

BOARD OF CORRECTION  
MINUTES  
June 3, 1986

A regular meeting of the Board of Correction was held at the Board's offices on June 3, 1986. Present were Chairman Robert Kasanof, Vice-Chairman John Horan, and members Wilbert Kirby, David Lenefsky, Barbara Margolis, David Schulte, and Rose M. Singer. The meeting was called to order at 2:05 p.m.

Chairman Kasanof reported on the Department of Correction's request for a variance from the space standard at the Correctional Institution for Men (CIFM). He said that the Department did not make a full, public showing of its need for a variance, but instead asked the Board to consider information in confidence in executive session. The Chairman indicated that he considered such a request as improper, since information pertaining to variances should be public. Therefore, he said, he anticipated asking the Board to grant a short variance to allow the Board and then Department time to work out a procedure for sharing sensitive information.

Mr. Lenefsky asked why Department plans for managing excess population were considered sensitive. Chairman Kasanof explained that the Department believed that the release of such information could damage its position in the Fisher case. He added that he would meet with the Corporation Counsel to decide if the issues at hand are litigation matters and to try to develop a system for sharing information without prejudicing the litigation. He emphasized the Board's need neither to be nor to appear to be, partisan in any litigation, stating that the Board's only concern should be that the lawsuit is resolved justly.

Deputy Executive Director John Rakis presented a report on rooftop recreation at the Brooklyn Correctional Facility (Brig), from which the Department was also requesting a variance. He cited the numerous delays in construction and stated that the roof is now expected to be ready in January, 1987. Mr. Rakis also described a letter received from Commissioner McMickens in support of the variance. In the letter, the Commissioner had indicated that adults received outdoor recreation at the Manhattan House of Detention, and adolescents at CIFM, both seven days per week. Board staff examined records and found that adults receive outdoor recreation only five days per week.

(not on weekends), and that the average time for the adolescents to get to CIFM, have their recreation, and return to the Brig, was four hours. Of a daily average of 87 adolescents eligible for outdoor recreation, only an average of eight per day took advantage of the program during the week studied.

Mrs. Margolis asked if construction would continue to be delayed. Executive Director Richard Wolf expressed the opinion that the Department has been making a good-faith effort to hurry rooftop construction, and mentioned that much of the delay had been caused by community opposition. The Department, he concluded, is requesting a six month variance renewal. Chairman Kasanof invited the staff's recommendation on this matter. Mr. Wolf recommended granting a four month variance, and requiring the Department to show a reduction in the time taken to provide inmates with outdoor recreation at other facilities. Chairman Kasanof agreed with this suggestion, and directed the staff to continue to monitor delays in providing Brig inmates with recreation at other facilities. He also indicated that he would not formally protest the inaccuracies identified by Mr. Rakis in the Commissioner's letter, but would allow the Department to retract the letter and provide a new one.

Mr. Schulte suggested that a Board member undertake to monitor progress on construction of the roof at the Brig. Mr. Lenefsky volunteered.

Chairman Kasanof asked the Board members for their opinion on the subject of summer meetings. All agreed that such meetings should be held. The Chairman requested a resolution allowing the Board to meet as a committee if a quorum were not reached. The resolution was passed unanimously. The next meeting was set for Tuesday, July 1, at 2:00 p.m.

Mr. Schulte asked for a response to the opinion of the Legal Aid Society, contained at the bottom of page three of its response to the Department's request for a variance from the space standard at CIFM, that for the Board to grant the variance would be illegal. Chairman Kasanof declined to characterize Legal Aid's language as threatening, and stated that there was at least some merit to the variance request and that the Board would be within its legal authority to grant a variance. He also stated that the Board would in future adhere more closely to its own written procedures for the handling of variance requests.

Mr. Schulte suggested a comparative study of the quality of life at CIFM between the overcrowded dorms and cellblock areas occupied at standard. Chairman Kasanof

agreed that all areas must be monitored regardless of their compliance or non-compliance with space standards, and said that it might become necessary to face the possibility of a prisoner release if conditions become too far substandard. Mr. Schulte said that he feared the current situation held the potential for a riot, and added that reducing the overcrowding was only the first step.

At 2:35 p.m. the following members of the Department joined the meeting: First Deputy Commissioner Peter Seitchik, Assistant Commissioners Barbara Dixon, Jerry Pasichow, and Dora Schriro, Special Counsel Robert Daly, and Marcia Goffen. Chairman Kasanof informed the members of the Department that the meeting was in private session, since the representatives of the Legal Aid Society had not yet been invited in, but that minutes would be kept, that the Department could comment on draft minutes, and that minutes were, of course, available to the public.

Chairman Kasanof referred to the meeting between Board and Department staffs on June 2, and said he understood that the Department wished to share information with the Board in confidence.

Special Counsel Daly explained that the Department was worried about both the State negotiations and the Fisher case, and would not want any comments made in a meeting with the Board to prejudice either issue. Mr. Daly added that all of the Department's reasons for seeking the variance had been set forth at the previous day's meeting with Board staff.

Mr. Wolf stated that Marcia Goffen had said at the meeting that CIFM appeared to meet eighth Amendment Standards, and that Board staff asked if there had been a survey. Mr. Daly stated that Ms. Goffen would prepare appraisals of CIFM for use in the Fisher litigation. These appraisals would not be discoverable. The Department will share their substance with the Board.

Chairman Kasanof stated that Legal Aid, as well as others, had a right to informed comment on variance requests. He said he would ask the Board to grant a short variance, and that he would meet with the Corporation Counsel to discuss how to meet both the Department's litigation needs and the Board's Standards. In response to a question from Mr. Daly, the Chairman indicated that requests by outside parties for information received by the Board in confidence would be resisted, but that the Board still had to meet due process requirements, including notice and an opportunity to comment. This did not, he concluded, mean that every paper received by the Board would need to be shared.

Mr. Daly stated that his concern was that Legal Aid Society not obtain through the Board non-discoverable information pertinent to the Fisher litigation. The Chairman replied that confidential information would be received when warranted by the public interest, and that a mechanism could perhaps be devised for paraphrasing sensitive information.

At 2:55 p.m. Messrs Ted Katz and John Boston of the Legal Aid Society's Prisoners' Rights Project joined the meeting. Chairman Kasanof welcomed them to the meeting, and stated that the Board had been discussing the procedures for reviewing and granting variances. He said that while he wished to adhere closely to the Standards, he did not wish to treat discussion of variance requests as administrative hearings, and did not wish such discussions to become adversarial in nature. In the instant case, he said, he believed the Department's request merited a short-term variance. During the period of the variance, systems would be devised to allow Legal Aid access to meaningful information upon which to base comments. The Chairman stated that the adversarial stance of the Department and Legal Aid in the Fisher litigation made it important, and difficult, to control effectively the flow of information which could be helpful or harmful to one of the parties. A sixty day variance, as contemplated, would allow time for the structuring of such information flow. The Chairman added that he would prefer the Legal Aid representatives withhold any substantive comments on the space standard variance until the abovementioned procedures were worked out, but said that they were free to do as they chose.

Mr. Boston said that, due to the lack of complete and timely information, and specifically to the fact that most of the particular pieces of information required by Minimum Standards to be presented in writing had not not been furnished to Legal Aid, he would withhold the bulk of his substantive comments on the issue. He did say, however, that it was Legal Aid's opinion that the time for variances was past and that CIFM was dangerously overcrowded, and that the written commentary presented earlier by Legal Aid had appropriately presented valid points.

Mr. Katz expressed his desire to avoid antagonism between the Board and Legal Aid, and asked how the sharing of relevant factual information could prejudice litigation. Chairman Kasanof stated that he had had no intention of implying an adversarial relationship between the Board and Legal Aid, and wished simply to define procedures in light

of the Fisher litigation. The Chairman said that the Board would stay close to the standards pertaining to variances and would seek above all to fulfill its duty to the public.

Mr. Rakis stated that the Department had requested a variance from the outdoor recreation standard at the Brig. Adults, he reported, go to the Manhattan House of Detention for daily outdoor recreation, while adolescents go to CIFM. Mr. Rakis also reported that adults who work in other facilities have recreation at those facilities. Adults who go to Manhattan for recreation go only five times weekly, he reported, and adolescents must spend an average of four hours going back and forth to recreation at CIFM.

First Deputy Commissioner Seitchik stated that he had not been aware that adults were not receiving recreation seven days per week, and that the problem would be corrected. Mr. Katz stated that the Legal Aid Society had no objection to the variance, provided that all inmates did receive daily outdoor recreation. Chairman Kasanof asked for assurance that the construction plans had been approved by the community. First Deputy Commissioner Seitchik said they had been, and Assistant Commissioner Pasichow said that the contract had been put out and a selection was expected by month's end. He said that the timetable continued to call for project completion by the end of January 1987.

Mr. Kirby, noting the essential nature of outdoor recreation during the summer months, moved that the variance be granted for a period of four months, with Mr. Lenefsky to monitor construction progress. Mr. Schulte seconded, and the motion passed unanimously.

Mrs. Margolis noted the importance of reducing transit time to recreation. First Deputy Commissioner Seitchik stated that the time had been reduced for adults, and that the problem with the adolescents would be addressed.

The representatives of the Department and of the Legal Aid Society left the meeting at 3:30 p.m. Mr. Kirby moved passage of a two month variance on the space standard at CIFM. Mr. Schulte seconded; the motion was passed unanimously.

The meeting was adjourned at 3:35 p.m.