

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

March 4, 1974

A regular meeting of the Board of Correction was held on March 4 at 100 Centre Street.

Present from the Board were Mr. Lehman, Mr. Gottehrer, Mr. Jackson, Mr. Kirby, Father Rios, Mr. Schulte, 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; and Greg Harris, Director, Clergy Volunteer Program.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Paul Dickstein, Assistant Commissioner; Joseph D'Elia, Director of Operations; Ronald Zweibel, Director of Legal Affairs; and Arnett Gaston, Executive Assistant to the Commissioner.

Mr. Lehman acted as Chairman and Mr. Nochimson, Mr. Harris and Ms. Pickman acted as Secretaries of the meeting.

Mr. Brickman requested the authorization of the Board to permit the Assistant Executive Director to be a signatory of Board checks to expedite the handling of financial matters. On a motion duly made and seconded, the request was approved.

Mr. Brickman requested the Board's approval for the appointment of Michael Cleary as Executive Secretary/Fiscal Officer of the Board. After discussion and upon a motion duly made and seconded, the appointment was made.

Mr. Kirby arrived at 2:20 p.m.

The minutes of the February 4, 1974 meeting were distributed for approval. Upon a motion duly made and seconded, the minutes of the meeting of February 4 were approved.

At the request of the Chairman, Ms. Pickman gave a brief description of the genesis of the Legal Advocate Program and its present function. She stated that the program staff conducts studies and prepares reports on matters concerning the courts and the functioning of the criminal justice system. The Board asked Ms. Pickman to provide copies of the program's two quarterly reports which have been filed with the Criminal Justice Coordinating Council ("CJCC") and to see sample inmate complaint records from the files. Ms. Pickman agreed to provide the Board members with these materials.

During Ms. Pickman's report, Mr. Jackson left the meeting, accompanied by Mr. Nochimson.

The Chairman reported that on February 27, David Condliffe, Assistant to Deputy Mayor Cavanagh, had telephoned to request the Board to submit a written statement of its planned activities for the coming year, as well as its program for the Department. The Chairman distributed copies of a letter submitted to Deputy Mayor Cavanagh on February 27. Mr. Brickman suggested that the letter could become a public agenda for action.

Mr. Brickman raised the issue of the Department's proposed classification questionnaire, and noted that the matter was discussed at the last meeting. Mr. Brickman reported that he had submitted the questionnaire on a confidential basis to Judge Irving Younger, Chairman of the Committee on Penology of the Association of the Bar of New York. Judge Younger has invited Mr. Brickman to meet with the Committee and indicated that the Committee might submit a report on the questionnaire.

The Chairman raised the issue of whether the Board wished to support the Correction Officers Benevolent Association ("COBA") in its efforts to secure pension parity with the police. Mr. Gottehrer reported that he had spoken with Tony Russo, a City labor relations official, and with a member of the State Pension Board. They informed him that the correction unions lost parity last year and that they had not relinquished parity willingly. They also reported that the loss of parity did not apply retroactively. The Chairman noted that the union parity is important for recruitment purposes, since the Department of Correction competes for personnel with the Police and Fire Departments, and has recently lost personnel to the Police Department. Upon a motion duly made and seconded, the Board resolved to submit a letter supporting the COBA's position on parity to be distributed to whomever the Chairman sees fit.

The Chairman raised the issue of Correction Officer Earl Whittaker, who was accused of inciting to riot during the Tombs disturbance in 1970. Although he was acquitted by the courts, the Department discharged Officer Whittaker without awarding him back pay. At the Chairman's suggestion, it was agreed that the Board would conduct a private investigation of the Whittaker case.

Mr. Brickman raised the issue whether the Department of Correction had fully investigated the death of Thomas Pellegrino, who was found dead in his cell at the Tombs in January 1974. Mr. Brickman stated that the issues in the case were how Mr. Pellegrino secured the drugs that killed him, and to what extent correction officers were derelict in not requiring Mr. Pellegrino to stand for the count on the morning on which he was discovered dead. He suggested that the Board ask Commissioner Malcolm whether the investigation of possible dereliction of duty had been completed.

Mr. Schulte raised the question whether the Department's Investigations Unit should be required to conduct investigations at the Board's request. Mr. Brickman reported that the re-funding application of the Investigations Unit would not be presented to the March meeting of the Criminal Justice Coordinating Council because CJCC had not received an adequate response to its questions concerning the past conduct of the unit. However, CJCC has permitted the Department to submit an application for four months of additional funding, with the possibility of presenting an application for re-funding to the June board. The Chairman reported that he would meet on the following day with Judge Benjamin Altman, the newly-appointed Director of CJCC, and would discuss the Investigations Unit at that time.

Rev. Wilson arrived at 3 p.m.

Mr. Brickman suggested that the Board ask Commissioner Malcolm what efforts have been made by the Department to give recognition to inmate suicide prevention aides who have performed their work respectively. He suggested that it might be useful for the Department to submit letters of commendation to the Judge who was hearing each inmate's case. The Board agreed with this suggestion. Mr. Schulte suggested that in addition the Board should submit letters of commendation to deserving correction officers. He suggested that the Commissioner be requested to submit to the Board a list of correction officers to whom commendations have been awarded so that the Board can issue its own awards.

Mr. Brickman raised the issue of the Department's system for notifying the Board of suicides and escapes. Father Rios described the Department's procedure for notification in case of the death of an inmate. The procedure, as described to him by correction personnel, did not provide for notification of the Board. Mr. Brickman noted that the Commissioner had offered to issue a teletype order requiring notification of the Board and including telephone numbers of the Board's Chairman and Executive Director; however, it had been decided that the teletype order should not be issued because of the possibility of crank telephone calls. The Board agreed that it wished to be notified of all prison deaths. Mr. Brickman stated that he would devise a system of notification in cooperation with the Department. All Board members expressed willingness to be called at night if necessary. Father Rios suggested that a check list be prepared for the members in case they were required to go to an institution to investigate a death. The Board agreed to this proposal.

The Chairman then invited the Board to discuss the content of its public hearings on the future of the Tombs. The Board agreed that the hearings should not be directed toward fact finding, but rather that the facts found in the course of the Rhem suit should be assumed for purposes of the hearings and that witnesses should be asked to make suggestions based on those findings rather than to dispute them. It was agreed that the main issue to be faced in the hearings was future planning for the Tombs, whether it should be closed or renovated. Mr. Gottehrer observed that the Rhem decision probably was based in an area for which the Mayor decided there was no public support. He stated that the hearings could serve the purpose of creating support for the expenditure of funds or demonstrate that there is no community support for such expenditures. He stated that the hearings should not be argumentative in tone, but rather informative. After further discussion, upon motion duly made and seconded, it was

RESOLVED THAT the Board of Correction will hold a public hearing on the future of the Tombs and the various options available to the City. The hearings will be held on the 16th, 17th and 18th of April and thereafter a report will be prepared containing the Board's recommendations to the Mayor, the Commissioner of Correction and other appropriate public officials and to the public.

inmate obtained the pills has yet to be determined. There is suspicion that they had been introduced into the institution by a correction officer. The suspicion was raised when an inmate wrote a letter to the Department, stating that someone was making "buys" of drugs for inmates. The Commissioner and Captain Mellon had a meeting with John Keenan of the Manhattan District Attorney's Office to discuss the letter. After the meeting, the inmate was interviewed by an assistant district attorney and was shown pictures of correction aides in an attempt to identify a possible suspect. However, the inmate claimed that it was a correction officer who was responsible. The inmate was then transferred to Rikers Island and was subsequently returned to Manhattan for further questioning. The Commissioner stated that there was no further information from the district attorney whether any evidence had been developed against a particular officer.

Mr. Brickman inquired whether the Department had initiated its own investigation concerning the conduct of the officers on that floor where the death occurred, since there appeared to be some question as to the exact time the inmate died and why he had not been discovered earlier. Apparently, Mr. Pellegrino did not stand for the morning count. The Commissioner stated that he was looking into the matter but had no information at this time.

The Chairman expressed the Board's interest in recognizing the services of the suicide prevention aides. The Commissioner agreed with the Board's suggestion and stated he would be willing to work with the Board on developing a solution.

The Chairman inquired as to the employment status of Correction Officer Earl Whittaker. Mr. Zweibel stated that Officer Whittaker had filed two law suits against the City, one for wages due him and the other to regain his job. The Commissioner stated that if Officer Whittaker is entitled to receive past wages, he would not object to such payment.

The Chairman noted that the Department had failed to notify the Board of the last two suicides. Commissioner Malcolm stated that the Department did not notify the Board concerning the Bellevue death because the Department did not have the responsibility for that inmate since he was incarcerated at Bellevue. However, the Commissioner did state that he would notify the Board immediately whenever there is an inmate death.

The Chairman also expressed his concern that the Board had not been informed of escapes which occurred recently. Commissioner Malcolm stated that although one escape which occurred was the responsibility of the Department, another escape which was reported in The New York Times was from the custody of the Police Department. Regarding the inmate who was in the Department's custody, Commissioner Malcolm stated that he has ordered a full investigation to determine the circumstances of the escape. It was agreed that Commissioner Malcolm and Chief D'Elia would work out a new notification procedure with Mr. Brickman.

The Chairman inquired as to the status of the chaplaincy task force recommendation. Mr. Dickstein stated that the proposal concerning the chaplaincy was still "bottled up" in the Bureau of the Budget and there was little the Department could do until there was approval by the Bureau of the Budget. He suggested the Chairman call the Bureau of the Budget to attempt to expedite the matter.

The Chairman inquired as to what the contingency plans the Department had in case of riots or fires in the institutions. Mr. D'Elia stated that each institution has its own contingency plan. However, the tour commander must be allowed the flexibility of determining what action should be taken in each specific case. Therefore, plans must be general in nature. Generally, riot plans contain advice as to how to contain a riot, how and when to use tear gas, notification procedures, etc. Mr. D'Elia stated that there was an overall contingency plan for Rikers Island.

Mr. Gottehrer stated that when the Tombs riot occurred, it was his understanding that there were no emergency plans. Mr. D'Elia stated that good leadership was more important than good plans. It was crucial that the commanding officer be in control of any situation.

Mr. Brickman suggested that the Board should be notified and be present during any emergency situation to report objectively to the community and media what actually occurs. As an example, he noted former Chairman vanden Heuvel's presence during the riot at the adolescent facility at Rikers Island. Mr. vanden Heuvel witnessed the retaking of the institution and publicly rebutted charges that correction officers had assaulted inmates. The Commissioner agreed that the Board's presence during an emergency would be helpful and promised to notify the Board should such a situation occur.

The Chairman expressed concern about existing fire plans at various institutions. Mr. D'Elia stated that although most institutions are fire-proof, there is always the danger of smoke causing injury or death. He stated that there are regular fire drills held at the institutions and agreed to the Chairman's suggestion to ask the Fire Department to examine each institution's fire plans.

Mr. Gottehrer inquired as to the present status of the Rhem v. Malcolm suit. Commissioner Malcolm stated that he had met with Judge Lasker and the other parties involved in the suit to discuss the final order. It was decided at that meeting that the defendants would submit a revised, proposed counter order on March 4 to assist Judge Lasker in preparing his final decree. The plaintiffs would submit a revised counter order one week after the defendant's submission. Commissioner Malcolm stated that the City would appeal Judge Lasker's decision. However, he was committed to improving the conditions within the Tombs regardless of the outcome of Rhem v. Malcolm. He stated that mail will soon be opened in the presence of the inmate. A proposal is being worked on to determine the feasibility of contact visits and what structural changes must be made to permit them. Regarding disciplinary hearings, the Commissioner said

The Chairman asked who should be notified of the Board's decision to hold the hearings. After discussion, it was agreed that the Mayor, the Commissioner of Correction and Judge Lasker should be notified and that a public announcement should be made thereafter.

Mr. Nochimson returned to the meeting at 4:10 p.m. and reported that Mr. Jackson had been examined by a doctor and released from the hospital. The Board expressed its concern for Mr. Jackson's health.

Mr. Gottehrer raised the question whether the Department of Correction had a contingency plan in effect for dealing with riot situations. It was agreed that this matter would be raised with the Commissioner. Mr. Gottehrer also suggested that Leo Zeferetti, President of the COBA, be invited to attend a meeting of the Board. The Board agreed with this suggestion.

The members of the Department of Correction joined the meeting at 4:30 p.m.

The Chairman stated that the Board was concerned about the efficacy of the classification questionnaire developed by Professor Cooper. Commissioner Malcolm stated that he shared the Board's concern and his staff is presently studying the questionnaire. He stated that his staff is also studying the question of who should administer the questionnaire -- correction or non-correction personnel. According to the Commissioner, the classification questionnaire will initially be utilized on an experimental basis at the Queens House of Detention.

Mr. Brickman stated that in his judgment, certain questions on the questionnaire were subject to attack on constitutional grounds while others seemed irrelevant in determining risk factors.

Commissioner Malcolm suggested that Board staff members and the Department staff meet with Professor Cooper to discuss the problems related to the questionnaire. The Chairman agreed to this suggestion.

Commissioner Malcolm stated that it was his intention to utilize one floor of the Manhattan House of Detention (the "Tombs") for all new admissions to assure complete classification before transferring inmates to general or special housing floors.

Father Rios inquired as to the length of time that it took Professor Cooper to develop the classification questionnaire and why the Board of Correction had not been asked to participate in its preparation. Commissioner Malcolm replied that the questionnaire had been developed during the past several months and the Board had not been asked to participate since the questionnaire was a relatively new project.

The Chairman inquired as to the present status of the investigation concerning the death of Mr. Pellegrino at the Manhattan House of Detention. Commissioner Malcolm replied that according to the Medical Examiner, Mr. Pellegrino died from an overdose of Seconal; the source from which the

that counsel substitute was being considered to assist inmates in serious cases. Commissioner Malcolm stated that although the Department would eliminate the present penalties of withholding personal mail and visits to inmates found guilty of infractions at disciplinary hearings, the Commissioner is unwilling to permit visits to those inmates charged and convicted of infractions which occurred during a visit. The Commissioner stated that the visiting rules had already been changed and inmates could now receive visits Monday through Friday for 45 minutes per visit. The Commissioner also stated that the Corporation Counsel has asked for a stay of Judge Lasker's order.

The Commissioner stated that the Department was working on a master plan to improve conditions at the Tombs. The plan will include renovation of the first floor, kitchen modernization, renovation of the visiting area to allow contact visits, restructuring the E and F sections of certain floors to be used as day rooms, adding soundproofing and revamping the ventilation system. The Commissioner stated that the proposal also contained a request for plexiglass roof enclosures for the Brooklyn and Bronx Houses of Detention as well as the Tombs. The Commissioner stated that the proposal has been submitted to the Department of Public Works which will "cost out" the renovations. The Commissioner estimated the cost of renovations at six to seven million dollars. When the Department of Public Works submits its estimate, the Commissioner will then meet with Deputy Mayor James Cavanagh and Budget Director Melvin Lechner to seek their approval of the plan. Commissioner Malcolm stated that there is a bill before the State Legislature submitted by Assemblyman Donovan which proposes that upon determination by a psychiatrist that an inmate is in need of psychiatric treatment, he must be transferred forthwith to a hospital for such treatment. Mr. Malcolm stated that he supported the bill strongly and that it also had the support of several medical associations. He asked the Board to also consider supporting the bill.

Commissioner Malcolm also stated that he was extremely disturbed by the prescription of psychotropic drugs by psychiatrists as a means of controlling inmate behavior. He was particularly disturbed by The New York Times Magazine article by Ted Morgan which stated that it was Department policy to utilize such drugs to control inmates. Commissioner Malcolm stated that the distribution of such drugs is under the control of Prison Health Services. Commissioner Malcolm stated that he had asked Dr. June Christmas, Commissioner of Mental Health and Mental Retardation Services to look into this problem and determine what action should be taken.

Commissioner Malcolm stated that he was still concerned about the detainees housed at Sing Sing, who number approximately 500. In response to a question concerning which inmates are sent to the Ossining Correctional Facility, the Commissioner stated that the first priority were those convicted awaiting sentence cases; second priority were those indicted awaiting trial and who have at least a 10-day return date to court; lowest priority were those awaiting grand jury action. He stated that inmates who were homosexual or had a mental health history were excluded from transfer to Ossining. The Commissioner stated that for the first time in several years the population at the Queens House of Detention had been reduced to below 100% capacity. He also mentioned that several cell blocks had been

closed at Rikers Island to allow for renovation. The Commissioner stated that if the population continued to be reduced, the Department would consider closing an institution, possibly the Branch Queens House of Detention.

Commissioner Malcolm also stated that the sentenced adolescents at the Coxsackie Correctional Facility would soon be returned to the City for resentencing.

Commissioner Malcolm stated that he was disturbed about a recent letter to the Department from a Board staff member concerning contact visits and Saturday visits at an institution. The Commissioner said that the inquiry should have been directed to the warden and that he felt that the Board's responsibility at the Inmate Liaison Committee meetings was not to answer questions relating to institutional or Departmental problems but rather to see to it that the warden answers the questions raised. Mr. D'Elia stated that the reason the letter concerned him was that the Board staff member wanted the information for the purpose of informing the inmates. Mr. Brickman assured Mr. D'Elia that a mistake had been made in sending the letter and that it would not occur again. However, Mr. Brickman stated that the reason the letter was sent was because the institution had not given the inmates a satisfactory answer to the questions raised at several Inmate Liaison Committee meetings.

Commissioner Malcolm stated that there was a recruitment drive to encourage Hispanics to take the correction officers examination, to be given later in the month. He stated that there was a selective certification procedure in which a separate exam would be given to bilingual applicants. The Commissioner also stated that there was no height requirement, that the age group for the test was 21 to 29 and that a year of probation would be required upon initial appointment to the position of correction officer.

Upon motion duly made and seconded, the meeting was adjourned at 6:10 p.m.