

MINUTES OF THE MEETING OF THE BOARD OF CORRECTION
January 8, 1973

A regular meeting of the Board of Correction was held on Monday, January 8, 1973, in the 14th floor conference room, 100 Centre Street, New York, New York.

Present at the meeting were Messrs. vanden Heuvel, Dribben, Becker, Carrion, DeMonte, Kirby, Schulte, Rev. Wilson and Mrs. Singer. Also present by invitation of the Board were John M. Brickman, Executive Director of the Board; Peter A. Lesser, Executive Secretary of the Board; Kenneth Nochimson, Legal Advocate; Greg Harris, Director, Clergy Volunteer Program; Joel Sperber, Director, Literacy Program; Bill Arnone, Senior Interne; Michael Cleary, Project Coordinator of the Board staff; and Debby Powers, Criminal Justice Coordinating Council.

Present from the Department of Correction were Benjamin J. Malcolm, Commissioner; Jack Birnbaum, Deputy Commissioner; George Camp, Assistant Commissioner; Richard Aneiro, Assistant Commissioner; Joseph D'Elia, Director of Operations; A.L. Castro, Director of Public Affairs; Ronald Zweibel, Director of Legal Affairs, and Dr. Ralph Plew, Acting Medical Director.

Mr. vanden Heuvel acted as Chairman and Mr. Lesser acted as Secretary of the meeting.

The meeting was called to order at 3:15 P.M. by the Chairman. The approval of the minutes of the meeting of December 11, 1972, was postponed until the next meeting. It was agreed that in the future, minutes of prior meetings will be sent to members one week before the next meeting.

Mr. Sperber presented a four month progress report of the Literacy Program and noted that he would like an additional \$2,500 for new supplies and materials. The Chairman agreed to speak to Random House regarding the donation of some of these materials. It was suggested that the Criminal Justice Coordinating Council and/or the Stone Foundation were possible sources of future funding to be investigated by the Board. Mr. Schulte and Mrs. Singer agreed to visit Rikers Island one weekday in the future in order to observe the program in operation, and to make a progress report to the Board at the next meeting. The Chairman suggested that a postcard be given to each inmate who participates in the program to send back to the Board after he leaves the Adult Remand Shelter so that the Literacy Program will know where he is for any follow-up work.

Mr. Becker presented a report on the Donaldson case. Mr. Donaldson died after a fire in the Manhattan House of Detention as the result of a flammable mattress. Mr. Becker declared that he believes that the company should be forced to take back 2300

mattresses not being used at the present time. These mattresses are believed to be in storage at Rikers Island. Mr. Becker expressed the opinion that there was sufficient grounds to force the company to take the mattresses back. Mr. Dribben volunteered to have chemists at Cone Mills, Inc. test the mattresses for flammability. Mr. Becker declared that he believes that there was an implied warranty in the production of the mattresses, as inflammability was a specification required by the Department. Mr. Becker requested that a letter be sent to Commissioner Malcolm concerning this entire affair, setting forth the Board's suggestions as to making a legal claim.

The 307th General Hospital Unit of the United States Army Reserve is scheduled to go to the New York City Correctional Institution for Men on Sunday, January 14, in order to conduct physical examinations on 75 to 100 inmates. Mr. Dribben or Mr. Lesser will attend this initial visit and will report back to the Board at its next meeting.

The draft Agenda for 1973 was distributed to the members of the Board. It includes as a high priority project the reorganization of the executive level of the Department of Correction.

The Chairman noted that a member of the staff was terminated on this date for his failure to inform the Board of Correction of his arrest on December 15, 1972, for possession of marijuana. The Chairman declared that the man was not being terminated for the underlying facts of the arrest but for his failure to inform the Board of the matter.

Mr. Kirby arrived at 4:03 P.M.

The Board discussed the matter of Alexi Vergun. The Chairman declared that he was dissatisfied with the Department's handling of the entire incident as well as the Department's procedure for investigation, which he termed a cover-up for lying. The Chairman said that he believes that the Department needs an outside investigating force to discipline Department of Correction personnel. Mr. DeMonte declared that an investigation board should be made a functioning part of the Board. Mr. Becker noted that the problem goes back to the initial training given to each correction officer. The Chairman then noted that there should be specially trained officers for the special housing floors and that it is not too much to ask of the Department to have those type of officers. It was suggested that Michael Cleary should be sent through the Correction Academy training program for new officers.

The Chairman reported that he and Mr. Kirby had attended the Steuben Foundation party on December 24, 1972, at Rikers Island, which was given for the inmates and their children at three institutions. Mr. Kirby said the results were excellent in terms

of morale and cooperation within the institution. The Chairman thanked Mr. Schulte for his donation which made possible the refreshments and the wrapping paper for the gifts that were distributed that day. The Secretary praised Assistant Deputy Warden Singleman's role in the preparation and planning for the party and the Chairman suggested Assistant Deputy Warden Singleman be considered for a Certificate of Merit.

The Chairman suggested that a draft letter be sent to all senior members of the Department of Correction explaining the Board's role, as well as the Charter provisions outlining the rights and responsibilities of the Board and its members.

The Chairman raised anew the question of the Vergun case, and recommended that Mr. Nochimson's report as to the incident in the Receiving Room of the Manhattan House of Detention be accepted and that Commissioner Malcolm's request for censure be denied. At this point, Mr. Nochimson left the room and there was a discussion of the matter. Mr. Kirby noted that in his dealings with Mr. Nochimson, he found Mr. Nochimson at all times to be fair and impartial, and that he was one of the few people who he trusted in a prison situation. Upon motion duly made and seconded, it was resolved that the Board note the Commissioner's letter and reject his recommendation. The motion carried unanimously. Mr. Nochimson then returned to the room.

At 4:33 P.M. Commissioner Malcolm and his staff arrived. Ms. Powers left the meeting at 4:35 P.M.

The Commissioner discussed Deputy Commissioner Birnbaum's resignation. The Commissioner noted that he was attempting to persuade Mr. Birnbaum to remain on the job and that a meeting with Deputy Mayor Hamilton regarding the matter has been arranged.

The Commissioner reported that Rhem v. Malcolm goes on trial on January 15, 1973, and that he would be involved in that matter. The Commissioner reported that the basement in the Manhattan House of Detention had been completed for recreation and it was scheduled to be put into operation on Friday, January 12, 1973 and that \$300,000 was in the current budget for the roof reconstruction, to make it a year round recreational facility.

The Commissioner then raised the matter of Valvano v. Malcolm, a case in the United States District Court for the Eastern District of New York, which resulted from the 1970 riots in the Queens House of Detention. The case has led to the suspension of eight Department of Correction personnel. A special prosecutor, Stanley Arkin, was designated to prosecute the case further and the Commissioner is in the process of finding an impartial judge to judge and hear the case. The Chairman noted that he would not like to see any officer suspended without pay until he was proven guilty, as working men do have fixed expenses to meet and that suspension

without pay would place an unfair burden upon them.

The Commissioner then raised the issue of The New York Times stories that appeared on January 6, 7 and 8, 1973, concerning methadone deaths in the New York City prisons. The Commissioner reported that in 1971 there were 34 deaths (23 non-suicide deaths and 11 suicides). In 1972 there were 35 deaths (24 non-suicide deaths and 11 suicides). In 1972 there were only five narcotic-connected deaths. The Commissioner discussed each of them. He said that only two -- the cases of John Pifkin in June, 1972 and James Williams in July, 1972 -- could be considered methadone-related deaths.

The Chairman declared that the Department should not respond to these stories because it was a Health Services Administration problem and not a Department problem. The Commissioner declared that since methadone detoxification programs had been in existence, 48,000 men have been detoxified, 20,000 women have been detoxified and 910,000 dosages of methadone have been administered. Yet, he added, there have been only two methadone-related deaths. The Commissioner asked that the Board take a public position that criticizes the Health Services Administration for its lack of adequate performance in the prisons. The Commissioner has felt that health services in the prisons have deteriorated badly and that their improvement was legally beyond the control of the Department of Correction. The Commissioner reported that there were too many instances of HSA employees not showing up for work or arriving late. Yet, he said, they cannot be disciplined by the Department and Health Services Administration refuses to do so. Mr. Becker suggested that the Board hold public hearings on health services. The Chairman suggested that the Board write a letter to the Mayor calling for a meeting with Gordon Chase of the Health Services Administration, the Commissioner of Correction, the Deputy Mayor and the Chairman. He then declared that the Health Services Administration should be the spokesman for the prisons on medical matters, and that the Health Services Administration should have the same discipline over their prison employees as the Department of Correction has over theirs.

Deputy Commissioner Birnbaum reported that he is sending an answer to Bronx Borough President Robert Abrams concerning Mr. Abrams' remarks to the press after a recent visit to the Bronx House of Detention. The Deputy Commissioner also discussed the use of punitive segregation and the matter of Herbert X. Blyden. The Chairman suggested that Mr. Kirby be sent to the Bronx House of Detention to speak to Mr. Blyden and to convince him not to continue his constant confrontation with the Department. Mr. Kirby agreed to go. Mr. Kirby then declared that there was a man in segregation in the Bronx House of Detention for 50 days. Commissioner Malcolm asked if it was administrative or punitive, and Mr. Kirby replied that he did not know.

Commissioner Malcolm declared that he commended the Board's work, and that he does not believe that Mr. Abrams' recommendation

for the creation of another community board is warranted because the Board is a viable and functioning body.

The Chairman declared that the letter from the Commissioner concerning the staff member who was arrested which was dated December 21, 1972, was received by the Board of Correction on January 8, 1973. He noted that the staff member was terminated not because he was arrested for possession of marijuana but because he had not advised the Board of the arrest.

Dr. Plew left the meeting at 5:49 P.M.

The Chairman reported that Commissioner Malcolm's suggestion that Mr. Nochimson be censured by the Board for his actions in the Vergun matter was rejected unanimously by the Board. The Chairman declared that he was unhappy that the Commissioner had written his letter without asking to hear Mr. Nochimson's side of the story. Commissioner Malcolm replied that he would never call for a Board staff member to report to him. The Chairman said that all the Commissioner had to do was to ask that the Chairman ask Mr. Nochimson to see the Commissioner with relation to this matter, and the request would have been honored. Commissioner Malcolm said that he would want the warden and correction officer present for any ensuing discussion so that they could present their side of the story.

The Commissioner discussed problems that correction officers have with disturbed inmates, and both he and the Chairman agreed that the most pressing problem was that they were undertrained for such confrontations.

Commissioner Malcolm reported that the Department had hired a director for its newly-formed Investigative Unit. The new Inspector General will be in charge of the Investigative Unit. The staff will consist of six investigators, one supervisor and one attorney. The target date for the final assembly of the entire team is in two to four weeks. The Commissioner reported that a civilian review board would be used to direct the Investigative Unit as to where its attention should be focused.

The Commissioner also reported that he had been given approval for the C-78 garage at Rikers Island, which will also serve as the nucleus of an automotive mechanics training center.

Mr. Castro and Mr. Arnone left the meeting at 6:17 P.M.

Mr. Becker advised the Department personnel of the Board's concern over the mattress situation and Deputy Commissioner Birnbaum reported that the mattresses had been sold to an anti-poverty program for \$1 each.

Mr. Becker asked that copies of any communications, verbal or written, between the New York Telephone Company and the Department as to the Telephone Company's responsibility in placing of telephones on the housing floors in the various institutions be sent to the Board for his perusal so that he could determine if there is a basis for a lawsuit for damages against the Telephone Company.

It was agreed that the next meeting of the Board will be at 3 P.M., February 5, 1973, in the same room.

Upon motion duly made and seconded, the meeting was adjourned at 6:22 P.M.