

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION

December 17, 1973

A regular meeting of the Board of Correction was held on December 17, 1973 in room 406, New York University Law School, 40 Washington Square South, New York, New York.

Present at the meeting were Messrs. McKay, Dribben, Kirby, Schulte, and Mrs. Singer. Also present by invitation of the Board were John M. Brickman, Executive Director; Mary Pickman, Director, Legal Advocate Program; Kenneth Nochimson, Co-Director, Legal Advocate Program; and William Arnone and Maureen Barden, Staff Assistants.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner and Jack Birnbaum, Deputy Commissioner.

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

The meeting was called to order at 2:20 p.m. The minutes of the meetings of November 19 and December 3 were approved.

Requests for excused absences from Rev. Wilson and Mr. Becker were approved.

The Chairman noted that Commissioner Malcolm and Deputy Commissioner Birnbaum were scheduled to arrive at the meeting at 3:30 p.m. to discuss the Inspector General report.

The Chairman reported on a meeting with James Cavanagh, Executive Deputy Mayor-designate. The Chairman and Mr. Cavanagh discussed the work of the Board. In addition, the Chairman explained to Mr. Cavanagh that in the judgment of the Board, Mr. Brickman and Ms. Pickman were not Mayoral appointees, and questioned the appropriateness of their submitting letters of resignation to the Mayor. As a result of his discussion with Mr. Cavanagh, however, the Chairman recommended that Mr. Brickman and Ms. Pickman submit their letters of resignation, accompanied by letters requesting that they be continued in their positions. The Chairman stated that he would prepare a letter as well explaining that they had been appointed by the Board and recommending that their tenure be at the pleasure of the Board.

Mr. Kirby arrived at 2:35 p.m.

The Chairman declared his intention to submit his resignation as Chairman while retaining a seat as a member of the Board, for two reasons. First, he declared, Mayor Beame is entitled to select his own chairman; second, in light of his many responsibilities it is difficult to devote the necessary time for work with the Board. He added, however, that he would continue as Chairman until Mayor Beame appointed someone in his place.

The Chairman raised the question of the Board's position with regard to the Inspector General, which included the Inspector General's own findings and a response to some of the points made in the Board's report. Mr. Brickman stated that since the Inspector General's report was approximately 100 pages he had asked Mr. Arnone to present a summary of it for the Board. Mr. Arnone noted that Mr. Katz disagreed with several of the specific points made in the Board's report but that he supported its evaluation, recommendations and conclusions with respect to the operation of his office. Mr. Arnone enumerated several problems cited by Mr. Katz, including notification of inmates and officers about the existence of the office, the fact that the grant requirements did not comply with the rules and regulations of the Department of Correction, and his difficulties in communicating with the highest officials in the Department. The Chairman then asked what the Board's position should be in discussing the Inspector General's office with Commissioner Malcolm and Deputy Commissioner Birnbaum. He said that he thought it would be unproductive to discuss the details of the report since the Board's report and Mr. Katz's report were nearly identical on many important issues. Mr. Nochimson suggested that the discussion center around the Board's conclusions and recommendations. The Board agreed generally with this proposal. Mr. Dribben asked about funding for the Inspector General's office and Mr. Brickman replied that it was pending.

Ms. Pickman reported that the Legal Advocate Program study of record keeping in the criminal justice system was near completion. She distributed a draft of the report to members of the Board. Ms. Barden then described the contents of the report, noting that the recommendations included an appeal to Chief Judge-elect Charles Breitel to give serious attention to existing record keeping problems. The Chairman asked about distribution of the report. Ms. Pickman replied that it should be sent to Judge Breitel and to the presiding justices of the appellate divisions, as well as to a variety of criminal justice administrators.

With respect to the Legal Advocate Program's proposed study of the reasons for non-production of defendants, the Chairman noted that he had spoken with Administrative Judge David Ross to seek his cooperation. He said that Justice Ross would not agree to the study and recommended that it proceed without his cooperation. He added that Ms. Pickman would use a corps of volunteer lawyers from the Council of New York Law Associates as investigators for the project.

Ms. Pickman reported on the progress of the placement of interview facilities in the court detention pens. She noted that there were budgetary problems but stated that the project was far enough along that it seemed on its way to completion.

Mr. Brickman noted that Jeffrey Siger, who acted as the Board's special counsel, for the last three years without pay, was contemplating leaving New York City. He suggested that the Board recognize Mr. Siger's contribution by passing an appropriate resolution and presenting him with a certificate or letter of thanks. Upon motion duly made and seconded, it was

RESOLVED THAT the Board of Correction notes with extreme gratitude the efforts of its volunteer special counsel, Jeffrey Siger, who has served selflessly since 1970; his contributions have been important and most useful.

The staff was directed to advise Mr. Siger of this resolution.

Mr. Brickman noted that Tom Wicker had agreed to do a column on the extradition problems of Nick Bagley. He stated that it would appear in The New York Times on Tuesday, December 18.

Mr. Brickman noted that the issue of who should deliver health care in the prisons would probably surface after January 1. He stated that materials would be presented to the Board at an upcoming meeting to inform it of the various questions involved.

Mr. Brickman raised the question of the dress policy at the New York City Correctional Institution for Women. After some discussion of Superintendent Murph's response to Mr. Brickman's letter and about the general question of proper dress, it was agreed that the staff would develop a written document on the subject.

Commissioner Malcolm and Deputy Commissioner Birnbaum arrived at 3:40 p.m.

The Chairman declared that the Board thought it would be useful to discuss the future of the Inspector General's office rather than to dispute the various facts involved. He noted that the Board's report was essentially in agreement with that of former Inspector General Katz. The Commissioner stressed his belief that the office was created to be an internal agency and noted that he believed that Inspector General Katz felt that his operation was a satellite agency. He described briefly some of the problems with the operation of the office. He added that he felt the Board's report was unfair and inaccurate in some respects, noting particularly that Mr. Katz's account was accepted as true and that no counter-opinions were incorporated into the report. The Chairman asked whether the Commissioner was in agreement with the concept of an Inspector General and voiced the Board's concern about whether the system was well set up. The Commissioner stressed that he was committed to the concept of an internal Inspector General, but stated that the office needs increased personnel in order to function effectively. He noted that the Department was in

the process of formulating a new proposal to be presented to CJCC within the next few weeks.

The Chairman raised the question of the Board's recommendations.

The Commissioner noted that he disagreed strongly with the Board's recommendation that the Inspector General report directly to him. He stated that having the office operate under the Director of Legal Affairs would be a satisfactory arrangement provided the director fulfilled his responsibility.

Mr. Brickman stated that the Inspector General's office was one of the most important functions in the Department and noted that the Board had concluded that blockage of information at an intermediary level had been one of the primary obstacles to effective working of the program. There was some discussion on this point.

Mr. Birnbaum noted that Mr. Katz had failed to follow the instructions given to him when he was first hired regarding his approach to personnel in the institutions. He declared that Mr. Katz's own method of operating was one of the principal hindrances to the office's effectiveness. He added that his office and Commissioner Malcolm's had sent a number of complaints into the Investigations Unit, contrary to what was stated in the Board's report. He said that inmates and correction officers had been notified in November of 1973 of the existence of the Inspector General's office. Mr. Dribben asked when a renewal of Federal funding would be requested and Commissioner Malcolm noted that the CJCC board next met in February. The Commissioner voiced his agreement with Mr. Brickman's statement that the problems of the Inspector General's office should have been resolved earlier. He noted the Department's problems in setting up any program within a City structure.

Commissioner Malcolm stated his intention to devise a new funding proposal within six weeks and said that once it had been drafted he would discuss it with the Board.

Mr. Kirby asked about the results of the Leon Lee investigation. The Commissioner replied that as soon as the District Attorney begins an investigation on any case which the Department was investigating, the Department ceases its investigation. Moreover, he declared that if no true bill were found, the Department's hands were tied in terms of conducting further investigations.

Upon motion duly made and seconded, the meeting was adjourned at 5:05 p.m.

The first sentence of paragraph 1 of page 3 of the minutes of the meeting of the Board of Correction of December 17, 1973 should read in its entirety as follows:

Mr. Brickman noted that Jeffrey Siger has acted as the Board's Special Counsel for the last three years without pay.