

NEW YORK CITY
BOARD OF CORRECTION
MEETING OF AUGUST 21, 1990

Members Present

Robert Kasanof, Chairman
Rev. Irvine A. Bryer, Jr.
David Lenefsky
Barbara Margolis
Rose M. Singer

Excused absences were noted for Judge William Booth, John R. Horan and David A. Schulte.

Representatives of the Department of Correction

Robert Daly, General Counsel
Toni Bair, Assistant Commissioner for Compliance
Gerald Mitchell, Chief of Operations
Hector Eugui, Deputy Chief of Operations

Others in Attendance

Richard Dachs, Counsel, N.Y.C. Council Committee on Public Safety
Bernard O'Brien, N.Y.C. Council Committee on Public Safety

The meeting began at 3:20 P.M. Chairman Robert Kasanof introduced and welcomed representatives of the Department of Correction. He then asked Assistant Commissioner Bair if his presence indicated he was speaking for the Department. Mr. Bair responded that not just he but also the other members of the Department present would speak for the Department. Mr. Kasanof then asked whether the Department's statements to the effect that there is no basis for an investigation of the incident at OBCC represent the Department's official position. General Counsel Daly responded that the Department's intent is to cooperate with the Department of Investigation's investigation, to be conducted by Commissioner Shepherd, and that any statements the Department makes are subject to the findings of that investigation. Mr. Kasanof asked whether statements made by Commissioner Sielaff in the most recent issue of the Civil Service Chief/Leader, statements directly contradictory to Mr. Daly's assertion, are subject to this qualification. Mr. Daly responded that they are.

Mr. Kasanof informed those present that just prior to the meeting he had privately shown members of the Board a videotape that contributed to his decision to request an official investigation of the incident at the Otis Bantum Correctional Center (OBCC). He noted that the original videotape had been given to Commissioner Shepherd. He then asked Executive Director Richard Wolf to outline the events that led to the Board's request for an investigation.

Mr. Wolf related that the Board's staff received notification of the disturbance at OBCC from the Communication and Control Center (CCC) at approximately 6:30 P.M. on August 14, 1990. At that time, he instructed office and field staff to go to the facility. Mr. Wolf arrived at OBCC at approximately 11:00 P.M. When he arrived, he spoke with officials of the Department regarding the disturbance and, in fact, inquired whether Assistant Commissioner Bair was present. He then entered the facility, proceeded past the control room, the receiving room and the clinic, where he noticed several injured inmates whose heads were bandaged and/or stabilized to protect them from further injury.

Mr. Wolf was then taken to what is referred to as the lower corridor area by the Board's Directors of Field Operations and Research. The area was very quiet. Clothes were piled in a line down the center of the corridor somewhat like "a stripe down a country road" and there was blood on the walls on both sides of the corridor. Mr. Wolf then showed these conditions to City officials, not affiliated with the Department, present at the jail. He then returned to the outside of the facility where he brought conditions in the lower corridor to the attention of the Deputy Commissioner for Management Integrity, Arthur Sinai. Mr. Wolf informed Mr. Sinai that conditions in the corridor were consistent with allegations by inmates that they had been beaten

by uniformed staff after the disturbance had been brought under control. Mr. Wolf then offered to show the area to the Deputy Commissioner but he did not respond to Mr Wolf's invitation.

Mr. Kasanof then asked Mr. Bair why, given that he is responsible for use-of-force policies for the Department, he was not present at the disturbance. Mr. Bair responded that at the time of the incident he had been with the Department only four days and had misunderstood procedures for entering his name and beeper number on the CCC notification list and consequently entered this information in the wrong log book. Therefore, he was not paged the evening of the incident and did not learn of it until the following morning.

Mr. Kasanof stated that the Board's call for an investigation should not be regarded as a pre-judgment of the events of the night of August 14.

Board Member Reverend Irvine Bryer, Jr. explained that in the days following the incident he spoke with several correction officers. They related to him that some officers found a way to "get at" inmates for the purpose of showing them that "things are going to change" and "the officers control the jails now."

Mr. Daly interjected that the Department has always appreciated the institutional role the Board plays and has no

quarrel with its authority. Mr. Daly added that the Department has great confidence in Commissioner Shepherd's investigation, which involves interviews with numerous inmates and officers. Therefore, Mr. Daly does not want anything to happen that would prejudice the investigation. In response, Mr. Kasanof stated that the purpose of relating these conversations is to demonstrate that there were sound reasons for the Board to call for the investigation. Reverend Bryer agreed that the reports he received from correctional officers indicate there is a need for a thorough investigation. Mr. Daly reiterated that Commissioner Sielaff wants the investigation to go forward.

Board Member David Lenefsky then asked Mr. Daly when the Board would be provided with a copy of the revised Use-Of-Force Directive. Mr. Daly responded that the Department forwarded previous versions to the Board and would continue to do so. Mr. Lenefsky asked whether the Directive was in final form. Mr. Daly responded that the Department had narrowed its differences with the Legal Aid Society and expects to have a final version before Judge Lasker by Friday. Mr. Kasanof then added that the Board awaits the final form of the Use-Of-Force Directive with interest and concern. Mr. Wolf then asked what the Department's position was with regard to C-76 (CIFM) and the old directive. Mr. Daly explained that the original, lengthy directive had been approved by Judge Lasker as part of the settlement of the Fisher litigation and that COBA president, Philip Seelig, understands

that, at least as to CIFM, any changes in the Directive must be approved by Judge Lasker.

The discussion then turned to variances. Mr. Kasanof began by noting that the Department has asked for the immediate squeezing of large numbers of inmates. He asked Mr. Wolf to describe the request in detail. Mr. Wolf related that the pending request seeks to squeeze CIFM to 2600 from 2054, an increase of 546 inmates and noted that the Department believes the request is necessary because of the planned takedown of ferries and other exigencies faced by the Department, most of which are due to a system at 102% of capacity as a result of the recent blockade of the bridge to Rikers Island which prevented transportation of inmates to courts and upstate facilities.

Mr. Kasanof then asked Mr. Bair whether some inmates were squeezed without variances from either the Board or the State Commission and whether the Department continued to squeeze inmates after the 24-hour period allowed under the Board's Standard for emergency variances. Mr. Bair replied that at the time he arranged the housing of these inmates with Deputy Chief Eugui, he was not yet conversant with the Minimum Standards and was therefore unaware of the 24-hour restriction. He stated that such a mistake would not be made again. Mr. Kasanof stated that the Board understood Mr. Bair's position and would treat the variance as though freshly requested.

Mr. Kasanof then asked Mr. Wolf to detail how many beds Board staff determined were available at this time. Mr. Wolf explained there were currently 310 beds empty as per the Operations Division Census. Mr. Bair noted, however, that the request is for 546 beds. Mr. Kasanof then asked how many times the Department has requested variances when there was active litigation before Judge Lasker and/or a genuine concern by the Board for public safety, both issues that have frequently been addressed by the Board in response to variance requests. Mr. Wolf stated that the Chairman is referring to "boilerplate" language in variance letters. He then read from the Board's July 23, 1990 variance letter to Commissioner Sielaff, "All variances are granted and contingent upon each facility's ability to maintain safety and security, to provide appropriate service, staff and program levels and to comply with all Board Standards."

Mr. Kasanof then asked whether it was necessary for the DOC to seek Judge Lasker's approval for housing additional inmates at CIFM. Mr. Daly replied that under Lasker's rulings 2600 inmates are permitted in CIFM, but that litigation to reduce this figure was pending before Judge Lasker. Mr. Kasanof said that he was reluctant to recommend that the Board rule on an issue currently before Judge Lasker and asked the Department to come back to the Board with a revised request. He suggested that Department and Board staffs meet in an effort to determine whether the Department really needs to squeeze any more housing areas and, if

so, whether alternative variance solutions can be identified.

Mr. Bair then asked Deputy Chief Eugui, who is responsible for housing under the direction of Chief Mitchell, to describe in more detail the status of additional available beds cited by the Board. Mr. Eugui explained that of 300 beds noted by the Board as empty, 200 are at the new White Street facility at the Manhattan Detention Center (MDC). However, the kitchen there will not be complete until mid to late September and, therefore, housing inmates there will impose hardships on inmates and staff. He acknowledged that this MDC housing had been used during the recent job action but suggested it was impractical for longer periods.

Mr. Wolf then stated that the beds at MDC were not, in fact, the beds he referred to as empty. Rather, he was referring to the following vacant beds: 116 beds in two dorms at the Correctional Institute for Men (CIFM); 73 beds in Mod 4 beds at the North Infirmary Command; 66 beds in two dorms in the Brooklyn Correctional Facility; and 63 beds on Hart Island. This does not include any beds at MDC. Mr. Lenefsky then asked whether the options provided by the empty beds described by Mr. Wolf had been discussed before the Department's variance request was made. Mr. Daly responded that the Department customarily provides Board staff with a description of the best available alternatives for the Board to act on, but in this case a full consideration of all

alternatives may not have been presented to the Board.

Mr. Kasanof then suggested the Department withdraw the current request and submit a new one to the Board. Mr. Daly agreed with this suggestion. Mr. Bair again noted that the Department was faced with a mid to late September date for completion of the kitchen at the White Street facility. Mr. Kasanof asked whether it might be possible to defer work on the ferry until new bed space became available.

Mr. Kasanof then noted that the current census indicated the Department was at 102% of capacity and that, based upon historical precedent, population pressures on the system could be expected to increase in the fall. With this in mind, he offered a warm personal invitation to the Commissioner to join the Board at its next meeting to discuss the way in which internal matters are now investigated by the Department. Mr. Kasanof said that he was concerned about the necessity of asking an independent party, such as DOI Commissioner Shepherd, to investigate Departmental matters and asked that Mr. Lenefsky and Reverend Bryer form a committee, with Mr. Lenefsky as chairman, to review the Department's internal investigative and disciplinary procedures. He then asked that the Commissioner share in a discussion regarding these issues at the next meeting of the Board.

Mr. Kasanof then stipulated that if new discussions

regarding possible alternative requests for squeezing inmates take more than one day, the Department must discontinue unauthorized squeezing of dormitories or it will be out of compliance with the Board's Minimum Standards. Mr. Bair acknowledged this stipulation, stating that he is looking forward to working with the Board and is concerned that the Department follow all applicable Standards and court orders. He added that he is committed to maintaining professional standards relating to Departmental policies and procedures. Mr. Kasanof then stated that Mr. Bair should understand that the Minimum Standards have the force of law and are not merely advisory. Mr. Bair replied that he understood.

Mr. Kasanof then stated that the Board was concerned about the high level of tension and potential for continued violence in the system. He emphasized that the Board would act responsibly, as required by law, as an objective oversight authority and would not pre-judge evidence or hastily draw conclusions. He added, however, that substantial evidence is being uncovered daily that indicates the Board's request for an independent investigation of the violence at OBCC cannot be considered frivolous.

The meeting was adjourned at 4:10 P.M.