

Board of Correction
Minutes
August 9, 1988

A meeting of the Board of Correction was held on August 9, 1988. Members in attendance were Chairman Robert Kasanof, Vice-Chairman John Horan, Judge William Booth, Angelo Giordani, Barbara Margolis, and Rose M. Singer.

The Department of Correction was represented by: Julian Prager, Deputy Commissioner; Robert Daly, General Counsel; David Frankel, Special Counsel to the Commissioner; George Vierno, Deputy Chief of Operations; and Michael Cleary, Executive Director of the Management Evaluation Division.

Also in attendance were Fran Vella from the State Senate Committee on Crime and Corrections, Jonathan Drapkin from the New York City Office of the Coordinator of Criminal Justice, Evelyn Hernandez from New York Newsday, and Paul LaRosa from the Daily News.

The Chairman opened the meeting at 2:10 p.m. by reporting that the day's census was 16,187, the second highest census in DOC history. He reported that the highest census, 16,223, had been recorded on the previous day. Further, he stated that 507 State inmates in the City system have exceeded the time beyond which they properly belong in State custody. Mr. Kasanof made the point that if the State were to immediately take custody of these inmates, the City's system would then be operating at less than 100% of capacity. The Chairman reiterated his long-standing belief that the presence of such a large number of State inmates in the City system, particularly when it is over capacity, constitutes a serious threat of violence and unrest, and said that he has relayed his concerns to both Peter Benitez, the City's Criminal Justice Coordinator, and his State counterpart, John Poklemba. He said that Mr. Benitez assured him that he shares the Board's concern over the impact on the City's jails of the accumulation of State inmates. Mr. Kasanof stated that Mr. Poklemba put aside the issue of transferring State inmates, and informed him that as soon as the operating agreement between the City and the State is signed, the State will begin to accept City-sentenced inmates into the new upstate facilities, which have already been staffed. The Chairman added that Mr. Benitez reassured him that the Department's budget for the upstate jails is on the Board of Estimate's calendar for this week, and that once financing is approved, the Department will act as quickly as possible to move inmates upstate. Mr. Kasanof said that he asked the two

Coordinators to work together in an effort to expedite the screening and transfer of inmates for the upstate jails.

Mr. Kasanof asked the Board's Executive Director, Richard Wolf, to update the Board members on the existing variances, for which the Department seeks a 30 day renewal. He noted that two of the variances had been granted recently by telephone consensus of the Board members, and are scheduled to expire today.

Mr. Wolf stated that the existing variances consist of the following:

517	beds at CIFM for City-sentenced males and for State inmates in the modules within their first 14 days of custody in the DOC system, for a facility capacity of 2600
9	male City-sentenced beds at QHDM
11	male City-sentenced beds at BXHD
140	male City-sentenced beds in 10 dormitories at BCF
<u>30</u>	male City-sentenced beds in one dormitory at the North Facility
707	

The Chairman stated that the Department has also made a request for an additional 207 variance beds for City-sentenced inmates, to take effect on August 22, as well as 150 variance beds for State inmates, to take effect on the same date only if the aforementioned 207 beds are not sufficient to sustain the population increase.

Mr. Kasanof said that the Board has always opposed the concept of an "inventory" of variance beds such as those which the Department is now requesting, and stated that variances are intended strictly for emergencies in which the Department can demonstrate a clear and immediate need to "squeeze" a limited number of inmates. He cited the fact that in the past year, the Board has revoked 800 variance beds without dire consequences for the Department, partly because many of them had not been in use. Regarding the request for additional variances for State inmates, the Chairman expressed shock that the Department would even consider making such a request. Mr. Kasanof reminded the DOC representatives that, at the July meeting, he pledged that unless the State took steps to significantly reduce the number of State-ready inmates in the City system, he would recommend the revocation of all existing variances for State inmates.

The Chairman asked the Department's representatives to comment on the State Criminal Justice Coordinator's contention that the upstate facilities are ready to accept

City-sentenced inmates as soon as the City is prepared to send them.

Mr. Frankel responded that the City and the State should be able to finalize their agreement before the end of the week, at which time the City's plan for transporting the inmates will go before the Board of Estimate. He said that the State Department of Correctional Services will send to CIFM, on August 15, the head of the seventeen person screening committee that will be responsible for selecting the City-sentenced inmates who will be sent upstate. Mr. Frankel indicated that the Department will be prepared to submit a list of inmate candidates as soon as the screening committee is assembled. He reported, however, that when DOC staff visited the upstate jails last week, they observed no correctional staff, and determined that only one of the two jails appeared to be within a week or two of completion. Mr. Frankel contended that the newspaper articles on the status of the upstate jails had been an attempt by the State to deflect attention from the State's failure to pick up its inmates from City jails.

Judge Booth warned that the State's "right of refusal" in the selection of inmates may present a significant obstacle to the expeditious transport of inmates to the upstate facilities.

Mr. Daly reminded the Board that the State will not house any of its State-ready inmates in the upstate jails, and opined that it was disingenuous of the State to publicly declare itself ready to accept City-sentenced inmates when it had not yet convened its committee to select these inmates.

Mr. Kasanof inquired as to the date by which the entire screening committee will be assembled to review inmate records for the criteria agreed upon by the State and the City.

Mr. Frankel responded that only the head of the committee is expected on August 15, and that it was not clear when the other sixteen members would arrive.

The Chairman expressed his belief that the City must pressure the State into expeditiously removing State-ready inmates from DOC facilities, and asserted that the Board, by granting the additional variances requested for State inmates, would simply be aiding the State's ongoing attempts to export its overcrowding problems to the City; the State would then have no incentive to pick up its inmates.

Mr. Frankel asked the Board to consider the fact that the City has been intensely involved in negotiations with the State on the agreement over the upstate jails. He

explained that since the negotiations have been quite delicate, it has not been easy for Commissioner Koehler to simultaneously press for a more expeditious removal of State-ready inmates. Mr. Frankel added, however, that as soon as the agreement is finalized, the Commissioner will be in a better position to insist that the State abide by the terms of the August, 1986, agreement regarding the timely transfer of State inmates.

The Chairman asserted that the Board, by refusing to grant additional variances, would actually be providing the City with leverage which could be of assistance in discussions with the State. He reported that State-ready inmates have recently been transferring out of the City system at a rate of approximately 380 per week, and inquired as to the rate at which they have been coming in. He added that many of these transfers involve newly-sentenced inmates.

Mr. Prager said that, recently, State inmates have actually been entering the City system at a rate slightly less than 380 per week, adding that the current total of 507 State-ready inmates over the time limit is primarily attributable to a pre-existing backlog.

Mr. Frankel asked the Board to take into consideration the fact that the Department has admitted more than 1100 inmates, of all categories, in the last twenty days. He asserted that it would therefore be an error to assume that the Department's current overcrowding problems are entirely attributable to the backlog of State-ready inmates.

The Chairman asserted that since the aftermath of the February riot at the Anna M. Kross Center (AMKC), the data clearly shows that the average number of State-ready inmates in the City system past the time limit has steadily increased.

Mr. Daly reminded the Chairman that the Department would also prefer that the State take immediate custody of State-ready inmates, but added that since no official agreement is in effect between the City and the State, there is little that can be done to force them to do so. He asked Mr. Kasanof to suggest actions the City might take to pressure the State on the matter.

Mr. Kasanof responded that for some time he has been urging the City to commence a lawsuit against the State. He said that it was his understanding that the lawsuit brought by the New York State Sheriff's Association had failed only because the Sheriffs sought State-wide relief without being able to demonstrate that an overcrowding problem exists State-wide.

Mr. Daly stated that he will relay the Chairman's suggestion to Peter Zimroth, the City's Corporation Counsel; and to Criminal Justice Coordinator Benitez. He said that in the meantime, however, the Department requires an additional degree of flexibility in order to operate the City's jails.

Mr. Kasanof asserted that the Board's main concern is assuring that DOC facilities are managed in accordance with minimum standards. He said that since the Department has stated that it is unable to predict the number of State inmates that will be in City custody on August 22, the granting of the additional variances requested would be tantamount to the issuance of a "blank check."

Mr. Daly stated that he does not see how the Board's refusal to grant additional variances will assist Chief Murray and Deputy Chief Vierno in running the City system.

The Chairman replied that the Board is primarily concerned with the protection of public safety and compliance with the minimum standards, not with providing assistance to the Department's managers. He then expressed his dissatisfaction with the Department's long delay in establishing an independent trial commission in accordance with the recommendations of the Special Committee on the Use of Force.

Mr. Daly asked that the Board focus on some of the positive steps the Department has recently taken. He reported that since December of 1987, with the assistance of two attorneys on loan from the Police Department, the Department has disposed of 606 disciplinary cases involving uniformed personnel. Mr. Daly also reported that as a result of the Department's intense lobbying efforts, the State Senate has passed legislation which will permit detainees to participate in work release.

Judge Booth expressed his frustration over the City and the State's inability to resolve their dispute over State-ready inmates in the City system, and requested that the Board send a formal notice of concern to both the Mayor and the Governor.

Mr. Frankel expressed his agreement with Mr. Daly's point that although the Department is willing to initiate a legal action against the State, the outcome of such action will not be known for quite a while, and therefore will not assist the City with its current overcrowding crisis. He also said he does not understand how the Board's refusal to grant additional variances will help the Department press the State into picking up its inmates.

The Chairman responded by stating that the Board is making every effort to fulfill its statutory duty of enforcing minimum standards in the City's jails. He said that the Board, in the discharge of its duties, is quite often required to measure requests for variances against the history of disturbances in the Department's facilities, and indicated that the presence of a large number of State inmates in the City system has quite frequently been a precursor to outbursts of violence and unrest, particularly when the census of the City's own inmates has also been high. The Chairman added that each time a major disturbance has erupted in the City, the State has managed to find bed space within its own facilities and to send buses to pick up its inmates from the City.

Mr. Kasanof moved that the Board grant a 30 day extension of the existing variances.

Mr. Giordani asked the Department's representatives to explain the logic behind the Department's apparent willingness to shoulder the burden caused by the excessive number of State-ready inmates in the City system.

Mr. Frankel replied that the Department is doing all it can to expedite the removal of the State-ready inmates, adding that the additional variances are needed simply to help the Department manage a difficult interim period between the takedown of the Bibby Venture and the transfer of inmates to the new upstate jails.

Mr. Daly asserted that one critical aspect of the current situation is that the State is not required, by statute, to take custody of parole violators within any specified period of time. He said that the courts have ruled that parole violators are primarily the responsibility of the municipalities and local law enforcement entities across the State.

Mr. Kasanof stated that he feels it would be unfair for anyone to portray the Board as insensitive to the Department's needs, and reiterated his recommendation that the Board renew the existing variances.

The motion was seconded by Mr. Giordani and approved unanimously.

The Chairman said he would not move that the additional variances be granted, and asked if any of the other Board members intended to make such a motion. No motion was made and the Department's request for additional variances was never put to a vote.

Mr. Prager asked the Board members to consider that the 150 additional variance beds requested for State inmates

would be used only if the other variance beds are not sufficient to cover the population increase.

The Chairman stated that the Department needs to realize that given the intolerably high number of State-ready inmates currently in the City system, the Board is totally unwilling to consider granting any additional variance beds for State inmates. He asked for a resolution which would allow the Board to convene telephonically in the event of an "emergency request" for variances prior to the September Board meeting.

The resolution was passed unanimously.

Judge Booth expressed concern over the "acrimonious" tone of the meeting, and stated that the Board should not even indirectly suggest that the Department lacks genuine concern for the safety and well being of all inmates and correctional personnel.

Mrs. Singer agreed that the harshness in the tone of the Board meeting was unnecessary and should be modified.

The Chairman apologized for what he said may have sounded like personal criticism of the efforts of the Commissioner and the Department to relieve overcrowding, but reiterated his belief that the Board simply cannot allow the State to export the burden of its own overcrowding problem to the City.

Mr. Frankel stated that he trusts that no one would believe that the Department considers the Board a handicap to the operation of the City's jails. He added that although he disagrees strongly with the Board's refusal to grant the additional variances requested, he looks forward to a continuation of the productive relationship that has existed historically between the Department and the Board.

A motion to approve the minutes of the July meeting was made by Mrs. Singer, seconded by Judge Booth, and passed unanimously.

The meeting was adjourned at 3:10 p.m..