

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE CIVIC ASSOCIATION OF THE DEAF OF :
NEW YORK CITY, INC. (also known as :
the New York City Civic Association :
of the Deaf) and STEVEN G. YOUNGER II, :
on behalf of themselves and all :
others similarly situated, :

Plaintiffs, :

95 Civ. 8591 (RWS)

V. :

RUDOLPH GIULIANI, as Mayor of the :
City of New York, HOWARD SAFIR, as :

Commissioner of the Fire Department :
of the City of New York, CARLOS :
CUEVAS, as City Clerk and Clerk of :
The New York City Council, PETER :
VALLONE, as Speaker and Majority :
Leader of the New York City Council, :
THOMAS OGNIBENE, as minority Leader :
of the New York City Council, and :
the CITY OF NEW YORK, :

Defendants. :

**CORRECTED
DECLARATION OF
ROBERT B. STULBERG
IN SUPPORT OF
PLAINTIFFS'
OPPOSITION TO
DEFENDANTS' MOTION
TO VACATE OR
MODIFY INJUNCTION**

-----X
EXHIBIT 7

From: Stephen Rush
To: Bazel, Julian; Ryan, Kristine
CC: Shacknai, Daniel
Date: 1/5/2010 11:09 AM
Subject: RE: Fire Alarm Boxes

Julian - can you set up this pre-lim mtg.

Stephen Rush
Assistant Commissioner for Budget & Finance
New York City Fire Department
9 Metrotech Room 8E-11
Brooklyn, NY 11201
718 999-2022/23
718 999-0652 (fax)

>>> "Ryan, Kristine" <RyanK@omb.nyc.gov> 1/5/2010 10:47 AM >>>
Since we intend to include this proposal, in some fashion, as part of the January Plan, I think it makes sense to open the discussion with NYPD Legal as soon as possible. Bringing CJC on board probably isn't as critical at this point, but I defer to you both on if/when to engage them.

I'd be interested in participating in the meeting with Jon Pines, FDNY and NYPD, once it is scheduled. Thank you.

-Kristine

Kristine M. Ryan
Assistant Director
Fire, Parks and Sanitation Taskforce
New York City Office of Management and Budget
(212) 788-3969

-----Original Message-----

From: Julian Bazel [<mailto:bazelj@fdny.nyc.gov>]
Sent: Tuesday, January 05, 2010 10:27 AM
To: Stephen Rush; Ryan, Kristine
Cc: Daniel Shacknai
Subject: Fire Alarm Boxes

Law Department General Litigation Deputy Chief Jon Pines is aware of our interest in seeking to re-open the permanent injunction. He will meet with us and NYPD whenever we are ready to do so.

If we are at that point, I can reach out to NYPD Legal to open the discussion, unless you wish to do so through your contacts.



This issue was originally coordinated by the Criminal Justice Coordinator's Office. We may wish to give them a heads up as well.

>>> Stephen Rush 1/5/2010 9:18 AM >>>

This was the last case; in reading it, I note that there was an earlier ruling that denied the removal of alarm boxes, but the grounds for the decision are also apparent in this review. Rather than try to force large savings all at once, it might be wiser to propose to the Courts that we move ahead on this project incrementally since it will have to be staged that way. Not sure of the mechanics, but we could go with a pilot and if it proves no impact, we can then move forward borough by borough. I know it delays savings, but it might be easier with Courts to move toward our ultimate goal assuming it makes sense following a pilot, which I think it would.

Of course this assumes we would need the Courts to buy the cell phone coverage + cell phone TTY availability, which I would guess if you are hearing impaired you might already have.

We should probably discuss with Law Dept.

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>>> Stephen Rush 1/4/2010 5:49 PM >>>

Here is what appears to be one of the later (last?) Court decisions with Judge Sweet. I also think if this proceeds, judging by notes, we would need to do an Environmental Assessment Statement.

Enjoy the read!!!

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EXHIBIT 8

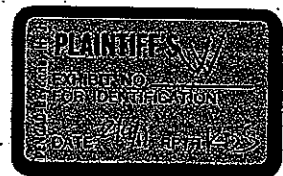
Introduction

Good morning Chairperson Crowley and Council Members. Thank you for the opportunity to speak with you today about the Preliminary Budget for Fiscal Year 2011 for the New York City Fire Department (FDNY).

As you know, I was sworn in as Fire Commissioner in January. As the new Fire Commissioner, I have inherited a Department that faces significant budget reductions. But during the past eight years, we also have established a Department that is better trained, better equipped and better prepared than ever before. Last year, the Fire Department posted some of the best performance indicators in our recorded history.

In 2009, the City experienced 73 civilian fire deaths, the lowest number ever recorded. The previous low was 77 in 1919. The Fire Department also achieved the fastest average response time to structural fires on record: 4 minutes and 2 seconds. In 2009, we also had the fewest number of fires ever, including a record low number of serious fires, which are those categorized as one-alarm or greater. Serious fires have declined nearly 20 percent in the last two years, coinciding with a major citywide fire prevention and education initiative that reached more than 1.5 million New Yorkers. Our Emergency Medical Service (EMS) is also achieving among the fastest response times in its history, despite a record number of calls.

Fire deaths have been at an all-time low during the last eight years. Our challenge is to maintain this level of service to the communities we serve. Like all City agencies, we are being called upon to find savings and generate revenue where we can. This has been difficult given the reductions to our budget over the last several years, including the



elimination of 30 FDNY ambulance tours last year and the loss of 191 civilian positions since Fiscal 2008.

Fiscal 2011 Preliminary Budget

The City's Fiscal 2011 Preliminary Budget calls for an overall City agency reduction of \$1.1 billion. The Fire Department's reductions -- associated with this \$1.1 billion citywide Program to Eliminate the Gap (PEG) -- will obviously present significant challenges but will be far worse if the currently proposed State budget is enacted. If it is, the City could face an additional \$1.3 billion in PEGS. For the FDNY, that would translate into layoffs of 1,050 uniformed members and the possible elimination of 42 fire companies. Until the State budget is finalized, we face a lot of ifs and unknowns. But, for purposes of my testimony today, I will focus on what the City's Preliminary Budget has proposed for the FDNY and, hopefully by the time of the Executive Budget hearings in May and June, we will know more about the State's budget situation and how it will affect our own.

Fire Companies

Last year, the City Council restored funding for 16 fire companies that were scheduled to close during this fiscal year. That funding was restored for this fiscal year only. In other words, those 16 companies are still scheduled to close on July 1st and the Preliminary Budget for Fiscal 2011 calls for an additional four company closings. This adds up to a loss of 20 fire companies and 505 firefighting positions via attrition. This is expected to achieve a total savings of \$37.4 million.

We have not yet reached any final conclusions about which companies may close since we are still in the process of integrating the new fire statistics for 2009 into our review and analysis. We are undertaking a comprehensive review of all available data to

help inform our discussions. As we did last year when making decisions about closing companies, we are using the following criteria:

- Projected post-closing response time to the company's first-due alarm boxes
- The number of occupied structural fires the company worked ("Occupied Structural Workers")
- Projected post-closing response time to the company's second-due alarm boxes
- Total responses
- Life-threatening medical emergencies to which our engines respond
- Workers (runs where the company performed work)
- Other factors such as proximity to other units, workload impact on surrounding units, street layout and geographic obstacles and response of perimeter companies
- The impact of the company closing in the communities they serve and on the overall safety of the City
- The operational knowledge of senior chiefs.

We are generating and considering a wealth of data and, after we finalize our analysis, we will make the difficult decisions. We will of course keep the Council informed of our decisions and will provide the Charter-required 45-day notice to those communities in which the closings will occur.

While we examine all these factors closely, it is crucial to emphasize that the extensive knowledge of our senior chiefs and officers in the field are an important part of the calculus. As I have said before, no fire chief wants to close fire companies. Now, as Fire Commissioner I repeat that sentiment by saying that no Fire Commissioner wants to close fire companies. But, as you know, 90 percent of our agency's budget is devoted to Fire and EMS operations. So, we obviously need to look to operations when such deep cuts are called for.

Alarm Boxes

The Preliminary Budget also calls for the deactivation of the fire alarm box system across the City for a savings of \$6 million in Fiscal 2011. As you may know, the

FDNY developed a plan to deactivate street alarm boxes in the mid-1990s. During a pilot project phase of that plan, the Department deactivated some alarm boxes. However, members of an organization representing deaf and hearing-impaired persons opposed the plan. These parties claimed that the loss of the call boxes would deprive them of their ability to call in emergencies. After litigating the matter, the Court prohibited the Department from deactivating additional boxes. The Court also expressly permitted the Department to apply to the Court to modify or lift the injunction at any time in the future, upon a showing that the deaf and hearing-impaired had other adequate means to report a fire.

Additionally, the Council, by Local Law 35 of 1996, required the Department to maintain call boxes in a distribution pattern of approximately one every four City blocks – a thinner distribution than the former placement of one call box every two blocks.

With the passage of nearly 15 years and the introduction of vast changes in communications technology, we are confident that call boxes can be deactivated without jeopardizing public safety. Our statistics show that these call boxes are no longer the important fire safety tool they once were. In 2009, 99.55 percent of calls reporting structural fires came from sources *other than alarm boxes*. That means that less than one half of one percent of structural fire calls came from the alarm boxes. Furthermore, as we face the challenge of fire company closings, the Department must strive to ensure efficient resource availability and reduce false alarms. Unfortunately, 85 percent of the alarm box transmissions we responded to in 2009 were false alarms.

Because of the standing court injunction, we have to make a motion to the Federal Court to revisit the court-ordered restrictions on alarm box removal before we can take

steps to deactivate any existing alarm boxes. The planned deactivation will also require the City Council to repeal Local Law 35 of 1996. We feel strongly that, if these preliminary matters are successfully resolved, this measure will save money without jeopardizing the public, including the deaf and hearing-impaired community.

We do not foresee the need for layoffs if we deactivate the call boxes since we are projecting savings based on headcount reductions through attrition, a reduction of contractual spending, supplies and equipment, and reduced overtime.

Company Staffing

Right now, 134 of our 198 engine companies (just over two-thirds) operate with four Firefighters, plus one officer; 60 engines have five Firefighters, and four "HMTU" (Hazard Material Technician Units) engines also have 5 Firefighters. All 143 ladder companies also have five Firefighters, plus one officer. These staffing levels are established by the existing union contract, which expires in the next fiscal year.

The Preliminary Budget provides for the elimination of the fifth Firefighter position on the 60 non-HMTU engine companies that have the 5th Firefighter. In conjunction with the Mayor's Office of Labor Relations, we will commence discussions with the Uniformed Firefighters Association (UFA) on our proposal to reduce staffing in the 60 engine companies.

This measure will not place our Firefighters and Fire Officers in jeopardy, nor will the public's safety be compromised. As I indicated, more than two-thirds of our engines are currently operating – safely and effectively – with four Firefighters and have operated in such fashion for more than 20 years. Moreover, engine companies are always paired for structural fire operations. Even at a first alarm, two engines, two ladders and a

Chief respond. And when one of those responding engine companies is a "four-Firefighter" engine, a third engine company is dispatched. Plus, our improved training, equipment and preparedness has led to record-breaking achievements, as I mentioned at the start of my testimony, and has enabled our members to operate as efficiently and effectively as ever in our history.

Hopefully, we will be able to come to an agreement with the UFA on our plan. However, if we cannot reach an accord with the UFA, arbitration will be necessary. The current budget climate necessitates that compromises must be made and we think we would be successful in making this argument before an arbitration panel, if it comes to that. Overall, this staff reduction of 300 Firefighter positions through attrition would achieve a savings of \$7.9 million, with savings increasing to more than \$20 million within four years of implementation.

The Budget also calls for the elimination of 20 administrative Firefighter posts, which would reduce headcount by 100 positions since five firefighters are required for each administrative position. These cuts will have a significant impact on important support functions including Fleet Maintenance, Health Services and Technology. And this is on top of the 26 percent reduction in the Department's civilian workforce since 2003. The planned elimination of 100 off-the-line positions via attrition would achieve a savings of \$5.5 million in Fiscal 2012.

We also plan to reassign 25 EMS personnel from off-the-line positions back to the field, saving \$1.5 million. This will impact our Office of Medical Affairs and the Bureau of Health Services, among other areas. It also means that our very popular Community CPR Training program will be discontinued.

Revenue

To increase revenue, we will begin issuing violations to building owners for fire company responses to unwarranted alarms. Each year FDNY fire companies respond to more than 31,000 calls from buildings whose alarms are improperly or unnecessarily activated due to, for example, lack of proper maintenance. In most instances, at least one Engine Company and one Battalion respond.

In a climate where fire companies are closing, having to incur the high cost of this unnecessary workload is even more untenable. These alarms reduce the availability of our units for critical emergency calls, and increase response times, risk of injury, fuel usage and wear and tear on our apparatus.

In 2009, almost 3,000 buildings had three or more unnecessary alarms. In light of these issues, we proposed a schedule of penalties that is projected to generate \$2 million annually. It is my hope that this initiative will reduce the number of these unnecessary alarms.

The Preliminary Budget also includes continued savings due to cost-sharing arrangements with the National Institute of Occupational Safety and Health (NIOSH). This includes \$2 million in Fiscal 2010 for costs associated with treating and monitoring our members as part of the World Trade Center Medical Monitoring and Treatment program.

New Needs

The FDNY does have some New Needs funded in the Preliminary Budget. These include the addition of \$402,000 for a Captain and six Lieutenants for a new EMS Station

that opened in Sunset Park this year.

In Fiscal 2011, our Facilities Management Unit will be funded \$830,000 for 11 new trade positions -- such as carpenters and electricians -- who help us maintain our aging infrastructure. This is important in light of the significant Capital Budget cuts from the prior fiscal year.

The Department's Fire Alarm Inspection Unit will gain seven positions, which we forecast will generate \$810,000 in revenue in Fiscal 2011.

Enactment of a new Fire Code in 2008 necessitated the hiring of 17 Fire Prevention staff for Fire Code-related enforcement. This additional staff is projected to generate \$2.7 million in Fiscal 2011 to offset expense costs.

Conclusion

As the budget process evolves, some of what I outlined today may change, but we are preparing for deep cuts to our agency budget. Despite these difficult reductions, we will do our best to minimize the risks and continue to carry out the responsibilities of our agency to ensure the safety of the communities we serve. In challenging moments, our Department has always managed to provide superior services. As they always do, our Firefighting and EMS personnel will continue to perform extremely well in responding to fires and other emergencies in New York City.

Thank you for your cooperation during this very difficult budget process. I would be happy to take your questions at this time.

**NEW YORK CITY COUNCIL
COMMITTEE ON FIRE & CRIMINAL JUSTICE SERVICES**

**Testimony of Daniel Shacknai
First Deputy Commissioner
New York City Fire Department**

May 27, 2010

Introduction

Good afternoon Chairperson Crowley and Council Members. Thank you for the opportunity to speak with you today about Intro 209 which authorizes the New York City Fire Department (FDNY) to remove, deactivate or otherwise render unusable any FDNY alarm box at the Mayor's discretion. We support this bill.

Alarm Boxes

The Mayor's Fiscal 2011 Preliminary Budget called for the deactivation and eventual removal of the fire alarm box system across the City for a savings of \$6.2 million in Fiscal 2011. As you may know, the FDNY developed a plan to deactivate street alarm boxes in the mid-1990s. Pursuant to that plan, the Department commenced the deactivation of some alarm boxes. However, members of an organization representing deaf and hard-of-hearing persons opposed the plan. These parties claimed that the loss of the call boxes would deprive them of their ability to call in emergencies. After litigating the matter, the Court issued an injunction in 1996 prohibiting the Department from deactivating additional boxes, but did not require the Department to re-activate the boxes that were already deactivated.

With the passage of nearly 15 years and the introduction of changes in communications technology, we are confident that additional call boxes can be deactivated without jeopardizing public safety. Our statistics show that these call boxes



are no longer the important fire safety tool they once may have been. Back in 1993, 15,380 calls received from call boxes provided the only alarm for a fire or other emergency. By contrast, in 2009, there were only 140 calls from call boxes reporting structural fires, out of a total of 26,666 structural fires reported. That means that fully 99.55 percent of calls (26,526 out of 26,666) reporting structural fires came from sources *other than alarm boxes*, and that less than one-half of one percent of structural fire calls came from the alarm boxes. In addition, of that small fraction of one percent of alarm box calls reporting structural fires, 56 percent of these incidents were also reported from another source – typically a phone call, that often *preceded* the alarm box source.

Of even greater concern is that 10,997 calls originating from call boxes in 2009 – that's 85 percent of the 12,931 calls from alarm boxes – were false alarms. Virtually every one of those calls represents a case in which FDNY initiated an emergency response where it was not needed. While difficult to cost out in dollars, false alarms are a clear threat to public and firefighter safety: they divert our first responders and make them unavailable for real emergencies, while needlessly putting our members in harm's way as they speed to non-existent emergencies. These unnecessary responses are a tremendous, and avoidable, waste of critical City resources.

Because of the federal court injunction, we have to make a motion to the court to seek to vacate or modify the prohibition on alarm box removal before we can take any steps to deactivate any existing alarm boxes. The Law Department is currently preparing that motion for filing in the near future.

However, City Council action is also needed to amend the previously enacted legislation. This bill would accomplish this latter step but its passage will not trigger any

deactivation or removal of the alarm boxes unless and until the federal court issues a new order permitting us to go forward with such deactivation or removal.

I want to make the Committee aware that because of these prerequisite measures, the fiscal impact of the alarm box deactivation cannot be achieved until these legal hurdles are cleared. In order to realize the benefit of these projected savings as soon as possible, we must pursue both Court and Council relief now. But, because of the procedural and implementation issues, the Executive Budget calls for the savings to begin in Fiscal 2012.

We feel strongly that this measure will save money without jeopardizing public safety. And, we do not foresee that the deactivation of the call boxes will result in layoffs since the projected savings would be achieved through attrition, and reduction of contractual spending and overtime.

Thank you for conducting this hearing today to discuss this bill. I would be happy to take your questions at this time.

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EXHIBIT 10

Over 40% to maintain the system.
43 Communication electricians
7 Supervisors

Q&A

What stats reflect alarm box usage?

USING ALL ALARM BOXES (BOTH BARS AND ERS)

- Less than 3 percent of ALL calls were from alarm boxes (12,931 of 473,024). *Bar Alarm Readout System Emergency Reporting System*
- More than 85% were false alarms (10,997 of the 12,931 incidents reported from alarm boxes). *335 medical emergencies*
- Less than 1.1% were structural fires (140 of the 12,931 incidents received from alarm boxes). *232 Non-Spout Fires, 1228 Non-Med. Emerg.*
- Of the structural fires, 56% had a second source (79 of the 140 structural fires with an alarm box as the alarm source).

Pull Boxes (BARS) Only

- More than 90% were false alarms (2,805 of the 3,102 incidents reported from pull boxes (BARS)).
- Less than 0.8% were structural fires (23 of the 3,102 incidents received from pull boxes (BARS)).
- Of the structural fires, 91% had a second source (21 of the 23 structural fires with a pull box (BARS) alarm source).

How many call boxes will be eliminated?

~~Answers~~

We employ an alarm box system of both pull boxes (BARS) and ERS alarm boxes. Pull boxes are self-explanatory. The ERS alarm boxes are devices that allow voice communication between the person reporting the emergency to FD Dispatch.

Currently we have 15,077 alarm boxes: 10,159 ERS and 4,918 BARS. The proposal is to eliminate them all.

How many boxes were removed in the 1990s and what kind were they?

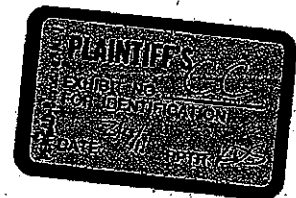
Our records show that in 1994-1995, we removed 4,068 call boxes:

- 2,706 ERS
- 1,362 BARS.

We were required to restore 2,260 of the 4,068. This resulted in a net reduction of 1,808. Of the 1,808 alarm boxes removed, 1,143 were ERS and 665 were BARS.

By Borough:

- Manhattan lost 274 ERS boxes
- Brooklyn lost 393 ERS and 427 BARS
- Bronx lost 307 ERS and 18 BARS



Queens lost 169 ERS and 220 BARS

Q. In dense areas, with public housing, call boxes are needed (asked by Rosie Mendez from the Lower Eastside)?

A. Most of those large buildings you describe have interior alarm systems. But the stats over the last 15 years don't bear out what you are saying that the call boxes are an important life line for these communities: they are not being used to alert us about emergencies.

Q. Can you come to these projects and educate the communities? Can you do outreach if the alarms are deactivated?

A. Yes we can, but we are already doing that. We have a very robust fire safety education program that has educated millions of New Yorkers.

Q. Can we see a chart of where the alarm boxes are located and which ones are used the most with a breakdown of what is called in, e.g., MFAs?

A. Yes, provided that to City Council Finance April 16, 2010.

CM James alleged that that "many, many people in her district do not have cell phones" and need these call boxes. We did not directly comment on that (we don't have stats about cell phone ownership). We do have stats, which the Commissioner mentioned again, that show how many millions of calls come in via cell phone and how few come via call boxes.

Hasn't the City spent a substantial amount of money on the up-keep of the existing call-box system?

We had to make an investment in the system because we are essentially under court order -- and legally required by local law -- to maintain this system. The court and the law barred us from deactivating or eliminating the boxes.

On 9/11, cell phones were not working and the call boxes were essential. The FAD union claims that relying exclusively on phones in an emergency is dangerous because the cell phone system can become overloaded during times of disaster or mass emergencies.

During the September 11, 2001 World Trade Center incident, all alarm boxes in the surrounding area (except directly in the "Ground Zero" perimeter) were operational. Cell phones were less effective, due to the high number of calls being placed and overwhelming the networks. The hardwired public telephone network was more reliable, although this system was also taxed. Even with the above conditions, the FDNY did not experience a dramatic rise in ERS alarm box activity. Most emergency alarms received (that day) were via telephone.

And, our field personnel were able to communicate to one another.

How will the deactivation of the call boxes affect the deaf and the hearing impaired?

The hearing impaired can call the FDNY TTY number 718.999.8888 to report a fire (SI Dispatch receives those calls).

The NYPD advises that they don't have a separate TTY number but all of their call takers are equipped with TDD (Telecommunications Device for the Deaf). When a hearing or speech-impaired person calls 911 they can use a tapping protocol, or can remain silent, or the call will come in with a tone alert from the caller's TTY, and the NYPD we will automatically engage the TDD to respond.

There is also a relay service (New York Relay Service) that hearing and speech impaired people can use in which they call the relay service and their operators act as an intermediary with the 911 call taker.

The TTY calls to FDNY and tapping calls to NYPD are very few. In this day and age, we receive multiple calls for every fire or emergency. Moreover, the deaf or hearing-impaired often will text or email a friend or loved one that is not hearing impaired to ask that person to call 911.

In reality, we send a response to any call received by FDNY Dispatch that is silent or sounds like tapping.

How many people use that number? Is that number advertised?

The Mayor's Office of People with Disabilities has the tapping protocol on their website. When we instituted the TTY numbers, the info was shared with the disabled communities.