

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

January 14, 1974

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

Present at the meeting were Mr. McKay, Mr. Gottehrer, Mr. Jackson, Fr. Rios, Mrs. Singer, Mr. Tufo and Rev. Wilson. 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; Greg Harris, Director, Clergy Volunteer Program; and William Arnone and Sylvia Kronstadt, staff assistants, all of the Board.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Jack Birnbaum, Deputy Commissioner; Paul Dickstein, Assistant Commissioner; Alphonso Ford, Assistant Commissioner; Ronald Zweibel, Director of Legal Affairs; and Joseph D'Elia, Director of Operations.

Mr. McKay acted as Chairman and Ms. Kronstadt and Mr. Arnone as Secretaries 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 December 17 were accepted as amended.

The retirements from the Board of Col. William Dribben, its Vice-Chairman since 1965, and of David Schulte, who has served since 1960, were announced by the Chairman. After discussion and statements of personal sentiment by the members, upon motion duly made and seconded, it was

RESOLVED THAT the Board of Correction regrets the retirement from service of its former Vice-Chairman, William H. Dribben, who served the City of New York faithfully, honorably and with excellence and distinction since June 23, 1965. His intelligence, counsel and diligence have been integral to the Board's function, and we expect to call upon him for assistance regularly in the future.

It was further

RESOLVED THAT the Board of Correction regrets the retirement from service of David A. Schulte, who served the City of New York faithfully, honorably and with excellence and distinction since 1960. His intelligence, counsel and concern for the community have been integral to the Board's function and we expect to call upon him for assistance regularly in the future.

The Chairman announced that the Mayor has accepted resignation from the Board of Jerome Becker, who has accepted the position of Chairman of the New York City Youth Board. After discussion and statements of personal sentiment by the members, upon motion duly made and seconded, it was

RESOLVED THAT the Board regrets the resignation of Jerome M. Becker, who served honorably and faithfully as a member since January 1972. Mr. Becker's talents are well suited for his major new assignment as Chairman of the New York City Youth Board and the Board wishes him every success in his new effort.

The Chairman also announced that the Mayor has accepted the resignation from the Board of Enio Carrion. After discussion and statements of personal sentiment by the members, upon motion duly made and seconded, it was

RESOLVED THAT the Board of Correction notes with regret the resignation of Enio Carrion, a respected friend and colleague, whose good humor and wise advice were valued. The Board wishes him every success.

The Chairman then noted that Mr. Gottehrer, Mr. Jackson, Fr. Rios and Mr. Tufo were newly appointed members and welcomed them.

A suggested list of Board and Board staff institution assignments for Inmate Liaison Committee meetings was distributed. The Chairman invited those with reservations or problems to discuss the matter with Mr. Brickman.

Mr. Harris reported that the Community Advisory Board (charged with interviewing prospective candidates for institutional chaplaincy posts) had met for the first time on December 18 to discuss four applicants, and had selected one, the Rev. John Fortt, to recommend to the Commissioner. However, it was subsequently learned from Deputy Commissioner for Rehabilitation Alphonso Ford that no line is available for the post, according to Mr. Harris. (Mr. Harris explained that the 1972 Prison Chaplaincy Task Force had recommended that the four full-time and 28 part-time chaplains employed by the Department be replaced with one ecumenical administrative full-time chaplain for each institution. It was recommended that a community board composed of two Board and two Department representatives and two other persons selected by the four Board and Department representatives, select the chaplains. It was assumed, Mr. Harris added, that each chaplain could provide services for inmates of his own faith, and could arrange for services for those of other faiths.)

The Chairman asked for a review of the Inspector General issue for new Board members. Mr. Nochimson explained that the Investigations Unit was established to perform the internal investigative function within the Department. The Board conducted a study in part to determine the Unit's merits for re-funding. The Board's evaluation concluded that the Unit's effectiveness is "virtually nil," Mr. Nochimson said. The Board had agreed to hold release of the report in abeyance if the Department would respond to its charges by December 31, 1973. A reply has not yet been received, but one was understood to have been prepared, Mr. Nochimson added. The Chairman urged that the report's confidentiality be preserved until the Department has had an opportunity to respond. Mr. Jackson asked how long the Board should wait for a response. The Chairman agreed that this was a legitimate question. Mr. Brickman suggested the possibility of insisting that the Department hire a new Inspector General despite the uncertain status of the Department's leadership.

The Chairman asked Mr. Arnone to discuss the Pellegrino case. Mr. Arnone reported that on January 10, 1974, Thomas Pellegrino, a 22-year-old white male, was found dead in his cell on the 8th floor of the Manhattan House of Detention by a correction officer. The initial medical diagnosis specified cerebral hemorrhage as the cause of death. It was later disclosed, however, that the inmate died from an overdose of seconal, a strong sedative not officially available in the institution. The Medical Examiner's office has confirmed that a potentially lethal amount of seconal was present in the blood of the inmate, Mr. Arnone added. The time of the inmate's death is presently in dispute, he continued. The officer reported that he discovered the body at 9:30 a.m., but the Medical Examiner's office estimated that the inmate had been dead up to possibly 12 hours. Because the inmate's absence should have been noted at the morning count and breakfast call, questions are raised with respect to internal institutional procedures, Mr. Arnone said. The Department has referred the case to the District Attorney, and Warden Peter Schaefer has stated that no one has been excluded from suspicion in the investigation into the source of the drug. There is some indication that the Department's own report will not accurately reflect its actions before the body was discovered, Mr. Arnone said. He urged that the Board press the Department to insure that its investigation is prompt and thorough.

Mr. Kirby arrived at 2:55 p.m.

Mr. Brickman noted that neither the Board nor the Department is proscribed from conducting or participating in an investigation despite the involvement of the District Attorney. He added that the Board's further involvement would be unwise, however, because it lacks the resources and skills to perform the comprehensive investigation that is necessary in this case. The Chairman proposed that in light of the Board's voluntary relinquishment of responsibility in the matter, it should maintain contact with the investigation and continue

to serve as a "watchdog." Mr. Brickman reported that he had told Mr. John Keenan, the Administrative Assistant District Attorney, that the Board hopes that the investigation will be completed with dispatch, unlike past cases that have required at least several months, because of its sensitivity and criminal ramifications. Mr. Brickman added that the Board should now push the Department to exert similar pressure on the District Attorney's office. The Chairman offered to request that the Medical Examiner give the Pellegrino laboratory work top priority.

The ramifications of the Rhem v. Malcolm decision were discussed. The plaintiffs had claimed violations of their constitutional rights as detainees in the Manhattan House of Detention and had asked the court to order a broad spectrum of reforms. The judge's ruling, which calls the Tombs unacceptable, as presently structured, means that good intentions are no longer enough, Mr. Brickman said. The Department might well appeal the decision, Mr. Brickman added. He suggested that the Board urge the Department to take the decree to the Bureau of the Budget and demand sufficient funds to construct and create a legally acceptable atmosphere. The Board might consider urging publicly that the Department not appeal the order, he said. Mr. Tufo examined the broad implications of the ruling and noted that it is the first time the imprimatur of a court has been applied to such broad aspects of prison reform. He suggested that plaintiffs might be urged to make concessions in their demands in exchange for the Department's agreement to apply the decree to all of its institutions. Mr. Gottehrer pointed to the political nature of the issue and added that the swiftness and stringency of the decree will be affected by City Hall.

Ms. Pickman reviewed the dress policy at the Correctional Institution for Women, noting that detainees are not permitted to wear slacks or halters. The Board has discussed the matter with the Commissioner and with Superintendent Essie Murph, who defines the institution's dress code as what she thinks is feminine, according to Ms. Pickman. Mr. Kirby stated that the institution should confront directly the problem of lesbianism, rather than obscuring it in the issue of dress. Ms. Pickman urged that the Board participate in any responsible litigation addressing the rights of female detainees.

Mr. Brickman alerted new Board members to the Board's involvement in the Nick Bagley case, and reported that he was hopeful of an affirmative resolution.

Commissioner Malcolm, Deputy Commissioner Birnbaum, Mr. D'Elia, Mr. Dickstein, Mr. Ford and Mr. Zweibel arrived at 3:45 p.m.

Commissioner Malcolm handed the response of the Department of Correction to the Board's report on the Investigations Unit to the Chairman. Commissioner Malcolm noted that ten more weeks of funding were left under the grant and stated that an application for renewal of the grant was due by February 26, 1974. He stated that it was the Department's intention to submit a new program proposal, including an expanded reporting unit, to the Criminal Justice Coordinating Council. He noted that the Department's response included some agreements with Board recommendations as well as some disagreements. He stressed the need for institutional access by investigators who were looking into all grievances, whether expressed by inmates or employees of the Department. He commented that the Investigations Unit never had enough resources under the grant to conduct a full scale recording operation as was needed. He noted specifically that only one clerk, paid \$150 a week, was in charge of the recording system. He therefore emphasized the need for a new expanded recording unit within the Inspector General's office.

Commissioner Malcolm then reported on the recent death of Thomas Pellegrino. He stated that suicide notes were found in his cell and that the cause of death was most likely an overdose of seconal. Commissioner Malcolm stated that he called for an immediate meeting with the District Attorney's office and that he had in fact met with Mr. Keenan, Assistant District Attorney Robert Leiner, Chief of the Homicide Bureau and Assistant District Attorney John Tully. Commissioner Malcolm stated that he also called Chief Medical Examiner Milton Helpert and requested an immediate autopsy. He was told by the Medical Examiner's office that the cause of death was seconal, a large substance of which was found in the inmate's stomach, but noted that a further chemical examination was expected from the Medical Examiner's office. The Commissioner added that assistant district attorneys were presently at the Tombs questioning all those who may have been involved and that the Department's own unit was investigating the matter. He emphasized that the major focus of the investigation would be on the source of the illicitly-obtained drugs, noting that the District Attorney's office and not the Department of Correction was looking into this aspect. He declared that a Department of Correction representative would be working daily with the District Attorney on this investigation.

Mr. Castro arrived at 3:50 p.m.

Commissioner Malcolm stated that in his opinion, the Department of Correction had an obligation to remove itself from the matter while the District Attorney's office was investigating it. He cited the possibility of contempt proceedings brought against anyone interfering with a district attorney's investigation. He therefore noted that the Department often will not bring up a correction officer on disciplinary charges until a district attorney is finished with his investigation. He added that the Department will, however, proceed on matters in which a district attorney's office is not itself interested and if the district attorney's office so allows.

Commissioner Malcolm acknowledged that in the Pellegrino case the Department was investigating some aspects of possible violations of its own rules and regulations. He declared that Captain Mellon is the Department of Correction's liaison and described Captain Mellon as being part of the Investigations Unit under the Director of Legal Affairs. Mr. Zweibel stated, however, that Captain Mellon was not part of the CJCC grant. Commissioner Malcolm described Captain Mellon as a Department of Correction liaison with the Investigations Unit whose function was to assist the unit in its investigations. Commissioner Malcolm also noted that in sensitive cases he will personally assign a certain member of the Department of Correction staff to investigate.

The Chairman stated that the Board would call Mr. Zweibel regularly on the progress of the District Attorney and the Department's investigations into this death.

Mr. Harris then reviewed the problems arising in the implementation of the Chaplaincy Task Force recommendations. Mr. Dickstein stated that Deputy Budget Director John Lannigan had not yet approved the line for the first chaplain. He noted that Tony Japha of the Bureau of the Budget approved the line and suggested that the Board call Mr. Lannigan. The Chairman agreed. Commissioner Dickstein noted that the Department of Correction would be asking for budgetary approval of all positions as soon as possible. The Chairman then suggested that Commissioner Dickstein, Mr. Harris and Mr. Brickman meet and devise a procedure through which the Chairman and the Board could be of assistance.

Mr. Ford noted that part-time chaplains should be advised of the new full-time positions which would be available and stated that a notice should be sent out to them.

Mr. Harris stated that the Adolescent Reception and Detention Center chaplain had requested appointment and payment as the full-time chaplain, since he had been acting virtually full-time in a voluntary capacity up to now. Mr. Ford noted that the warden of the Adolescent Reception and Detention Center had recommended him as chaplain. He pointed out that a warden could recommend chaplains, but a warden did not have the power himself to appoint a chaplain.

The Chairman then offered Board participation in upcoming discussions leading to a decree in the Rhem v. Malcolm litigation. Commissioner Malcolm stated that the Department would be glad to have the Board participate. He stated that the first meeting regarding the decree would be on January 21 at 10 a.m. in Deputy Mayor Cavanagh's office. He asked the Board to join the Department and the Corporation Counsel in

this meeting. He noted that the opinion of Judge Lasker would revolutionize the prison system in the City. He declared that in his judgment, the Tombs would have to be closed down completely if the decree in any way approached the scope of the judge's opinion and added that he had so informed the Deputy Mayor and the Corporation Counsel. Commissioner Malcolm stated that no dollar figure has been estimated as of yet and described the old \$3.9 million figure for the Tombs renovations as out of date. He commented that the new figure would probably exceed \$10 million. He added that the Department is presently developing new figures.

Deputy Commissioner Birnbaum added that renovation in this case might take more time and money than building an entirely new structure from scratch. Commissioner Malcolm stated that he wanted to see the Tombs closed up. Mr. Tufo suggested that the Department's officials might be looking at the Rhem decision in too narrow a light and thus failing to capitalize on an opportunity to utilize the case to its fullest extent. He noted that the parties in the case had the opportunity to develop a far-reaching program of change which the City would have to support in accordance with the court order. He suggested a creative planning process, instead of a fight among the parties involved.

Mr. Jackson questioned the issuance of the Department's press release criticizing the judge's opinion. Commissioner Malcolm said that the release was necessary to counteract what he termed "press distortion." He stated that he felt that he had the responsibility to defend the progress of his administration.

Mr. Dickstein then stated that this litigation might present the City with an unparalleled opportunity to release Bureau of the Budget constraints due to the need for obedience to the court order.

Mr. Brickman then noted that it was the Board's feeling that the Department of Correction as the client of the Corporation Counsel should determine whether or not to appeal. Commissioner Malcolm responded that he was aware of this and noted that the Department of Correction had not in its press releases attacked the ruling of the judge. Mr. Tufo added that money objections are often a camouflage for political objections and that court decisions can overcome the money camouflage. He noted that Rhem can give an irresistible force to what might normally be a political fight and therefore take the issue of reconstructing the Tombs out of the normal political forum. The Chairman again offered the assistance of the Board of Correction in any way possible to utilize the Rhem decision.

Commissioner Malcolm then described problems with the residential community based facility in East New York. He stated that the facility had been awarded funding for three years at \$180,000 a year and that December 1 was the scheduled starting date. However, groups within the community hired an attorney and obtained a temporary restraining order to prevent the Department from moving into the community and establishing a residential facility for inmates. He noted that a court decision on the possibility of a permanent injunction would come down January 18. He described this issue as placing the entire concept of community-based facilities for inmates in jeopardy. He noted that there has been community opposition to the proposed use of the Branch Queens House of Detention as a facility for mentally disturbed inmates, but that the community in that particular case expressed its anger briefly yet failed to organize over it. The Chairman once again pledged the support of the Board on the issue of the East New York community-based facility.

Upon motion duly made and seconded, the meeting was adjourned at 5 p.m.

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