

**NEW YORK CITY**  
**BOARD OF CORRECTION**  
**MEETING OF NOVEMBER 14, 1990**

Members Present

Robert Kasanof, Chairman  
John R. Horan, Vice Chairman  
Rev. Irvine Bryer, Jr.  
Louis Cruz  
David A. Schulte  
Rose M. Singer

Excused absences were noted for Judge William Booth, David Lenefsky and Barbara Margolis.

Representatives of the Department of Correction

Arthur Sinai, Deputy Commissioner  
Robert Daly, General Counsel  
Hector Eugui, Deputy Chief of the Department  
Toni Bair, Assistant Commissioner

Others in Attendance

John Guzman, New York State Commission of Correction  
Frank Reay, State Senate Committee on Crime and Corrections  
George Jordan, New York Newsday  
Mark Mooney, New York Post  
Mary Jo Mullan, Office of Compliance Consultants

The meeting began at 2:15 p.m. Chairman Robert Kasanof welcomed the representatives of the Department of Correction and other guests. He then called for a motion to adopt the minutes of the Board meeting of October 10, 1990. The motion was made by Board member Rose M. Singer, seconded by Board Member David A. Schulte and approved by all Board members present. Mr. Kasanof then noted that Board vice-chairman John Horan and Board member Reverend Irvine Bryer, Jr. would arrive at the meeting late and that certain business would not be conducted until their arrival.

Mr. Kasanof then inquired as to the status of the opening of the Nursery Beacon facility. He asked Department representatives whether they anticipated requesting a variance to house inmates in that facility prior to the next scheduled Board meeting. Mr. Bair responded that the opening of the facility was effectively out of the Department's hands. He explained that the Commissioner for Capital Development, Sharon Keilin, is currently working with the relevant agencies on health and safety issues related to the opening of the facility. Specifically, Commissioner Keilin is handling the issue of methane gas present at the facility. Mr. Bair stated the opening would not take place for at least ten days and that the Department would contact the Office of Compliance Consultants, the Legal Aid Society and the Board as soon as approvals are secured from the relevant agencies and that any request for a variance, if needed, would be made at that time.

Mr. Kasanof raised the issue of telephone polls on Department requests for variances. He said that the strength of Board meetings is that they provide members with an opportunity to exchange views before votes are taken. He stated further that a resolution dealing with the issue of telephone polls would be discussed later in the meeting. Mr. Bair said that the Department was sensitive to the Board's position and would do everything in its power not to make an untimely request. He said that in terms of population pressures the Department is in relatively good shape, and that the system's population has reached its peak.

Mr. Kasanof said he wished to return to the Nursery Beacon issue. Deputy Chief Hector Eugui reported that the Department of Environmental Protection (DEP) did not approve the interim operating plan for the facility that addressed the methane issue and that the plan is now being rewritten. Mr. Kasanof emphasized that the Board would not entertain or grant a variance for the facility until it received documentation from the Fire Department (FDNY) and the DEP that approved operation of the facility. He noted the potential for tear gas and firearms to ignite methane gas and explained that the Board requires assurance that methane levels are safe for the intended use of the facility.

Reverend Bryer then asked what procedures were in place to

monitor the level of methane at the facility and whether there was a generally accepted safety level. Board Member Louis Cruz said that there was a statutory standard. Mr. Schulte asked whether the City considered the possibility of the presence of methane during the planning stages for the facility. Mr. Cruz stated that Department actions conveyed the impression that the Department felt it was exempt from preconstruction regulations. Department General Counsel Robert Daly responded that the Department did not feel it was exempt from such requirements and that as soon as the presence of methane was detected the Department brought in experts to investigate and abate the problem. Mr. Cruz noted this issue was important because the Department could recover costs from the contractor if planning and tests for methane were not conducted. Mr. Daly noted that methane pools are subject to shifting and this had happened at the Nursery Beacon. He assured the Board that all appropriate agencies have been involved throughout the building and approval process.

Mr. Schulte then asked what the toxicity of methane was. Mr. Cruz commented that it was very high. Mr. Kasanof stated that the main problem was that the gas was highly combustible. He stated that despite the Department's assurances the Board would require the proper releases from the FDNY and the DEP. Mr. Bair responded that the Commissioner Keilin would provide them. Reverend Bryer noted that certain City and State agencies may be

exempt from performing Environmental Impact Reports (EIRs) and asked whether there was, in fact, a requirement for an EIR at that site. Mr. Bair suggested that the Board communicate specific questions such as these in writing so that the Department can fully respond to them.

Mr. Kasanof then asked whether there were additional issues to be discussed regarding the opening of the Nursery Beacon facility. Mr. Eugui said there were none at this time. Mr. Bair agreed but added that until Montefiore is able to provide medical services at the facility, services would be provided through the Otis Bantum Correctional Center (OBCC). Mr. Bryer asked whether vehicles would be dedicated specifically to provide transportation of inmates to OBCC. Mr. Bair responded that there would be.

Mr. Kasanof then stated he would like to discuss the issue of the receiving rooms. He noted that he was informed that there was severe overcrowding in the receiving rooms and that the matter would soon be before Judge Lasker. He explained that he had written Mr. Daly stating that since the issue was to be heard in Federal Court the Board would, as is customary, defer to the Judge's decision. Mr. Kasanof said that after learning this Board member David Lenefsky informed Mr. Kasanof that he should have consulted with the Board on the issue. He agreed that in the future he will discuss such actions with the Board to

determine if members hold differing views. He added that as Chairman he can only function if he is on the same wavelength as the Board and promises to consult with them in the future.

Mr. Horan said that he would like to add to Mr. Kasanof's comments. Mr. Horan related that Mr. Lenefsky explained to him that his comments were prompted by the unraveling of the management of Rikers Island and this led Mr. Horan to reflect that perhaps the Board should not be granting variances so readily. Mr. Kasanof indicated that he did not feel that the Board could be perceived as giving in to the Department, noting that the Department would probably not take the view that the Board had been lenient with them.

Mr. Kasanof then stated that as reads the numbers, the Department has been too optimistic about its ability to keep pace with the growing inmate population. Mr. Bennett's figures suggest the Department will be in deep trouble early next year. Mr. Eugui stated that he disagreed. He explained that if the Nursery Beacon facility opens as planned, sometime prior to the previously scheduled February opening, the Department should be able to avoid a crisis. Mr. Kasanof then asked how many beds there were at the Nursery Beacon facility. Mr. Eugui reported there were 853 beds. Mr. Kasanof then asked whether this would take the Department through the year. Mr. Eugui responded that if the State continued taking inmates with no backlog and the

assistance of Parole Board continued, things will stay on track.

Reverend Bryer noted that Mr. Eugui's scenario requires relying on the Nursery Beacon facility again and asked whether there were beds in the system not being used. Mr. Eugui answered, explaining that the Department has reduced the number of down cells to 343 from 495, and expects to reduce that number to 0. He added that the Department just started to receive toilets, sinks and other supplies requested and should have all they have ordered by early December.

Mr. Cruz asked why the Department continues to use porcelain bowls which can be broken so easily. Mr. Eugui said the decision was based on economics. He explained that the Department had repeatedly requested steel fixtures but the Office of Management and Budget had refused such requests because porcelain bowls cost about a third as much as steel bowls. Mr. Schulte stated the pressure on OMB may not have been sufficient. Reverend Bryer then asked what the Department intended to do about reducing the number of down cells. Mr. Eugui responded that it would set up a \$750,000 repair fund for spare parts. Reverend Bryer continued, asking if there were any plans to gradually introduce steel bowls. Mr. Bair said that, to his knowledge, there were not. Mr. Sinai offered that it might be more productive to refer such issues to Commissioner Keilin.

Mr. Kasanof said that, if requested, the Board would prepare a letter raising the issue of the long-term advisability of using porcelain fixtures the Department could take to OMB.

Mr. Schulte said that it should be made clear that the issue is one of public safety, not merely preference for porcelain over steel--that the presence of excessive numbers of down cells may lead to the early release of inmates.

Mr. Schulte continued, noting that conditions in the receiving rooms and housing areas at the Rose M. Singer Center were shocking during his last tour there. He noted that there were holes in walls, that wiring was exposed in some showers and that many areas were filthy. He asked why, if some Sprung structures were being converted to storage, the overflow from the receiving rooms wasn't housed in the Sprungs. Mr. Eugui said the Sprungs were not being converted and explained that detainees were currently housed in them. Mr. Schulte asked how long it would take to add more Sprung structures. Mr. Eugui responded that it would take only three months to construct such facilities. Mr. Schulte commented that such construction was advisable.

Mr. Kasanof said that he had met with Deputy Mayors Mollen and Steisel and feels the City is aware of the major correctional problems it faces. He explained that the City faces three

options; build more facilities, develop effective alternatives to incarceration or have the system's population capped. He explained that the State system has reached the point when it is unable to accept more inmates and that increased police activity will, inevitably, lead to some increase in the jail population. Therefore, it is essential for the Department to take some action or it will be overwhelmed by numbers by early next year. He said that the Board would like to know, with some specificity, how the Department will respond to such a population increase without housing people in gyms. He noted that there is a powerful public safety interest in seeing that criminals are confined, but confined under conditions that meet Constitutional standards.

Mr. Kasanof continued, reporting that Mr. Schulte had spoken with Executive Director Richard T. Wolf about having a jail assigned to him that he would visit on a regular basis. Mr. Cruz stated that he felt such an arrangement would not be productive because correction officials would anticipate the visits and act to hide problems. He said that random visits were much more effective for finding out what is really going on in an institution. Mr. Kasanof replied that he thought both approaches could be combined, that those Board members who wished to adopt an institution could and would be assisted by Board staff assigned to that institution. He noted that the practice of visiting an institution regularly had begun with Mrs. Singer's visits to the Correctional Institute for Women and the Department

recognized the value of these visits when it named the Singer Center after her. Mr. Bair commented that he had been a warden and had over 20 years experience in corrections and that it was his experience that it was exceedingly difficult to "fix up" an institution in a short time and that is why the Department's believes the Board should go anywhere in the system anytime they wish.

Mr. Cruz said that he was very impressed with Warden Gaston's ingenuity. He explained that this ingenuity was manifested in the ability of the Warden to shift inmates in and out of receiving rooms in the manner of a "shell game" in order to disguise the extent of the overcrowding of the facility. He added that this created a situation where medically cleared inmates were mixed with inmates who had not been medically cleared and this jeopardized the safety and well-being of officers. He characterized this practice as atrocious. Mr. Kasanof said that this shell game, though it achieved technical compliance, was likely to have the long term effect of making the Board very reluctant to grant emergency variances. Mr. Bair said the Department put inmates in the gym to keep them from having to stand for 12 hours or more. Mr. Kasanof reiterated that it was a bad situation, that it was now cured, but that its continued practice would erode the Department's credibility.

Mr. Daly stated that he had received two calls from Mr.

Kasanof regarding such shell games. He explained he is mindful that the Board knows a shell game when it sees one. He added that the situation at RMSC occurred because there were no cots in the gym. When the administration became aware of the situation, cots were provided.

Mr. Wolf asserted that such shell games do in fact occur. He explained, however, that they put the Department in violation of the 12 hour transfer rule and that there is a tendency for such games to result in the loss of inmates in the system. For example, the Board learned that eight inmates housed in a receiving room at the George Motchan Detention Center for several hours missed court dates and, consequently, may not have been released, further crowding the system. Mr. Wolf also noted that the labor costs for replacing porcelain bowls exceeds the price differential between porcelain and steel fixtures.

Mr. Wolf said that despite the fact that the Department was under pressure to avoid a contempt citation from Judge Lasker, it had only managed to repair 27 down cells between November 2, when the number of down cells was 370, and November 14, the date of today's meeting. Therefore, the Department's ability to decrease the down cell numbers as represented today does not seem credible. Mr. Sinai said that the down cell problem goes back a year and a half, when the Department was refused funds for staff overtime to repair cells and for equipment needed to make those

repairs.

Mr. Schulte then asked how many toilets were provided for the 80 women who were housed in the gym at RMSC. Mr. Wolf informed him there were two functioning toilets in the gym. Mr. Schulte noted that this was a violation of the Standards and asked whether there were toilets in the closed third tier at the James A. Thomas Center. Mr. Eugui reported that the toilets in those cells had been cannibalized for use in other facilities. Mr. Schulte then asked if, as he had heard, there were 400 unused cells upstate. He protested the squeezing of inmates here when the State won't let the Department use those facilities. Mr. Eugui explained that they were not unused cells, rather they were unused beds in gyms.

Mrs. Singer moved that the Board extend all variances. Mr. Schulte seconded the motion and the vote was carried by all present. Mr. Kasanof then called for a vote on the resolution to discontinue the use of telephone polling regarding variances. The move for a vote was seconded by Mr. Horan with all those present voting yes (a copy of the resolution is annexed hereto).

Mr. Bair then commented that planning for the Nursery Beacon facility was set into motion many years ago and if it had opened as planned the population problem would not have occurred. He noted that this showed that the Department correctly anticipated

the population increase, but was unable to respond to it because of the late opening of the facility. Mr. Kasanof responded that no one familiar with construction in New York would have expected such a project to be completed on schedule.

Chairman Kasanof thanked the representatives of the Department of Correction and others present for their participation in the Board meeting. The meeting was adjourned at 3:00 p.m.