

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

January 25, 1974

A special meeting of the Board of Correction was held on Friday, January 25, 1974, in its offices at room 100, 280 Broadway. Present at the meeting were Mr. McKay, Mr. Gottehrer, Mr. Jackson, Mr. Kirby, 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, Assistant Executive Director, and Peter A. Lesser, Executive Secretary/Fiscal Officer of the Board; Greg Harris, Director, Clergy Volunteer Program; Kenneth G. Nochimson, Co-Director, Legal Advocate Program; Barbara Allen, William Arnone, Arden Culver, Steven Fisher, Sylvia Kronstadt, and Eileen Shanahan of the Board staff; and Steven Rosenberg of the Mayor's Criminal Justice Coordinating Council. Present as a special guest was Mr. Ramsey Clark, former Attorney General of the United States.

Mr. McKay acted as Chairman and Ms. Culver as Secretary of the meeting.

The meeting was called to order at 3 p.m.

Mr. Brickman introduced Mr. Clark to the Board, and the Chairman invited Mr. Clark to address the Board. Mr. Clark spoke briefly of the importance of changing public attitudes by informing the public of what is at stake. He cited the one most important goal as "employment for everyone who walks out of the institutions."

At 3:15 p.m., Mr. Clark left the meeting.

The Chairman introduced Ms. Shanahan to the Board. Ms. Shanahan came to the Board after working in the Clergy Volunteer Program as Coordinator for the Women's House. She also worked with Prison Health Services as a community liaison between prison mental health staff and the professional community.

Mr. Brickman reported on the Nick Bagley case. He stated that Governor Wilson appeared to have made a decision to keep Mr. Bagley in New York, that Governor Mandel had proposed a means by which this might be accomplished, and that Douglas Colbert, Mr. Bagley's attorney, felt optimistic now that Mr. Bagley would be allowed to remain in New York.

Mr. Brickman proposed to the Board that public hearings be held on the Investigations Unit. He recounted that in November 1973 the Board staff had conducted a study of the unit, had distributed the report to the Board prior to the November 27 meeting, and had suggested at that time that public hearings be held. Mr. Brickman stated that after much discussion the Board had agreed to distribute copies to Commissioner Malcolm, and Messrs. Leon Katz, Robert Wallace, and

Ronald Zweibel, with the request that the Department respond to the report by December 31, 1973, and that the Board had agreed to hearings or some other publication in January 1974 if satisfactory evidence of (1) general acceptance of the Board's recommendations and (2) commencement of implementation were not received by December 31, 1973.

Mr. Brickman further stated that in its December 4 cover letter enclosing the report, the Board had requested the Department to "accept in principle the recommendations by December 31, 1973," that "without that acceptance and a substantial effort to begin implementation by that date, the Board would find it difficult to avoid public action consistent with its responsibilities."

Mr. Brickman reported that the Department did not meet the December 31, 1973 date. He stated furthermore that the response received finally, dated January 14, 1974, failed to answer in a substantive way the recommendations set forth. Mr. Brickman noted that the Department's delay in answering along with the tone of their response suggested to him that the only way the Board could carry forth our role of insuring that the Department of Correction maintain an Investigations Unit that worked was to hold public hearings. Mr. Brickman stated that the Department must itself be committed to ensure command accountability and must manifest an ability to manage its own affairs in satisfactory fashion. Mr. Brickman added that he felt more strongly now about the need to hold public hearings than he did before.

The Chairman informed the Board that he felt passages from the December 4 letter "put down the gauntlet," and that upon reading the two response letters, he felt the Department was saying "go ahead and do it."

Ms. Pickman stated that she believed the Department considered the Board a "toothless tiger."

Mr. Brickman stated that he felt the Board's recent behavior in its dealings with the Department had caused this. He gave as evidence the Board's handling of several incidents without criticism of the Department, as well as its having been inordinately sensitive to Commissioner Malcolm regarding the Rhem suit.

Mr. Gottehrer stated that he did not believe it was advisable to hold public hearings. He said he believed Commissioner Malcolm's response was not an invitation to hold public hearings, but a response made in the manner suggested. He further stated that Commissioner Malcolm would view public hearings as antagonistic, that the Commissioner wanted an Inspector General, and that he would say he is going to endorse an Investigations Unit. Mr. Gottehrer also raised the issue of the Board staff's being forced to defend itself over many of the points in the Department's January 14 response.

Mrs. Singer stated that she felt the timing was inappropriate. She noted that Commissioner Malcolm had done a good job, that public hearings would place him in a bad position, and that the Board should try to determine from him how we can be of help. She further stated that she believes Commissioner Malcolm wants an Inspector General, and that the Chairman and the Commissioner should meet and see how to resolve the question.

Mr. Tufo inquired as to the purpose of the hearing, what evidence we had received to indicate the Department considered the Board "toothless tigers," and what other issues had to be considered before the Board held public hearings.

The Chairman stated that the purpose of the hearings was to expose the deficiencies in which the unit had been set up and was operating in order to prevent it from operating the same way in the future.

Mr. Jackson stated that he was strongly in favor of public hearings, and that as President of the Fortune Society, he feels the Department could do a better job. He noted that Warden Thomas at Rikers Island had informed him that he did not want the Board in his facility. Mr. Jackson stated his belief that the Commissioner's response did not address itself to what should be done, and that if there is a continuation of the unit, changes should be made.

Mr. Kirby stated he was in favor of public hearings since he believed that something had to be done about Commissioner Malcolm's giving up authority to his subordinates. He noted that he believed the response letter had come from Deputy Commissioner Birnbaum.

Rev. Wilson stated that he felt timing was bad for public hearings. He suggested that the Chairman meet with Commissioner Malcolm to clarify the situation. He further stated that he endorsed public hearings, but at another time. He said that the Board should speak to Malcolm in private and if that is unsuccessful, then should consider public hearings.

Father Rios reminded the Board that its first consideration and responsibility was to the community. He stated that time may be a real issue--since there is no guarantee that Commissioner Malcolm will stay in office, it would be better to hold hearings now than wait until a new Commissioner took office. He said that inmates are suffering under trying conditions. In referring to the Department's response, Father Rios stated that he felt the tone of the response did not endorse the Board's recommendations, that several of the points the Department made were unclear, unsubstantiated, and defensive, rather than constructive, and did not take the substance of the Board's report into consideration. He further stated that the Board must consider its own functions, must get outside of political considerations and think instead of the services required by the community. He then moved that the Board hold public hearings.

The Chairman said the ultimate question was whether progress would be made by holding public hearings. He stated that the Board must first determine that it has an issue which can be projected to the public and that the Board can project it satisfactorily before it moves ahead.

Mr. Tufo stated that he believed public hearings should be held whether or not Commissioner Malcolm is reappointed. He further stated that he believed early hearings would set a new tone whether Commissioner Malcolm is the person reappointed or someone else is appointed, and that he was in agreement with the staff's concern that the Board have watchdog responsibility for the Investigations Unit.

The Chairman said that in regard to Commissioner Malcolm, the Board must consider whether it can separate its commitments, whether it was possible to support him while holding public hearings on the malfunction of the Investigations Unit. He noted that he could speak to Mr. Cavanagh about the Board's serious concern about the unit while noting that it also supported Commissioner Malcolm.

Mr. Jackson stated that now that Mr. Katz has gone and the Investigations Unit is nonfunctioning, the Board must consider this issue first and not Commissioner Malcolm. He further stated that the Board must examine the present structure of the unit to consider whether it should be renewed as it is presently set up.

Mr. Brickman stated that he agreed with Father Rios that the Board's constituency is the community and that it has a public responsibility. He noted that part of that responsibility is to the needs of the inmates, who have limited options without an Inspector General to whom they may address their complaints of abuse. Mr. Brickman further stated that in regard to the "toothless tiger" argument, until December 1972, the Board "went public" whenever something occurred in the institutions that warranted public attention and concern. He added that without this catalyst to force the Department to answer for itself, this was no longer happening, and that he believed hearings would once again force the Department to examine itself.

Father Rios noted that the Department had not yet filed the necessary letter of intent or grant application with CJCC to apply for renewal of the program. He noted that the next possible CJCC board meeting was in March 1974. Mr. Gottehrer agreed that this was a significant consideration and suggested that the Board call Bob Wallace of CJCC to the meeting.

Mr. Brickman added that Commissioner Malcolm's letter to CJCC, while indicating an interest in the continuation of the grant, did not enclose the needed documents to bring that about.

Mr. Brickman then stated that there were other issues to consider than the Investigations Unit. He further stated that the Board cannot allow its personal feelings about the Commissioner to interfere with its public responsibility. Mr. Brickman cited Gordon Chase as an example of someone who has made a large bureaucratic agency work well. He stated that Commissioner Malcolm has a highly paid staff and less than 5,000 employees, and that it was the duty of the Board of Correction to identify the Department's failures. Mr. Brickman said that he was unable to accept the rebuttal letter and declared that if the Department considered Katz's behavior so unacceptable, there was an inevitable question as to why he was not replaced.

Ms. Pickman stated that public hearings were the only alternative, and that sitting down with the Department would not be effective. She further stated that the Board members' viewpoint was different from that of the staff who dealt with the Department on a day-to-day basis. She further stated that public hearings would bring information to the public and would raise the profound question of the ability of the Department to ensure accountability of its line forces.

Mr. Tufo asked whether the nature of the hearings would be such as to make them sufficiently dramatic to bring about the desired results. He noted his concern that there might be general disinterest and that the situation might end up "worse off."

Mr. Nochimson announced that he had reached the CJCC offices, that Bob Wallace was not available, and that Steve Rosenberg would be coming to the meeting in his place.

Mr. Brickman stated that the August 1971 hearings on medical care in the prisons had demonstrated to the public the lack of management within the prisons with regard to medical services and had been instrumental in getting health services transferred out of the Department's jurisdiction over to the Health Services Administration. Mr. Brickman added that recent dealings with Commissioner Malcolm and Mr. Zweibel had reconfirmed to him the extent to which the executive staff of the Department was unaware of its line forces and what is happening within the institutions.

Father Rios spoke of the effectiveness of the chaplaincy task force hearings in establishing how little was known. He declared that these hearings had gotten results, and asserted his belief that public hearings would also be an effective means to change the present situation. He noted that in a controlled population, such as the Department has available, there exists an ideal situation in which to check things out. He further noted that if the Department cannot adequately check out the situations that exist within its institutions, no one could.

"We can not, who can, they must," he added. He further stated that he believed this would be an opportune time, since it followed the release of Judge Lasker's decision, to point out to the public that the Department can not effectively carry out an investigation.

Mr. Jackson added that in his own experience the Department was not checking things out with the people he brought to their attention.

Mr. Gottehrer stated that the Department asserted that it supported the idea of an Investigations Unit and that he believed that hearings might put the Board in the position of being attacked by the Department.

Mr. Rosenberg of CJCC entered the meeting at 4:35 p.m.

The Chairman introduced Mr. Rosenberg to the meeting and asked him whether the Department had taken the necessary steps to ensure that the Investigations Unit would be operating next year.

Mr. Rosenberg stated that the Department had not brought anything to the CJCC offices to indicate that it would seek refunding of the unit. He further stated that CJCC is interested in the unit, believes it is important, and would continue to fund it for a second year if several of the problems were cleared up (i.e., the necessity of obtaining a warden's permission to enter an institution). He noted that in the November letter that Commissioner Malcolm had sent to CJCC he had indicated the Department would seek refunding, that CJCC (Bob Wallace) had responded with a letter raising a number of questions, and that Mr. Wallace had received an answer from Malcolm but that the response did not adequately answer all of the questions raised.

Mr. Rosenberg informed the Board that there is a deadline of February 27, 1974 to be met in order to make the March 1974 meeting. This means an internal deadline of the first or second week in February. So far, CJCC has heard nothing.

Mr. Kirby stated that he felt public hearings would not solve the problem of the Investigations Unit and that the Board should first meet with Commissioner Malcolm.

The Chairman asked Mr. Rosenberg whether, if public hearings were held, anyone from CJCC would be willing to testify. Mr. Rosenberg's response was uncertain.

Mr. Kirby suggested that if the Department did not meet the CJCC deadline of February 1, 1974, public hearings be held. The Chairman declared that he agreed.

Mr. Nochimson stated that this was a critical time since the Investigations Unit was now up for refunding and that public hearings would allow the Board to have some effect on restructuring the unit. He further stated that the purpose of the hearings would be to identify the problems, what has to be done, what has to be put into a new proposal. (e.g., Should inmates be informed of the unit? What structure should be established to make every inmate aware?)

A general discussion was held about the advisability of talking to the Department about restructuring a new proposal for the Inspector General proposal, instead of holding public hearings.

Mr. Brickman stated that in light of prior meetings and the response the Board had received, talking was not going to bring about the desired results.

Mr. Gottehrer stated that he believed negotiations between the Board and the Department would solve nothing. He stated that there were two important questions, "Are they going to reapply?" and "If CJCC can't resolve the problem of the continuation of the unit, then the Board should hold hearings."

Mr. Brickman stated that this is exactly what the Board has done.

Mr. Jackson stated that the original proposal accepted by CJCC for the unit was not followed by the Department. He further stated his disbelief that there would be any benefit arising from sitting down with the Department to negotiate a new proposal.

Mr. Tufo stated that the question was one of timing and objective. He stated that he was committed to public hearings in order to expose the lack of management capacity and accountability. He further stated that the Board must be sure of its grounds and be certain that it can achieve what it sets out to. He further stated that the question to address was how the conclusions reached by Judge Lasker could best be dealt with by the City, the Department, etc. He stated that he felt Judge Lasker's decision was the most thorough study in the last decade.

Mr. Brickman stated that it was his preliminary judgment that it was inadvisable to use Judge Lasker's decision as a basis for public hearings. He stated that it would take the focus off the Department's internal management capabilities. The Department, Mr. Brickman noted, must be made to account for what it has done. Judge Lasker's decision as the focus of hearings would merely permit the Department to expand upon its assertions of good intention.

Mr. Brickman then discussed structure. He raised the issue of what is a good internal investigation unit. The Department's initial planning of the unit was discussed, as well as how correction personnel were informed; the 11-month delay; the printing of 10,000 notices, their recall; the issue of the Civilian Review Board; aspects of background checks of correction personnel; projected testimony from Messrs. Birnbaum, Malcolm, Zweibel, and Katz; the unit's liaison with other agencies, the Special Prosecutor and district attorneys; the internal discipline of correction officers after the October 1972 escape; problems in Branch Queens; the procedure necessary to formulate accusations against correction officers (why does it take six months for a Departmental hearing and six months to get a disposition); what does the unit have to show for its work product; how many inquiries resulted; how many correction officers were charged with misconduct; what is the present status of the unit? Mr. Brickman stated that the Board staff could be ready for hearings within three weeks.

Mr. Tufo then read to the meeting his amended version of a draft resolution distributed earlier at the meeting by Mr. Brickman. Mr. Tufo's resolution combined the consideration of the Investigations Unit operation with the Lasker decision. Mr. Tufo noted that he believed the broader scope his resolution encompassed would better ensure that the hearings would accomplish something substantial. A general discussion ensued regarding Mr. Tufo's amended version of the resolution.

The Chairman stated that the Board could help the Department respond to Judge Lasker best by issuing a press release. He further stated that he had reached several tentative conclusions. He stated that he agreed with Father Rios that political considerations could not be taken into account; he added that the Board did not know enough, nor could it judge the time element. He noted that the most important question is whether public hearings would allow the Board to do something for the system. The Chairman stated that he believed that hearings would enable the Board to call to the attention of the public and the Department of Correction certain very important issues. He noted that the hearings would have to be tightly controlled and precisely conducted, and that the undertaking would be very difficult.

Mr. Tufo stated that the key point was whether the Department had the capacity to function properly. He further stated that by focusing upon the Rhem decision, the Board could demonstrate whether there was capability and commitment on the part of the Department.

Father Rios stated that the Board was mandated to evaluate the performance of the Department and that if public hearings were the only way in which to accomplish this, it was entitled to hold them.



Mr. Lesser stated his belief that the Board was capable of controlling the hearings, citing the 1971 hearings as evidence.

Mr. Lesser further noted that there was much mismanagement and that the Investigations Unit was merely the most recent example, work-release being an area Mr. Lesser had been talking to the Department about for two years, and about which the Board has had to fight for information the Board is entitled to have but which the Department does not wish to provide. Mr. Lesser stated further that the function of the Board is fact-finding and evaluative; public hearings would allow it to get the facts. He added that the Board would ask questions and the Department will have to answer.

Mr. Lesser next addressed himself to the issue of the Board's reputation among the inmate population, noting that we had done little lately to improve the situation. Mr. Lesser stated that the Investigations Unit issue hits right to the heart of the inmates. He added that the purpose of the hearings would be to call the Department to task. They have been negotiating, Mr. Lesser added, but have not been doing the job.

Mr. Lesser also noted Board staff morale and stated that it was currently at its lowest point. He declared that the Department does not respect the Board and does not wish to cooperate with it. What is evident to the Board staff in its day-to-day dealings, Mr. Lesser added, is not readily apparent to the members. Mr. Lesser stated that the only way in which to make the Department work was to embarrass it.

Rev. Wilson made a motion to move forward with the hearings. Mr. Kirby seconded the motion.

Mr. Gottehrer stated he was concerned about the allegations made about the staff in Commissioner Malcolm's response.

A discussion ensued about the advisability of meeting with Commissioner Malcolm before holding hearings.

Father Rios responded to Mr. Gottehrer's concern over the allegations made about our staff by stating that he had gone over the allegations in the response and the report itself. He declared that in his judgment, if anything the allegations make the Department look worse because they were either unfounded or unimportant.

Mr. Brickman stated that a close reading indicated that where the report was wrong, the mistake was not substantial, and that the Department agreed with much the Board said.

The Chairman asked whether the Board staff could answer all questions so that it would be protected. He said that before holding a public hearing, the Board should document its answers to their questions.

Mr. Nochimson noted that the Board has always acted unanimously, and urged that the Board vote unanimously.

Mr. Kirby moved to table the motion.

The Chairman called for a vote regarding tabling. The motion failed by a vote of three in favor (Mrs. Singer and Messrs. Kirby and Gottehrer) and four opposed (Mr. Jackson, Father Rios, Mr. Tufo and Rev. Wilson).

The Chairman called for a vote regarding holding the hearings. The motion carried by a vote of five in favor (Mr. Jackson, Mr. Kirby, Father Rios, Mr. Tufo and Rev. Wilson) and two opposed (Mr. Gottehrer and Mrs. Singer). (Although the Chairman did not vote, he indicated that he favored the hearings.)

Mr. Tufo stated that at the next Board meeting, the exact format and scope of the hearings should be discussed.

The Chairman stated that by the next Board meeting the staff would have prepared answers to the Department's allegations, formulated a structure for the hearings and prepared a statement of the underlying purposes. The Chairman declared that the date of February 15, 1974, would be the earliest date possible for hearings.

The Chairman announced that he would talk to Executive Deputy Mayor Cavanagh during the coming week and inform him of the Board's intention to hold hearings. He noted that he would inform Mr. Cavanagh that the hearings might bring discredit to the Department but that the Board wished to keep the issue of Commissioner Malcolm's reappointment separate.

Discussion generally ensued among the members about the advisability of the Chairman's speaking to Mr. Cavanagh about the hearings during the coming week. Mr. Tufo stated that the Board should wait to disclose this information until it had decided upon the scope of the hearings. The Chairman declared that he would make it a private understanding.

Mr. Brickman noted that the Chairman had resigned prospectively and a new chairman might not want the pressure of holding public hearings.

Mr. Tufo moved to reconsider the motion to hold hearings.

Father Rios said that he was against the motion to reconsider. He declared that the Board knew the direction the hearings would take. The Chairman could simply tell the Mayor that the Board did not have a precise scenario, but that it wished to apprise him of its intentions.

Ms. Pickman, Mr. Lesser, and Mr. Brickman discussed further the issue of the staff's feelings.

The Chairman called for a vote on the motion to reconsider. The motion failed by a vote of two in favor (Messrs. Gottehrer and Tufo) and three against (Messrs. Kirby and Jackson and Father Rios). Mrs. Singer and Rev. Wilson did not vote.

Upon motion duly made and seconded, the meeting was adjourned at 6:35 p.m.