

PERSPECTIVE

Independent Oversight Of N.Y. Jails

Michael B. Mushlin, John Horan, David Lenefsky, Madeline deLone, John m. Brickman, and Clay Hiles

In most of the United States, there is little genuine oversight of jails and prisons. For 50 years, New York City, however, by leadership and by example, has shown how to do it. Since 1957, the city has had a Board of Correction, appointed by the mayor, New York City judges, and the City Council, that is charged with independent oversight of city jails. For decades it has generally performed that role honorably. The board's charter of enforceable minimum standards, promulgated in 1978, sets a floor of decency for the custody of both persons convicted of misdemeanors and detainees presumed innocent while awaiting trial.

But now the board has compromised its independence and jeopardized those standards. Bowing to pressure from the New York City Department of Correction to cut costs, increase the department's prerogatives, and diminish accountability, the Board of Correction has proposed a new set of standards that were discussed publicly for the first time at a hearing on April 17. If approved, the new standards will dramatically reduce basic protections provided for over 30 years to men and women who have not been convicted of a crime, time tested policies which have made the jails safer for prisoners and for the correction staff who work there.

Under these proposals, jails will be more dangerously crowded; phone calls to parents, children, and spouses will be monitored; and personal letters will be read without a warrant; contact visits with family members during the crucial and often devastating first 24 hours of incarceration will be eliminated; Spanish-language translation will no longer be required at all jails for participation in programs; and, most dangerously, inmates who need protection may be subject to 23-hour lock-in status under conditions of isolation that have been described as tantamount to torture and that are known to increase the risk of suicide.

Many of these new standards are proposed to match practices in other cities whose jails suffer from violence and chaos. In its search for the lowest common denominator, the Board of Correction is breaking faith with several generations of advocates and leaders who created and sustained the modern criminal justice reform movement in New York, a city that has historically distinguished itself by its concern for civil liberties and human rights. With the proposed standards, the board would abdicate its responsibility to the public it serves.

The key to the value and effectiveness of an oversight body is its independence from the agency that it is intended to oversee. In revising -- and diminishing -- its standards, the board consulted extensively with the Department of Correction over a two-year period during which not one of the many New York and national organizations and leaders involved in prison reform was included in the process. Nor were any current or former inmates or their families. By failing to

meaningfully consult anyone beyond the agency it oversees, the board has squandered its independence and forgone the opportunity to provide standards informed by the most extensive expertise available. An oversight body must not become part of the political practicalities of the day. City administrations and their policies come and go, but independently set standards establish our collective code of decency and humanity, regardless of political fashion and fiscal tides.

At the public hearing on the standards, a broad coalition of families of prisoners and organizations representing generations of criminal justice reform stood together at the only public hearing that the board has held. As the prisoners and their loved ones testified about the most oppressive and humiliating conditions that they have faced even under the current standards, they reminded us that while New York may have been at times a national leader in correctional standards, it still has a long way to go forward -- and these ill-considered proposals would take us straight backwards.

It is not too late for the Board of Correction to change course. With an apparent nod to community pressure, the board announced at a meeting on May 10 that it would extend the public comment period by five weeks and meet once with representatives of organizations of its choosing. While this is a step in the right direction, we believe that the board should rescind its proposed standards and start over. Before it again proposes new standards, it should listen to the community, including prisoners' families, human rights and prison advocacy organizations, the public at large, experts outside of the department it is mandated to oversee as well as the Department of Correction. By doing so it would demonstrate the wisdom and courage to return to its critical role as an independent monitor.

U.S. Supreme Court Justice William J. Brennan described prisons as a 'shadow world'; in these dark places, without independent oversight, abuses and violations of fundamental rights often occur. We call on the mayor, judges, and City Council who appoint the board to demand real oversight, and we call on the board to end this failed process before future generations of prisoners and correction staff suffer the harmful consequences of its misdirected actions.

Michael B. Mushlin is a professor of law at Pace Law School and former chair of The Correctional Association of New York, the New York City Bar Association Committee on Corrections and project director of the Prisoners' Rights Project of the Legal Aid Society, John Horan is an attorney and former vice chair of the Board of Correction, David Lenefsky is an attorney and former member of the Board of Correction, Madeline deLone is the executive director of the Innocence Project and former Deputy Director of the Board of Correction, John M. Brickman is the chair of the Correctional Association of New York and former executive director of the Board of Correction, and Clay Hiles is a former chair of the Correctional Association of New York and former executive director of the New York City Criminal Justice Agency.