

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

February 4, 1974

A regular meeting of the Board of Correction was held on Monday, February 4, 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, Mrs. Singer, Mr. Tufo, and Rev. Mannie Lee Wilson. Also present by invitation of the Board were John M. Brickman, Executive Director of the Board; Mary D. Pickman, Assistant Executive Director of the Board; Greg Harris, Director, Clergy Volunteer Program; Peter A. Lesser, Executive Secretary/Fiscal Officer, Board of Correction; Kenneth G. Nochimson, Co-Director, Investigations and Reporting Unit; and William J. Arnone, Staff Assistant.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Jack Birnbaum, Deputy Commissioner; Alphonso Ford, Assistant Commissioner; Paul Dickstein, Assistant Commissioner; Joseph D'Elia, Director of Operations; John Buchholz, Director of Design and Engineering; Mr. A. L. Castro, Director of Public Affairs; and Arnett Gaston, Executive Assistant to the Commissioner.

Also present as a guest of the Board was David Schulte.

Mr. Lehman acted as Chairman and Messrs. Nochimson and Arnone acted as Secretaries of the meeting.

The meeting was called to order at 2:05 p.m.

It was noted for the record that Mr. Schulte was attending the Board meeting as a guest since he has not been sworn in formally as a member of the Board.

It was noted that Robert B. McKay, the former Chairman, had resigned from the Board. After discussion and expression of personal sentiment, upon motion duly made and seconded, it was

RESOLVED THAT the Board of Correction notes with regret that the Mayor has accepted the resignation from membership of its former Chairman, Robert B. McKay.

The Board and its staff believe that they have been extraordinarily fortunate to have been rewarded

with the services of Dean McKay since his appointment as Chairman on April 23, 1973. His distinguished leadership, unflinching good humor, sense of tact and wise counsel have been a source of great inspiration and assistance to each of us. We hope to call upon him regularly for special assistance in the future.

Mrs. Singer suggested the Board consider presenting Dean McKay with a plaque or scroll in appreciation of his service. Mr. Brickman agreed to look into that possibility.

The Inmate Liaison Committee assignments were discussed. Mr. Brickman distributed a list of institutions to which Board members are assigned and suggested that any problems regarding assignments be raised with him after the meeting.

Mr. Tufo noted that the Manhattan House of Detention had failed to give the Board timely notice of the Committee meeting held on January 31. Mr. Nochimson was notified of the meeting only 20 minutes before it was held. Mr. Nochimson agreed to discuss the problem with Deputy Commissioner Birnbaum.

Mr. Brickman raised the problem of the Department's failure to respond to Board correspondence. He presented numerous letters, dating back to July 1973, which had not been answered by the Department. Mr. Schulte suggested that the Board establish a liaison with one Assistant Commissioner who would be responsible for ensuring responses to our correspondence. However, Mr. Brickman stated that the Commissioner asked that all mail be sent to him. It was decided to discuss the problems with the Commissioner.

The Department's general attitude of ignoring the Board was discussed.

Mrs. Singer suggested a meeting attended by the Deputy Mayor, the Chairman, and the Commissioner to define the role and status of the Board. Mr. Brickman stated he feared such a meeting might result in a lessening of our influence. Mr. Tufo suggested the Chairman define the role of the Board. The Chairman suggested the Board try cooperating with the Department on each issue or problem and if that failed, public action might be required.

Mr. Brickman raised problems concerning the City inmates housed at the Ossining Correctional Facility. He stated that the original legislation permitting the City to transfer inmates to Ossining was intended to relieve the expected overcrowding resulting from the new drug law. Initially the Department had issued a directive stating that only post-conviction inmates would be housed at Ossining. However, Mr. Brickman noted that a substantial number of the 456 inmates

housed in Ossining are detainees. He noted that numerous problems have developed as a result of the transfer of detainees. It is extremely difficult for these inmates to communicate or have visits from their attorneys and families. Conditions at Ossining are worse than most of the City prisons. Rules and regulations differ because Ossining is under State control. In some cases, the State rules are more restrictive. Inmates transferred to and from the City for court appearances must surrender their personal belongings which are sometimes not returned. Mr. Brickman suggested that the Board raise these questions with the Commissioner, especially in light of the fact that several City prisons are operating well below capacity and could no doubt absorb upstate detainees. Mr. Brickman noted that the Departmental directive which orders that only post-conviction cases be sent to Ossining is no longer enforced.

Mr. Jackson stated that inmates being transferred from Brooklyn to Queens had to sign a form but were not told for what purpose the form was used. It was decided to raise that question with the Commissioner.

The alleged disclosure of mental health reports by correction personnel to the district attorney was next discussed. Mr. Brickman explained that at a recent hearing before the Joint State Legislative Committee on Mental and Physical Handicap concerning the treatment of mentally disturbed inmates, John Greenthal, Assistant General Counsel of the Health Services Administration, stated that he was told by an assistant district attorney that mental health records of inmates were turned over to the district attorney as a matter of course upon request by the district attorney. The information contained in such records could include admissions by the inmate regarding his underlying case or other evidence which cannot be given to the district attorney without the consent of the inmate. Mr. Brickman explained that Health Services Administration attorneys are of the opinion that distribution of mental health records of inmates without their consent violates the doctor-patient privilege as defined by the law. Mr. Brickman noted that access to such records by the district attorney enables him to utilize such information as background material to expand his investigation of a case. Such use of these documents would be violative of constitutional and evidentiary principles of law. On January 24, 1973, the former Chairman, Dean McKay, sent a letter to the Commissioner noting the allegation made at the hearing and asked that such a practice, if true, be stopped immediately. Mr. Brickman explained that the Commissioner's response on January 31 missed the point Dean McKay had raised in his letter. The Commissioner related this problem to the broader question of what agency should be responsible for the delivery of prison health services, rather than explaining the Department's policy concerning requests from the district attorney for such records.

Father Rios stated that the Commissioner's letter seemed to indicate that the Commissioner could determine what material was privileged matter. The Chairman stated that the Board should gather more information regarding the specific incident in question as well as information regarding privileged communications.

The Board agreed that the Commissioner should be asked what Departmental policy is regarding requests by the district attorney for mental health records.

The Chairman requested that the hearings on the Department's Investigations Unit, which the Board, by resolution at its last meeting agreed to hold, be delayed for approximately one month so that he and other Board members could discuss the status of the Unit with the principals involved. Mrs. Singer so moved. Mr. Tufo noted that the Board's resolution was amended to include the possibility of examining the overall planning and management capabilities of the Department. He stated that it was his understanding that the Board would hold general hearings which would include, but not be limited to, the issue of the Investigations Unit. The Chairman questioned the advisability of so broad a scope.

Rev. Wilson agreed with the Chairman's request that he be given time to interview the principals. He stated that the Chairman should then recommend a course of action to the Board members.

Mr. Brickman informed the Board that Steven Rosenberg of CJCC had written a letter to Commissioner Malcolm on January 30, 1974, requesting material pertaining to refunding by February 8, 1974. Assistant Commissioner Paul Dickstein had informed Mr. Rosenberg that a letter of intent had in fact been sent to CJCC but Mr. Rosenberg was unable to find this letter. Mr. Gottehrer stated that the question of the submission of the letter of intent and the adherence by the Department to other technical requirements were not significant. He noted that CJCC was controlled by the Mayor and questioned whether the people presently constituting CJCC's executive board and staff would be in their positions much longer. He stressed that the decision to fund or not to fund particular projects was a political decision. He stated that he agreed with the Chairman's request to meet with the principals involved and reiterated his opposition to a hearing.

Mr. Jackson noted that there had been agreement originally over the initial grant design among CJCC, the Department and the Board and that the present situation resulted despite this rhetorical agreement.

Mr. Brickman noted the time risk if the Board did not push the Department and CJCC to obtain refunding.

Mr. Jackson noted that the Board risked being held accountable for not acting sooner.

Mr. Brickman suggested that the Board set a hearing date and then ask the Department to act before that date.

Mr. Gottehrer objected to this, stating that a hearing could always be held without the authorization of a date at present.

Mr. Jackson stressed the need for the Board to hold the Department of Correction accountable for a program which they had agreed to on paper. He noted that a mere promise by the Commissioner was worthless.

The Chairman questioned whether the fault lay with the Commissioner or with the wardens, deputy wardens, and assistant deputy wardens who could impede the implementation of what the Commissioner wants.

The issue of discrepancies in the Department's figures on work release was brought up by Father Rios and the Department's failure to account for escapes was explained by Mr. Lesser. Mr. Brickman noted that the Department had misstated statistics regularly to the press and to the public on this question. He stated that at some point the Board would have to act as a watchdog agency to hold the Department responsible.

Although no formal vote was taken on the Chairman's request, it was the sense of the Board that he be given time to discuss the question of the Investigations Unit with the Department and other principals involved.

Mr. Brickman then distributed to the members of the Board the Report of the Chairman to the Senate Committee on Crime and Correction on the Inspection of the Manhattan House of Detention.

The next Board meeting was set for Tuesday, February 19, 1974, at 3 p.m. at Mr. Tufo's offices at 645 Madison Avenue, on the 20th floor. It was decided that the Board would hereafter meet on the first Monday and third Tuesday of every month.

Mr. Harris reviewed problems in implementing the recommendations of the Chaplaincy Task Force, noting that despite the Department's pledge to expedite the appointment of the first chaplain, nothing had been heard from the Department since the last meeting.

Ms. Pickman then informed the Board that two private interview booths in the court pens at 100 Centre Street would be set up. One would be in the criminal court and the other on the 16th floor. She stated that Administrative Judge David Ross had given his personal commitment to the construction of the two booths. Ms. Pickman further informed the Board that two Investigations and Reporting Unit reports, on court recordkeeping and on the monitoring of Brooklyn Supreme Court judges, were in final draft stage. She also informed the Board that the Unit's study of pre-sentence reports had appeared in the Fordham Urban Law Journal.

Mr. Brickman reviewed the present status of the Nick Bagley case. He expressed hopes for a resolution of the case shortly.

Commissioner Malcolm and his staff arrived at 4:25 p.m.

Mr. Gottehrer left at 4:26 p.m.

Commissioner Malcolm introduced his staff to the Chairman. ~~and the~~

Mr. Brickman reviewed the significant number of communications which the Board had sent to the Department and the failure of the Department to reply. The Commissioner suggested a possible meeting to resolve outstanding matters. He also requested that as a matter of practice, the Board notify him ten days after a letter is sent that the Board has yet to receive a response.

Mr. Buchholz arrived at 4:35 p.m.

The Commissioner further requested that the Board send him carbon copies of all correspondence which the Board sends to other Department personnel. The Commissioner stated that his executive assistant, Arnett Gaston, would be in charge of coordinating all Department and Board correspondence.

Mr. Brickman outlined the Board's concern over the use of the Ossining Correctional Facility to house detained inmates not yet convicted.

Mr. Dickstein arrived at 4:40 p.m.

The Commissioner outlined the factors which the Department felt warranted the use of Ossining for this purpose. He noted among them the possible need to house inmates presently at the Manhattan, Brooklyn, Queens and Bronx Houses of Detention in other facilities, which he wanted to keep under capacity. Mr. Brickman recognized the competing factors but he emphasized that the original rationale for the transfer statute, newly numbered Section 79 of the Correction Law, had been the overflow of detention facilities caused by the new drug laws. He stated that the fears behind Section 79 had not materialized and that this should have caused the State and Department to question the present use of the Ossining facility.

Mr. Brickman further questioned whether there was not enough space at the Rikers Island House of Detention for Men to house inmates not yet convicted. He noted that the New York City House of Detention for Men at Rikers Island was presently being operated at 52 percent of capacity. The Commissioner responded by noting that the running of an institution at less than capacity allowed for repairs and reforms. He emphasized that the Department did not want the detained inmates housed at Ossining but stated that the need for space and one man to a cell principle had a higher priority. He also noted that Departmental staff

shortages would prevent the transporting of three hundred inmates from Ossining to Rikers.

Mr. Kirby stated that the heart of the problem was the selection of which inmates were being transported to Ossining. He emphasized that no detainees should be sent upstate. Commissioner Malcolm stated that he would prefer housing the four hundred inmates who were convicted and awaiting sentence to Ossining instead of inmates who were not yet convicted. He noted, however, that the State Department of Correctional Services had set up strict criteria for the selection of inmates to be sent to Ossining. He informed the Board that he was meeting with State Commissioner Peter Preiser to suggest revisions of these criteria. The Commissioner suggested that Mr. Brickman and Director of Operations D'Elia meet to discuss possible ways of remedying the situation that the Board objected to regarding Ossining. The Commissioner stated that Mr. D'Elia would also explore Mr. Jackson's claim that inmates at the Queens House of Detention who had Kings County cases were required to sign in each time they returned to the institution. Mr. D'Elia will also investigate Mr. Jackson's report that correction aides at the Queens House of Detention had been ordered not to place calls on behalf of inmates to phone numbers with 566- exchanges. The Commissioner stated that Mr. D'Elia would order this corrected if he found substance to the assertion.

The Commissioner informed the Board that the Department will have exhausted its correction officer availability list by March. He further noted that only 54 percent of those on the list were accepting positions as correction officers. He did point out that the Department's recruitment of Hispanics was showing gains and noted that a huge recruiting drive was being conducted by the Department of Personnel.

The issue of disclosure of mental health information by Department personnel to district attorneys' offices was then raised. The Commissioner noted that under Chapter 25 of the New York City Charter, he as Commissioner of Correction is solely responsible for the custody and care of inmates. He stated that it was the Department's opinion that its own legal responsibility was in no way diminished by the Mayor's order, shifting responsibility for the provision of medical and mental health care to the Health Services Administration. He informed the Board that the Department would seek a formal opinion by the Corporation Counsel as to the responsibility for health care under the Charter. Mr. Zweibel then stated that the Department was of the opinion that it had to have access to all medical records because of problems that might arise in institutions in the evening when HSA personnel were not present. He stated that the Department did have technical custody of all records pertaining to inmates. He acknowledged that some privileges did exist but that the Department had to obey all court subpoenas for records, although the Department felt that both the physicians and the inmates should have an opportunity to move to quash the subpoenas.

Mr. Zweibel further questioned the existence of a doctor-patient privilege where HSA personnel were not examining inmates for the purpose of diagnosis and treatment. He also stated that it was the Department's opinion that no privilege covered the disclosure of information by an inmate of his plans to commit a future crime. He stated that both the district attorney and the Department had a right to know this information. He further added that the entire question of legal privilege applying to Health Services professionals and paraprofessionals who work in the institution was not entirely clear. Mr. Zweibel stated that it was not the Department's policy to permit access to a district attorney at random and that no routine procedure for disclosing such information existed. He noted that the incident described by John Greenthal, Assistant General Counsel of the Health Services Administration, in his testimony before the Joint State Legislative Committee on Mental and Physical Handicap had never been brought to the attention of the Department of Correction. Mr. Zweibel also stated that he did not recall any instance in which information was voluntarily submitted by the Department to anyone in the district attorney's office. He stated that if such a request were made by the district attorney, the Department would examine the nature of the information requested and then decide whether to transfer it to the district attorney. He noted that such decisions would be made on a case-by-case basis. The Commissioner reiterated that it was not the Department's policy to provide any such information to district attorneys' offices as a matter of routine procedure. Mr. Jackson suggested that district attorneys might in fact be obtaining such information directly from institutional heads of institution staff without going through the Department's executive staff. Mr. Tufo asked the Commissioner whether this practice would be a violation of Departmental rules. The Commissioner said that it would.

Upon questioning, however, the Commissioner stated that the Department had not yet conducted an investigation into Mr. Greenthal's allegations because of too many other pressing problems at the time. He stated, however, that Mr. Zweibel would contact Mr. Greenthal for evidence to substantiate his charges. Mr. Tufo further questioned Commissioner Malcolm as to the nature of the Department's policy in this area. Mr. Zweibel said that he could not state that a directive was in effect on the disclosure of such information. Mr. D'Elia described the policy as a general rule that Department employees were not to give out information pertaining to inmates. Mr. D'Elia also noted that a memorandum of understanding had been drawn up between the Department and HSA concerning the question of privileged information but the memorandum had never been formally agreed to because of a dispute as to what was privileged information. The Commissioner stated that it was in the province of the Corporation Counsel to resolve the dispute and informed the Board that the Department would raise this issue with the Corporation Counsel and ask for a formal opinion. The



Commissioner admitted, however, that it was not the right of the Department to define what constituted privileged information.

The Commissioner informed the Board that the question of the implementation of the Chaplaincy Task Force recommendations was still being studied by the Deputy Budget Director.

The Commissioner then asked for the Board's cooperation in supporting the concept of community-based facilities. He informed the Board that the Department had been successful in defending against court actions to enjoin the establishment of a community-based facility in East New York. He further informed the Board that there were now 250 inmates in four community-based facilities sponsored by the Department in the City. The Commissioner noted that the community had fought the establishment of the Sloane House facility but the Department overcame this opposition by establishing a community advisory committee to participate in the operation of the facility. He then informed the Board that the Department would be meeting with representatives of the East New York community within the upcoming week to work on plans for that facility at 1000 Dumont Avenue. He stated that a work-release program on Rikers Island was not workable and asked for Board support to continue the establishment of community residential facilities to house inmates in work-release programs.

The Commissioner then informed the Board that on the following day at 10 a.m. members of the Department would be meeting with Deputy Mayor Cavanaugh to discuss the City's policy in reference to the Rhem v. Malcolm decision. He noted that Federal District Judge Morris Lasker had toured the Manhattan House of Detention during the previous week and stated that he had seen vast improvements from the date of his last visit.

The Chairman informed the Commissioner that the Deputy Mayor had requested that he attend, representing the Board of Correction. Commissioner Malcolm declared that he welcomed his attendance.

Upon motion duly made and seconded, the meeting was adjourned at 6 p.m.

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