

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

November 5, 1973

A regular meeting of the Board of Correction was held on Monday, November 5, 1973 in the 14th floor conference room, 100 Centre Street, New York, New York.

Present at the meeting were Messrs. McKay, Dribben, Becker, Kirby, Schulte, Rev. Wilson and Mrs. Singer.

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; Peter A. Lesser, Executive Secretary, Board of Correction and William J. Arnone, staff assistant.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Jack Birnbaum, Deputy Commissioner; Alphonso Forde, Assistant Commissioner; Paul Dickstein, Assistant Commissioner; Joseph D'Elia, Director of Operations; Ronald Zweibel, Director of Legal Affairs; A. L. Castro, Director of Public Affairs; and Essie Murph, Superintendent of the New York City Correctional Institution for Women. Also present was Steven Rosenberg of the Criminal Justice Coordinating Council.

Messrs. Dribben and McKay acted as Chairmen and Mr. Arnone acted as Secretary of the meeting.

The meeting was called to order at 2:35 p.m.

Upon motion duly made and seconded, the minutes of the meetings of October 2 and 12 were approved.

Upon motion duly made and seconded, a request for an excused absence from Mr. Carrion was accepted.

Mr. Dribben asked that the minutes reflect his criticism of absences by Board members and of fragmented attendance by Board members during meetings. He stated that some members appeared to be repeatedly absent and noticed that other members often left meetings during their progress.

It was agreed that a special meeting of the Board of Correction would be held on Tuesday, November 27, to discuss pending matters. The meeting will be held at 12 noon at a location to be determined later. The next regular meeting of the Board of Correction will be held on December 3 at 2:30 p.m. in the 14th floor conference room, 100 Centre Street.

Ms. Pickman announced her acceptance of a position as assistant professor of law at the University of Arizona. She expects to leave the Board of Correction in July 1974.

Mr. McKay arrived at 2:45 p.m. and Mr. Kirby arrived at 2:50 p.m.

Mr. Dribben suggested that the Board or the Chairman meet as soon as possible after election day with the Mayor-elect to discuss his plans for the Department of Correction and his need for Board of Correction assistance.

At the Chairman's request, Mr. Brickman reported on the progress of ongoing projects. He stated that he would circulate a memorandum regarding progress, supplementing his memorandum to the Board of October 8, 1973.

Rev. Wilson arrived at 2:55 p.m.

Mr. Dribben reported on the Army Medical Unit Program and his meeting with Frank Schneider, Director of Prison Health Services, Colonel Lustig of the Army Medical Unit, Dr. Plew, Acting Medical Director of the Health Services Administration and Mr. Lesser. Mr. Dribben discussed the provision of medical and dental services by the Army medical units to inmates. He reported that an objection was voiced by Mr. Schneider to Army doctors informing inmates of all physical defects found during their exams. Mr. Dribben stated that because of the limits of outside hospital ward space and staff, Mr. Schneider felt that inmates should not be informed of everything that was wrong with them medically.

Mr. Kirby strongly objected to this and raised legal questions. Mr. Brickman stated that the Board staff would discuss this problem with Mr. Schneider and report on it.

Mr. Kirby also asked about procedures and problems with Veterans Administration Hospitals. The Board staff will also look into this.

Mr. Lesser left the meeting at 3:00 p.m.

Mr. Brickman distributed a proposed letter from the Chairman to the Mayor-elect and presented its substance. At Mr. Schulte's suggestion, it was generally agreed that a meeting with the Mayor-elect and the Board of Correction be requested in the letter.

Mr. Dribben raised the matter of the duplication of efforts in New York City to train uniformed personnel from various departments who have common concerns. He suggested a coordinated training program, and it was agreed that the possibility would be raised with the Criminal Justice Coordinating Council.

At the Chairman's request, Mr. Brickman reviewed the matters to be raised with Commissioner Malcolm and his staff.

Mr. Brickman summarized the report of the Board of Correction staff on the operation of the Inspector General/Investigations Unit of the Department of Correction. He noted that Salvatore La Barbera, the CJCC project monitor, had urged the suspension of the grant which funded the investigations unit. The Director of CJCC, Robert Wallace, however, did not wish to act precipitously. Therefore, CJCC has informed Commissioner Malcolm of the possibility of funds being suspended and has asked the Department to supply information as to its compliance with the grant. Mr. Brickman noted that the focus of CJCC was on compliance with the precise terms of the grant, while the focus of the Board of Correction in its study was on the overall performance of the Inspector General's office under the Department. Mr. Brickman noted that Commissioner Malcolm was asked to send a letter to Wallace by the end of this week, explaining the progress of compliance with the grant. Mr. Nochimson read a summary of the Board's conclusions and outlined questions which should be presented to Commissioner Malcolm.

Mr. Brickman discussed problems which came to the Board's attention at the Correctional Institution for Women at Rikers Island. He noted that several visits have been made by Board staff to the Correctional Institution for Women and that meetings have been held with the Director of Legal Affairs, Ronald Zweibel, to bring to his attention the problems found, particularly with respect to the Punitive Segregation Area. Mr. Brickman noted that on Tuesday, October 30, 1973, he, Ms. Pickman and Mr. Nochimson met with Commissioner Malcolm to discuss problems at the Correctional Institution for Women. Mr. Brickman described the meeting as a positive one. He also noted that Arnett Gaston, Commissioner Malcolm's Executive Assistant, later confirmed many of the findings of the Board during its on-site visits.

Mr. Becker arrived at 3:25 p.m.

Mr. Brickman read the letter sent by the Chairman to Commissioner Malcolm on October 26, regarding the escape at the Manhattan House of Detention on October 23, 1972. Mr. McKay stated that he had stressed with Commissioner Malcolm that pressure was coming from within the Board and its staff to "go public" with the Board's displeasure over the lack of disciplinary actions taken subsequent to the escape. Mr. Brickman noted Mr. Zweibel's inability to answer questions about the escape at the Board meeting of October 2. He related Mr. Zweibel's response in discussions in the past week about the status of disciplinary measures taken against correction officers. Mr. Brickman noted that Mr. Zweibel had told him that three cases against correction officers might have to be dismissed in light of the pressure by the Board. Mr. Zweibel had further stated that one correction officer had been convicted but that no supervisory correctional personnel had been charged because no responsibility could be fixed with them. Mr. Brickman noted that the only conviction that the Department was able to obtain against a correction of-

ficer was apparently based upon the technical presumption of negligence arising whenever an escape occurs during the tour of a particular correction officer. Mr. Brickman further stated that according to Mr. Zweibel, three other correction officers could not be convicted or prosecuted because inmate witnesses were under the control of the District Attorney, who would not release them.

Mr. Brickman discussed the fact that the Ossining facility is now being used to house unconvicted pre-trial defendants instead of convicted but unsentenced defendants who are supposed to be housed there by directive of Commissioner Malcolm.

Mr. Rosenberg arrived at 3:30 p.m.

The Board members then discussed aspects of the problem of the Inspector General and agreed that this would be the focus and the emphasis of the Board's meeting with Commissioner Malcolm and his staff.

Mr. Brickman stressed the confidentiality of the Board's report on the Inspector General. Mr. Schulte commented on the explosive nature of the report, noted the need for Board of Correction action and praised the work of the Board staff, particularly Mr. Nochimson.

The Chairman raised the question of removing the Inspector General unit from the Department of Correction, but expressed doubts about the Board's assumption of the grant. Mr. Brickman agreed that the Board should not take upon itself the responsibility for operating the Inspector General's unit. Mr. Becker noted that the Department of Sanitation had an Inspector General who worked so well that he had to be fired, and he indicated his view that a strong Commissioner could make such an office work.

Mr. Malcolm, Deputy Commissioner Birnbaum, Assistant Commissioner Forde, Messrs. D'Elia and Zweibel and Ms. Murph arrived at 3:45 p.m.

Mr. Brickman outlined the problems that had developed at the Correctional Institution for Women. Mr. Malcolm admitted his disturbance over the punitive segregation area at the institution. Ms. Murph stated that no inmate was housed there for more than one day and inmates housed in punitive segregation would no longer be required to wear hospital gowns. Mr. Malcolm stated that the entire question of the clothing of detainees in punitive segregation arose as a result of a suit by an inmate named Elizabeth Powell at the CIFW. He noted that detainees at the Adolescent Reception and Detention Center and at Ossining wear uniforms. He stated that the reasons for this were hygienic and sanitary.

Ms. Murph described the incident leading to the suit by Ms. Powell. She noted that Ms. Powell had stated that she wanted to wear a dress in any way she chose. Ms. Murph felt that allowing this could possibly lead to inmates wearing only bras and

shorts. Both Mr. Malcolm and Ms. Murph raised questions about the mode of attire of inmates in the CIFW as leading to homosexual incidents.

Mr. Brickman stated that the issue in his mind was the right of a pre-trial detainee to live in an institution to some degree as he or she saw fit. Mr. Malcolm described the issue of the wearing of pants by women inmates as merely "the tip of the iceberg." Ms. Murph was then questioned as to her understanding as to what inmates would now be allowed to wear in the punitive segregation area. There was some confusion over the agreement which the Chairman and Mr. Malcolm had come to over the question of removal of differentiations in dress between inmates housed in the punitive segregation area and those housed in general population. At the request of the Chairman, Ms. Murph agreed to furnish the Board with a memorandum outlining the precise institutional rules and regulations as to clothing and dress for detained inmates at the CIFW. Mr. Malcolm declared that his office would first review the memorandum.

Mr. Castro arrived at 3:55 p.m.

Mr. Lesser returned at 4:05 p.m., accompanied by Mr. Dickstein.

A discussion was had over the possibility of certain dress provoking homosexual incidents. Both Commissioner Malcolm and Ms. Murph stressed this as their greatest concern.

Mr. Becker commented on the disturbing aspects of regulations formulated solely to prevent homosexuality. He noted that he was commenting on these problems from the perspective of a member of the Human Rights Commission.

Mr. Kirby stressed that the Board's request that Ms. Murph submit rules and regulations was not to be taken as the relinquishing by the Board of its position that detained inmates had basic rights in the area of clothing. He stated that no institutional administrator should set the standard of dignity for detained inmates, based on his or her own subjective feelings.

Mr. Birnbaum commented that he thought that most detainees would not want the total freedom of dress which he thought Mr. Kirby felt was the right of all detainees. The Board praised Ms. Murph's leadership generally, and she left the meeting at 4:10 p.m.

Commissioner Malcolm noted that Ms. Murph was a most progressive administrator and pointed out that her institution would be first in the City to have contact visits. Such visits were planned for the following week.

The Chairman outlined the Board's efforts in examining the Inspector General's office, noting its critical preliminary conclusions about the operations of that office by the Department. Mr. Malcolm stated that he realized the problems with the office and discussed the history of its formation, going back to the Valvano class action suit.

Commissioner Malcolm noted that the Inspector General's office existed only on paper in May 1971, as a result of a directive written by Mr. D'Elia. Mr. Malcolm stated that following the writing and issuing of this directive, the City sought a grant from the Criminal Justice Coordinating Council to fund the unit. Commissioner Malcolm noted that a directive had recently been issued notifying the inmates of the existence of the unit but that the directive was being held at present because it had been issued in one form to both inmates and correction officers. He stated that it was now in the process of being printed in the thousands with separate notices to inmates and correction officers.

Mr. Brickman raised a number of detailed questions about the operation of the office of Inspector General. He asked why there had been a delay of at least ten months in issuing the directive notifying inmates of the existence of the office and asked why the directive (#30) had been rescinded in the past week. Mr. D'Elia explained that the Department had received a mandate for the establishment of the Investigations Unit but had no staff or manpower with which to implement it. He stated that he issued what he thought was a "ridiculous" order in May 1971, since there was a lack of manpower to implement it. He further stated that he thought that it would be dangerous to notify inmates about the existence of the unit until the Department had enough staff and resources to implement it thoroughly. Mr. Zweibel added that the Department went through two Civil Service lists to fill the position of Inspector General and his staff, which were not filled until April, 1973. He also noted that staff members had to be trained and that courses and lectures were given. Mr. Birnbaum added that the whole question of how the grant would operate and its discrepancies with existing Department regulations further added to the delay. He stated that many delicate and difficult negotiations had been conducted with CJCC and were continuing to be conducted. He commented that the CJCC monitor who was in charge of modifying the grant to make it conform to Department of Correction rules and regulations never did so. Mr. D'Elia stated that 50,000 copies of the revised notice had been mimeographed in English and Spanish and should be sent to each institution by Thanksgiving. Mr. Malcolm asked that the printing be rushed and that a date be obtained from Warden Buono at the Rikers Island headquarters.

Mr. Brickman raised the question of what charges had come out of investigations conducted by the Inspector General's office. Mr. Zweibel stated that there had been several incidents in which wardens had charged particular members of their staffs. Mr.

Malcolm added that the Branch Queens investigation did result in charges. Mr. Kirby then criticized the results of the investigation into the Leon Lee case at the Bronx House of Detention, which is discussed in the Board's report on the Inspector General's office. Mr. Kirby criticized the Department for promoting to Assistant Deputy Warden the very captain whose conduct was questioned in the Leon Lee investigation. He and Mr. Brickman further questioned Mr. Malcolm and Mr. Zweibel on the extent to which the Department of Correction followed up on cases which had been referred to the District Attorney's office. Commissioner Malcolm stated that such follow-up was conducted by the Department but would not interfere with a particular District Attorney's investigation. Upon questioning by the Chairman, however, Mr. Zweibel was unable to state that the follow-ups were in fact regularly conducted by him. Commissioner Malcolm then stated that the Director of Legal Affairs should check with the District Attorney's office on cases referred to it at least once a month. Mr. Zweibel stated that this had not been done up to now.

Mr. Brickman asked Mr. Zweibel exactly what charges had resulted from the Branch Queens investigation. Mr. Zweibel said that a correction officer had been charged in the Branch Queens escape investigation and asked to be excused so that he could check his files. He was so excused at 4:45 p.m.

Mr. Malcolm then expressed his displeasure with the areas in which the Board was focusing. He asked that the Board reorder its priorities to give him support in the areas which he thought were of critical importance. He noted a prime area as the training of correction officers in human relations, especially suicide prevention. He noted that the Bureau of the Budget was objecting to his request for a new academy for correction officer training. Mr. Rosenberg declared that no decision had yet been reached by CJCC as to the refunding of the Inspector General's unit. He noted that CJCC was awaiting a report by the Department on many issues which remain unanswered.

Mr. Zweibel returned at 5 p.m.

Mr. Malcolm continued to discuss further areas in which he thought the Board of Correction could offer support. He suggested the Warden's Bill as one and renovating the Adolescent Remand Shelter as another. Mr. Zweibel then stated that a check of his records revealed that three sets of charges had been drafted in the Branch Queens escape against one captain and two correction officers. He indicated that one correction officer had resigned and the other charges were now pending. The Chairman questioned him as to the meaning of "now pending." According to Mr. Zweibel, this meant that the cases were on the Director of Legal Affairs' trial calendar to be tried by his assistant, James Latham. Mr. Zweibel noted that he did not personally follow up this particular case, and stated that it is not his

practice to follow up in every case. The Chairman stated that such follow-up appeared to be essential in every single case. Commissioner Malcolm noted that two correction officers involved in the Henry Brown escape in Kings County had already been tried and that four correction officers at the Brooklyn House of Detention, who were involved in the release of Mr. Brown to Kings County, were to stand trial although charges have not yet been filed against them.

Mr. Brickman asked Mr. Zweibel about the aftermath of the Tombs escape of a year ago. Mr. Zweibel stated that four correction officers had originally been charged. He stated that one had been convicted but he did not know what penalties he had received. He noted that a question arose in the prosecution of the three other correction officers. He stated that it appeared that it would be necessary to rely on the testimony of inmate eyewitnesses in order to successfully prosecute these correction officers, who had been assigned to tours prior to the escape. Mr. Zweibel stated that he needed the cooperation of the District Attorney's office to utilize the inmates because their testimony might interfere with the prosecution by the District Attorney of these inmates in relation to their possible complicity in the escape. Mr. Brickman twice asked Mr. Zweibel whether this meant that the Department of Correction would defer to the District Attorney's office and thereby jeopardize the prosecution of correction officers so as to assure the District Attorney the opportunity to prosecute inmates who may have been involved in the same incident. Mr. Zweibel stated that that was his understanding of the policy of his office.

Mr. Brickman then asked whether this meant that the Department of Correction had determined that it was more important to prosecute inmates involved in an escape than to prosecute members of its own employ who might have been negligent or even involved affirmatively in the escape attempt. Mr. Malcolm stated that this was not an accurate characterization of Department of Correction policy but did not elaborate.

Mr. Dribben asked Mr. Zweibel if he was satisfied with the personnel of the Inspector General's office. Mr. Zweibel answered that he was not satisfied, stating that there were many reasons for the failure thus far of the operation of that office, the staff of the Inspector General's office being one of the reasons. Mr. Zweibel stated, however, that he believed that the problems could be corrected through negotiations between the Department and CJCC. Upon questioning by the Chairman, Mr. Zweibel stated that actual charges had been filed against correction officers involved in the Branch Queens escape, and not merely recommendations for charges from the Warden of Branch Queens.

Commissioner Malcolm then objected to the Board's repeated exploration of the same issue. He agreed to the need for disposition of charges as soon as possible and he voiced his



personal unhappiness over the operation of the Inspector General's unit thus far. He further stated that many charges are forthcoming as a result of investigations conducted by the unit.

Mr. Brickman asked Commissioner Malcolm about his personal awareness of the Branch Queens case, particularly about the charges of possible improper activities, or even involvement with organized crime by a correction officer. Commissioner Malcolm did not specifically recall this person's alleged involvement in the escape and other matters. Mr. Nochimson asked Commissioner Malcolm of his knowledge of interference by particular institutional administrators, especially at the Bronx House of Detention, with the operation of the Inspector General's office and with Mr. Katz himself. Mr. Birnbaum declared that he personally had difficulty talking to Katz. Mr. Nochimson asked why the Department had not dealt with this problem at an earlier stage. Mr. Malcolm stated that many problems which arose in the Department were not dealt with at the earliest possible moment. Commissioner Malcolm then noted that he was not sure if he needed an Inspector General but did admit that the Department had gained some experience from the operation of this office.

The Chairman then stated that the Board would furnish the Department with a copy of any report which it intended to release on the Inspector General at least one week before the release date. Mr. Malcolm reiterated his request for assistance from the Board in funding the grant for the operation of the Inspector General's office. He commented about the political nature of the grants, noting that the Department had been forced to accept what he termed disastrous grants in the past; he stressed that the Department wanted to meet the grant requirements of the Investigations Unit and keep the operation of the Inspector General's office.

Commissioner Malcolm then asked the Board for assistance in monitoring delivery of inmates to courts. Mr. Malcolm noted that a letter had been sent by Justice David Ross, Administrative Judge of the Manhattan and Bronx Criminal Courts, to Mayor Lindsay in which, according to Justice Ross' figures, out of 1,060 prisoners delivered to the Criminal Courts in Manhattan and the Bronx over a specific period of time, 60% arrived late. "On time" was defined by Judge Ross as 9:30 a.m. Mr. Malcolm stated that the Department intends to respond to this letter and he will furnish a copy of the response to the Board. He noted that Judge Ross ignored in his letter the problem of how many inmates actually were seen by judges in the Criminal and Supreme Courts. He stated that he was aware of many instances of inmates who had never been called, although they had been produced in the court pens, and commented that the courts must learn that they cannot treat inmates as baggage to be shuffled back and forth to court. Commissioner Malcolm asked that the Board's proposed inspection teams, utilizing the Council of Law Associates, focus on the problems of delivery of inmates to court and the attention given by the Criminal and Supreme Court judges to inmates.

Mr. Malcolm closed the meeting by asking for the Board's cooperation, noting that the Department was becoming "a football between those who thought the Department was not doing enough to improve living conditions of inmates and those who thought the Department of Correction was moving too fast."

Upon motion duly made and seconded, the meeting was adjourned at 5:40 p.m.