

BOARD OF CORRECTION
MINUTES
MARCH 4, 1986

A regular meeting of the Board of Correction was held on Tuesday, March 4, 1986, in the Conference Room of the Board of Correction. Members present were Chairman Robert Kasanof, Vice-Chairman John Horan, Wilbert Kirby, David Lenefsky, Barbara Margolis, David Schulte, and Rose M. Singer. Judge William Booth was excused from attending. Chairman Kasanof called the meeting to order at 2:15 p.m.

Chairman Kasanof informed the Board that the Department has submitted a draft of the 1985 Rikers Island Development Plan, and that Commissioner McMickens and her staff would be making a presentation, both to explain the plan and support a request by the Department for a variance from the space standard for the North Facility and the Annex.

Chairman Kasanof suggested the establishment of three committees, with the following members: Legal and External Affairs -- John Horan (Chair), William Booth, and Robert Kasanof; Medical and Health Standards -- David Lenefsky (Chair), David Schulte, and Rose M. Singer; and Service Delivery -- Barbara Margolis (Chair), Angelo Giordani, and Wilbert Kirby. Chairman Kasanof presented a resolution which would authorize any two members of the Legal and External Affairs Committee to issue subpoenas on behalf of the Board (see attachment). Mr. Kirby asked whether adoption of the resolution would tend to diminish the authority of Board members who did not serve on the Legal Committee. Chairman Kasanof indicated that the resolution would not have that effect: it would simply enable the Board, through the actions of one of its committees to function more efficiently by making it possible to issue subpoenas without the necessity of convening the entire Board for a vote. Mr. Lenefsky expressed support for the resolution, but asked that it be made policy that every Board member be informed whenever the Committee issued a subpoena. Chairman Kasanof indicated that this was agreeable to him, and Mr. Schulte moved that the resolution be passed. Mrs. Singer seconded the motion and the resolution was passed unanimously.

Chairman Kasanof announced the resignation of Board Counsel Barbara E. Dunkel, who joined the staff of Martin Commission. He encouraged Board members to participate in

in the search of a new Counsel, and stressed that he hoped for wide competition by persons of all social and ethnic backgrounds. To that end, he directed that at least two staff members interview each applicant for the position. Once the staff has identified the best candidates, members of the Legal and External Affairs Committee will interview the candidates, and before any candidate is hired, it is anticipated that the entire Board will have a chance to meet him or her.

The Chairman announced that he was preparing to begin plans for a program which would bring academic and other authorities on correction and criminal justice to address the Board, would increase the staff's opportunity to travel to other jurisdictions, and would perhaps provide for more internships at the Board. Chairman Kasanof stated that the various parts of this program were contingent upon obtaining private grant monies.

Mrs. Singer requested that a regular date be established for Board meetings. It was decided that meetings would be held the first Tuesday of every month; the meetings during months not so scheduled would be decided upon by the members. The next meeting is scheduled for Tuesday, April 1, 1986.

At 2:35 p.m., the following members of the Department of Correction joined the meeting: Commissioner Jacqueline McMickens, First Deputy Commissioner Peter Seitchik, Deputy Commissioners Albert Gray, Judy Keefer and Sharon Keilin, General Counsel Devora Cohn, Special Counsel Robert Daly, and special assistant Matthew Foreman. Chairman Kasanof welcomed the members of the Department, and expressed the wish that the Board, in fulfilling its duty as a public oversight agency, could be of as much assistance to the Department as possible.

Commissioner McMickens introduced her staff and explained that they were each present to discuss the Department's population and capacity in terms of their special areas of expertise. The Commissioner began by saying that the Department was requesting a variance from the standard requiring that each inmate in the North Facility and the North Annex be allowed sixty square feet. Reasons for the Department's inability to provide housing at standard in these facilities include the precipitous and unanticipated rise in the number of State inmates in City custody, and the rise in the average length of stay. The Commissioner stated that there was an ongoing dialogue

between the Chief Administrative Judge and the Department about reducing the length of stay, and that the courts were provided with lists of inmates who were in the system for more than six months, inmates in the system who had been sentenced more than twenty one days earlier, and inmates with low bails. The Commissioner also stated that litigation was proceeding on the State-ready issue.

First Deputy Commissioner Seitchik discussed the population and capacity projections which had been developed up through 1989. He explained that the detention population was expected to grow at roughly 500 inmates per year, the sentenced population at 200 per year, the Immigration and Naturalization Service (INS) population to remain constant, and the State-ready population to remain constant. He cautioned, however, that the litigation currently underway on the State-ready issue made population forecasts for that group extremely unreliable. Capacity information was based upon construction timetables, and capacity was figured at the rate of sixty square feet per inmate. Deputy Commissioner Seitchik pointed out three time periods which he said would be particularly problematic: first, right now, when population is nearing capacity; second, the spring of next year; and third, the fall, of 1987. In both spring and fall 1987, population will exceed capacity; in fall 1987, the gap is expected to be 700 or more beds.

Mr. Kirby pointed out that in calendar year 1985, population increased at a rate far higher than that predicted, and asked what would happen if population increased in the same way in the future. Commissioner McMickens said that a large part of last year's unexpected growth was attributable to the fact that the city had about 1000 unplanned-for State inmates.

General Counsel Devora Cohn provided a summary of current litigation. She explained the background of Benjamin v. Malcolm, and referred to Judge Lasker's 1981 order, forcing the State to accept custody of State-sentenced inmates within 48 hours of sentencing. In 1985, the State moved to vacate the order, based upon the Supreme Court decision in Pennhurst. Early this year, Judge Lasker vacated the order but gave the City leave to show that the order is grounded in Federal law. The City is currently preparing to argue that if the order were vacated the City would be unable to comply with existing Federal court orders, thus raising Constitutional issues and thereby meeting Pennhurst objections.

General Counsel Cohn also provided information on Davis v. Coughlin, a lawsuit filed by the Post-Conviction Unit of the Legal Aid Society on behalf of a putative class of inmates who were or would be held in New York City facilities on parole violation charges, past the point at which, if they were in State custody, they would be eligible for parole consideration hearings. The City is also a defendant in this case, and has crossmoved against the State, arguing that the State should be required to take all parole violators who do not have City holds.

Mr. Schulte suggested that Hart's Island could be turned over to the State, which could then use it to house parole violators.

Special Counsel Robert Daly made a presentation on the subject of length of stay, which he said is up dramatically. In the past, the Department had taken several initiatives to try to reduce length of stay by improving cooperation with other parts of the criminal justice system. The Department had discussions with defense attorneys, who indicated that the trip to Rikers Island was onerous, so the Department now brings each inmate into the court pens in the borough where the lawyer makes an appointment to see him. The Department worked with the Probation Department to speed the processing of probation reports so that convicted inmates could be sentenced faster, and in fact reduced the delay from six to eight weeks all the way down to three weeks. The Department circulates lists of inmates who have been in the system for over six months, who have been sentenced more than twenty-one days ago, or who have extremely low bails. In 1983, the Department succeeded in requiring the State to house up to one hundred State inmates in the City on open cases. The Department is putting additional phones in the court pens to facilitate inmates' efforts to raise bail.

Special Counsel Daly went on to discuss the effects of determinate sentencing, which he said would raise population, and discussed the City's efforts to bar judges from imposing deferred sentences. He also said that the Department is currently trying to convince the Criminal Justice Coordinator to support a bill which would allow the Department to grant seven days furloughs to a large percentage of sentenced inmates. In that way, inmates within a week of release could be furloughed to the completion of their sentence. The City, however, would provide these furloughed inmates with a strong incentive to stay out of trouble: since inmates eligible for furlough

would also be those who were let out early on good time, the City could threaten to bring inmates back to complete their full sentences if they violated conditions of their furlough.

Deputy Commissioner Keilin next spoke about construction. After the prisoner release in 1983, she said, it became City policy to undertake a building program so that a similar release would never become necessary in the future. Construction such as that of the North Command grew out of this commitment. The Department is now proposing, in addition to the construction called for under the Mayor's Jail Construction Program, the Rikers Island Development Plan. The reasons for the Plan are as follows: 1) The Mayor's Program calls for the enlargement of many existing facilities. Ultimately new facilities, including new program spaces, will have to be built: the old facilities are getting too large to run. 2) The ratio of cells to dormitories is changing. The Department considers a ratio of 65% cells to 35% dorms to be optimal; under the Mayor's Jail Construction Program, the ratio will be 59% cells to 41% dorms. 3) The Development Plan will provide for the construction of permanent cells, to give the Department a capacity cushion and allow the closing of the modulars when their 10-year "useful life" is ended. 4) The Development Plan would allow the Department to achieve its goal of housing all inmates at a standard of sixty square feet.

Deputy Commissioner Keilin went on to provide updates on other construction. The Brooklyn Correctional Facility (the Brig) is nearly finished. Administrative areas are open; only 150 beds are missing. Of these, 60 will be ready for use in July, the rest in October of this year. The New York City Correctional Institution for Women is adding 372 new cells, which will be ready for use in October. In 1987, two hundred single cells will be added to the North Command. The City is hoping to be able to use prefabricated cells for this project. The East Facility will be ready for occupancy in 1988, and will house women. It will have a thirty-bed nursery, and will meet Mental Health Minimum Standards for new facilities. In C-71, single cells which had been enlarged to house two or three inmates will be returned to their original configuration and used for single occupancy. The Rikers Island Development Plan calls for a new facility on the East end of the Island, to be called Nursery-Beacon I, which would be an 850-bed male detention facility, built on the same plans as the East Facility, without the nursery and with the East Facility's one minimum security wing built as a maximum security area.

Chairman Kasanof asked where the optimal figure of 65% cells to 35% dorms came from. Deputy Commissioner Keilin explained it as a balance between cost (cells are more expensive) and security (dorms are less secure). Deputy Commissioner Keilin continued her discussion of new construction by explaining that the White Street Jail will contain all single cells except for a 50 bed dorm for the work cadre. In Brooklyn, two 50 bed dorms would be built for cadre inmates, and the window replacement project would be completed. In addition, the visit house is to be demolished, and a four story annex would be built. This annex would contain the new visit quarters, and the two dorms already described.

Continuing her discussion of the proposed Rikers Island Plan, Commissioner Keilin stated that in 1990, the Anna M. Kross Center would be split. A 600 cell addition would be limited for C-95, and an administrative building would be constructed for C-71. Rikers Island Hospital would be rebuilt as a Mental Health Center (thus freeing C-71 for general population use). The current site of the North Facility Annex would become an infirmary, over 50% of which would be new construction. The two health buildings would be occupied by 1992. The New York City House of Detention for Men is to be renovated at a cost of 45 million dollars. Most building systems, such as electricity and plumbing, will be replaced. If possible within the fire code, the housing areas would be carpeted for noise reduction. One story additions to the facility, which are sinking, are to be rebuilt. The Adolescent Reception and Detention Center is to receive new modular program space: a library, a gym, and an officers' locker room.

In Fiscal Year 1988, a new inmate phone system, using computer linkage to inmates' commissary accounts and permitting a doubling of the number of inmate telephones, is to be installed. In the same year, a central storehouse will go up on Rikers Island, and in 1990 or later, two regional kitchens will be built on the Island, one for each side of Hazen Street. The kitchens will deliver meals to receiving kitchens at the facilities, from where the meals will be served. Each facility will still, however, be responsible for its own breakfast.

Other plans include an expansion and renovation of industries shops; more classrooms at each facility; and upgrading roads on the East end of the Island to accommodate increased traffic as construction of new facilities begins. Also under discussion is another new facility, Nursery-Beacon II, which would serve as the relocation resource during the planned reconstruction of HDM.

Chairman Kasanof pointed out that in 1987 there would be capacity deficits of 1000 spaces. Commissioner McMickens stated that the Department was relying on the State to take its own prisoners back to eliminate the deficit. Chairman Kasanof asked what the plans were if the City lost the litigation with the State, and the Commissioner replied that she would consider seeking a variance to enable her to house State prisoners in less space. The Chairman asked what other plans there might be, and specifically inquired as to the Department's ability to locate individual inmates in case a release become necessary. The Commissioner replied that the Department had to release the lowest bail, longest term inmates first, and that the last time a release had occurred, the Department had conferred first with judges. Special Counsel Daly added that a 10% case alternative was tried in many cases, and the Commissioner said that inmates were permitted to bail themselves out using commissary account funds. In response to a further question from Chairman Kasanof, the Commissioner stated that during the last prisoner release, there was a portion of the population which did come back for trial, and that research should be conducted to determine which part of the population that was, in order to assure that, in the future, people in that category had access to bail. The Chairman asked if the numbers involved were significant, but Special Counsel Daly replied that, in general, bail review does not yield significant numbers because judges are simply unwilling to set low bails for certain types of crime. Mr. Daly reiterated his proposal that legislation be amended to empower the Department to grant seven day furloughs, and that it then allow sentenced misdemeanants to finish their sentences on furlough. The Commissioner added that, if the political climate were more friendly to risk-takers, the population in work-release would be increased by forty to fifty inmates. The Commissioner concluded that the City will not be able to build fast enough to close the gap between capacity and population.

Chairman Kasanof advised the Department to begin work now to develop means to close that gap one year from now, so that in a year it will be possible to say that everything has been tried short of a variance. He suggested that perhaps the Board might serve notice now that it will not give a variance on the space standard in a year's time, so that the Department would have a weapon in its talks with the Office of Management and Budget. First Deputy Commissioner Seitchik warned that such a course of action might have the effect of forcing still more modulars on the Department, which would lead to serious long-term problems. The Chairman replied that he was open to all suggestions, but that the issue needed to be discussed.

The members of the Department withdrew from the meeting at 4:05 p.m.

Mr. Kirby mentioned that the State was doing practically no new prison construction. Chairman Kasanof said that it was necessary to grant the Department's request for a variance, but that he recommended emphasizing that such requests will not customarily be approved. He also stated that the Department's figure of 65% cells as an optimum number should be examined, and stated that in the future, all planning documents will be promptly obtained.

The Department's request for a variance to 57 square feet per inmate in housing areas at the North Facility and the North Annex, was granted unanimously by the Board. Special Counsel Daly was invited to return, and was told that the variance had been granted, but reluctantly, and that the Board expected to be kept informed about budget and strategy issues, especially in regard to the summer of 1987 and its anticipated population crunch. Mr. Daly thanked the Board for the variance, emphasized the Department's commitment to fulfilling the Standards, and promised that the Board would be kept informed on all matters concerning population and capacity. Mr. Daly left the meeting.

The minutes for the previous meeting were passed, with a correction noting an excused absence for John Horan. Mr. Schulte suggested finding out how much room existed in the State system, but the Chairman and the Executive Director both advised that there was no room at all. Mr. Schulte restated his suggestion that the possibility of transferring Hart Island to the State be examined.

The meeting was adjourned at 4:20 p.m.