

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

July 9, 1973

A regular meeting of the Board of Correction was held on Monday, July 9, 1973, in the 14th floor conference room, 100 Centre Street, New York, New York

Present at the meeting were Messrs. McKay, Dribben, Carrion, DeMonte, Kirby, and Mrs. Singer. Also present by invitation of the Board were Michael J. Dontzin, Counsel to the Mayor; John M. Brickman, Executive Director of the Board; Mary D. Pickman, Director of the Legal Advocate Program; and Kenneth G. Nochimson, Co-Director of the Legal Advocate Program.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Joseph D'Elia, Director of Operations; Ronald Zweibel, Director of Legal Affairs; Dr. Francis DeBilio, Assistant Commissioner; and Arnett Gaston, Executive Assistant to the Commissioner.

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

The meeting was called to order at 3:15 p.m. Upon motion duly made and seconded, the minutes of the meeting of June 18, 1973, were approved and requests for excused absences from Messrs. Becker, Schulte, and Rev. Wilson were accepted.

At the Chairman's request, Mr. Brickman reported that he and Ms. Pickman had been invited to teach a course on criminal justice at Staten Island Community College during the up-coming fall semester. He stated that he and Ms. Pickman would teach two hours per week and that their students would be available to do field work for the Board. He requested the Board's approval of the arrangement. Thereupon, on motion duly made and seconded, it was

RESOLVED THAT the proposal of Mr. Brickman and Ms. Pickman to teach a course at Staten Island Community College and to receive remuneration therefore be, and it hereby is, approved. Such secondary employment shall not be deemed incompatible with the aforesaid employees' primary duties. To the extent that teaching and related duties which do not result in a direct benefit to the Board may require the expenditure of time during normal working hours, such approval is conditioned upon the aforesaid employees working an equivalent period of time with respect to office matters.

Mr. Brickman reported that the Legal Advocate Program had secured a grant from the Mayor's Criminal Justice Coordinating Council for the period July 1, 1973, through June 30, 1974. Mr. Brickman stated that since the

grant funds might not be received until August, a cash flow problem was anticipated. To meet this problem, he suggested that the Board accept the offer of the Fund for the City of New York for a \$10,000 interest-free loan, to be repaid within one year. He asked the Board to authorize him to sign the loan agreement. Thereupon, on motion duly made and seconded, it was

RESOLVED THAT in connection with the anticipated cash flow problems of the Legal Advocate Program, the Executive Director be, and he hereby is, authorized and empowered to arrange an interest-free loan from The Fund for the City of New York or any other source. Furthermore, he shall be, and hereby is, authorized and empowered to sign any and all notes, papers or other documents relating to such loan. If the lender shall require any additional or substitute signatures, such Board and staff members whose signatures may be so required shall be, and hereby are, authorized to make such signatures.

The Chairman invited the Board to attend a social gathering at his home on July 18, to which the staff had also been invited.

Mr. Brickman suggested that because of vacation schedules, the Board should meet only once in August. After discussion, the Board agreed to meet on Monday, August 13, at 2 p.m. Mr. Brickman was instructed to inform Commissioner Malcolm of the meeting date.

Mr. Kirby arrived at 3:20 p.m.

The Chairman reported that he, together with Mr. Kirby, Rev. Wilson, and members of the staff, had attended the opening of the new Adolescent Reception and Detention Center at Rikers Island on June 29, 1973. Mr. Kirby congratulated the Chairman on the remarks he delivered at the opening.

The Chairman reported that he, Mrs. Singer, William vanden Heuvel, and Mr. Brickman had met with Maxwell Lehman of the New York City Charter Revision Commission. They submitted to Mr. Lehman a working paper prepared by the Board's staff, which suggests a greatly strengthened role for the Board in the new Charter. The Chairman stated that by September or October the Board should decide on an appropriate formulation of its role for the new Charter. It was agreed that the Board staff would work together with the staff of the Charter Revision Commission to formulate and implement the Board's recommendations.

At the Chairman's request, Mr. Brickman reported that the Inmate Liaison Committees are now meeting in every institution except the Brooklyn House of Detention and the new ARDC. Mr. Brickman stated that Rev. Wilson had made a significant contribution to the functioning of the Inmate Liaison Committee at the Bronx House of Detention, and that the inmates had invited him to become chairman of the committee. Mr. Brickman stated that the staff had discussed what role the Board's representatives should assume in the meetings and concluded that no definite policy should be established. He reported that the first meeting of the Inmate Liaison Committee at the new ARDC had been

postponed until September, and said that the staff believed the meetings should begin earlier. Ms. Pickman reported that the committee in the Brooklyn House of Detention is not meeting. Mr. Dribben suggested that a strong directive from the Commissioner was needed to end the stalemate in Brooklyn. It was agreed that the Chairman would raise this issue with the Commissioner.

The Chairman reported that the Board had received a letter from the Commissioner commending Mr. Dribben and the Board on the success of the military medical unit program. In his letter the Commissioner stated his wish that military medical services be provided to all City institutions. Mr. Dribben stated that he would meet with General McGrath to begin arrangements for expanding the program starting in September. Mr. DeMonte suggested that the Board secure publicity for the program.

Mr. Brickman reported on the status of the Bagley extradition case. He stated that all necessary documentation had been provided to the Maryland authorities and that a hearing would be held on July 10 in the office of the Maryland Attorney General, to determine whether the Governor should be advised to drop extradition proceedings against Mr. Bagley.

Mr. Brickman reported that the staff's work on several projects had been impeded by the Department's failure to respond to the staff's inquiries and requests for information. He described in detail several instances in which the Commissioner's office and other offices of the Department had failed to answer his letters, despite follow-up letters and telephone calls. He cited long delays in securing a response to requests for the Commissioner's approval in certain matters. In addition, he declared that the staff had encountered problems in gaining access to the institutions, particularly in connection with its survey of the suicide prevention aide program. After extended discussion, it was agreed that the Chairman would request a meeting with the Commissioner to discuss the specific matters raised by Mr. Brickman and more generally the staff's problems of access and response.

The Chairman stated that the report on the suicide of John Wayne Wilson would be released on July 11. He stated that the Board's amicus curiae brief in the Tyson case would be filed within one week. He also reported on plans to file an amicus curiae brief in Wallace v. Kern, a federal suit brought by inmates of the Brooklyn House of Detention against Kings County Supreme Court judges, seeking effective assistance of counsel and speedy trials.

Mr. Dontzin arrived at 4:25 p.m.

Mr. Dontzin stated that he had asked to attend the meeting to discuss the Department's plan to accept prisoners sentenced to terms of intermittent imprisonment. He requested the Board's assistance in preparing a set of guidelines for judges to use in imposing intermittent sentences. A memorandum prepared by the Board staff containing a number of proposed guidelines was then circulated.

Dr. DeBilio and Captain Gaston arrived at 4:30 p.m. Commissioner Malcolm and Mr. Zweibel arrived at 4:35 p.m.

The Commissioner stated that the Department had planned to accept prisoners on an intermittent basis one year ago, but the great increase in prison population in the summer of 1972 prevented the Department from implementing the plan. The Commissioner declared that population levels have now dropped sufficiently to permit the Department to begin to accept prisoners on an intermittent basis. He reported that the City's prisons are presently operating at 93 percent of capacity.

The Commissioner stated his view that the intermittent sentence could be a humane sentencing tool, but only if used properly. He declared that the intermittent sentence should not be used for traffic violators or prostitutes, who would otherwise be fined, or for those offenders who would otherwise be placed on probation. The Commissioner stated that the use of intermittent sentences raised several questions which had to be resolved: for example, whether the sentence would include days, nights, or weekends; when an intermittent prisoner would be declared to be an absconder; what type of medical examinations would be provided for such prisoners; what kind of programs should be provided for them; and whether additional staff would be required. The Commissioner stated that the Penal Law had recently been amended to require the Department to accept intermittent prisoners, beginning September 1, but that the Department would begin accepting such prisoners before that date. He asked for the assistance of the Board and the Mayor's office in conducting a study of the types of cases in which the intermittent sentence is imposed. The Chairman agreed to make the Board staff available for such a study.

Mr. D'Elia arrived at 4:45 p.m.

Mr. Brickman suggested that a program be developed in which intermittent prisoners would be employed to tutor the regular sentenced population. The Commissioner stated that such a tutorial program could not be established until the study had determined the make-up of the intermittent population.

The Commissioner reported that the Department is presently without an Assistant Commissioner for Programs. He introduced Dr. DeBilio and reported that Dr. DeBilio is temporarily coordinating the Department's program efforts.

At the Chairman's suggestion, the timetable for implementation of the intermittent sentence was discussed. Mr. Zweibel reported that the Department was prepared to certify its readiness to accept intermittent prisoners on a citywide basis by August 1. At Mr. Dontzin's request, Mr. Zweibel and Ms. Pickman were directed to prepare by July 12 an expanded memorandum of proposed guidelines for the imposition of intermittent sentences. Mr. Dontzin reported that he would meet with Judge Ross later in the week to discuss the proposed guidelines. The Commissioner stated that he would announce the Department's decision to accept intermittent prisoners approximately one week before the August 1 starting date. He asked that the Board join him in making the announcement.

The Commissioner reported on plans for implementation of the new drug law beginning September 1. He stated that the Department had begun to plan for a great increase in the detention population beginning September 1. He declared that according to Department projections, there will be 3,000 additional detainees committed to the Department's custody by September 1, 1974, a doubling of the present detainee population. He expressed his fear that all the progress made in the prisons over the last several years would be wiped out within one year by the enormous increase in population. He reported that the courts seem now to be working more effectively and that the backlog of cases has dropped significantly. He stated that the usual summer population increase had not developed this year. He declared that the Department wishes to take over the 75 Morton Street facility to house intermittent and low-risk prisoners. He stated that the Correction Law would probably be amended during the summer session of the State Legislature to permit the Department to use the Ossining Correctional Facility to house 1,000 to 1,500 sentenced prisoners and detainees. He stated that the Department would have to transport detainees housed at Ossining to the City for attorney interviews. He declared the Department's position that the cost of housing City prisoners at Ossining and transporting them to the City must be borne by the State. He reported that fifteen to twenty-five additional court parts are planned for New York City. In this connection, the Department has requested funds to hire seventy-five to eighty additional correction officers to staff additional court detention pens.

Mr. Dontzin stated his distress at the fact that the State's plans for implementation of the drug law were still incomplete, that no space for additional court facilities had been secured and no budget had been prepared for hiring additional staff. He reported that the State plans to open fifteen court parts in the City by September 1 and ten additional parts by January 1, 1974. In his opinion, the Department's projected figure of 3,000 additional detainees by September 1, 1974, was probably optimistic. He asked the Board to be prepared to speak out on this issue. The Chairman asked how the Board could secure information as to the State's plans. Mr. Dontzin suggested that the Board communicate with Archibald Murray of the Judicial Conference and with General O'Hara of the Governor's Office. The Chairman agreed to contact them.

The Commissioner reported on recent escape attempts at the Bronx and Manhattan Houses of Detention. He stated that the attempts raised the possibility of correction officer error and a serious question as to how hacksaw blades could have been smuggled into the institutions. He noted that there had been a great increase in the number of outsiders with access to the institutions and stated that the Department presently has 4,000 passes outstanding. Mr. Kirby urged the Commissioner not to attribute the escape solely to the presence of community service workers.

At 5:40 p.m., Ms. Pickman left the meeting and Mr. Brickman began to act as secretary.

Commissioner Malcolm raised the issue of the warden's bill, now before the City Council. He also declared that there was pending before Justice Evans of the State Supreme Court a motion for an order requiring the Department to withdraw the appointments of all provisionally appointed wardens who have been serving for more than nine months, as well as to hold a new warden's examination within four months. Mr. Dontzin declared that the City would appeal such an order.

With respect to the warden's bill, Commissioner Malcolm noted that he was asking for nothing more than the power which is presently accorded to the Police Commissioner, and added that he felt it was not inappropriate for the Commissioner to have the power to appoint senior personnel who earn as much as \$40,000 per year.

Commissioner Malcolm added that in addition to the warden's bill, there are pending before the City Council bills relating to the institutional commissaries and to an eight-hour day in the Department. He declared that he plans to assemble a group of persons to testify with respect to these bills, which are now in the Council's Committee on Public Safety. He added that he would welcome the Board's participation, as well as that of other agencies, such as Citizens' Union.

At 5:50 p.m., Mr. Dontzin and Dr. DeBilio left the meeting.

At 6 p.m., upon motion duly made and seconded, the meeting was adjourned.

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