

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

December 3, 1973

A regular meeting of the Board of Correction was held on Monday, December 3, 1973 in the 14th floor conference room, 100 Centre Street, New York, New York.

Present at the meeting were Messrs. McKay, Becker, Dribben, Kirby, Schulte, Mrs. Singer and Rev. Wilson. Also present by invitation of the Board were John M. Brickman, Executive Director of the Board; Mary D. Pickman, Director, Legal Advocate Program; Greg Harris, Director, Clergy Volunteer Program; Kenneth G. Nochimson, Co-Director, Legal Advocate Program; and Sylvia Kronstadt, staff assistant.

Present from the Department of Correction were Benjamin Malcolm, Commissioner; Jack Birnbaum, Deputy Commissioner; Alphonso Ford Assistant Commissioner; Paul Dickstein, Assistant Commissioner, and Joseph D'Elia, Director of Operations.

Mr. McKay acted as Chairman and Ms. Kronstadt acted as Secretary of the meeting.

The meeting was called to order at 2:45 p.m.

The Chairman requested discussion of a proposed resolution that would urge community involvement, in the form of public hearings, in the appointment of members to the State Commission of Correction. Mr. Brickman emphasized the importance of promoting means to insure the independence of the Commission. Mrs. Singer expressed concern about the hearsay and misinformation that public hearings might produce if sources who have little information about, or antagonism toward, nominees are permitted to testify. Mr. Schulte suggested that in order to avoid the appearance of a direct attack against any individual, the resolution be generalized to include all state commission appointments that require Senate confirmation.

Mr. Becker arrived at 2:55 p.m.

The Chairman noted that if the appointing authority is aware that its nominations will be subject to public scrutiny, it will likely perform its screening and selection function with greater care. Upon motion duly made and seconded, it was

RESOLVED THAT the Board of Correction urges that the State Senate Finance Committee hold public hearings into the appointments of a chairman and members of the State Commission of Correction. Given the goals of

independent evaluative judgment, public accountability, community involvement in the prisons, and perhaps foremost, the creation of lasting public confidence in the correctional system, it is vital that a correctional commission be independent of the line agency it is empowered to monitor and advise. In order to assure the nomination and approval of persons of the highest ability, integrity and calibre, the nominees for these and other offices subject to Senate confirmation should be the subject of public hearings. The hearings must provide an opportunity for the expression of judgments, opinions and concerns by all elements of the community which will be affected by the nominations.

The Chairman noted two concerns he had with respect to the Inspector General study. Referring to the study's eighth recommendation (p. 49) which states that "All Departmental charges lodged during the past 11 months as a result of recommendations by the Inspector General must be resolved by January 15, 1973," the Chairman questioned whether such a requirement provided adequate time to the Department. Mr. Nochimson explained that the Inspector General's office had only conducted 36 investigations in which such charges might have arisen, and that it was unlikely that there were more than a few cases outstanding with such charges pending. The Chairman also asked whether it is necessary to take the stand expressed in the study's final paragraph, in which the adequacy of the Commissioner's response to a CJCC request for information is questioned. Mr. Brickman reported that the references in the paragraph have been depersonalized to "Department" rather than being leveled directly at Commissioner Malcolm. The Chairman reiterated that he would prefer to see the paragraph deleted from the Board's report. Mr. Nochimson noted that its purpose is to indicate that the only action taken by the Department since the last Board meeting has not been substantial. The Chairman said he would prefer that the paragraph appear in the transmittal letter, rather than in the report. Mr. Brickman discussed the desired impact of the report, and read the text of the proposed transmittal letter which states that the Board will take no public action at this time on the Inspector General matter. The letter requires that the Department accept "in principle" the Board's recommendations, and demonstrate substantial compliance, by the end of the year. The possible impact of the report was discussed. The Board agreed that it did not choose to jeopardize the Commissioner's chance for reappointment. Mr. Kirby asserted that the Commissioner should be confronted with a strong, unequivocal report regarding the failure of the Inspector General. Mr. Dribben added that if it is agreed that the concept of an Investigations Unit is worth salvaging, the Department should be given an honest chance to resurrect and rejuvenate it.

Upon motion duly made and seconded, the report and transmittal letter were approved as amended.

Ms. Pickman presented the final draft of the Pre-Sentence Report study, noting that it raises questions rather than taking positions. She pointed to the incongruity of a system that operates on plea bargaining yet requires preparation of pre-sentence reports prior to formal sentencing. The entire process should be reexamined to define at what point the sentencing process actually begins, she said. Perhaps investigations for the reports should begin sooner, to minimize delay, she suggested. The report is only for private circulation at this time, declared Ms. Pickman. It should be sent to the presiding justices and possibly to interested legislators and to CJCC to inspire legislative change. Ms. Pickman noted that specific recommendations will be drafted in the future, and that the release of the recommendations might be used as the occasion for release of the report. Ms. Pickman requested and received Board permission to have the report published in the Fordham Urban Law Journal, and to circulate it privately.

The Chairman asked Mr. Brickman what action he wished the Board to take with respect to the Prison Nursery report. Mr. Brickman requested the general approval from the Board to proceed. The report must be edited and updated, submitted to the Commissioner, and released publicly, he said. Mrs. Singer suggested that Superintendent Murph and others who are quoted on important policy matters be permitted to confirm the accuracy with which their statements are reported. Mr. Brickman agreed that the report would be submitted to such sources for "review and comment" but not for clearance.

Mr. Brickman announced that the tour of the Manhattan House of Detention, previously scheduled for December 7, had been cancelled because of lack of interest on the part of Board members.

The Chairman announced that the next Board meeting is scheduled for Monday, December 17, at New York University Law School.

The Chairman requested that Mr. Schulte discuss the matter of telephones for detainees on Rikers Island, which have been a recurring source of tension and frustration. Mr. Schulte commented that he had spoken with Jack Meredith of the Telephone Company, who confirmed that contracts such as the one with the Department take about a year to complete. The major problem, according to Mr. Schulte, is that the Department was 1 - 2 years derelict in negotiating the contract. In addition, the Department has failed to perform a number of tasks in relation to the project, and the phone company feels no pressure to give the contract greater priority, according to Mr. Schulte.

At 3:50 p.m., Commissioner Malcolm and Deputy Commissioner Birnbaum arrived.

The Commissioner stated that the Department was prepared some time ago to move forward with a complete new phone system, but that over the years the trunk lines to the Island have become overloaded because of the construction of new institutions. A tie-in with the inmate information system was also contemplated. The phone project was intended to begin at the first of 1973,

but the money did not become available until July, the Commissioner said.

Mr. D'Elia arrived at 3:55 p.m.

The existing conduit extends only to the middle of the island, the Commissioner continued. Additional conduit must be installed. The existing dispatch office may be used to house the new telephone equipment, rather than building another structure, according to Mr. Birnbaum. The requirement is not for a major building, but for something akin to a pump station, he said. The Commissioner expressed surprise that phone company representatives had attempted to place blame for delays in phone installation on the Department. Ms. Kronstadt reported that Mr. Meredith had said of the phone company, "we are and we aren't" being held up by the Department. The phone company must receive from the Department signed floor plans for each detainee institution indicating where phones are to be placed. It also needs a room in each institution in which equipment may be housed and accessible, as well as the small \$30,000 structure through which the cable will run, according to Ms. Kronstadt. Ms. Kronstadt confirmed that Mr. Meredith had agreed that even if the Department were to complete such requirements "by tomorrow" the phone company would still require at least 10 months to complete installation. However, the Department's inaction could result in the contract requiring even more than one year, according to Ms. Kronstadt, noting that the target date of "about a year" has been quoted for the last five months. The Commissioner explained that his bureau of Engineering and Design is overburdened with work, and that as the Department moves more extensively into renovative work, needs for a larger staff will increase. The Commissioner agreed that a meeting with representatives from the Department, Board and phone company would be helpful.

At 4 p.m. Mr. Dickstein arrived.

Ms. Pickman raised the issue of Board access to inmates. She recounted the example of an alleged Black Liberation Army member who, through the Fortune Society, had requested to meet with a representative of the Board. When a Board staff member presented his pass at the House of Detention for Men on Rikers Island, he was detained for some time and ultimately denied access to the inmate. Ms. Pickman questioned why Board access to certain inmates should be limited by the Department; there should be no differentiation, she said. Mr. Brickman asserted the Board's responsibility and authority to meet with any inmate who so requests. The Commissioner reported that the Department has had standing orders that certain high-risk inmates not be moved unnecessarily, particularly since the Henry Brown escape. When such an inmate is taken to court, he must be surrounded by an "army" of security personnel, the Commissioner said. Currently, 21 of these "high-risk" inmates are incarcerated in City

facilities, the Commissioner noted, and Board staff members should not expect to receive the same response to requests to interview such inmates as for the general inmate population. He suggested that because interviews with such inmates require a stricter kind of security, clearance from his office be secured prior to interviews.

The Chairman discussed the continuing issue of transportation and court delay, noting that the Board is attempting to organize a group to discuss logistics. He reported that he had spoken to Michael Dontzin, Counsel to the Mayor, who has agreed to speak with Justice David Ross and arrange a meeting with the Department. The Commissioner revealed that in a recent Departmental survey during a defined time period, 58% of defendants were produced in Court before 9:45 a.m., 7% before 10 a.m., and 35% after 10 a.m. (96% of whom arrived before 11 a.m.). In every case, the prisoner who was called had been there 1 - 2 hours before he was called. The Commissioner also noted that in Manhattan the number of defendants delivered but not seen by the judge has dropped from 16% to 5%. Twenty-one buses should have been delivered in September, but it appears now that delivery will be delayed until at least January, the Commissioner said. Because the Department has begun using chartered bus service to transfer inmates to Sing Sing, it is presently able to use more Departmental buses to improve the court delivery situation, he added. However, as long as the courts place all of the blame for late delivery on the Department, the problem will be insoluble. At a recent Departmental meeting it was resolved to send the vans out each morning by 6:15 a.m. and to have all inmates in court by 10 a.m. The Chairman offered to have Board representatives to meet with Department and Court officials to make further progress on the court delivery problem.

The Chairman informed the Commissioner that the Board's Inspector General report would be delivered to him the following day. The Commissioner agreed that the unit needs improvement, and that a number of changes will have to be made in order to obtain refunding.

Mr. Brickman asked about progress on the chaplaincy recommendations, and the Commissioner agreed to look into the matter.

The Commissioner expressed pleasure at the "glowing reports" received from the Board regarding Inmate Council meetings. However, it was reported that at present there are no active councils at Brooklyn, ARDC, or ADC.

The Commissioner related the difficulties experienced by the Department in public reactions to community-based facilities. The Department intends to initiate a citizens' advisory council to act as a liaison between the community and the Department, the Commissioner said, and invited the Board to be represented on such a body. The Commissioner noted that even such liberal spokespersons as Representative Bella Abzug, Councilwoman Carol Greitzer and Senator Manfred Ohrenstein had criticized the facilities. Representative Abzug had written that "ample time (is needed) to determine the merits" of community-based programs,