely convinced that unless
22 there is some catastrophe over the next five
23 years that these projects can be built and built
24 on time and within the cost parameters that we have
25 set up.

1
2 And when you say "Can we guarantee
3 it?", I don't know anyone who can guarantee that.
4 Can we put in penalties for being late?

5 Yes, we can, but I have never seen
6 it work. What happens is the initial costs go up
7 to cover the costs of the penalty, and if the
8 person has seventeen different reasons on why he
9 is late -- and when you are dealing with thirty-
10 two different contractors on one job, when they
11 start blaming each other for being late, it becomes
12 a ten year process to determine who is right.

13 The best way to meet our budget is
14 to get the job started and to keep them moving.

15 The most costly part of any con-
16 struction job, the most serious is a delay in
17 construction itself. But as long as the job
18 keeps moving you can't get into too much trouble.

19 And that is the way we work, and
20 hopefully that is the way we are going to work
21 with FDC.

22 MR. TUFO: Mr. Tessler, thank you
23 very much. Your testimony has been very helpful,
24 and hopefully we will be able to call on you
25 if this proposal continues to be considered by the

1
2 Board.

3
4 I am afraid that the microphones
5 are no longer working, but we will move along.

6 Our next witness is someone who
7 usually does not need a microphone. It is
8 Benjamin Malcolm, who is now serving as Chairman
9 of the United States Parole Commission, and who
10 is formerly the Commissioner of Correction of the
11 Department of Correction, New York City.

12 Commissioner Malcolm, welcome back.

13 MR. MALCOLM: Thank you.

14 MR. TUFO: I know we must both share
15 many memories, looking across the table at each
16 other once again.

17 MR. MALCOLM: Yes. Mr. Chairman and
18 members of the Board of Correction, it is indeed
19 a delight to be back here today.

20 You perhaps also know that in past
21 times I may not have agreed with you at all
22 Public Hearings, but I think this is indeed one
23 of the most important ones that the Board will
24 ever conduct because, as I understand just briefly
25 from some of the literature and some of the items in

1
2 newspapers, this will change the course of the
3 Board of Correction in the State of New York.

4 I must tell you, Mr. Chairman and
5 Board members, that I did not prepare a written
6 testimony because I only returned from meeting
7 with Federal Judges in Texas and another meeting
8 in California yesterday morning, to find this
9 invitation on my desk.

10 But I thought it was extremely
11 important that I come here and try to share with
12 the Board my feelings about this proposal.

13 As I understand it -- and if I
14 am wrong, I would certainly stand correction --
15 as I read this letter sent to me, the proposal
16 is that the State of New York would pay the
17 City some two hundred million dollars for Rikers
18 Island, I guess all of it, and this money would
19 be used in order to build satellite institutions
20 around the City.

21 Am I correct in that assumption?

22 MR. TUFO: That is basically
23 correct.

24 The City is also committed that it
25 would pay probably another hundred and fifty

1 million dollars out of City capital budget funds
2 to complete the five year construction plan.
3

4 MR. MALCOLM: The City would pay
5 that?

6 MR. TUFO: Yes.

7 MR. MALCOLM: Well, that is an
8 understanding; I thought that's what it was.

9 I think before you can really
10 address this problem seriously that perhaps the
11 Board and the public should understand what we
12 are talking about here, in terms of the investment;
13 what the City has invested, and what the State
14 has failed to do in the past twenty-five to
15 thirty years.

16 Looking back to 1954 and between
17 the years of 1954 and 1956, there are certain
18 factors that took place under the leadership
19 of the late Anna Kross.

20 First, she closed the reformatory
21 at New Hampton, New York, and transferred all the
22 adolescent inmates to the Brooklyn House of
23 Detention.

24 Her reasoning, I thought, was
25 quite good: She felt that in order to provide

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2 educational programs for the adolescents -- the
3 sixteen and twenty year olds; these are the ones
4 who were serving time -- they ought to be in an
5 area where they could get the education.

6 Later on, under her administration,
7 she opened C-71 at Rikers Island, with the
8 Board of Education putting in a school at that
9 time known as PS 616, later known as PS 189, to
10 provide education.

11 Later, she opened C-71, which we
12 know as the New York City Correctional Institu-
13 tion for Men, and sentenced inmates were sent
14 there.

15 At that time, trial adolescent
16 inmates were housed in various institutions around
17 the City. At the time the riots occurred, in
18 1970, McGrath was then Commissioner, and since
19 it had reached in 1969 an all time high--the
20 summer census of 1969 showed that trial inmates
21 exceeded thirteen thousand seven hundred and
22 sixty-nine with a capacity for seven thousand
23 six hundred people -- indeed there were almost
24 three thousand sentenced inmates serving time
25 in State facilities, approximately, by 1970, in

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2 places as far away as Dannemora on the Canadian
3 border.

4 In December of 1970, after the
5 Department had its worst riots and I was asked
6 to come into the Department as the Deputy, we
7 found the capacity to be approximately seven
8 thousand six hundred, and approximately twelve
9 thousand inmates in these facilities.

10 In 1971 mid summer, the old
11 Woman's House in Greenwich Village was closed
12 and a new institution opened over in Rikers
13 Island.

14 At the time Mayor Lindsay promised
15 the citizens of Greenwich Village that we would
16 not put an institution back in that section of
17 the City again.

18 On the same day that this facility
19 was opened, the C-90 and the C-76 was opened.

20 Both of these two facilities together
21 cost twenty-eight million dollars, and the
22 adolescent inmates were transferred from what
23 was known as C-71 reformatory on Rikers, which
24 had been built -- ordered by Commissioner Kross,
25 to the C-90 wing, and C-76 became an overflow

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2 institution housing all the additional inmates
3 from the four boroughs, excluding Staten Island,
4 because we never had an institution on Staten
5 Island.

6 In 1973, the summer, the City
7 opened C-74, which is known as the ARDS, Adoles-
8 cent Remand Detention Center, with a thousand
9 and eighty beds at a cost of 48.5 million
10 dollars.

11 The inmates from HDM, the adoles-
12 cents, were transferred over to the new
13 institution, and by that time we had increased
14 the capacity to ninety-seven hundred.

15 In September of 1974, Branch Queens,
16 along about September, I would say, Branch Queens
17 was closed as an institution, which was housing
18 the mental health facility, and the inmates
19 transferred to C-71.

20 In December of 1974, as many of
21 you recall, The Tombs was closed and the inmates
22 were transferred to the House of Detention for
23 Men on Rikers Island.

24 I give you that bit of a background
25 to show you or to indicate that the New York

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2 City Correction System had a tremendous change
3 transferring from what was once a sentenced system,
4 a system housing sentenced inmates to a system,
5 now, where almost seventy percent of the inmates
6 are trial inmates, and on Rikers Island had the
7 transformation of being -- which is formerly
8 a sentence facility -- to a facility where two
9 thirds of all inmates on Rikers Island were trial
10 inmates.

11 Now, this kind of transformation
12 resulted in untold problems. First, the problem
13 of transporting men, women, adolescents to court
14 through perhaps ten miles, twelve miles of
15 some of the most congested traffic in the metro-
16 politan area.

17 There were problems in terms of
18 legal representation. Many lawyers felt that
19 it was not worth their time to take a case because
20 they lost so much time in terms of travel.

21 Protection of prisoners, the legal
22 representation of them, certainly, in my opinion,
23 was not what it could have been or should have
24 been had the inmate kept in his home-borough annex
25 to the courthouse.

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Third, and certainly not least of these three items, visitation became a problem to poor people getting about, where they before could have taken a train or a bus right down to where they wanted to go in maybe half an hour, in Manhattan to the Tombs, they now found themselves going through at least two bus changes and from there going on to Rikers Island.

With this kind of background, the question that I guess is facing the Board is whether or not it would be in the best interests of New York City to sell Rikers Island to the State.

But if my reading in the New York Times, and other information that I have heard, is correct, there must be drastic qualifications as to this whole process, extremely drastic.

My answer would be yes: If the State would take over all sentenced inmates, and provide vocational training and work programs, thereby leaving to New York City a jail system that Anna Kross advocated twenty odd years ago.

This would reduce the population by one third;

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2 Yes, it would be good for the
3 City if the State would make a fair offer -- and
4 I talk about a fair offer, ladies and gentlemen.
5 I will go back a little bit more on this, because
6 the figure of two hundred million dollars, in
7 my opinion, is to be the biggest land grab since
8 the Dutch bought Manhattan from the Indians.
9 And I will talk more about that in detail:

10 Yes, it would be good if the
11 elected officials, both State and City, would be
12 willing to support relocation of institutions
13 in all communities throughout the metropolitan
14 area rather than going to the ghettos and
15 placing institutions there.

16 As some of you know -- or perhaps
17 some of you know -- I have had my trials and
18 tribulations in placing institutions in the com-
19 munity.

20 In 1973 we were set to open a
21 work release program at 1000 Dumont Avenue.
22 This community is in the heart of Brownsville,
23 and the citizens rose up in arms, and the night
24 before we were to move in secured enough money to
25 go into court, hire a lawyer to go into court and

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2 get a Temporary Restraining Order, and indeed
3 kept us from coming in.

4 They were supported by the elected
5 officials, the State Senators, the State Assembly-
6 men. Oh, we won the lawsuit in court. The issue
7 was finally resolved at City Hall, and we felt
8 at that time, in January of 1974, it would not
9 be in the best interests for the Department or the
10 City to force a confrontation with those citizens
11 in that community.

12 After the closing of the Women's
13 House of Detention in Greenwich Village, and
14 going all the way back to 1971, we made some
15 efforts to take over a drug facility that was
16 opened.

17 We met with tremendous community
18 pressure. It is easy to assume that you can
19 place facilities around and these facilities will
20 be built; it is extremely difficult in actuality.

21 Now, I don't believe it would
22 be in the best interests of the City of New York,
23 unless the State officials are willing to assist
24 in this transformation.

25 This gets to be an extremely powerful

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2 political issue, as you all know and as we all
3 hear it, from time to time by hook or by crook,
4 work release programs, day care centers, drug
5 programs, whatever you have, "They are great,
6 wonderful, but not here; let's put them over there
7 somewhere."

8 Let me get to the cost and why I
9 said this would be a tremendous land grab.

10 I am really shocked, to be frank
11 with you. The State of New York did absolutely
12 nothing for the past thirty-odd years to take
13 care of this problem. From its official opening
14 the only major institution I know that opened
15 was the one at Greenhaven, which opened about
16 1941, which was turned over to the United States
17 government, to the Armed Forces to house military
18 prisoners there, and 1948 or 1949, 49, I think
19 that's my recollection, it was turned back to the
20 State.

21 (Continued on next page.)
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2 While the Department was under the
3 leadership of Anna Kross, they did foresee that
4 some day they would need these facilities, and
5 planned and built to meet the problem.

6 During my seven years with the
7 Department, six of which I was a Commissioner,
8 we opened a hundred million dollars' worth of
9 new institutions, a hundred million dollars of
10 new institutions while the State opened absolutely
11 nothing.

12 These institutions cost approximately
13 35 thousand dollars per bed, ranging anywhere
14 from 24 thousand dollars in the C-95 to 48 thou-
15 sand dollars in ARDC.

16 Now I hear that we are going to sell
17 roughly 65, perhaps 66 or 67 hospital beds over
18 there for somewhere in the neighborhood of 25
19 thousand dollars more a bed, and just for God-only-
20 knows what we are going to throw in for all the
21 land, bridge, all of the facilities of that, the
22 new moat pool, of which the City pays three and a
23 half million dollars, all of the industrial areas,
24 the bakery--I just am flabbergasted as to the
25 200 million dollars.

1
2 Would it be feasible in terms of --
3 not looking at the cost -- would it be feasible
4 to build institutions within the City? Perhaps
5 the land could be found and the citizens would
6 agree.

7 But here again, there is an over-
8 simplification.

9 In Rhem versus Malcolm, a case that
10 was decided in the Southern District, there was
11 a stipulation that we would put no more than 500
12 prisoners in the Tombs.

13 Institutions that are going up across
14 the Nation now will go between 400 and 500.
15 United States prisons in Texas sold Texas -- it ?
16 is more than 500.

17 They will be opening one in Otisville,
18 New York, and some others, all about 400 or 500,
19 and that makes a lot of sense.

20 I think the Board would appreciate
21 that, but how many prisoners do we have coming
22 from the Borough of Manhattan? When I was
23 Commissioner here I think it was between a thousand,
24 1,100 -- just adult prisoners.

25 The Tombs alone is not going to solve

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2 all three of these problems; it is not going to
3 solve nearness to the courtroom for these people,
4 or make available to lawyers to see their clients,
5 or for the relatives to visit.

6 In order to solve that problem,
7 facilities would have to be built within the
8 Borough of Manhattan -- in order to accommodate
9 these three problems -- the same goes for any other
10 problem --

11 MR. TUFO: Mr. Malcolm, if I could
12 just interject, because I know you haven't had
13 an opportunity to view the entire proposal before
14 us: It includes a provision that the borough
15 facilities would be built close to or adjacent to
16 the courthouses in each of the boroughs; that
17 they would be limited, as you suggest, to small
18 sizes, probably 400 to 500 beds per institution.

19 And one other matter is that the
20 proposal is not a sale of the Island; it is a 99
21 year lease of the Island, the land.

22 That is just for clarification.

23 MR. MALCOLM: Fine.

24 I have just about completed my re-
25 marks, but even so I still think 99 years, where

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2 will we all be?

3 I think that the City really would be,
4 would place itself in a bad, bad situation.

5 I think that the State is purchasing institutions,
6 warehouses, et cetera, all around the State.

7 I think that the State certainly in
8 the time that the City is in great fiscal crisis
9 must make a better offer.

10 MR. TUFO: The justification that the
11 City was given for the price is ^{two} too independent
12 appraisals that were done by non-City and non-
13 State agencies, of the current value of Rikers
14 Island.

15 MR. MALCOLM: Well, be that as it may,
16 Mr. Tufo, you know and I know that when they be-
17 gin to build the ^{institutions} institutions, it is difficult for
18 me to be able to say that this can be done within
19 the framework of 200 million dollars.

20 Furthermore, the question was raised,
21 in terms of the sentenced inmates, there must be
22 programs, there must be work programs, there must
23 be meaningful programs, programs that I don't think
24 should be done in a jail setting.

25 It is very difficult. I wonder whether

1 these programs would be carried out.

2
3 It raises a lot of questions in my
4 mind in terms of how this could work out.

5 I think that when I was negotiating
6 with the State of New York, I think we were coming
7 up with a much, much better deal, and I am not
8 saying that I am opposed to the transfer.

9 In a telephone call to me some time
10 ago by the Mayor in Washington, I indicated I
11 was not opposed to supporting the purchase of
12 two institutions out there that was being pro-
13 posed at that time -- that was the Women's house
14 and ARDC.

15 However, I must say that I think the
16 State is getting certainly the far better end of
17 the bargaining and that the City is not getting
18 good dollars out of it.

19 MR. TUFO: Are there any questions for
20 Mr. Malcolm?

21 One of the problems that the City has
22 had to address is the suitability of the existing
23 facilities for pre-trial detainees.

24 As you know, the Anna Kross Center
25 has never been reopened, and one of the considerations

1 that we have to have before us is whether the
2 opportunity to build new facilities in the
3 boroughs would provide better working conditions
4 for the officers, better living conditions for the
5 inmates, and at a lower cost to the City.

6 We will give you what you probably
7 have not had a chance to see, which is a Working
8 document that Criminal Justice Coordinator
9 Herbert Sturz and Commissioner of Correction
10 Benjamin Ward had prepared and distributed re-
11 garding the details of the proposed plan and the
12 cost savings that they perceive in operating the
13 new institutions, and what they conceive as a cost
14 equivalent between the cost of constructing the
15 new institutions and the cost that would be re-
16 quired to maintain the present institutions as
17 they are, in the event that the sale, the proposed
18 sale does not go forward.

19 And I think and I am sure you will
20 look at this with an expert's eyes, and any com-
21 ments you have and any opportunity to go into the
22 details of the proposal we will welcome into the
23 record.

24 MR. MALCOLM: One further comment. I
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2 don't want to give the Board the opinion that
3 I am opposed to the proposition of building
4 institutions within the City and bringing them
5 closer to the jails; not at all.

6 What I have some reservations about
7 is that I believe -- and I don't care what these
8 numbers here say -- when I was on Mayor Lindsay's
9 administration, we all talked about the building
10 of Yankee Stadium and the amount of money that
11 it was going to take.

12 And I don't know what these figures are,
13 but I know very well that the last security
14 facility we built in New York City cost 48½
15 million dollars at sale. The going price now in
16 the United States Bureau of Prisons is close to
17 \$30,000 a cell.

18 You must build more than you actually
19 need, because you have an 80 percent factor there.
20 New institutions have more than 80 percent, to
21 allow for broken cells, allow for maintenance
22 and things of that sort.

23 I have some serious reservations
24 about being able to do all that has to be done,
25 maybe 17 or 18 facilities for 200 million

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2 dollars.

3 I just think the Board ought to take
4 a harder look at this. I think the State should
5 be willing to come up with more money than that.

6 If the State had to go out on the
7 open market to do this, they would spend much,
8 much more money.

9 The other thing that I think has not
10 been addressed, in all due respect to the Deputy
11 Mayor, Herbert Sturz, -- who I think is doing a
12 very fine job; he has a tremendous background in
13 this field -- is where are these facilities going
14 to be placed?

15 Have they thought about that? Just
16 get into one of these meetings in the evenings
17 and let the community make itself known.

18 I do suggest that if they are going
19 to put these facilities in certain places they
20 should be spread around, not in the ghetto alone,
21 not in the poor areas of the City; and why should
22 these citizens in those areas have to accept
23 every kind of facility such as this -- drug
24 treatment programs, all kinds of centers and
25 institutions?

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2 I think that problem is a real
3 problem and a very serious one, and I think
4 that the legal climate which says that we don't
5 want facilities in our areas, I think people who
6 are in these elected offices should come forth
7 to support this.

8 Certainly when I was asked by Con-
9 gress -- the facility on 34th Street, work release
10 program -- this is a great problem and I think
11 the Board should certainly take a look at it.

12 MR. TUFO: We certainly will take a
13 careful look at your comments, and they will have
14 great influence on our own deliberations.

15 Thank you for making the effort to
16 come here.

17 MR. MALCOLM: Thank you very much.

18
19 MR. TUFO: This testimony concludes
20 today's hearing. We had invited a number of other
21 witnesses, who were not able to appear; some of
22 them have submitted statements, and others may
23 submit statements in the future.

24 If we feel that it is necessary, we
25 will continue these hearings at a future date.

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Thank you very much for your
attendance.

(Time noted: 3:35 p.m.)

C E R T I F I C A T E

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4 STATE OF NEW YORK)
5 : ss.:
6 COUNTY OF NEW YORK)

7 I, ROBERT KAUFMAN, a Shorthand
8 Reporter and Notary Public within and for the
9 State of New York, do hereby certify:

10 That the statements, colloquy and testimony
11 contained herein is a true record of the proceedings
12 in this matter.

13 I further certify that I am not related to
14 any of the parties to this action by blood or
15 marriage, and that I am in no way interested
16 in the outcome of this matter.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 16th day of October, 1979.

19
20
21 R Kaufman
22 Reporter
23
24
25