

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

December 9, 1974

A regular meeting of the Board of Correction was held on Monday, December 9, 1974 in the 14th floor conference room, 100 Centre Street, New York, New York.

Present at the meeting were Mr. Lehman, Mr. Gottehrer, Mr. Jackson, Mr. Kirby, Father Rios, Mr. Schulte, Mrs. Singer, and Mr. Tufo. Present by invitation of the Board were John M. Brickman, Executive Director; Marc Rosen, Assistant Executive Director; Eileen Shanahan, Co-Director, Investigation and Reporting Unit; Greg Harris, Director, Clergy Volunteer Program; Jerome Cappellani, Stephen Fisher and Charles Hamiel, staff assistants; and Erica Dickert, Secretary to the Executive Director.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Jack Birnbaum and Luis Cadiz, Deputy Commissioners; Alphonso Ford, Assistant Commissioner; William Ritholtz, Director of Legal Affairs; A.L. Castro, Director of Public Affairs; and Albert Jackson, Inspector General.

Mr. Lehman served as Chairman and Messrs. Fisher, Cappellani and Ms. Shanahan as secretaries of the meeting.

The meeting was called to order at 1:00 p.m.

The Chairman reported that the Board's staffing had improved, citing the addition of two full-time staff, Jerome Cappellani and Erica Dickert. The new staff members were introduced to the Board.

The Chairman discussed the letter he had received from Mario Merola concerning the attempted escape at the Adolescent Detention Center last January. Mr. Brickman noted that the time is now appropriate to ask the Commissioner about the status of allegations of misconduct by correction officers.

The next topic discussed was the Correction Aide Program. Mr. Jackson noted that the decision to cut the program was obviously made by Deputy Mayor Cavanagh without consultation with the Department.

Mr. Brickman reported on the status of the prison library coordinator position. He stated that the classification had been approved and that the Department was awaiting final approval from the Budget Bureau.

At 1:30 p.m., Mr. Tufo entered the meeting.

The future of the Tombs was raised. The Chairman reported that the Tombs would close as of December 31. Mr. Brickman declared that the City and the Legal Aid Society are required to submit draft orders to the court, which would regulate the conditions under which Tombs detainees are to be housed at Rikers Island. He added that it is expected that Judge Lasker's order will call upon the City to upgrade the House of Detention for Men.

The Chairman informed the Board of several problems that had been encountered in trying to gain access to materials in the Inspector General's office. Mr. Brickman declared that the Board should have immediate access to the files and that the Charter gives it the right. Mr. Schulte agreed that the Board should have immediate access to the file. Father Rios declared that in some instances the Board should have access to the files and raw data before the Commissioner sees the final report. Mr. Tufo stated that the Board should make a specific request in writing. However, Mr. Brickman added that the Commissioner should not be given more than three days. Upon motion duly made and seconded, it was

RESOLVED THAT the Board instruct the Executive Director to obtain all information on the matter of Richard Kovzelove from the Department of Correction.

At 1:40 p.m. Mr. Kirby entered the meeting.

The Chairman raised the question of the severe impact that the cut in the Correction Aide Program will have on the Department. He noted that the Department has come up with other ways of saving the \$700,000 per annum and that he has brought this to the attention of Deputy Mayor Gribetz.

Mr. Kirby declared that the inmates' rights will be violated by the termination of the program. He urged the Board to sue, seeking a temporary restraining order. Further, he declared that he believed that the civil rights of the workers in the program, the majority of whom are black, hispanic and female, were being violated. Mr. Jackson added that in the final analysis these workers will probably go on welfare.

Mr. Brickman stated that the Commissioner should have the power to cut programs where he wants to within

the Department and not have City Hall and the Bureau of the Budget dictate cuts to him. Mr. Jackson declared that the Commissioner does not have the leverage to argue with Deputy Mayor Cavanagh.

Mr. Gottehrer stated that Human Rights Commission Chairperson Eleanor Holmes Norton's memo on guidelines for firing workers might be applicable to this case. He noted that her memo questioned the legality of across the board firings which affected minorities and women disproportionately. Mr. Kirby declared that if this is correct, then the Board should seek a court injunction. Mr. Gottehrer believed this would be the best possible test case.

At 2:00 p.m., Mr. Brickman left the meeting.

At this point, Mr. Fisher left the meeting and Ms. Shanahan began acting as secretary to the meeting.

Mr. Harris noted that eleven correction aides have been retained and reassigned to Bail Re-Evaluation. In addition, Mr. Harris called attention to the memorandum he had distributed offering the CVP as an emergency stop-gap measure.

The Chairman made reference to Commissioner Malcolm's memorandum offering departmental alternatives.

Mr. Harris brought up two problems related to the Clergy Volunteer Program. He declared that contradictory regulations exist at several institutions regarding visits to inmates in punitive segregation, as well as visitors bringing in literature. He asked that the matter be raised with Commissioner Malcolm. Upon motion duly made and seconded, it was

RESOLVED THAT segregated areas in all institutions be considered a standard housing area and that clergy visits not be prohibited to the Bing.

Mr. Harris suggested that the Board ask Commissioner Malcolm to activate policies for literature formerly set up but not followed. He explained that the warden, deputy warden, librarian, chaplain and a social worker were designated to act as a committee to review questionable literature.

Mr. Fisher reported back on his telephone conversation with Mr. David of the Human Rights Commission. According to

Mr. Fisher, Mr. David stated that the major question to be answered is whether there is a disproportionate effect on minorities. Court suits have declared in the past that layoffs that affect racial groups adversely are discriminatory and City Hall has been notified of this. Procedurally, the City Commission on Human Rights, the State Human Rights Commission and the Equal Employment Opportunity Commission (EEOC) are the administrative agencies to be approached. However, Mr. Fisher said, Mr. David informed him that the best alternative would be to speak to the general counsel of EEOC.

Father Rios raised the question of whether the Board should pursue this matter if no other group decides to. Mr. Schulte responded that he would join Messrs. Kirby and Jackson in seeking a personal injunction against the dismissal of correction aide employees. He declared that since the Board initiated the program, it had responsibility to take the initiative to save the program. Mr. Jackson offered to confer with Messrs. Kirby and Victor Gotbaum, the head of District Council 37.

At 2:30 p.m. the Board met in executive session.

At 3:40 p.m. Commissioner Malcolm, Deputy Commissioner Birnbaum, Mr. Albert Jackson and Mr. Castro entered the meeting. Mr. Kenneth Jackson, Ms. Shanahan and Mr. Hamiel left the meeting and Mr. Fisher acted as secretary of the meeting.

The Commissioner thanked the Board for its assistance in seeking to retain the Correction Aide Program. The Commissioner reported that he had met with the Budget Bureau in the hope of salvaging the program. He stated that he proposed a plan that called for the dismissal of 15 aides and several correction officers. This plan was rejected flatly by the Deputy Mayor. Nineteen supervisor positions will remain intact in the program.

The Commissioner expressed his displeasure about not being consulted regarding the cuts, stating that the program, a permanent civil service occupational group, had been completely destroyed. He said that pink slips had been sent out on Friday. He declared that the Bureau of the Budget had taken to running the Department.

At 3:45 p.m. Deputy Commissioner Cadiz and Mr. Ritholtz entered the meeting.

Mr. Kirby informed the Commissioner of his intention to seek a temporary restraining order. The Commissioner

stated that he welcomed this action and noted that the union has been supplied with all relevant papers.

At 3:47 p.m. Assistant Commissioner Ford entered the meeting.

Responding to several questions concerning Ms. Norton's memorandum, the Commissioner stated that an argument could be made in Federal court that without the program the level of service to inmates would decline. The Correction Officers Benevolent Association, as well as the other line organizations, have come to the aides' side. Father Rios asked the Commissioner if his hands were legally tied and the Commissioner responded that as a City administrator he could not take an adversary position. Deputy Commissioner Birnbaum stated that if it is necessary for officers to assume the duties of correction aides, which he estimated at a 1:4 ratio, the City would lose more money than it originally intended to save by cutting the program.

Mr. Gottehrer declared that judges are now mindful about services to inmates and that there would definitely be a diminution in service with the proposed cut. He noted that it is a "Malcolm-Lindsay" program which is considered expendable.

The Commissioner agreed with Mr. Gottehrer's analysis of the situation and declared that the criminal justice system fails because only 1% of the total operating cost is designed for rehabilitation.

The Chairman stated the Board's intention to either seek an appointment with the Mayor or write him a strong letter in support of the program. Mr. Kirby asked if the Board was committed to going into court. Mr. Gottehrer expressed the opinion that the Board could not ask for a stay because it is not the aggrieved party.

Access to punitive and administrative segregation areas was raised. The Commissioner stated that inmates in these areas should not be denied the right of a clergy visit.

The Chairman brought up the problem of access to Investigations Unit material. After some discussion, it was learned that the Investigations Unit should be finished with the Kovzelove case in two days. Mr. Jackson stated that it had been necessary to launch a completely new investigation and that was the cause of the delay.

The Commissioner reported that the Department has requested \$16 million in the 75-76 capital budget, but only received \$464,000 for the C-98 HDM project of splitting and sealing the cell blocks and adding two day rooms. He said that \$3.5 million was requested for the project, but the City allocated \$350,000 for the project, thereby killing it. For C-94 (professional service), he declared that \$364,000 was requested; the City allocated \$14,000. Money for C-75 ongoing repair project was not affected, he said.

Deputy Commissioner Birnbaum reported on the progress of installing telephones on Rikers Island. Several lines in each institution have been provided by the Health Department, the Board of Education and the Legal Aid Society relinquishing some of their lines. Deputy Commissioner Birnbaum expressed his hope to have these temporary lines installed by Christmas.

The Chairman brought up the subject of the ADC escape. The Commissioner briefly recounted how he had to urge Assistant District Attorney Paul Dorf to come to the institution to investigate the incident.

The Commissioner informed the Board of the timetable for closing the Tombs. Today, the methadone detoxification unit was closed out and transferred to three dorms in C-76 with a capacity of 190. Eventually, it will become the Adult Detoxification Center for the Department, as other units are phased out by attrition.

The Commissioner reported that on December 16-17, the transfer of 50-60 mental observation cases to C-71 will be carried out. Twenty-two correction officers will then be transferred to C-71 and other institutions. On December 16, the House of Detention for Men will be set up as the intake institution for Manhattan detainees. On December 21 and 22, the balance of the Tombs inmates will be transferred to the House of Detention for Men. The Commissioner asked that the Board be present on these last two days as observers, as Ms. Shanahan and Mr. Fisher were on the closing day of Branch Queens. The Commissioner said that the institution will remain open for use of its kitchen and laundry and the Correction Academy.

The Commissioner expressed his intention to write the Mayor in January concerning the future of the Tombs. He declared that the institution would be needed in the future, since the Ossining contract is scheduled to run out in two years and there is a creeping rise in the

population. The Commissioner proposed that an ad hoc task force composed of the Board of Correction, the Department of Correction, the Department of Public Works, the City Planning Commission, the Bureau of the Budget and the Corporation Counsel formulate plans for the future of the institution. However, the Commissioner declared that he will not be party to any agreement if the Budget Bureau stipulates that the 44 square feet cells are to remain.

Mr. Castro informed the Board of the upcoming holiday shows in the institutions.

At 5:20 p.m. the Commissioner and his staff left the meeting, together with Messrs. Fisher, Harris and Ms. Dickert. Mr. Cappellani began acting as secretary of the meeting.

The discussion was their concern with the action the Board would take with respect to the Correction Aide Program cutbacks. Three courses of action were agreed upon. ✓

First, the Board decided that Legal Aid should be contacted to determine if any legal action on behalf of the inmates had been taken or was underway. It was suggested that the Board submit an amicus brief in support of any suit that would be brought.

Second, the members agreed that if Commissioner Malcolm failed to inform Chairman Lehman as to the outcome of the meeting between Mr. Gotbaum and mayoral aides, the Board should contact Mr. Gotbaum to find out what efforts he had made on behalf of the correction aides.

Finally, there was general consensus that the Board send a letter to Mayor Beame with a copy to Mr. Cavanagh. The letter was to express the Board's opposition to the cutbacks. He suggested an alternative plan, using CVP personnel as substitutes for the Correction Aides.

At 5:45 p.m. upon motion duly made and seconded the meeting was adjourned.