

BOARD OF CORRECTION

MINUTES

MARCH 8, 1989

Members Present

Robert Kasanof, Chairman
John R. Horan, Vice Chairman
Judge William Booth
Barbara Margolis
Rose M. Singer

Excused absences were noted for Rev. Irvine A. Bryer, Jr.,
Angelo Giordani, David Lenefsky, and David A. Schulte.

Representatives of the Department of Correction

Robert Daly, General Counsel
David Frankel, Special Counsel to the Commissioner
Michael Cleary, Executive Director, Management Evaluation
Division
James Hunter, Supervising Warden, Division I

Others in Attendance

Fran Vella, State Senate Committee on Crime and Correction
John Guzman, New York State Commission of Correction
James Harvey, Daily News

Chairman Robert Kasanof opened the meeting at 2:10 p.m. He moved for adoption of the minutes of the February 14, 1989 Board meeting. The motion was seconded by Judge William Booth, and approved by all Board members present.

Chairman Kasanof reported that the Fire Department had issued a letter to the Department of Correction which included a series of requirements to be met before inmates could be housed on the Bibby Venture prison barge.

The Department of Correction confirmed that the pre-occupancy requirements specified by the Fire Department had now been met. The Department requested variances from the Recreation and Visiting Standards. The Visiting Standard variance allows visits for Bibby Venture inmates to be conducted at the Brooklyn House of Detention. The variance requires that a van and sufficient staff be assigned to transport the inmates to and from the Brooklyn House of Detention Visit House. The variance for indoor recreation permits provision of this program at the Brooklyn House of Detention when inclement weather prevents provision of outdoor recreation on the Bibby Venture.

Chairman Kasanof next discussed the large number of State inmates currently housed in the City system. He stated that today almost 300 Parole Violators remain in City custody more than fourteen days after their final adjudication hearing. He requested that Department representatives at the next Board meeting report on the status of the State prisoner problem.

Chairman Kasanof also referred to the mixing for purposes of housing of detainees and City-sentenced inmates in Department facilities. He stressed that although the Department has received authorization under State Correction Law to implement such mixing, the Board standard on classification still prohibits the mixing of pretrial detainees with sentenced prisoners. He expressed a personal moral view against such mixing in that the majority of detainees are primarily poor members of minority groups who would not be incarcerated if they could afford bail and who should, nonetheless, be afforded the same constitutional rights to treatment as defendants who have posted bail. He explained that, in his view, the "home rule" question on mixing has not been resolved in favor of the State Correction Law.

Chairman Kasanof then discussed Ker v. California, which established the principal that states are free to interpret the due process clauses of their constitutions as giving broader rights to citizens than does the Federal Constitution. He noted that the New York Court of Appeals has often done so. Therefore it is an open question as to whether the mixing of sentenced and detention inmates would be found to violate the New York State Constitution.

The discussion then turned to the case of a captain who recently had been fired as a result of an incident involving a strip search conducted without probable cause and in reckless violation of Departmental rules. He noted that he had pursued a series of conversations and correspondence with

former Correction Commissioner McMickens about the excessive and inappropriate uses of force by this Captain, which had resulted in only a two month extension of his probationary period as a captain. Chairman Kasanof reported having had numerous conversations with Commissioner Koehler about the Board's concern for proper search procedures.

Chairman Kasanof then asked Board Executive Director Richard Wolf to discuss conditions in Department facilities.

Mr. Wolf informed the Board members about overcrowding in the Rose M. Singer Center. Since Monday, March 6, the female census had exceeded the jail's current capacity. New admission inmates, therefore, were sleeping in the gym because the Department did not wish to annex to the Singer Center any more of the bed space currently used to house male detainees in nearby C73.

The Board members voted to grant an emergency variance at the Rose M. Singer Center to house at 40 square feet as many as 75 City-sentenced female inmates in each of three modular dormitories. Whenever the census in any dormitory exceeds 50 inmates, a "C" officer must be assigned with no cross-reliefs to be done by the Housing Officers, and with a Meal Relief Officer available for these modulars on all tours.

Mr. Wolf then described an incident on Friday, March 3, at the House of Detention for Men. The incident began in the main corridor at 6:20 p.m. when five inmates who were leaving the mess hall left the line of their assigned housing area and forced their way into the Visit House search area in pursuit of a female Visit Officer who they alleged had long been disrespectful to their visitors. When the inmates were brought under control and their line re-assembled in the corridor, a questionable use of force occurred involving a captain, several Officers and an inmate from the line who had not participated in the original incident. This inmate was removed from the area for medical treatment. The rest of the inmates from his housing area, Block 7, allegedly were concerned about his safety and, upon being returned to the Block, one inmate allegedly assaulted a Housing Officer. When the response team arrived, a questionable use of force occurred involving two inmates who then were removed to the clinic. Shortly thereafter, another Block 7 Housing Officer was assaulted and his personal alarm taken. A fellow Officer pulled him to safety and sounded the wall alarm. By the time the response team arrived, the inmates on both sides of Block 7 had barricaded the "B" gates. The barricades stood from approximately 7:20 p.m. to 9:30 p.m., when discussions with Department staff convinced the inmates to remove the barricades without further violence. Several staff members earlier had been taken to St. John's Hospital for medical treatment.

Chairman Kasanof reported that he and Reverend Bryer had responded to the incident at the House of Detention for Men. He stated that he was satisfied with the Department's prompt investigation of all aspects of the incident, an investigation that had quickly resulted in the transfer from HDM of several of the staff members involved.

Mr. Wolf explained that during the course of the incident at HDM, an unrelated escape had occurred from the Adolescent Reception and Detention Center. The escapee had later been found on the grounds of the Singer Center.

Judge Booth inquired about the status of other inmates who had escaped from Department custody.

David Frankel, Special Counsel to the Commissioner, responded that all escaped inmates have been recaptured.

Chairman Kasanof next discussed the ongoing problem of shackling in City hospital wards. He noted that this issue had been discussed at the February Board meeting, where all present had agreed that shackling should be used sparingly and only for high security reasons. He reported that he and Reverend Bryer had expressed their concern over this issue in a letter to Commissioner Koehler which had resulted in an amendment to the Departmental Directive on shackling. Chairman Kasanof said that

the number of shackled inmates has gone down but is still unreasonably high, and that the Board would continue to monitor this topic.

Robert Daly, Department of Correction General Counsel, explained that the Department's policy on shackling has been revised to allow the Commanding Officer at each Hospital Prison Ward to decide which inmates will be shackled rather than to rely upon the original decision made by the Tour Commander at the jail from which the inmate was transferred.

Executive Director Wolf next mentioned the Department's letter, dated March 6, requesting an extension of the existing variances.

Chairman Kasanof asked Department representatives if all of the beds for which there currently are variances are being used to house inmates.

Michael Cleary, Executive Director of the Management Evaluation Division, reported that the Department is using all of the space the Board members have granted them.

After a brief discussion about the Department's request for an extension of all existing variances, the Board members present unanimously voted to approve the request.

It was agreed that the next Board meeting would be held on Wednesday, April 12, 1989.

Chairman Kasanof thanked the representatives of the Department for their participation in the Board meeting, which was adjourned at 3:10 p.m.