

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

October 2, 1973

A regular meeting of the Board of Correction was held on Tuesday, October 2, 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 and Mrs. Singer. Also present by invitation of the Board were John M. Brickman, Executive Director of the Board; Greg Harris, Director, Clergy Volunteer Program; Kenneth Nochimson, Co-Director, Legal Advocate Program; William Arnone, staff member, Board of Correction; and Steven Rosenberg, Sal La Barbara, Terry Baldwin and Cipriano Salazar of the Criminal Justice Coordinating Council.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Alphonso Forde, Assistant Commissioner; Joseph D'Elia, Director of Operations; Arnett Gaston, Executive Assistant to the Commissioner; Ronald Zweibel, Director of Legal Affairs; James Hickey, Assistant Director of Operations; and A. L. Castro, Director of Public Affairs.

Mr. McKay acted as Chairman. Mr. Arnone and Mr. Nochimson acted as Secretary of the meeting.

The meeting was called to order at 2:15 P.M. Upon motion duly made and seconded, the minutes of the meeting of September 10, 1973 were approved.

At the Chairman's request, Mr. Brickman reported on ongoing matters and projects. An increased number of speaking engagements by Board members and staff are being arranged. Mr. Brickman stated that at such functions persons speak as individuals who happen to be affiliated with the Board of Correction and draw upon their experiences with the Board; they do not articulate Board policy unless agreed upon in advance.

Mr. Brickman then reported on the Board's monitoring of disciplinary hearings at the Manhattan House of Detention pursuant to the stipulation of settlement in Rhem v. Malcolm. Mr. Brickman noted that the stipulated six month monitoring period ended on September 18, and that Mr. Nochimson has submitted recommendations. He reported that he and Mr. Nochimson had met with Judge Lasker, who asked the Board to extend its efforts for three additional months.

Mr. Schulte suggested that Board of Correction members attend disciplinary hearings. Mr. Brickman declared that any member of the Board of Correction who wished to attend should contact Mr. Nochimson.

Mr. Kirby arrived at 2:30 P.M.

The Chairman reported on his meeting with City Council Majority Leader Thomas Cuite and Commissioner Malcolm regarding two bills currently before the Council. One, the Warden's Bill, would give the Commissioner of Correction more latitude in appointing institutional administrators; the second would end the segregated budgetary allocation for prison commissaries and would establish commissary funds as part of overall Department of Correction operating expenses. Dean McKay noted that Mayor Lindsay was extremely interested in the Warden's Bill.

Mr. Brickman discussed the present status of sanitary inspections of City prisons. He noted that the Board had no knowledge of the source of the articles appearing in the Daily News and New York Times of Saturday, September 29. Mr. Nochimson then reported on the progress visit made by members of the Department of Health to the Manhattan House of Detention on the morning of October 2.

Mr. Brickman reported that the Department of Correction is moving ahead to implement the recommendations made by the Board's Task Force on the Chaplaincy and the Prisons. The first meeting of the Chaplaincy Appointment Board was scheduled for Thursday, October 4. The Chaplaincy Appointment Board consists of two representatives of the Department of Correction, two representatives of the Board, and two members to be chosen by these four. The two Department representatives are Assistant Commissioner Alphonso Forde and Dr. Francis De Bilio, Director of Rehabilitation. The Board's representatives have been Mr. Harris and Father John Corn of Trinity Parish. The Board of Correction must name a replacement for Father Corn who, as an associate of an organized religious group, is ineligible. Father Corn was replaced by William J. vanden Heuvel, the former Chairman of the Board. Mr. Harris then distributed to the Board a memorandum outlining the present operation of the Clergy Volunteer Program. He noted that discussions were underway to supply clergy volunteers for the Ossining facility and declared that the State Department of Correctional Services has approved in principle the notion of a Clergy Volunteer Program at Ossining.

Mr. Brickman declared that the Legal Advocate Program was prepared to release another in its series of longest held cases, that of "Sandy R.," who has been held for 25 months awaiting trial. Mr. Nochimson distributed a list of Mr. Rosa's court appearances and the progress of his case, noting the responsibility of the Manhattan District Attorney's office for the delays. Mr. Nochimson noted that Mr. Rosa was scheduled for a court appearance on October 3. After discussion, it was agreed generally that a suitable report would be released if Mr. Rosa's trial did not begin on October 3.

Mr. Brickman discussed the escape of Henry Brown from the Kings County Hospital out-patient department. Regarding the suspension of the two correction officers involved, he recalled the escape from the Manhattan House of Detention on October 23,

1972, in which no Departmental disciplinary action was taken despite the issuance of a grand jury report. He stated that there had been other escapes in which no Department of Correction disciplinary action had been taken. Mr. Brickman reported on his meeting with Chief Harold Schryver of the Major Crime Investigation Unit of the New York City Police Department, with whom he and Mr. Nochimson met on the evening of October 1, 1973. Mr. Brickman described the Major Crime Investigation Unit as devoted primarily to investigating the operations of the Black Liberation Army. Mr. Brickman recounted his discussion with Chief Schryver regarding the finding of a map describing the Kings County Hospital layout. The map had been found in the Bronx on September 17, 1973, during a police search of an apartment which housed alleged members of the Black Liberation Army. Mr. Brickman noted that he had spoken with Chief Schryver regarding meetings between Department of Correction officials and the Police Department prior to Mr. Brown's escape. According to Chief Schryver, members of the Police Department met on September 19 with Mr. Zweibel and Captain Constantine Mellon, who is the Department of Correction's liaison with its Inspector General's office. The meeting was held at the initiative of the Police Department. According to Chief Schryver, on September 20 a second meeting was held with Police Department officials and Deputy Warden Geraty of the Kings County Prison Ward, Assistant Deputy Warden La Torre of the Transportation Division, and Captain Donlin of the Kings County Hospital Ward; Captain Mellon also attended. Another meeting on September 21 was held between members of the Police Department and Captain Mellon. According to Chief Schryver, at these meetings prior attempts by Henry Brown were discussed, as were findings of the search of the Bronx apartment. At these meetings, Department of Correction officials agreed to notify all institutional commands that its central office should be informed if and when any suspected Black Liberation Army defendant was transported from one institution to another or from an institution to a hospital ward. Despite this, there was no reported notification in the case of Henry Brown. It was further noted that no information was given by the Department of Correction to the Board following the escape and the Board's efforts to obtain information from the Department of Correction's Office of Public Affairs were frustrated.

Mr. Schulte noted that there was strong public interest in the question of prisoner escapes and that this might warrant the Board's investigation and action. Mr. Kirby stated that the Department of Correction should be "shaken up" from top to bottom. Mr. Brickman noted that the Warden of the Brooklyn House of Detention, James Monroe, had retired a week and a half before the Brown incident and that Deputy Warden Edward Weinrauch was presently the senior officer in command. Mr. Kirby noted that despite previous close calls there had been no security renovations made in those institutions in which escape attempts had occurred.

Mr. Brickman discussed the status of the Office of Inspector General of the Department of Correction. He noted that a recent article in the New York Times had raised the question of the staff of the Inspector General. He declared that the Board often

refers cases to Inspector General Leon Katz. The question was raised as to the future of the Inspector General's reports after they are completed and submitted to Mr. Zweibel. Mr. Brickman noted the Leon Lee case, which had been initiated by the submission of evidence to Inspector General Katz by the Board. Mr. Zweibel had informed the Board of Correction that there was a "stalemate" in the investigation of the case but that the evidence had been sent to the Bronx District Attorney and that nothing had been done in the District Attorney's office or internally at the Department of Correction.

Mr. La Barbara noted that questions had arisen as early as February, 1973, in reference to the performance of the Inspector General's office under the CJCC and Law Enforcement Assistance Administration contract specifications by which the program was funded. The original idea in creating the Inspector General's office was to remove prison investigations from control of wardens and correctional staff. Mr. La Barbara noted severe problems with the conduct of the Inspector General's office from the outset. He described poor relations between the Inspector General and the institutional staffs which he was investigating. He noted the lack of a directive explaining the Inspector General's role to either institutional staffs or to inmates. Inmates were never informed that there was an office of Inspector General to investigate complaints. Mr. La Barbara suggested the possibility of CJCC abandoning funding for the Inspector General's program. Mr. Kirby suggested that the office of Inspector General be transferred to the Board of Correction, removed completely from within the control of the Department of Correction. Mr. Rosenberg declared that this might be a recommendation which CJCC could make. The Chairman stated that the Board would work with Mr. La Barbara and would relate findings to CJCC in the course of its review of the Inspector General's office.

At 3:15 P.M., Mr. Bernard Weinstein, Executive Director of the Bellevue Hospital Center arrived together with Madeline Bohman, Deputy Director, and Edward Stolzenberg, Associate Director, who has responsibility over the operation of the Bellevue prison psychiatric and medical wards. They appeared at the invitation of the Board to discuss plans to improve medical services at Bellevue Hospital and the Manhattan House of Detention. Mr. Weinstein presented a lengthy history of the involvement of Bellevue Hospital with prisoners and the Department of Correction, and then discussed the background of the proposed prison ward for the new Bellevue building. He noted that the new Bellevue building was scheduled to open on November 12, 1973. He stated that the original decision by the Bellevue board was to place in-patient prison services in a facility separate from the new Bellevue structure. He noted that this original decision not to include the Bellevue prison ward in the new Bellevue building was the subject of a long period of controversy which, after a year of debate, was finally settled and after which it was agreed that the prison ward would be housed on the 18th floor of the new building.

At 3:50 P.M. Mr. Kirby left the meeting and Mr. Becker arrived.

Mr. Weinstein noted that one goal of Bellevue was to obtain a distinct and separately staffed prison health care service which would assume responsibility for the total health care of inmates at the Manhattan House of Detention on both in-patient and out-patient bases. He noted that a critical problem in providing health services is the lack of efficient transportation of inmates from the institutions to Bellevue.

In connection with the location of the prison ward in the new Bellevue, Mr. Weinstein outlined the proposal for an interim location of the prison ward at a site outside the new Bellevue building until the 18th floor is ready to function as a prison health unit. Mr. Weinstein described the present construction and the plans for reconstruction of the current Adult Emergency Services ("AES") building and proposed this building as the site for the prison ward until the 18th floor is functional.

The Chairman asked Mr. Weinstein what the Board could do. Mr. Weinstein asked for its understanding in this transition phase in the provision of health services to inmates. He urged the Board to seek the full cooperation of HSA in assuring the goals that Bellevue wishes to set for prison health care. He stressed the need to build these goals into the present contract proposal between the Manhattan House of Detention and Bellevue. He stressed that this contract would include in-patient care and avoid mistakes which he declared he sees in the Montefiore contract.

At 4:20 P.M. the representatives of the Department of Correction arrived.

Mr. Castro stated that Commissioner Malcolm would be delayed because he was meeting with Police Commissioner Cawley, and the discussion of the escape was delayed until Commissioner Malcolm's arrival.

The question of issues that occur at Inmate Liaison Committee meetings was raised. The Chairman noted that there had been a prior meeting on this issue between himself, Mr. Brickman, Commissioner Malcolm and Deputy Commissioner Birnbaum. He discussed the procedure that had been set up whereby questions of fact and policy would be referred by the Board to personnel within the Department of Correction who were designated as having responsibility over each area. A list of each such person in the Department and the area over which he has responsibility was to have been submitted to the Board by Deputy Commissioner Birnbaum; no list has yet been received. Mr. Brickman also noted that a teletype order had gone out from central office to each institution requesting that all "correspondence" from the Board be forwarded to the Deputy Commissioner's office. Mr. Brickman said that the

result of the ambiguity of this order is some institutional personnel would not even talk to Board staff members.

Mr. Castro stated that he did not know anything about the status of the agreement between Commissioner Malcolm, Deputy Commissioner Birnbaum and the Board. Mr. Brickman cited the institutional command at C-71 as having stated that the Board's role at Inmate Liaison Committee meetings was solely as an observer. He then read a memorandum outlining difficulties which a Board of Correction staff member had at C-71. The Chairman stated that the Board of Correction was to be more than a silent observer at Committee meetings, according to Commissioner Malcolm and Deputy Commissioner Birnbaum. Mr. Dribben declared that the Board staff should always be fully briefed about their roles.

The Chairman submitted to Mr. Castro the Board's proposed statement regarding the new training academy. Mr. Castro agreed to read it, make comments, and return it to the Board.

Mr. Brickman raised the subject of the New York Times and Daily News articles on sanitary inspections. Mr. Gaston and Mr. Castro both stated that it was their belief that it was an article leaked by the Department of Health, specifically Commissioner Joseph Cimino.

Pending Commissioner Malcolm's arrival, Mr. Castro gave a preliminary introduction to the escape. He noted that the article in the Saturday and Sunday Daily News was a poor story, quoting top police officials about the responsibility of the Department of Correction and misinforming the public about specific warnings having been given by the police to the Department of Correction, thus giving the impression that there had been continuous discussions about the possibilities of escape between the Police Department and high officials of the Department of Correction.

Mr. Castro noted that on September 21 and 22 the entire executive staff of the Department was at a conference out of the City. He declared that the captain who serves as the Department's liaison with its own Investigations Unit is in touch with the Major Crimes Investigations Unit of the Police Department. This officer, Captain Constantine Mellon, received a copy of the map which had been discovered in the Bronx apartment after a search by police in September. According to Mr. Castro, Captain Mellon was told of the concern by police about the possibility of a Black Liberation Army escape. Mr. Mellon advised Commissioner Malcolm and Mr. D'Elia of this information on Friday, September 21, according to Mr. Castro. Mr. D'Elia on that same date asked Captain Mellon to call all institutions and inform them that there should be no movement of BLA defendants, who had been clearly identified by the Department of Correction, without notification to Central Office. Mr. Castro said that the same call was made on the following Monday. On the day of the escape, Mr. D'Elia prepared a written order to be sent out with more specific orders. Mr. D'Elia then called each institution. When Mr. D'Elia called the Brooklyn House of Detention he was informed that Henry Brown, one of the Black Liberation Army defendants, was not there but had been moved to Kings County Hospital.

The Department of Correction has conducted and is conducting its own investigation into the Brown escape, according to Mr. Castro. The Brooklyn House of Detention has already been found to have a communications breakdown, he declared; the Department did in fact notify Deputy Warden Donovan about the notification procedure. Then Deputy Warden Donovan stated that he had written it down in the institutional orders. Mr. Hickey stated that the date of this order was two days before Mr. Brown's escape. Mr. Castro then noted that it is the captain in the receiving room who has the ultimate responsibility at each institution for releasing or transferring particular inmates.

The question was asked as to who is conducting the Department's investigation. Mr. Castro stated that it was Inspector General Katz. He stated that the suspension of the two correction officers by Commissioner Malcolm was only procedural and that there was still some doubt as to whether the two correction officers suspended had any knowledge that the individual they were escorting was a member of the Black Liberation Army. Mr. Castro declared that the correction officers still "lost" an inmate, no matter who he was. Mr. Dribben noted that this was the fundamental problem, and Mr. Castro agreed.

According to Mr. Castro, Mr. Brown was handcuffed to one correction officer; the other correction officer was armed with a gun. An x-ray technician stated that the handcuffs had to be removed so that Mr. Brown could be clothed in a special robe to be x-rayed. Mr. Brown then went into a booth, came out in a robe for the x-ray, returned to the booth and dressed. Mr. Castro noted that it was impossible to see the inmate's feet from behind the booth. He stated that the booth was 8 feet high and that a two-foot bench was inside the booth. According to Mr. Castro, it appeared that Mr. Brown (who is six feet tall) jumped on the bench and was able to jump over the top of the booth and to leave, running down the corridor outside the booth and out an exit approximately 18 feet away.

Mr. Castro stated that the entire escape took a matter of seconds. He noted that the Department had in its possession a map found in the Bronx apartment. He stated that the map was very general and not useful for what Mr. Brown did. The map seemed more appropriate for an attempt to rescue inmates by outside forces, he declared. Mr. Castro stated that there was no knowledge by the Department that Mr. Brown ever indeed saw this map.

Mr. Schulte asked if a correction officer is authorized to fire at an escaping inmate. Mr. Castro answered affirmatively and added that the inmate need not be charged with a felony for the correction officer to be allowed to fire. Mr. Schulte asked for specific rules and regulations governing correction officer conduct in such situations.

Mr. Brickman raised the question of other escapes in the past without any disciplinary action.

At 4:55 P.M. Commissioner Malcolm and Mr. D'Elia arrived.

Commissioner Malcolm stated that the Department had received Henry Brown on April 17, 1973 from Missouri, where he had been imprisoned for attempted murder of a police officer. Mr. Brown had been indicted here in New York for the murder of Patrolmen Lauro and Foster. On July 27, Mr. Brown attempted to escape from the Brooklyn House of Detention. On August 20 he was arraigned on this escape.

At 5 P.M. Mr. Zweibel arrived.

On September 18, according to Commissioner Malcolm, Henry Brown was brought to Kings County Hospital for a suspected bleeding ulcer. In Mr. Brown's inmate folder was a letter from a doctor authorizing the examination. The examination was done at Kings County, but no problems were found. The inmate card accompanying Mr. Brown noted in large red letters the words "escape risk." On September 19, the map found in the Bronx apartment was submitted to Captain Constantine Mellon by Detective Burns of the Major Crime Investigations Unit. Commissioner Malcolm was shown the map on September 20.

On September 20, there was a meeting at Kings County Hospital with Captain Mellon representing the Department of Correction and members of the MCIU of the Police Department. At this meeting the accuracy of the map was verified.

On September 21, according to Commissioner Malcolm, a telephone call was placed to each institution in the Department. He noted that City prisons were by that date housing 17 Black Liberation Army defendants -- 12 male adults, two adolescents and three females. On September 24, a memorandum was issued by Deputy Warden Weinrauch at the Brooklyn House of Detention to all members of the Brooklyn House of Detention staff. The memorandum specified that the three Black Liberation Army defendants in the institution, Messrs. Monges, Torres and Brown, were not to be moved without notification to central office. On September 25, the more extensive order was sent out to each institution from central office of the Department of Correction. The Department's present investigation is as to who was at fault at the Brooklyn House of Detention. Commissioner Malcolm noted that a very difficult problem at the clinic at Kings County Hospital is the mingling of handcuffed inmates with civilian patients. He then described the procedure and the routine whereby Mr. Brown was taken to Kings County; he described it exactly as Mr. Castro had described it. Mr. Malcolm stressed the role of booths and the 12-foot ceiling with the eight-foot partitions making it extremely difficult to observe an inmate patient. He noted that the two correction officers had to come around the sides of the booth to pursue Mr. Brown when they realized that he had jumped over the side. Commissioner Malcolm noted that one correction officer was approximately 30 years old and that the other was approximately 50. Although both had good records, neither was a match for Mr. Brown's speed. He noted that both correction



officers made their move in pursuit when they saw the robe drop off Mr. Brown and they heard the slamming of the bench by Mr. Brown. He also noted that the booth measured three feet by three feet, making it impossible for a correction officer to accompany Mr. Brown inside the booth while he changed.

Commissioner Malcolm stated that he suspended two correction officers on the spot for human error despite extenuating circumstances. He declared that the press had tried to build up a false feud between the Department of Correction and the Correction Officers Benevolent Association. Commissioner Malcolm also stated that the members of the press talked to low level policemen regarding contacts between the police and the Department of Correction and that the Department had not been specifically warned that Mr. Brown would be attempting an escape. Commissioner Malcolm stated that the three meetings between the members of the Police Department and members of the Department of Correction, held on September 19, 20 and 21, were between Detective Burns and Captain Mellon and did not involve any higher Department of Correction officials. Mr. Gaston characterized the meetings as informal and merely part of an ongoing procedure and consultation that had always taken place between the two Departments. Commissioner Malcolm added that at no time did any high level Department of Correction officials meet with high level Police Department officials regarding the matter.

Commissioner Malcolm also stated that at any time a Black Liberation Army group wants to release a fellow Black Liberation Army inmate from a hospital they can do it. The Department is planning to establish procedures to make this impossible but the procedures have not yet been created. Commissioner Malcolm noted that on Monday, October 8, a trial in Manhattan of five Black Liberation Army defendants will begin and that top security will be ordered for that trial.

Mr. Brickman asked whether it is standard operating procedure for a correction officer to be suspended immediately after an escape. Commissioner Malcolm stated that each case represented a different problem. He stated that, for example, the Tombs escape had been planned for weeks, that many different tours of officers were involved and that he would have had to suspend everyone involved at the time. In the present case, the same two correction officers, according to Commissioner Malcolm, had escorted Mr. Brown on his early visit to Kings County and knew who he was. The card accompanying Mr. Brown also highlighted the words "escape risk" and "murderer." In response to a question as to how many inmates were classified as escape risks, Mr. Malcolm was unable to provide an answer.

Commissioner Malcolm further noted that charges resulting out of the prior escapes or attempted escapes at the Tombs, Branch Queens and Brooklyn House of Detention were being formulated at present. He stressed that he was personally "fed up" with reports showing that procedures had broken down without pointing at individuals who are at fault.

Mr. Brickman raised the problem of correction officers not being informed of their being cleared after they have been told that they were under investigation. Mr. Malcolm said that this was a very rare matter. Mr. Zweibel observed that something under investigation does not require notice. Mr. Zweibel was asked by Mr. Brickman what had happened with the Tombs case. Mr. Zweibel said that he did not know if there had been charges or indictments in the Tombs case. Commissioner Malcolm summed up his action in suspending the two correction officers, saying that he could see exactly what happened at the Kings County Hospital escape, but could not tell what had occurred at the Tombs. The Chairman declared that he interpreted the Commissioner's position as having had a prima facie case against these two correction officers. Commissioner Malcolm agreed, saying that in this case there was direct evidence, not merely hearsay.

Commissioner Malcolm noted that there was more serious evidence concerning the Brooklyn House of Detention's role than that of the two correction officers at Kings County Hospital. He said that this will come out in the investigation. Commissioner Malcolm stated that he was personally extremely unhappy about the lack of information given to him by the Brooklyn House of Detention. Commissioner Malcolm declared that there have been serious contraband problems building up in the institutions; inmates have been found with drugs and blades. He also noted problems with HSA personnel bringing things into the institution.

Commissioner Malcolm then read some of the hate mail he had received in connection with the Henry Brown case.

Mr. Schulte then asked Mr. Nochimson to relate a "tip" which Mr. Nochimson had received from the Manhattan House of Detention to the effect that weapons had been found on the seventh floor of that institution and that inmates were planning some action at the Inmate Liaison Committee meeting scheduled for the following day. Mr. D'Elia confirmed the account given by Mr. Nochimson and stated that razor blades and ice picks were found. He noted that the meeting was planned for the recreation room, which had a corridor leading to the Supreme Court. Mr. D'Elia had asked Warden Schaeffer to move the meeting. Warden Schaeffer then decided not to hold the meeting at all; a good excuse was available because elections were due.

Commissioner Malcolm then stated that if an inmate council meeting had gotten to this point then it would seem that the particular institution's council meeting had failed. He approved the decision to cancel the meeting.

Mr. Nochimson stated his praise for the progress of the Tombs' committee thus far. The Chairman pointed out that a "tip" about possible actions planned by inmates could be made by someone wishing to scuttle the inmate council, especially if meetings

would be immediately canceled as a matter of policy upon the receipt of such threats.

Upon motion duly made and seconded, the meeting was adjourned at 5:50 P.M.