

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

February 19, 1974

A regular meeting of the Board of Correction was held on February 19, 1974 at the offices of Mr. Tufo at 645 Madison Avenue, New York, New York.

Present at the meeting were Mr. Lehman, Mr. Gottehrer, Mr. Jackson, Father Rios, Mr. Schulte, Mrs. Singer and Mr. Tufo. Also present by invitation of the Board were John M. Brickman, Executive Director; Mary D. Pickman, Director, Legal Advocate Program; Kenneth G. Nochimson, Co-director, Legal Advocate Program; and Peter A. Lesser, Executive Secretary/Fiscal Officer.

Mr. Lehman acted as Chairman and Mr. Nochimson as Secretary of the meeting.

The meeting was called to order at 2:15 p.m.

Mr. Brickman announced that a request for an excused absence had been received from Rev. Wilson. Upon motion duly made and seconded, the request was approved.

The Chairman stated that he had just returned from a meeting with representatives of the Correction Officers Benevolent Association ("COBA") and other line associations. He reported that the major topic of conversation was the current effort by the COBA to regain parity with the Police and Fire Departments with regard to the 20-year pension plan. This plan entitles an employee to retire at one-half his salary after completing 20 years of service. Last year the State Legislature had extended the service requirement to from 20 to 25 years for newly-hired correction and sanitation employees. A discussion followed which centered on the feasibility of the Board taking a public stand regarding the pension plan. It was decided to study the matter further before making a final decision.

The minutes of the February 14 meeting were distributed for approval. Upon motion duly made and seconded, the minutes of the meeting of February 14 were approved. After discussion, Mr. Brickman asked that the members read the minutes carefully, note incorrect statements, and telephone corrections to him.

Mrs. Singer stated her concern that Board staff members were overstepping their authority without consulting Board members. In particular, she noted that a staff member had written to the Department of Correction concerning a problem in the visiting area of the Correctional Institution for Women. Mrs. Singer stated she had not been made aware of the letter until after it had been sent. She stated

that any matters related to institutions should be brought to the attention of the Board member assigned to that institution to discuss what action is required.

Mrs. Singer's comments resulted in a general discussion as to the roles of the Board members and the Board staff. Mr. Tufo said it was his judgment that the role of the Board members was to set policy and the staff's role was to carry out those policies. Father Rios stated that, in terms of accountability, he believed that the staff should be answerable to Mr. Brickman and that Mr. Brickman was responsible to the Board.

Mr. Brickman agreed with Mr. Tufo's analysis concerning the staff function of the Board. He stated that it was the staff's function to see to it that the Department of Correction worked more efficiently.

Mr. Brickman stated that both Peter Lesser and Bill Arnone were resigning from the Board of Correction staff. Mr. Lesser is moving to Texas to practice law and Mr. Arnone will become executive director of a senior citizen's center in the Bronx. Mr. Brickman lauded their services and noted their individual contributions. Mrs. Singer suggested that the Board look into the possibility of presenting plaques to them in appreciation of their services.

Mr. Schulte requested a salary breakdown of the Board staff. Mr. Brickman agreed to supply that breakdown.

The Department of Correction's Investigations Unit ("Unit") was discussed. The Chairman stated that after having an opportunity to study the present structure of the Unit, it was his judgment that the Unit was incapable of handling the tasks listed in the original grant award. The Chairman noted that he, along with Mr. Brickman and Mr. Nochimson, had met with Commissioner Malcolm and Assistant Commissioner Dickstein and suggested that the application for refunding limit the investigative authority of the Unit to those cases where there appeared to be a direct injury to an inmate, e.g., assaults, neglect in medical treatment, deaths, etc. However, those cases involving sale of drugs, possession of contraband, misconduct by off-duty correction officers and escapes should be referred to the appropriate law enforcement agency for investigation. The Unit should maintain an active liaison with those agencies but should not attempt to investigate those matters themselves. The Chairman noted that the Commissioner agreed to narrowing the scope of the Unit. The Commissioner also agreed to eliminate the task of performing background checks of prospective employees. The Commissioner promised to eliminate a budget request for "buy money" in the refunding application. He also agreed, at the Board's suggestion to

add the Unit's telephone number to the notice informing inmates of the purpose of the Unit.

Mr. Brickman stated that he had just received a copy of the refunding application and reported that many of the changes agreed to by the Commissioner were not reflected in the application. In particular, the budget request for "buy money" was not excised as promised.

After examining the application, Mr. Gottehrer stated that the inclusion of a budget request for fingerprint equipment was "outrageous." Mr. Schulte said that the application ought to contain a paragraph permitting the Board to evaluate the Unit.

Mr. Jackson inquired as to the status of the Board's proposed public hearing concerning the Unit. The Chairman suggested that the Board hold in abeyance a discussion regarding hearings until he met with the newly-appointed Director of the Criminal Justice Coordinating Council, Benjamin Altman.

Mr. Gottehrer suggested that the Board consider holding public hearings concerning the Manhattan House of Detention ("Tombs"). He stated that the recent court opinion in Rhem v. Malcolm held that the physical conditions of the institution were unconstitutional and must be ameliorated. In light of the court opinion as well as other articles criticizing the conditions at the Tombs, Mr. Gottehrer stated that the purpose of the hearings would be to gather expert testimony to develop a public report outlining the most feasible alternatives available to the City to improve the existing conditions.

Mr. Schulte reminded the Board that Mayor Beame had supported the building of a new Tombs when he was Comptroller. The Chairman suggested that the staff study the possibility of holding hearings concerning the Tombs and Mr. Brickman agreed to prepare a preliminary memorandum for the March 4 meeting.

Mr. Nochimson questioned the capacity of the staff to prepare adequately for such hearings in light of the departures of Messrs. Lesser and Arnone. Mr. Brickman suggested the possibility of utilizing consultant funds which are in the Legal Advocate Program budget to hire lawyers on a part-time basis to assist in the preparation of the hearings. Mr. Lesser stated such funds could be available within two weeks if no problems were raised by the Department of Personnel or the Bureau of the Budget. Mr. Brickman asked for and received the approval of the Board to free those consultant funds for that purpose.

The proposed work release center at 1000 DuMont Avenue was discussed. The Chairman stated that he had met with the Counsel to the Mayor, Ronald Stringer, who explained that there had been enormous community resistance to the proposed center due to the close proximity of the facility to homes and to a nearby school. The Chairman stated that the Department has decided to cease the fight to secure 1000 DuMont Avenue in view of these problems.

The Board discussed whether the Department of Correction or the Health Services Administration ("HSA") should be responsible for the delivery of medical services to inmates. The Chairman noted that Commissioner Malcolm would like to have the responsibility for health services returned to the Department of Correction. Mr. Brickman stated that the staff of the Board was strongly in favor of HSA retaining control of prison health services. Mr. Brickman stated that Commissioner Bellin's recent appointment of Dan Armet to replace Frank Schneiger as head of Prison Health Services might be taken as an indication that Dr. Bellin was in favor of retaining control of Prison Health Services. Mr. Brickman suggested that the Board hold in abeyance a decision concerning this question pending receipt of an opinion by Corporation Counsel which is expected to clarify whether the Commissioner is, in fact, legally responsible for the delivery of health services to inmates. Father Rios stated that the competence of the Department to handle the delivery of health services is questionable considering their past performance in other programs, such as the Investigations Unit. It was his belief that all health services should be delivered by professionals under the auspices of the HSA. Father Rios requested a copy of the section of the Administrative Code which defines the Department's responsibility for the care, custody and control of inmates which Commissioner Malcolm has stated empowers him to be responsible for the delivery of health services.

Mr. Brickman stated that he had obtained copies of the classification questionnaire which was developed by Professor Tony Cooper of New York University to assist the Department in classifying inmates in terms of risk factor. Mr. Brickman distributed the questionnaire for examination. He stated that, in his judgment, there were serious questions as to the constitutionality of the questionnaire as well as the relevance of certain questions in classifying inmates. He stated that the questions asked presume that a crime has occurred and that the inmate committed the crime. The answers to such questions may contain statements or admissions by the inmate and the correction officer conducting the interview may be subpoenaed to testify regarding those statements.

Mr. Brickman explained that a second problem was the relevance of certain questions for the purpose of determining an inmate's risk factor. Such questions as the number of victims involved in the alleged crime or whether explosives were used have no relevancy as to risk factor in an institutional setting.

Finally, Mr. Brickman stated that he had spoken to Professor Cooper who explained that all inmates would be given their "Miranda warnings" prior to being questioned. However, if the inmate refused to answer the questionnaire, the inmate would be placed in maximum security. Mr. Brickman stated that this procedure may conflict with Judge Lasker's opinion, which seems to state that an inmate has a right to be housed under the least onerous conditions.

Mr. Lesser stated that he had attended a Department training session in which correction officers received instruction as to how to utilize the questionnaire. Mr. Lesser stated that his observations led him to conclude that the proposed classification system was ill-conceived and unworkable.

Alternatives were discussed as to what action the Board should take in addressing the problems raised by the classification questionnaire. Mr. Gottehrer suggested that the Board discuss the problem with the Commissioner at the next Board meeting. The Chairman agreed to raise the issue with the Commissioner.

Mr. Brickman noted that the staff had prepared a series of recommendations dealing primarily with proposed legislation to improve the treatment of mentally disturbed inmates in the criminal justice system. These recommendations had been promised to the Select Committee on Mental and Physical Handicap ("Committee") which recently held public hearings on the subject. Mr. Brickman agreed to distribute them to the Board for approval.

Father Rios reported that he had attended a caucus of Black and Hispanic citizens to discuss prison reform on February 18, 1974. He reported that the caucus had discussed the feasibility of conjugal visits for inmates and the possibility of a full-time salaried Chairman of the State Commission of Correction.

Father Rios stated that he had agreed to play a major role in investigating suicides and studying methods of suicide prevention now that Mr. Arnone is leaving the Board. Mr. Arnone had handled problems related to mental health and suicides. However, Father Rios asked for the assistance of other Board members in examining this problem. Board members agreed to offer their assistance.

Mr. Brickman stated that the suicide notification procedure developed by the Department and the Board appeared to have broken down. The Board was not informed of the recent deaths which occurred at the Manhattan House of Detention and at Bellevue. Mr. Brickman stated that the Department informed him that the Board was not notified because it was uncertain whether the Tombs death was a suicide and the Bellevue suicide was not considered within the jurisdiction of the Department. Mr. Brickman disagreed with the Department's justification and stated that the Board should be notified whenever there is an inmate death. The Board agreed to raise the problem of notification with the Commissioner at the next meeting.

The Chairman raised the question as to whether the Board would involve itself in the case of Correction Officer Earl Whittaker who had been charged with inciting to riot during the Tombs disturbance in 1970. He was recently acquitted. The Chairman noted that James Wechsler had written an article concerning Mr. Whittaker's effort to obtain past wages and the refusal of the Department to order payment of such wages. After discussion, it was decided that there was little that the Board could do regarding this situation.

Father Rios stated that he felt strongly that the Board members must avoid dissention or disagreement among themselves in order that all points contained in the Board's agenda are answered by the Commissioner.

Mr. Lesser stated that in studying the Department's work-release program, it was his judgment that the program was a failure. He stated that the Department has been seeking quantity rather than quality, and that meaningful jobs were not being obtained for inmates. Therefore, the recidivism rate among work-release inmates was high. The Chairman requested that Mr. Lesser detail his findings in a report to the Board.

Mr. Brickman stated that while the meetings with the Commissioner served the purpose of alerting the Department to problems in which the Board was concerned, the question of what to do when the Department failed to respond adequately must be addressed. Father Rios suggested that at the close of each meeting with the Commissioner, the Chairman should ask if there is any further business. The Chairman agreed to ask such a question at the conclusion of each meeting.

Mr. Tufo stated that the Board should distinguish items on the agenda between those which are raised for informational purposes and those which the Board has already taken a firm position and wants the Department to make a definite response.

Mr. Brickman stated that the next scheduled meetings were on March 4 at 2 p.m. at 100 Centre Street; March 19 at 2 p.m.

at Mr. Tufo's office and on April 1 at 2:30 p.m. at 100 Centre Street.

At 6:15 p.m., upon motion duly made and seconded, the meeting was adjourned.