

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

September 23, 1975

A regular meeting of the Board of Correction was held on Tuesday, September 23, 1975 in the 14th floor conference room, 100 Centre Street, New York, New York.

Present were Mr. Jackson, Mr. Kirby, Father Rios, Mrs. Singer, and Mr. Tufo. Also present by invitation of the Board were Michael D. Cleary, Executive Secretary/Fiscal Officer; Jerome Cappellani and Stephen Fisher, Staff Assistants; and Sheryl McCarthy, Law Interne.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Jack Birnbaum, Deputy Commissioner; Luis Cadiz, Deputy Commissioner; Joseph D'Elia, Director of Operations; Alphonso Ford, Assistant Commissioner; William Ritholtz, Director of Legal Affairs; John Walsh, Acting Director of Public Affairs; Arnett Gaston, Executive Assistant to the Commissioner; Francis Buono, Supervising Warden, Rikers Island; Arthur Rubin, Warden, New York City House of Detention for Men; James Thomas, Warden, Court Detention Facilities (former Warden HDM); Captain Constantine Mellon, Acting Inspector General; and John Buckholtz, Design and Engineering Division.

Mr. Tufo served as Chairman, and Messrs. Fisher and Cappellani as Secretaries of the meeting.

The meeting was called to order at 2:35 p.m.

The Board asked the Commissioner to explain the recent rash of escapes.

The Commissioner said the escapes have to be thought of in light of the restraints of the budget and federal court decisions which have affected the Department. He emphasized that the impact of Federal court decisions has had a direct affect on the operation of the Department.

The Commissioner noted that the Department had prepared a report on the recent rash of escape attempts to the Mayor and that a copy of the report had been forwarded to the Mayor's office that morning. He stated that the Board would receive a copy of the report once the Mayor gave his approval for distribution to the Board.

The Chairman declared that the Board has a statutory right to see the report whether the Mayor wants the Board to see it or not. The Commissioner responded that he had heard the Board of Correction was preparing a report on recent escapes and hopes that the Board will feel free to discuss the report with him in a cooperative manner. The Chairman responded that developments in the past few months suggest that cooperation between the Board and the Department had diminished.

The Commissioner explained how Federal court decisions have affected the Department of Correction. He noted that the Manhattan House of Detention was closed as a result of the courts and that court decisions have come down affecting recreation and contact visits, which the Commissioner declared he was not opposed to. Regarding outside recreation at the New York City House of Detention for Men, the Commissioner noted that the court mandated 90 minutes of recreation four times per week giving the inmates the option to remain within the cellblocks if they chose to do so. By doing this, the four officers usually on duty in the cellblock have been reduced to two. Two officers must supervise the outside recreation and two officers must supervise the entire cellblock. The Commissioner noted that to supervise fully and properly each cellblock he would need 14 additional correction officers.

The Commissioner noted that the Department cannot house one man per cell for every inmate in their custody although they would like to do so. Judge Judd's recent court decision requiring single cell occupancy at the Queens House of Detention and the Brooklyn House of Detention will have a severe impact on the operation of the Department. On November 10th, every inmate at the Brooklyn House of Detention must be in one cell. The Commissioner noted that the Department has approximately 6900 male detainees and approximately 6900 available cells. When the Ossining contract expires and when that institution closes in July, the Commissioner noted that 600 inmates will have to be brought back to the City and there is a problem of where they will be housed.

The Commissioner also declared that the fiscal crisis of the City of New York has had a severe impact on the operation of the Department. He noted that the Department had lost 209 civilian personnel since the crisis began, approximately 250 correction officers through attrition since May of 1974, and 250 additional officers who were recently layed off. He noted that he has had much trouble obtaining permission from the Bureau of the Budget to hire officers for the vacancies that have accrued. For example, the Commissioner declared, five correction officers were discharged as a result of disciplinary measures, and these five have not yet been replaced. In addition, one year ago, he asked the Bureau of the Budget for \$575,000 for security equipment such as fluoroscopes and metal scanners for the institutions. One year later nothing has happened. Further, he noted that the correction aides, a permanent civil service class, was eliminated from the Department thus reducing the Department's social service component.

At 2:55 p.m. Mr. Kirby entered the meeting.

The matter of the steady rise in the inmate population was raised. The Department estimates that by November 18th they will have an additional 700 inmates in their custody. The Commissioner noted that it was just a matter of time before the mandate of single-cell occupancy will be city-wide.

Regarding the August 13-14 escape from the New York City House of Detention for Men, the Commissioner noted that it was apparent that the correction officer did an improper count and that there was negligence on the part of the staff.

Deputy Commissioner Birnbaum stated that the Department was able to hire four officers of the five that were discharged for disciplinary reasons.

The Commissioner declared that he and the Department will not be scapegoats for court mandates, the City's fiscal crisis and the rising detention population. He stated that the Department has been put into a box within the past year and that it cannot operate effectively given the constraints that have been placed upon it. He noted that the Inspector General has left and that Captain Mellon was acting Inspector General. He further noted that the Department has been unable to fill the two additional Investigator positions in the Inspector General's unit although it has received permission from the Vacancy Control Board. The Inspector General's office, the Commissioner noted, has squashed five to six escape plots over the past few months.

The Board asked the Commissioner what changes in administrative practices have resulted after the August escape from HDM.

The Commissioner responded that on August 15th he went before the Board of Estimate for money to get fluoroscope machines in all of the institutions. Warden Rubin stated that at the present time HDM uses hand friskers and a walk-through machine on contact visits. It was noted that five correction officers are needed at HDM to be assigned on an ongoing permanent basis as security officers who would check the utility corridors for signs of tampering. Warden Rubin stated that maintenance officers would be best qualified to serve as security officers. He now has six maintenance officers performing a security function, as opposed to one security officer before. However, by using the maintenance officers, he is taking them away from their usual tasks of fixing broken toilet bowls, fixtures and other maintenance problems within the institution. In addition, Warden Rubin declared that he has intensified search procedures in all of the blocks and has

required that no pictures or obstructions be placed on the back wall of each cell. Correction officers have been alerted to be careful with the dispensing of linens although it is impossible to keep track of the amount of linens that an inmate receives. Chief D'Elia declared that he had sent out a confidential order after the escape attempt from the Brooklyn House of Detention in May which stated that all areas where heavy cases (i.e., notorious inmates, alleged BLA members) are housed be searched daily. All property, the cell and all adjacent areas of these housing areas are to be searched thoroughly.

Warden Buono declared that the security at the control building on Rikers Island is a problem. He stated that for three years he has been asking for revisions of the control building so that people coming to visit inmates would not have to wait at the control building on Rikers Island but rather wait at a control building on the Queens side of the bridge.

At 3:35 p.m. Commissioner Cadiz entered the meeting.

The Board declared that it wanted to cooperate with the Department and that the Department should have come to the Board when it had started to prepare its report on the escapes. The Commissioner declared that its first obligation is to the Mayor of the City of New York and not to the Board of Correction.

Warden Thomas stated that it is impossible to run programs and maintain adequate security given the present level of manpower. If you increase security, he noted, you curtail programs. Deputy Commissioner Birnbaum stated that every time a court order was received at the Department requiring the Department to initiate certain programs, they have always submitted a request to the Bureau of the Budget for additional manpower.

The Board inquired as to what is needed to tighten ~~to tighten~~ up perimeter security on Rikers Island. Warden Buono declared that there were really three major items that needed to be changed. First, the construction of a control building on the Queens side of the Rikers Island Bridge is needed. Second, the airport runway from LaGuardia Airport makes the Island highly vulnerable for escapes, and third, perimeter lighting needs to be strengthened along the area that is adjacent to the LaGuardia runway. He noted that everytime requests such as these and other requests for security have been made to the Bureau of the Budget, the Budget examiner always asks "why do you need them?" Deputy Commissioner Birnbaum stated that the Department had been in touch with the FAA regarding the possibility of that agency placing an alarm system on the catwalks adjacent to Rikers Island.

The Chairman declared that had the Department's rules and regulations and institutional orders been followed, the escapes of the past month would not have taken place.

The Commissioner stated that at the present time Kings County Hospital has 36 specialty clinics servicing inmates. He noted that when Montefiore Hospital signed the contract with the City to provide medical care on Rikers Island, they were supposed to provide specialty clinics at Rikers Island Hospital. The Commissioner hopes to have Montefiore provide these services as soon as possible. The Commissioner also noted that construction on a \$30,000 holding pen will begin tomorrow in Kings County Hospital and will contain an examining room which will allow doctors to examine inmates in its holding area rather than take them to the specialty clinics. In addition, the Commissioner has asked the administrators of the hospitals to tell their doctors not to tell inmates when they will return for a scheduled appointment.

The Commissioner declared that overcrowding at HDM was a serious problem, and he supported the Board's recommendation in its June report on HDM that the Institution have a population ceiling. He noted that at the present time since the Bronx House is partially closed 357 inmates who would normally be housed in the Bronx House of Detention are housed at HDM.

A discussion ensued on the letters that the Chairman and the Commissioner wrote to Deputy Mayor Cavanagh regarding the single cell occupancy issue and the fact that this might force the City to reopen the Bronx House of Detention to its full capacity. The Commissioner noted that Chief D'Elia had just received a call from City Hall inquiring as to the number of additional correction officers which would be needed at the Bronx House of Detention to utilize fully that institution. In addition, Mr. Ritholtz declared that by November 10th the Department of Correction has to come up with a plan regarding single-cell occupancy at the Brooklyn House of Detention. It was also noted that the Legal Aid Society wants double-celling stopped at HDM since the Court of Appeals decision applies for the whole second circuit which includes all of New York City. The Chairman stated that since the problem is so severe it might be necessary for him and the Commissioner to appear before the Emergency Control Board.

The Board asked the Commissioner how many officers would be needed if the Department had to open the Bronx House of Detention, the Adolescent Detention Center and the Manhattan House of Detention. The Commissioner responded that he needed an additional 45 to 50 correction officers for the Bronx House of Detention, 280 officers for the Adolescent Detention Center, and approximately 264 officers for the Tombs. In addition, he noted that these figures only represent officer coverage and not the

addition of superior officers. The Commissioner pointed out that to hire approximately 100 correction officers would cost the City about \$2,000,000 when fringe benefits are included.

At 5:25 p.m. the Commissioner and his staff left the meeting and a recess was called for five minutes. Mr. Fisher left the meeting and Mr. Cappellani acted as Secretary.

The meeting was reconvened at 5:30 p.m. The Chairman solicited the other members' responses to the Commissioner's statements. The Chairman was specifically interested in learning what degree of emphasis the members believed the Board's escape report should place on the pressures to which the DOC is subjected. In connection with this issue it was noted that the September 13 escape was very similar to the one of August 13, thus showing a lack of action on the part of the Department.

It was agreed generally that the problems set forth in the Department's report should be given due consideration, but that the Board has a duty to disclose unsatisfactory conduct where and when it occurs.

It was further agreed that the members would read the final draft of the escape report, and give all minor suggestions to Jerry Cappellani; all major changes would be submitted to the Chairman.

Upon motion duly made by Mr. Kirby, and seconded by Mrs. Singer, it was

RESOLVED THAT the Chairman would have the authority to decide when to release the report.

The next topic of discussion was the Board's relationship with the Legal Action Center, and the fact that it is incumbent upon the Board to inform LAC what role the Board will play in the Outlaw suit. The Chairman explained that the Corporation Counsel would not permit the Board to join as plaintiff in the case. After some further discussion, upon motion duly made by Mr. Kirby, and seconded by Father Rios it was

RESOLVED THAT the Board of Correction will continue to cooperate with the Legal Action Center by providing assistance relative to the case of Outlaw v. D'Elia, but cannot join as plaintiffs in said case.

The question was raised of what procedure should be used by the Board members who wish to recommend individuals to fill the vacant positions on the Board. There was general agreement that each member should act individually.

Upon motion duly made by Father Rios, and seconded by Mrs. Singer, a request for an excused absence from Mr. Schulte was approved.

Upon motion duly made by Mr. Kirby, and seconded by Mrs. Singer, the meeting was adjourned at 6:00 p.m.