

Remarks to the New York City Board of Correction by John R. Horan

Board Hearing, April 17, 2007, 22 Reade Street, City Planning Commission Hearing Room, 1st Floor

Madame Chair, members of the Board

I am addressing you today as a former member of this board and Vice Chair from 1978 to the end of 2005, during which time I participated in the initial drafting of the Minimum Standards, and the later promulgated Health Standards, setting the operating standard for the United States for sensible and humane regulations in jails, affecting inmates as well as correction officers.

During my long tenure as a Board member I witnessed several Commissioners manage the jails and manage relations with the Board. With few exceptions that relationship was managed successfully and the system of variances that grew up during that period is itself testimony to the relationship of constructive oversight that the board has cultivated.

Now, I fear that this board has decided, in presenting the proposed changes at this hearing, to acquiesce in the demands of the Department in so many important particulars, that there will be little power of oversight left to it, once the proposed amendments are adopted.

There is no other body in the governing agencies of the City with the power to regulate the City's jails. And the inmates clearly have no political constituency that cares to call attention to their concerns. All that is left is the Legal Aid Society and other concerned legal groups you have heard testify so eloquently today but who lack the power to regulate. The power to regulate day to day is what this board has. Its present standards represent responsible regulation subject to variances under the right circumstances.

If these proposals are adopted, the minimum standards will be re- set for a long time. Only the most drastic circumstances would call for their further amendment. If, for example, the 50 square foot standard is adopted after so many years of accepting that 60 square feet has worked well and is the better measure, and does not prove out, going back to 60 will be very difficult and tightening is always easier than loosening a standard. I disagree with most of the proposals presented, on the merits, but I recognize many are debatable. What I wish members of the board would think about is how you are in essence acquiescing to the pressure of the Dept to be more cost effective. What is driving most of these amendments is cost concerns of the Dept and control concerns. This may be a benign Commissioner who runs the jails today, but a not so benign one may come in the future, and find these amendments which convey great authority to the Dept, with oversight relegated to the bleachers, to his or her liking.

This board has always had an outstanding staff. Our Executive Directors have uniformly been outstanding as have our counsels and support staff. They are imbued with a sense of mission which is to have these difficult places run properly and humanely and with as

much sunlight and scrutiny as they can bear. With these proposed amendments I cannot imagine a talented staff being much interested in the work. Applying to work for the board will not be for the energetic and imaginative sort that we have had to date.

For me as a former member, a rather bittersweet irony is that the board was not usually very tough on the Department. Certainly, not in the view of the Legal Aid Society's Prisoner's Rights Project. We delayed and we temporized and we sought to make arrangements with Commissioners when we differed. Now, the board has evidently decided to remove the one really potent oversight lever it has, the Variance. Not that we often looked closely at whether a variance should be discontinued, but we could have and on a few occasions we used that power to effect modest changes in approach by the Dept. With desired changes always subject to the variance procedure the Dept always had to justify its proposals for change. The staff working with the Dept thus had the power (potentially) of its Board's discretion on a particular variance, to use to obtain a better result, better in the sense of a give and take of debatable positions. Now, with all that the Dept wants locked into the proposed amendments, and the transfer of power almost complete, there will be little strength to the staff's work inside the Dept. One of the truly unheralded facts of the board's existence during my tenure was that our staff led by our Exec Director was able to negotiate and effectuate important small and large changes in administration of the jails, often without claiming credit and even giving credit to the department. This board by these changes, many of them, in my view wholly unwarranted, is giving up the staff's leverage as well as its own.

In conclusion, I ask each of you to consider what your duty of oversight means. What is the pressing need for these proposals, other than the Dept's desire to have them? What will you have left to oversee if you adopt these proposals? The existing standards have done well for many years. The system of variances has kept the right tension between the Dept and the board. If you adopt these proposals in the face of the serious and informed views of those testifying, will you have rendered yourself superfluous and have betrayed the unique trust placed in you by the City Charter? By your presentation today, and by the backwards way you have proceeded, and by the short timetable for comment, you appear to have already decided.