

## MINUTES

### BOARD OF CORRECTION

January 26, 1984

A regular meeting of the New York City Board of Correction was held on January 26, 1984 at the offices of the Board of Correction, 51 Chambers Street, New York.

Members present were Chairman Peter Tufo, Vice-Chairman John Horan, Angelo Giordani, Wilbert Kirby, David Lenefsky, David Schulte, and Rose M. Singer.

An excused absence was approved for Barbara Margolis.

Board staff present were Joe Aulet, Michael Cleary, Chuck Davis, Erica Dickert, Barbara Dunkel, Judith Ennett, Alison Estess, David Johnson, Laura Limuli, Deirdre Nurre, Rolando Torres, Barbara Treen, Hamilton Walker, Melba Wiggs and Richard Wolf.

The meeting was called to order at 2:15 P.M. by Vice-Chairman John Horan. Mrs. Singer requested that the minutes of the December 6, 1983 meeting be amended to state that the President of Marymount College, Sister Collette Mahoney, not the staff of Marymount College, had offered an opportunity for inmates at the CIFW Women's House to enroll in Marymount. Wilbert Kirby moved that the minutes be accepted. The minutes were approved as amended.

Richard Wolf introduced Hamilton Walker and Jose Aulet, new Correctional Standards Review Specialists with the Board assigned to the Field Operations Unit.

Michael Cleary discussed the current status of the Board's budget. At present, four Correctional Standards Review Specialist positions are vacant along with one secretary. Under the City's Program to Eliminate the Gap (PEG), the Board was directed to plan for a \$31,000 reduction in its budget for the upcoming fiscal year. However, the Board was subsequently informed that it would be exempted from any cuts in Fiscal Year 1985, although if the situation changes these cuts may be reimposed. Therefore, the Board will only fill 3 of its 4 standards review specialist positions until the budget for FY85 has been made final. David Schulte requested that copies of the current budget be distributed before the Board makes decisions on the future budget.

Chairman Tufo entered the meeting and praised the work of Barbara Treen, Special Project Coordinator, and Melba Wiggs, Standards Review Specialist, who resigned from the Board staff.

Barbara Dunkel reported on the Court of Appeals decision on Burns v. McCreary. The Court of Appeals affirmed the decision of the Appellate Division denying Thomas McCreary access to New York City jails, but did so on other grounds. The Court of Appeals determined that the case should not have been considered on the merits by the courts below because the Board has no authority to render an appellate decision binding on the Commissioner regarding his interpretation of Board standards in individual cases. Because the visiting standard gave authority to the Commissioner to revoke visiting passes within his discretion and the Commissioner acted within his purview under the standards, the decision of the Commissioner is not reviewable. McCreary has no clear legal right to reinstatement; therefore the courts cannot compel reinstatement.

Chairman Tufo remarked that the Court stated that the Board had no jurisdiction to establish the review procedure in the first place. The Board can make findings and recommendations, but it was not given appellate authority. In order to change this, the Board would have to seek a revision in the City Charter. Barbara Dunkel remarked that because the decision was ambiguous, the Department's initial reaction to it would be significant. Its impact might be limited to legal assistants' access to the jails. Chairman Tufo expressed regret that the Legal Aid Society had appealed McCreary.

Chairman Tufo reported that he met with newly-appointed Commissioner of Corrections Jacqueline McMickens.

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Commissioner McMickens joined the meeting at 2:35 along with DOC General Counsel Devora Cohn. The Commissioner thanked Board members and staff for their individual congratulations and support. She described her positive working relationship with the Board since the early 1970's. She reported that she tells correction officials around the country that they should establish organizations like the New York City Board of Correction in their jurisdictions. She expressed her desire and willingness to establish and maintain open dialogue with the Board. On the issue of the Department's request to amend the Board's standard governing the amount of square footage per prisoner in dormitories, she requested that the Board defer consideration until her staff had an opportunity to present its case to the Board's staff on this issue.

The Board deferred consideration of this issue at the Commissioner's request.

David Lenefsky asked what changes the Commissioner wished to see in the relationship between the Department and the Board. Commissioner McMickens remarked that good communications must be established requesting that when the Board becomes aware of unsatisfactory conditions, it inform the Department in a timely and systematic way. Commissioner McMickens suggested that use of a common incident form could facilitate better communications.

David Schulte stated that the Department should have a receipting procedure so the Department would have a record of the recommendations made by Board members. He mentioned that he had reported the need for bannisters on the public stairway entrance to the Tombs. Commissioner McMickens agreed that recommendations should be more systematically reviewed in future.

Chairman Tufo reported that the Board would consider its space standard for dormitories at its February meeting. He stated that Barbara Dunkel would be the official Board contact on the issue. Commissioner McMickens and Ms. Cohn left the meeting.

Chairman Tufo reported on a letter sent to the Board by C. Vernon Mason, an attorney, which asserted that Mason had been "retained to represent a member of present and past employees of the Board of Correction." Chairman Tufo stated that no Board employee had retained Mason who represents former employees of the Department. Charges of sexual harrassment and discrimination have been brought by black female correction officers against the Department. Mr. Tufo reported that Commissioner McMickens had promised the Board a careful investigation of the matter.

Wilbert Kirby expressed his belief that there is extensive discrimination against black correction officers in the Department of Correction. Vice-Chairman Horan asked that the Board refer these problems to its personnel subcommittee and that Mr. Mason be contacted and informed of this action.

David Lenefsky expressed concern that the investigation could take up an enormous amount of staff time. Chairman Tufo recommended that David Johnson work with the personnel subcommittee on a preliminary investigation of this matter.

Chairman Tufo stated that the Board staff had worked hard under trying circumstances to prepare testimony for presentation to Board of Estimate on the City's proposed correction construction plan. He noted that the Board had received several letters praising its analysis and recommendations on this plan.

In preparation for the February meeting on space standards, Chairman Tufo directed staff to prepare an analysis of the current utilization of dormitory space.

David Schulte inquired about Judge Morris Lasker's influence on the Board's decision on square footage. He reported that he had toured the modular housing on Rikers Island, and inquired about the possibility of dayroom space being added to the modular housing. Chairman Tufo answered that modular housing is only a small part of total dorm space. He suggested that the square footage issue be reviewed on an institution-by-institution basis. David Schulte questioned whether square footage per detainee was a significant issue for those inmates who are only detained 7 days or less.

Barbara Dunkel discussed the ACA, State Commission, and Board standards. David Schulte inquired about the possible use of empty space in the front of modular housing units for dayrooms and suggested the need for the construction or modification of additional space to create some privacy.

It was suggested that the Department and Legal Aid be given the opportunity to make explanations and recommendations before the Board made its decision.

David Schulte inquired whether a certain type of existing dorm was preferable. He was advised that it is believed by corrections professionals that there is no such thing as a "good" dorm for detainees. David Schulte and Rose Singer stressed the need for some degree of inmate privacy. One possible design which might add privacy would be a configuration in which one dayroom is shared by two modular housing units.

Rose Singer recommended that the new Criminal Justice Coordinator, Kenneth Conboy, be invited to an upcoming Board meeting. Benjamin Malcolm should also be invited in the future, in hopes that he could more closely involve the Board with the Parole Board.

Richard Wolf reported on the recent suicide in ARDC. A 19 year old detainee hung himself in the ARDC punitive segregation area at 7:10 P.M. on January 16, 1984. Board staff David Johnson and Alison Estess responded to the scene and investigated. The suicide raises issues of inadequate staffing patterns, insufficient presence of inmate observation aides, and improper application of mouth-to-mouth resuscitation. Chairman Tufo requested that the final medical examiner's report be obtained.

Barbara Dunkel reported that the Board had received consent to file an amicus curiae brief with the United States Supreme Court. in the case of Block v. Rutherford. The Board's brief will be a description of its experiences with contact visiting in the New York correction system. Chairman Tufo stated that Judge Peggy Davis will be writing the brief at no cost to the Board. David Schulte inquired what the cost of the Board's involvement would

be. Barbara Dunkel suggested that the cost would be minimal, involving only routine costs of document preparation and printing.

Barbara Dunkel raised the Department's amendment request for denial of recreation for recreation-related offenses. She reported that the Department was operating its denial procedure in an acceptable fashion. The Board approved the amendment.

The next Board meeting was scheduled for February 16, 1984 at 2:00 P.M. An alternate date was reserved for February 28th.

The meeting was adjourned at 3:55 P.M.