

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

July 23, 1974

A regular meeting of the Board of Correction was held on Tuesday, July 23, 1974 in Room 1410, 100 Centre Street, New York, New York.

Present were Mr. Lehman, Mr. Gottehrer, Mr. Jackson, Mr. Kirby, Mrs. Singer and Mr. Tufo. Present by invitation of the Board were John M. Brickman, Executive Director; Michael Cleary, Executive Secretary; Eileen Shanahan, Co-Director, Legal Advocate Program; Greg Harris, Director, Clergy Volunteer Program; Stephen Fisher, Staff Assistant; Sylvia Kronstadt, Staff Assistant; Barbara Allen, Secretary to the Executive Director; and Kenneth Nochimson, Volunteer Consultant to the Executive Director.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Jack Birnbaum, Deputy Commissioner; Luis Cadiz, Deputy Commissioner; Joseph D'Elia, Director of Operations; A.L. Castro, Director of Public Affairs; William Ritholz, Director of Legal Affairs; and Arnett Gaston, Assistant to the Commissioner.

Mr. Lehman served as Chairman and Ms. Allen, Ms. Kronstadt, and Mr. Fisher as Secretaries of the meeting.

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

Upon motion duly made and seconded, it was

RESOLVED THAT the Board of Correction notes with extreme regret the resignation of Kenneth G. Nochimson, our Acting Assistant Executive Director who has served the Board since June 28, 1971. Mr. Nochimson's commitment and devotion to the ideals shared by each of us, his sensitivity to problems encountered in seeking to fulfill our goals, and his capacity for long hours, instinct for wise counsel and unfailing courtesy and sense of humor were a source of pride to us. We wish him well in his new assignment as Director of the New York City Youth Board.

Mr. Nochimson stated that he wished to say a few words in response but wanted to wait until the full Board was present.

Mr. Brickman praised Mr. Nochimson and declared that he had appointed him Volunteer Consultant to the Executive Director in order that he might be able to retain access to the prisons and be of assistance to the Board in emergency situations.

Mr. Nochimson stated that he had sent his letter of resignation to Mr. Brickman on July 5, effective that date.

At 1:05 p.m. Mr. Jackson joined the meeting.

The Chairman stated that Marc Rosen had been selected to replace Ms. Pickman. He declared that several members of the Board, as well as Mr. Brickman and Ms. Pickman, had met him and all thought very highly of him and his background and believed that he would be an excellent replacement for Ms. Pickman. The Chairman spoke briefly of Mr. Rosen's background and declared that he would call him and inform him of the Board's decision, offering him the position.

The Chairman asked Ms. Kronstadt to provide details of the Department training program which is to be given to the Board staff next week. Ms. Kronstadt stated that in order for the Board staff to better understand and appreciate the problems encountered by correction personnel, these sessions had been arranged. She noted that instructors from the Department's training academy were adapting a lesson plan based on their regular curriculum and would present this to the staff next Tuesday and Wednesday, with sessions lasting from 9 a.m. to 4 p.m. each day, and that Board members were most welcome to attend the sessions.

The Chairman stated that he understood that Board members and staff were having problems with access to the institutions. Mr. Harris stated that his access problems appeared to have been resolved. Mr. Jackson and Mr. Kirby told of their problems in trying to enter the institutions.

Mr. Brickman stated that he had asked the staff for a detailed memorandum on any problem of access anyone had incurred, briefly described these memoranda to the Board, and declared that the staff had been instructed not to go into the institutions unless they have a specific reason for being there.

Mr. Brickman declared that there appeared to be an increase in the number of complaints of physical abuse

by correction officers. He noted that when these complaints come in they are written up and sent to Commissioners Malcolm and Scoppetta for investigation.

The Chairman stated that the only way many of these problem areas which the Board sees as needing action and movement by the Department will get action is if each Board member takes responsibility for a particular item and personally works with whomever in the Department is responsible for that particular area.

Mr. Brickman said that the real problem seems to be one of management, and noted the situation with the installation of telephones on Rikers Island, the various problems at the Brooklyn House of Detention, and the racial tensions at the House of Detention for Men.

Mr. Gottehrer asked for a chronological report on the telephone situation and Ms. Kronstadt agreed to provide this.

Mr. Kirby stated that he, Fr. Rios, Mr. Jackson and Ms. Kronstadt had met with inmates and administrators at the House of Detention for Men to discuss the racial tension there. He noted that the general attitude among the inmates was if no one else can do anything, why should the Board be able to.

The Chairman reported that at a recent Criminal Justice Coordinating Counsel meeting, some questions had been raised as to the right of the Board of Correction to conduct certain studies in areas of the criminal justice system other than the prisons. It was suggested that the Board get an opinion on this from Corporation Counsel. Mr. Brickman declared that if an opinion were sought, the Board should be more or less certain exactly what that opinion would be, as it could result in more restrictive rights and powers than the Board presently exercises. The Chairman asked specifically what part of section 626 gives the Board authority to make recommendations for and get involved in other parts of the criminal justice system. Mr. Gottehrer noted the section which provides that "The Board shall have the following powers and duties:...The preparation for submission to the mayor and the commissioner of...studies and reports in regard to methods of promoting closer cooperation of custodial, probation and parole agencies of government."

Mr. Brickman stated that inasmuch as inmates in the custody of the Department of Correction were involved with these areas of the criminal justice system, the

Board should have the authority to study and make recommendations for those areas of the criminal justice system.

Mr. Brickman asked the Board's approval to release the Court Recordkeeping Report and stated that the report would lose its timeliness if it were not released soon.

At 2:20 p.m. Mr. Tufo entered the meeting.

The Chairman went over the Tombs report point by point. A general discussion then ensued as to both format and content of the report in its present form.

Mr. Brickman explained what might happen and the likelihood of a stay being granted the City in its appeal of Judge Lasker's decision.

At 3:25 p.m. Ms. Kronstadt became Secretary of the meeting.

Mr. Kirby discussed his views with respect to the bail system, declaring that any system of money bail inevitably penalizes the poor. He also urged that a recommendation for bail reevaluation on Rikers Island be made in the Board's report.

Mr. Jackson declared that if the Board advocates the abolition of money bail, it must develop an alternative.

The Board discussed the issue of whether to recommend that judges be required to spend a specified amount of time in jail.

Mrs. Singer questioned whether half an hour in a cell would change an individual who is lacking in compassion.

Mr. Kirby declared that a judge needs to know the feeling of a cell; he needs to know what he is doing to a man.

Mr. Lehman noted that the Board should not advocate such an experience for others unless its members and staff are willing to undergo the same experience. Mr. Brickman declared that on several occasions attempts have been made to permit staff members to spend time in a cell, but the requests have been denied. Mr. Nochimson noted the important distinction between the difference in a judge's authority and that of the Board. The judge, he said, has the power to order an individual's incarceration.

Mr. Lehman stated that rather than advocate such a requirement for judges, the Board should simply cite

examples of jurisdictions in which it has already been done, and then make a general declaration as to the usefulness of experiencing jail conditions.

Mr. Brickman informed the Board that the staff has prepared an amicus brief in the Wallace v. Kern suit, an action by Brooklyn inmates regarding court delivery.

At 4:25 p.m. Commissioner Malcolm and his staff entered the meeting.

The next meeting was set for August 5.

The Chairman informed the Commissioner of the resignation of Mr. Nochimson, and the likely replacement of Ms. Pickman by Mr. Rosen were announced.

At 4:30 p.m. Mr. Fisher began acting as Secretary of the meeting.

The Chairman raised the recent problems of access to the prisons which several Board members and staff have encountered. Mr. Jackson declared that whatever procedure that was agreed upon by the Department and the Board was not working effectively. He cited two recent problems at the Queens House of Detention and Rikers Island Hospital which he encountered when he attempted to interview inmates.

At 4:32 p.m. Mr. Castro entered the meeting.

The Commissioner responded that several teletype orders had gone out to the heads of institutions setting forth the functions of the Board and the Clergy Volunteer Program. In addition, the Commissioner noted that he had read the charter mandate of the Board to the wardens at a heads of institutions meeting recently and that the problem seemed to be the inability of that information to reach the people running a specific tour in an institution. The Commissioner declared that whenever a Board or staff member encounters any difficulty gaining access to an institution, he should be notified of the officer's name and shield number the following day. The Commissioner or a member of his staff would call the warden and request that the officer be informed of the Board's Charter-mandated responsibilities. In certain cases, the Commissioner noted, he would meet with the warden and the officer.

The Commissioner and Mr. D'Elia emphasized that if a Board or staff member wished to enter an institution

during a count or change of tour there might be some delay. Mr. D'Elia stated that a paper count usually takes a half hour while a change of tour and count process takes about 45 minutes at a Rikers Island institution.

Mr. Kirby then recounted the difficulty he had encountered at the Rikers Island Hospital during a count. He noted that he was wearing his badge and was asked to show additional identification. When he asked to go up to the third floor, Mr. Kirby stated that the assistant deputy warden informed him that he did not think it was appropriate for him to do so.

The Commissioner declared that he did not endorse the two problems Messrs. Jackson and Kirby encountered at Rikers Island Hospital and noted that he had asked Deputy Warden Milton Reiner to submit reports on these two incidents. The Commissioner then asked the Board if access problems had improved during the past year.

Mr. Jackson responded that after being on the Board for seven months, he still encountered problems from the warden and deputy warden at the Branch Queens House of Detention. Mr. Kirby declared that it was more a matter of harrassment and noted that he had no difficulty at the Queens House of Detention when members of the Department were with him.

Mr. Brickman related several incidents which involved Board staff, and the Commissioner reiterated his request to be informed of such incidents. Mr. Brickman stated that the Board will establish a form to include all pertinent information which will be delivered by hand to the Commissioner within 24 hours. Mr. Brickman designated Mr. Fisher to oversee the completion and delivery of the forms to the Commissioner.

Mr. Kirby then brought up the alleged assault of David Robinson, which he had been investigating at the Adolescent Detention Center. Mr. Kirby noted that Mr. Robinson had a wound on top of his head, and according to witnesses he was hit with blackjacks. Although the use of blackjacks is against Departmental rules and regulations, Mr. Kirby stated that Warden Louis Greco admitted that it was unusual for an inmate to have a wound on the top of his head.

Mr. D'Elia responded that Mr. Robinson had proven to be a difficulty to the Department of Correction and had been housed in nearly all of its institutions. This difficulty, Mr. D'Elia continued, prompted him to call Mr. Robinson's brother, who is a Captain in the

Department, to his office. Mr. D'Elia stated further that if David Robinson comes back to the City to testify in his brother's case, it would be difficult to find a suitable place to house him since it is reported that he has assaulted correction officers at other institutions.

Mr. Brickman stated that after an incident at the Adolescent Detention Center in January, there were reports of the alleged use of blackjacks. He noted that the Bronx District Attorney's office believed it was true, but since there were too many conflicting stories and it was inmate testimony, the District Attorney's office apparently had decided not to pursue the matter.

The Commissioner responded that the case had been before the grand jury, but it was unable to come up with any indictments, only recommendations. He declared that if the grand jury's recommendations revealed any abuses or violations by the Department, the personnel involved in the incident will be so charged. Further, the Commissioner noted that District Attorney's investigations take too long. He noted that in the Pellagrino case, he had to push the District Attorney's office for completion of its investigation. Mr. Nochimson suggested that the Commissioner should try and set up a meeting with representatives from the District Attorney's offices; Mr. Nadjari, Commissioner Scopetta, and representatives of the Board and Mayor's office and urge them to conduct their investigations as quickly as possible since the Department is under pressure to insure accountability of its line forces. The Commissioner responded that he has been attempting to arrange a meeting with the Department, Mr. Nadjari, and Commissioner Scopetta.

The Chairman announced that the Board's report on the future of the Manhattan House of Detention would be ready for public release on August 1, 1974. He then inquired as to the status of the Tombs.

The Commissioner stated that a memorandum was being prepared by the Corporation Counsel asking for either an indefinite stay of execution of the District Court order requiring the city to close the Tombs or a stay until October 31, 1974 when Rikers Island will be ready to receive the inmates from the Tombs. In addition, the Commissioner said that he received a petition from Tombs inmates asking that the institution remain open. He added that the Department is working on the premise that it will be closed on October 31. The Commissioner further stated that the Department had a contingency meeting today to set forth the necessary plans if the courts rule that the Tombs is to be closed on August 9.

He reported that approximately 70 mental observation cases will be sent to Branch Queens, and that some of the mental health staffing will be transferred to Branch Queens and the New York City House of Detention for Men. The Commissioner estimated that 250 inmates will be sent to Ossining Correctional Facility. The Tombs itself will close as far as inmates are concerned, he said.

At 5:20 p.m. Mr. Cleary and Ms. Shanahan left the meeting.

Mr. Nochimson inquired about the procedure presently being followed for inmate disciplinary hearings. He stated that a hearing officer at the Tombs refused to find a witness for an inmate's hearing because the accused did not know the witness' name. The Commissioner and Mr. Ritholtz stated that no counsel will be supplied at disciplinary hearings since the Supreme Court ruled last month that this was not mandatory. Mr. Ritholtz further stated that a stipulation of settlement will probably be reached between the Legal Aid Society and Corporation Counsel on this matter in the near future.

Deputy Commissioner Birnbaum then brought up the matter of the Department's proposed classification system. He declared that the original system is presently being revised by Professor Cooper at the request of Corporation Counsel.

A general discussion ensued about the uses of administrative and punitive segregation.

The Commissioner announced that Rhem arguments will be held before the Court of Appeals on the morning of July 25 at 40 Centre Street.

The next topic discussed was the progress of the installation of telephones on Rikers Island. The Commissioner declared that construction plans for conduits for each institution on Rikers Island, except for the Correctional Institution for Men, will be submitted by July 26 to Corporation Counsel for approval of the contracts. The Commissioner estimated that approval of the contract would take two weeks, with an additional two weeks for bidding. He noted that it would cost \$18,000 per institution and that construction should be completed some time in November.

Deputy Commissioner Birnbaum commented that the Department of Public Works has finished the design plans for an additional building for headquarters, and that it estimates construction costs at \$120,000. He further stated that the Bureau of the Budget was not willing to

provide that money and requested that the Department utilize existing facilities on the Island. For this reason, he said, two employees of the Bureau of the Budget will tour all existing Island facilities for the purpose of determining whether adequate space is available in any institution. The Commissioner declared that the Bureau of the Budget has been "dragging its feet" on the whole matter. Moreover, he stated, it would be practical for an additional building to be built next to headquarters because of easy access and complete coverage. He noted that the Department of Public Works supports this position but that the Bureau of the Budget is against it. He asked that the Board push the Bureau of the Budget on the matter and attend the tour of existing sites, which is to be held some time next week.

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