

NEW YORK CITY
BOARD OF CORRECTION

October 12, 2000

MEMBERS PRESENT

John R. Horan, Acting Chair
Louis A. Cruz
David Lenefsky
Richard Nahman, O.S.A.
David A. Schulte

Excused absences were noted for Board Members Canute C. Bernard, M.D., Stanley Kreitman and Barbara A. Margolis.

DEPARTMENT OF CORRECTION

Gary Lanigan, Acting Commissioner
Antonio Figueroa, Deputy Commissioner
Roger Jefferies, Deputy Commissioner
Elizabeth Loconsolo, General Counsel
Catherine Raymond, Bureau Chief
Sheila Vaughan, Bureau Chief
Roger Parris, Assistant Commissioner
Richard Filippazzo, Deputy Warden
Linda LaGreca, Deputy General Counsel
Elizabeth Myers, Inspection and Compliance Division
John Mohan, Office of Public Information
Richard Palmer, Jr., Captain

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Jr., Executive Director
Michael Tannenbaum, Chief Operating Officer
George Axelrod, Director, Risk Management
Patrick Brown, M.D., Medical Director
Arthur Lynch, Mental Health Director

OTHERS IN ATTENDANCE

Betsy Collins, Office of Deputy Mayor Lhota
Chris Winward, Investigation and Oversight, City Council

Acting Chair John R. Horan called the meeting to order at 1:05 p.m. Minutes from the September 14, 2000 meeting were approved unanimously.

ACTING CHAIR HORAN: Turning to my report, I just would note, Commissioner, unfortunately, and others will speak to this, communications and conduct between this Board and the Department have taken a turn for the worse, and members of your staff have made recently deliberate efforts to discredit our staff and unfortunately to discredit a Member of this Board, who will speak to that. I am sure you're aware of this. We take it very seriously, and we intend to address it. We're going to address it partially in public today in this meeting, and after the meeting we will address it in other ways, and we will let you know how. We have no doubt that this starts at your office, and works down through the Office of Counsel

ACTING COMMISSIONER LANIGAN: I'm sorry, could you speak louder?

ACTING CHAIR HORAN: I said that we have no doubt that this starts in your office and works down through your Counsel, and I'm referring specifically to communications from Chief Raymond which have to do with the conduct of our staff, and I want to express right here publicly the support and confidence we have in our staff, from Richard Wolf on down, and the regret I have personally as Acting Chair that you have decided to act in this fashion. The specific incident, I will turn to Mr. Schulte and the attack on his integrity which we all deeply resent and which he will now personally address.

MEMBER DAVID SCHULTE: Mr. Commissioner, I didn't receive a copy of this letter. I think that's indecent and I think that's unfair. I'm going to read the letter. It was written by - I want to get the title straight - Bureau Chief Catherine Raymond to Mr. Wolf, the Executive Director on October 1st. Says this memo, "Dear Mr. Wolf, This memo has been prepared in response to comments made by Board of Correction members during the scheduled meeting of the Board of Correction which was held on September 14. During the week previous to the monthly BOC meeting, I contacted you, Mr. Wolf, several times regarding the agenda for the upcoming BOC meeting. The Board gave me the impression that they had very few things to talk about. At one point you, Mr. Wolf, asked me, as Chief of Compliance, if there were any issues I wished to discuss. I told you that there were not." So far the letter is very calm.

"The Board of Correction did not deliver an agenda to ISCD until Monday afternoon, September 11th. It is my belief that the Board did not act in good faith." That's the first attack on the Board. Unconscionable, and I'm not quoting the Chief now - this is David Schulte. "It is my belief that the Board did not act in good faith when it did not adhere to the agenda and initiated a discussion about JATC and use of the third tier." End of quote. I am going to express again - this is a misunderstanding on the part of the Chief as to what authority she has to demand an agenda. And I would say that there isn't any agenda that prevents me from talking on subjects she doesn't know about in advance. I quote again, "Given the current low census and many previous discussions concerning the JATC renovation project, we cannot understand what prompted this inquiry." End of quote. Does he have to justify to you or anybody else in this

room what he may talk about? Quote again, "If there were any sudden increase in population, the Board knows the Department has many other options available. Why then would the Board focus on the third tier of JATC?" What right has Ms. Raymond to demand explanations of me, the staff or anybody else, as to what we're going to talk about? This is offensive and destructive. I quote again, "It is my belief that the Board did not act in good faith when it did not adhere to the agenda." Unquote. If you wish to keep somebody on your staff who makes these kind of accusations against Members and staff of the Board, that's certainly your prerogative, but you're headed towards a confrontation, at least with me.

I quote again, "After a thorough investigation" - and here comes the killer - "I can only conclude that the report of Member David Schulte" - anybody doubts who David Schulte is, I am David Schulte, I've been here forty years. Listen to what she says about me. "David Schulte deliberately misled those at the meeting." And if that isn't tantamount to calling me a liar I'll have to look up in my dictionary. I resent this bitterly. And you received a copy of this letter. I heard not a word of explanation from you sir. I continue, "Mr. Schulte reported to the Members and had recorded into the minutes that he discovered the deteriorating conditions in Sprungs 1 and 2 at Rose Singer on one of his usual tours and that the closing of these two Sprungs was somehow the result of his visit." Whether it was the result of my visit or not - what difference does it make? Disgusting conditions existed and you, sir, either didn't know about it or Chief Raymond didn't do anything about it, and that's what this whole issue is about. That's the reason for a Board, is to point out what goes on behind closed doors.

I quote again. It's hard for me to say this. "This is contrary to the truth..." - I'm saying things that are contrary to the truth - "...which is that you, Mr. Wolf, and Mr. Schulte were there to observe the conditions in the Sprungs because they were slated to be closed that day." Maybe they were, maybe they weren't - I knew nothing about it, and if you don't believe me, well that's too bad. "As you know, Mr. Schulte also made allegations..." - this is a legal term, allegations, charges - "...and had recorded into the minutes that the conditions observed in Sprungs 1 and 2 were the result of poor management." I didn't make any allegations. I'm stating facts. It was the result of poor management, and to characterize what I saw, I asked Ms. Sherie Jones - is that her name? Brown, what she thought of the conditions I found. She said, "Disgusting". And I urge the recorder to record that word again. "This is completely untrue," says the letter, "and it is documented that the facility had been trying to have these Sprungs closed for some time." If that be true, and I don't dispute that they were trying, who was preventing it? She's passing the buck to you, sir. Unless she prevented it. She doesn't know who prevented the closing. For two months, I'm told - maybe it was one month - these are devastating, shall I say, misrepresentations of fact.

I quote again - there's only one paragraph left - "In addition Mr. Schulte made a point of stating that during his meal in the Blue Room (the supervisory staff dining room) he had difficulty obtaining butter for his toast..." It wasn't my toast I was worried about. I have enough money to buy my own butter. I'm talking about - if I couldn't get the toast, couldn't get butter, and I was told the kitchen doesn't serve butter, and the Warden was sitting right next to me - she must have

heard it - what about the inmates? So I said, "Well, what do you serve instead?" She said, "Oil." Maybe you like oil, maybe they like oil on their toast, but that isn't what the Board of Correction is about. It wants to see fair treatment. Now the last sentence, "At the time that Mr. Schulte was dining in the Blue Room, the staff was preparing the lunch meal for staff but nonetheless did their best to accommodate him." And that's true. They did, and they finally found a little piece of butter for me. "In conclusion, I understand the goal of these meetings was to discuss pertinent issues ongoing in the Department of Correction." Misapprehension, and I suggest that Ms. Raymond go back to the Correction Academy and take a course in what the Board of Correction stands for. We stand for truth and honesty. And the last sentence, "By deviating from the agenda it does not serve any useful purpose to either party." And then, there are four lines: copy to "Gary M. Lanigan, Acting Commissioner, William Fraser, Chief of Department, and Elizabeth Loconsolo, and John Horan."

In concluding, I say I've been here forty years. I have never met a letter more dedicated to destroying the good will between this Department and the Board of Correction than she, Raymond's letter. And I for one will no longer deal with Chief Raymond. If you want to keep her as Chief of Compliance, which in my opinion she's totally incompetent, go ahead, but I won't deal with her. That's the end of my report.

ACTING CHAIR HORAN: Thank you, Mr. Schulte. Are there other Members of the Board

MR. SCHULTE: Could I just ask Mr. Lanigan's response to this?

ACTING CHAIR HORAN: I'm sorry. If you wish to have a response, of course.

ACTING COMMISSIONER LANIGAN: I think where the Chair may have been heading was to ask if other Members of the Board had other comments about this, and I'd prefer to hold the comments until everything's on the table.

MEMBER DAVID LENEFSKY: I think, with all due respect, we'd like to hear from you, sir.

ACTING COMMISSIONER LANIGAN: Okay. A: I regret that you take offense to the letter. It was not meant to be an offensive letter towards you. The practice that has always been, to date, that we had an agenda for the meeting. There were times when as early as, as late as the day of the meeting that agenda would have to change and Richard would call and let us know. Last meeting there was a change in that practice, and that's fine. But not having an agenda is also acceptable. The reason an agenda is helpful is that if you want an intelligent response to an intelligent question, it's helpful if I know what that question is going to be in advance. Any research that needs to be done can in fact be done. The JATC is an excellent example. We had absolutely no plan to use JATC in the next year. There is, however - there are, however, legal arguments taking place as to our right, the Department's right, to use the third tier of JATC, so, not knowing that those legal arguments were taking place, I didn't know where your Executive Director's questions were coming from, and it led to some confusion at the table here, and I prefer not to say, "I'll get back to you, it's not an agenda item, I'll get back to you". That's an acceptable answer, and that's what I will have to say if it's not an agenda item, because I'm not

going to give you less than a complete, correct answer. In terms of the forum that you've chosen to hash this out, I agree with you that our relationship seems to have taken a turn for the worse, and I regret that also. I'm not sure exactly where this turn took, but we discussed it as early as, as late as this morning, and how we should go about improving that relationship with the Board. There does seem to have been a bad turn taken here, not only with respect to this memo but with respect to several memos that have come back that had a negative tone on the part of the Board as well as the Department, I might add. There have been very negative memos going back and forth. It was, I apologize to any - I do not, I know Chief Raymond does not believe that you are a liar, sir.

MR. SCHULTE: Then why did she say so?

ACTING COMMISSIONER LANIGAN: I do not believe that and I know Chief Raymond may have

MR. SCHULTE: If I say to you you are deliberately misstating the facts, and had it recorded, would you consider that offensive? That's what was said about me. End of case.

ACTING COMMISSIONER LANIGAN: You may have been incorrect, and that's what she was attempting to

MR. SCHULTE: But she didn't say that. She said I was deliberately misstating the case, and that's calling somebody a liar. I've been here forty years. Let me just say one more thing, Mr. Chairman. The network of good will is a very tenuous thing between the Board and the staff and I've always been a defender of the staff, uniformed and civilian. But this - a great hole was torn in that tender network and Ms. Raymond signed her name, didn't have the decency to send me a copy of this letter which is the sign of either indecency or cowardice - you can use your own choice - and you still haven't explained why you permitted this letter to go out.

MR. LENEFSKY: That's the great irony of this, is there has been no more champion of the Department of Correction in the years that I've been here than David Schulte. Consistently. He has always gone out of his way, more than any other Board Member, to support the Department on the critical issues. Never once has he swerved from that path - never once that I can recall. This letter is, Gary, offensive - at the least. This is not the only oversight relationship that exists in our republic. Oversight relationships exist - every city, every state, and on the Federal level. It's a well-played-out relationship. It is helpful to have an idea of what is going to be on the agenda, but there's no hard rule that agendas have to be word-for-word given to the people on the other side of the table. And the question wasn't that far removed from your competence, your jurisdiction - someone's competence and jurisdiction in this room. If you were taken back by it, that's a judgment call on your part. But it certainly doesn't warrant or merit that kind of response. It is totally not proportionate to what happened.

ACTING CHAIR HORAN: The Executive Director wants to have a word.

EXECUTIVE DIRECTOR RICHARD WOLF: I just want to say that first, it is written that the

Board didn't act in good faith when it didn't adhere to the agenda. I have a couple of things to say about it: first, that as has already been pointed out by Mr. Schulte, that is very harsh language. Secondly, until now - until this month's meeting, my conversations with whomever our liaison has been have always been conversations. They've been informal and they've been very general. Typically what I will say - and what I said in advance of the meeting where this is in question - is, yes, one of the things we are going to be talking about is census, capacity and renovation issues. Now, when I say that, did I mention JATC specifically? Absolutely not. But to suggest that, well, we had no clue, we had no notice when there are legal issues that are presently at play regarding the place, when there's been a longstanding renovation project underway, and where the issue of the extent to which the Department is contemplating using that facility when it does reopen are matters of, if nothing else, great historical significance to the corrections system in the City of New York because of what happened there and why the third tier ultimately ended up being closed - to suggest that it's "bad faith" to raise such an issue at a public meeting like this, I think seriously misconstrues what our role is as a public body asking questions about what's going on in public institutions.

MEMBER LOUIS CRUZ: Mr. Chairman, with all due respect.

ACTING CHAIR HORAN: Mr. Cruz.

MR. CRUZ: I am rather in shock at both the tenor and content of that letter, because that in no way reflects the man that I have been working with for almost ten years. I have never heard his reputation for veracity ever challenged by anyone, even in jest. The position of the Department, if I understand it, is that failure to pre-notice us of an issue is a sign of bad faith in one form or another. I beg to differ, because that type of a statement shows an utter disregard of the operations of this Board and what we are governed by. There is an agenda item, "new business". Is it the Department's position, can it be the Department's position - and forgive me for raising my voice because I do not mean to do that - that under no circumstances can any Member of this Board, duly charged by the Charter of New York, bring an issue to the Department at a meeting without pre-notice? This is not a criminal, prosecutorial, adversarial relationship. We are the oversight, and from what I have seen over the last several months, is a chomping at the bit and a conscious resistance to the prerogatives of this Board, to the point where that letter is so silly. I'd better quit right there.

ACTING CHAIR HORAN: Let me add just one further note, Mr. Commissioner. I am personally disappointed that you chose to defend that letter and to argue and suggest that it was a surprise that it was offensive, and I hope that you'll think better of that as you re-read it and consider the remarks you've heard today. There could be no excuse for not realizing what that letter intended to say. All right.

ACTING COMMISSIONER LANIGAN: Could I just comment again?

ACTING CHAIR HORAN: You can try, yes. Go ahead.

ACTING COMMISSIONER LANIGAN: What I'm saying Mr. Schulte is I've worked with you

for six years also

MR. SCHULTE: A little louder, please.

ACTING COMMISSIONER LANIGAN: I've worked with you for six years also. I respect you. With all respect, I believe indicating that mismanagement that led to that is incorrect.

MR. SCHULTE: Would you like me to explain why I said that? Because they had been trying to remedy the conditions, disgusting conditions, for over two months - and nothing was done. If that isn't mismanagement, you'd better go to a course on management.

MR. LENEFSKY: Gary, you're entitled to have a substantive disagreement. That's not what this discussion is all about. We're entitled to disagree with each other, in good faith, and there is obviously a disagreement about how David characterized something in your jail system. What this discussion is about is your response, and what we are suggesting is that your response is not anywhere appropriate to what David had said at that meeting. You personalize something - he wasn't trying to personalize something. He was calling your attention to a very bad condition, and in reply you personalized it. You accused him of misleading intentionally.

MR. SCHULTE: And I resent that. You've nothing more to say, sir.

ACTING COMMISSIONER LANIGAN: No sir.

MR. SCHULTE: Then we know where the relationship of this Board and the Department is going to go under your leadership - at least I know.

ACTING COMMISSIONER LANIGAN: I hope that where you started was that there has to be better communications.

MR. SCHULTE: But you are the fellow responsible for this letter. You could have sent me a copy but you didn't.

ACTING COMMISSIONER LANIGAN: That we can put that relationship back on track. That's what I'm hoping.

ACTING CHAIR HORAN: All right. Let's end the discussion on that note.

MEMBER FATHER NAHMAN: Lest my silence suggest that I've got nothing, that I haven't got strong feelings - when I read that I was outraged. That you can see nothing offensive and think that it's okay maybe speaks for itself, I find incomprehensible. It's now a matter of public record and I hope it doesn't go before a court of public opinion. But I would ask that you please re-read it, maybe in light of what our comments are, and maybe appropriate action would have to be taken if this a person that speaks publicly but not appropriately.

ACTING CHAIR HORAN: Thank you Father Nahman. The next item on the agenda, if there

isn't another report from a Member

MR. SCHULTE: But there is.

ACTING CHAIR HORAN: I'm sorry. Is there another report?

MR. SCHULTE: After you, sir.

MR. LENEFSKY: Yes, I'd like to raise the issue, John, is this the appropriate point?

ACTING CHAIR HORAN: Yes, go ahead.

MR. LENEFSKY: Gary, it's come to my attention that you've signed a directive recently that forbids the Board's staff of taking a photograph of a crime scene. And the question that I have for you is: cite me one instance when a Board staff took a photograph of a crime scene that interfered with the investigation at that crime scene. And I don't want to put any statute of limitations on it, Gary. Go back to day one when the Board was established. Cite me one incident in which a Board taking - a staff member of the Board - took a photograph that interfered with a crime scene.

ACTING COMMISSIONER LANIGAN: I cannot cite you an instance.

MR. LENEFSKY: General Counsel. One incident.

GENERAL COUNSEL LOCONSOLO: As I sit here, I can't cite an incident to you.

MR. LENEFSKY: Can any member of the Department of Correction cite on incident - going back from day one when this Board was established, where any

MS. LOCONSOLO: I don't think all of the right people are here.

MR. LENEFSKY: Well, we're going to leave the record open. Gary, give me one example when a staff member of the Board did take a photograph which the Department asked for that photograph. One example. No statute of limitations. Go back to day one.

ACTING COMMISSIONER LANIGAN: Again, I am not familiar with any instance.

MR. LENEFSKY: Counsel?

MS. LOCONSOLO: I have the same answer, and again I don't believe all of the correct people are here who can respond.

MR. LENEFSKY: Of those people who are here, is there anyone who can cite me one example of either question? And we'll leave the record open. We'll allow anyone in the Department the right to come back to us. No statute of limitations. So Gary, what was the rationale for the

change in policy?

ACTING COMMISSIONER LANIGAN: Some Board Members were here a few months ago when I came and explained why the Department's position at that time was that, at a crime scene, Board Members and their staff should not be there.

MR. LENEFSKY: I was at that meeting.

ACTING COMMISSIONER LANIGAN: And the position of the Department at that time was that we were prohibiting access to crime scenes. The reason for that was for the integrity of the crime scene should there be a subsequent criminal investigation, and I went to great lengths at that time to explain in no way were we trying to hamper the Board's authority to do their investigations after the crime scene was dismantled. But during the crime scene itself, in the crime scene proper, we felt that the Board should not - that not only the Board, members of the Department, and other outside agencies

MR. LENEFSKY: Gary, we're not talking about that. That's not the issue. We're talking about when we do have access to a crime scene, because there are certain conditions that will prevail when we do have access to a crime scene. When we have access, when your people are there with us, what is the change, what is the rationale and the policy that prevents a staff member when he is there legitimately, pursuant to your directive, from taking a photograph? What's the rationale?

ACTING COMMISSIONER LANIGAN: Leading up to that, after that current position, there was a subsequent meeting with Mr. Wolf and the Chair at which the Department was directed by the former Commissioner to allow the Board Members access and their staff access to the crime scenes.

MR. LENEFSKY: Correct.

ACTING COMMISSIONER LANIGAN: The negotiations there led to that it would be an escorted access to the crime scene. It went on to explain that that escorted access, the only limitations would be that there would be no recording devices, no camera equipment during that period.

MR. LENEFSKY: What's the rationale?

ACTING COMMISSIONER LANIGAN: The rationale was simple negotiations. That's what was negotiated with the Board at the time.

MR. LENEFSKY: Gary, Gary. Admittedly there was a letter from staff to the Department which acknowledged we would not take any photographs at a crime scene. You well know that the Board repudiated that letter, that position months and months ago.

ACTING COMMISSIONER LANIGAN: Actually I did not know that. That's not the first time

that's been said, Mr. Lenefsky, but that is not correct.

MR. LENEFSKY: Well, at this point, just on this very narrow point, excuse me, on this very narrow point, I'm going to pass to Richard so he can document how we told the Department more than once after that letter was written that we were repudiating that position.

ACTING COMMISSIONER LANIGAN: I'm not going to suggest that you did not tell the Department. I'm saying to you directly I was not aware of that until

MR. LENEFSKY: Until when?

ACTING COMMISSIONER LANIGAN: until as late as about a week or two ago. I don't

MR. LENEFSKY: No one on your staff told you

MR. HORAN: Wait, wait. Time out now. As Chair, look, let's not get into an argument. David was presenting a view and asking some questions. Let's continue to ask

MR. LENEFSKY: Again, what's the rationale for the change in policy? We're there at the crime scene with your guidance, under your directive - what is the rationale for preventing a staff member from taking a photograph when he is legally there?

ACTING COMMISSIONER LANIGAN: Part of this is the whole integrity of a crime scene. What we're allowing are people that are not doing criminal investigations to come in and take photos and leave a crime scene with photos. This is a problem. At a crime scene, this is a problem. Now we discussed this with several oversights. We discussed this with the Police Department. We discussed this position with the Law Department. We discussed it with the Criminal Justice Coordinator, and I believe it was discussed with the DAs. I personally did not discuss it with them. So there is a problem with people coming in, conducting an investigation. It may not be a criminal investigation that you are conducting, but the pictures that you are taking

MR. LENEFSKY: Are available to you

ACTING COMMISSIONER LANIGAN: Will be necessary for a criminal investigation.

MR. LENEFSKY: Gary, all of our photographs are available to you and to the District Attorney's Office and that's why I specifically asked you to cite me one example in which you or any member of the Department of Correction in the last forty years asked for a photograph that a Board staff member, that a staff member of the Board took and didn't give it to you. You can't. Regardless of who's in the room and who's not in the room, you can't. You will not be able to do that. That is still not a policy, Gary. That is still not a rationale for preventing staff members from taking a photograph when they are entitled to be there at a crime scene.

ACTING COMMISSIONER LANIGAN: I beg to differ with the word "entitled". I don't know that

MR. LENEFSKY: Gary, your directive says that we are allowed to be there under certain conditions

ACTING COMMISSIONER LANIGAN: Yes, granted that - we granted access.

MR. LENEFSKY: During those times, Gary, and only during those times I am talking about, what is the rationale from preventing or from prohibiting - what's the reason for not allowing a staff member to take a photograph that's going to be available to you or anyone else who asks for it? We don't have a relationship with the Police Department by Charter. Our relationship by Charter is with you. Again, we are at the crime scene. You are there. You know it. The Department has no complaints about our being there. What is the rationale for not allowing a staff member from taking a photograph?

ACTING COMMISSIONER LANIGAN: Again, the rationale is to extend the privilege to the staff members, to the Board Members, to be at the crime scene.

MR. LENEFSKY: That's not a privilege. That's not a privilege, Gary. It's not a privilege.

ACTING COMMISSIONER LANIGAN: What I'm told is that you do not necessarily legally - I know you disagree with this position - what I'm told is that you do not necessarily have legal access to a crime scene.

MR. LENEFSKY: Gary.

ACTING COMMISSIONER LANIGAN: I've agreed, I've written to the Chair when that directive was promulgated. I held that directive for over a month on my desk before it was promulgated at the Chair's request.

MR. LENEFSKY: Gary

ACTING COMMISSIONER LANIGAN: And I told the...excuse me one second Mr. Lenefsky...and I told the Chair in the letter that was sent to him when that directive was promulgated that the reason it was being promulgated was because we could not have misdirection to the staff. There were two sets of orders out there to the staff. One set of orders - the last verbal set of orders given to each of the facilities - was that the Board did not have access to a crime scene. For over a month that verbal order stood out there while we had a different policy in place, and I explained to the Chair that I could not leave that conflicting information out there. That we had to be clear with the staff that these are the rules that you operate by today. Those rules, and I told this to him in the letter, could be changed. We would continue to negotiate this with the Board.

MR. LENEFSKY: Gary, what's so disturbing is that this is all so unnecessary. We had been working so well together, between the Board and the Department, over the last several years. The response to David, and the response to this crime scene incident, is so unnecessary. You can't cite any instance in which we have interfered with a crime scene. It's a unilateral action on

the Department's part that I don't understand. I see no rationale for it. I see no justification in the experience for it. Where is the experience that leads the Department to take this strident view?

MR. HORAN: Yes, Father Nahman.

FATHER NAHMAN: An observation. In the arena which I work, the theme is "if it ain't broke don't fix it." Here is a directive that kind of countermands a practice that been longstanding, and I have asked why. Usually when a directive in my frame of reference is issued, it's to prevent something from happening a second time that happened and we didn't want to happen the first time. When I asked for any kind of background, I found out that there were photographs taken at one time that were helpful for the Department in their investigation of a scene. So I say, well, do they want to prevent that? Something that's helpful? The only thing that comes to my mind is, do they want to cover up?

MR. SCHULTE: That's the issue.

FATHER NAHMAN: And we say well, you know, only the Board of, we take photos (*inaudible*) the Heisenberg effect doesn't take effect and it doesn't affect the crime scene. We have photos - it's documentation. Why would you not want these? And again, I cannot understand, I just cannot think of another alternative other than - we don't want them because it may contradict photos that we may have which then gets into a whole messy thing that we don't want to document this cover up. I don't want to believe that. But I think that, again, in the arena of public opinion, when these statements, these observations are made, those people who want to discredit the Department - those people who are on the scene relative to the Police Department, also want to discredit the Department of Correction. I think that action to echo what David is saying, you know, is negative unless you can explain exactly what had happened or what happened or what could possibly happen that would give a good rationale.

ACTING COMMISSIONER LANIGAN: One of the things I'd like to comment on - you talk about the pictures that were taken a decade or so ago, and I'd like to ask a question: was there a crime scene set up when those pictures were taken? The answer is no. That's why evidence was removed. Evidence was removed at that scene where you took those pictures because a crime scene was not established. It was not handled professionally, and that is exactly what the Department is trying to do is to handle the crime scene in a professional manner.

MR. LENEFSKY: Gary, you're going to have your crime scene. We are there pursuant to your directives. What is the rationale for not allowing us to take a photograph? That's the single narrow issue.

MR. HORAN: Richard wants to add a word.

MR. WOLF: Just a related question, I guess, is that what's not being focused on is that for many years, not only with the Department's approval were we going to the scenes - and some, more recently were with crime scenes established, in a formal sense, and others where we were just

responding to where, let's say, a suicide had occurred - going with, not just the permission of the Department, but in the company of representatives of the Department, and were allowed to, at that time, without any questions being asked, to take photographs. That long had been the position - if it was a position at all - that's what had been going on for years and years. And the question becomes, not just why were we initially barred one time, and then negotiations had to happen for us to get back in, but what changed to cause the policy to change from the time when we could take photographs that nobody was interested in - other than the Board - but that we could take photographs, to all of a sudden saying, "We have a new policy and now you can't take photographs." And that's the point - that's a change. It's not as if one day everybody woke up and there was a policy created from the beginning which said, "Here are the rules. The Board of Correction can come but they can't take photos." We always had been allowed to take photos, and the question is why now we can't.

ACTING COMMISSIONER LANIGAN: As I said to the Chair and will continue to say, I will defer to the experts on crime scenes with this. If they - if the experts on crime scenes suggest that there is no problem with the Board being there and there is no problem with the Board taking photos, I'll defer to that. But I'm going to defer to the experts.

MR. LENEFSKY: Forgive me, Gary. I've said this three times. I'm just going to say it once more. The issue is not whether or not we are at the crime scene. We are at the crime scene. We are there pursuant to your directives. We are not going past any of your guards, breaking down the doors. We are there. They know we are there. We are there pursuant, again, to your directives. What in the experience in the last forty years, in the last four years, in the last four months, has changed the rationale or a rationale for prohibiting us from taking a camera, and a photograph which is available to the Department?

MR. HORAN: The Commissioner's had his response, and do you want to say one more thing?

MR. CRUZ: Yes. Commissioner, we discussed this in Executive Session, arguably privileged as an Executive Session, specifically for this topic because it involves investigations. Our views were made known then. You know how we felt about it, etc. For you to sit there and, really, stretch reason to the point of lacking any rational horse sense - I apologize for that characterization because I consider you better than that - but for you to state that if and when you are advised by criminal investigations experts that that would be okay, it is really disingenuous. Of all the people here, maybe, maybe this Board Member, Louis A. Cruz, is the only one that's been qualified by all criminal courts in this state as an expert criminal investigator - by virtue of training, education and so forth. I am telling you that any criminal investigator that tells you that a criminal investigation is hampered by the taking of extra photos is per se incompetent. Our mandate under the Charter is to investigate. We have the right to investigate, and to investigate any incident, serious incident, and this point was made to you before. For any investigator who calls himself an investigator or for any investigative arm like this Board and its staff to conduct an investigation without preserving that which is there to be seen with a photograph is per se incompetent, because the photograph merely allows you, in the quiet contemplation after the fact - and this is why investigators do the same thing - to go over it. Did we miss anything? How does that compromise a crime scene? I submit to you that it does not. It's really a defiance of

the Board's Charter prerogative. It really is, and someone's making up, from what I foresee here, and what I see, from past conduct over the last year, is a nibbling away - an attempt to nibble away - thinking they're going to get away with it, by, on the part of someone, to diminish the effectiveness of this Board to accomplish its statutory responsibility. And I'm not going to stand for that.

MR. HORAN: Thank you.

MR. SCHULTE: I have just one other sentence. I admire Acting Commissioner - I use that full term - Lanigan. I think he's making a mistake. Father Nahman described the mistake in eloquent terms. The public doesn't go quite that far. And I can foresee the headlines. Do you know what the headline is going to be? "What is Acting Commissioner Lanigan hiding?" That's the end of my statement.

MR. HORAN: Dick Nahman?

FATHER NAHMAN: Just a question. Is a suicide a crime scene?

MR. HORAN: Ask the Commissioner.

FATHER NAHMAN: Is a suicide considered a crime scene?

ACTING COMMISSIONER LANIGAN: Yes. The reason for that is because at the time of the suicide, the only thing that we know is that you have a body. We don't know what brought about that demise.

MR. HORAN: All right. Let's go on to the staff report.

MR. SCHULTE: I have one more report.

MR. HORAN: I'm very sorry. Do you have a current report?

MR. SCHULTE: Yes. I was out recently with the Executive Director and the Director of Field Operations, Carl Niles - and you correct me being Al Gore now for any details that I misstate - it was the George Motchan Center, wasn't it?

MR. WOLF: Yes sir.

MR. SCHULTE: And there we met Warden Ocasio. And listen carefully, because I have good news. I thought he was a fine man and on top of things. And we visited the bathrooms, and the showers and the negative thing I found - it's not terribly important but it's a shadow about to become a storm. The conditions of the modular floors - am I right, modular floors? - is deplorable. The flooring is disintegrating, plywood is rotting, etc. And with all the extra space that the Department now has at its command - I think there are four thousand off-the-line cells - you're asking for trouble and I for one, if the situation doesn't change, will recommend that these

modulars be closed, because you can't house people in sub-standard housing, and that's what you, Commissioner Lanigan, are doing. You keep saying "nobody told me". Well I'm telling you to your face this is what the situation is. These are minority people. These are deprived people. These are people in many cases sentenced to no crime because they haven't been tried yet. And to force them to live in these circumstances is not why I joined the Board of Correction, and it's not why you're Commissioner, in my humble opinion. We went into the bathrooms. They were perfect. Showers had to be redone - no, it was a group shower, that's right. Nice flooring was there. I said to Warden Ocasio, "So how is it that you can get plumbers to fix all this stuff when your colleague Warden - what's her name?"

MR. WOLF: Andrews.

MR. SCHULTE: Andrews says she can't get anything done because there aren't any plumbers. How do you get them? Oh, he said, that's easy. I call them up at home. ...She should call the plumbers up at home. How is it one institution is well managed, and the contiguous institution joins this particular one, is poorly managed? The Warden says, "I can't get anything done." Why couldn't she get...where does the buck stop, if it doesn't stop on your desk sir? That's my question.

ACTING COMMISSIONER LANIGAN: You started by saying that I said numerous times that no one told me.

MR. SCHULTE: Yes.

ACTING COMMISSIONER LANIGAN: That's not true. I don't think I ever said that. And I'll ask you

MR. SCHULTE: You just said that.

ACTING COMMISSIONER LANIGAN: ...where I have ever said to this Board, "Nobody told me." That's incorrect.

MR. SCHULTE: You just said so.

MR. LENEFSKY: Gary, I think David was referring to your statement that you made in response to...being informed only a week ago that we had repudiated the letter.

MR. SCHULTE: You said nobody ever told you.

ACTING COMMISSIONER LANIGAN:: If I said that Mr. Lenefsky, Mr. Schultz...

MR. SCHULTE: My name is Schulte, in case you've forgotten.

ACTING COMMISSIONER LANIGAN: Yes sir.

MR. SCHULTE: Thank you.

ACTING COMMISSIONER LANIGAN: Secondly, I'm going to ask you, politely as I can, not to insult our Chief of Compliance.

MR. SCHULTE: Then she shouldn't insult me.

ACTING COMMISSIONER LANIGAN: Okay.

MR. SCHULTE: I haven't heard you direct that to her. Would you like to do so now?

ACTING COMMISSIONER LANIGAN: I'm asking you as politely as I can to refrain from doing so.

MR. SCHULTE: I will certainly do that. Will you ask your Chief of Compliance to do the same? I'd like to hear it, your request.

ACTING COMMISSIONER LANIGAN: In terms

MR. SCHULTE: Let the record reflect that he won't.

MR. HORAN: The record reflects it. Go on, Commissioner.

Acting Commissioner Lanigan said that an extensive renovation project is underway at GMDC to upgrade bathrooms in the thirty modulars and six Sprungs. He noted that the remaining ten areas will be completed over the next year. Mr. Wolf said that on the Thursday preceding Mr. Schulte's visit, Board staff conducted an extensive inspection of GMDC's mods. He said that several areas were found to be in very bad shape, noting that in Mod 11B, Board staff observed that there was only one operating shower and three toilets for thirty-six inmates. Mr. Wolf said that when Mr. Schulte inspected the area on Tuesday, there were sufficient numbers of operating showers and toilets. He added that it was obvious that extensive repairs had been made in the interim. Mr. Wolf said that this situation demonstrated a very constructive role that the Board plays in the jails. However, he said that Mr. Schulte's point was important - that the deteriorated conditions had existed for some time and DOC had swing space available. He urged the Department to survey the mods and Sprungs throughout the jails and, if Standards ratios are not being met, to reduce the number of inmates in an area, or to close it until repairs are made. Mr. Lanigan said that all wardens have been reminded to be vigilant.

Mr. Wolf reported that Mr. Schulte's also toured the GMDC Infirmary, which had been closed since January due primarily to heating problems. He said that in one room housing several inmates, there are no radiators. Warden Ocasio explained that the radiators were being repaired and would be retrofitted and reinstalled within three to four weeks, and that if the weather turned cold, he would move the inmates to another room. Mr. Wolf said that a few days ago a BOC field representative, accompanied by a DOC representative, observed the inmates during the day, in their beds and covered with blankets. They recorded the room temperature at

slightly below 65 degrees. Mr. Wolf suggested that this was too cold for infirmary patients. Mr. Wolf also reported that there is a mosquito infestation problem in GMDC, which is particularly acute in the infirmary. He said that he saw several inmates whose backs were covered with insect bites. Mr. Wolf said that two window panes were missing, and that insects, including mosquitos, had direct access into the area. He added that the window, which did not have screens closing the area exposed by the missing panes, looked out over dense vegetation. Mr. Lanigan responded that since Mr. Schulte's visit, the window had been repaired.

Mr. Wolf said that staff noted a significant increase in the number of reported uses of force in the Central Punitive Segregation Unit (CPSU). He said there were 79 reports in September, up from an average of 36.25 for the first eight months of the year. Mr. Wolf said that 20% of September's reports mentioned the cell door security slots. He noted that DOC had renovated 115 cell doors. A closable box surrounds the slot on these doors, so that if an inmate refuses to pull his arm back inside the cell, an officer closes the top of the box and the inmate cannot throw anything from the cell or grab at passing staff. Mr. Wolf asked why the reports increased in September, and whether DOC intends to continue retrofitting CPSU cell doors. Mr. Lanigan said that the numbers were indeed high - 112 reports - because more searches were being conducted and also because there was a TSO (Tactical Search Operation) on September 12th. The TSO was held because officers had been finding too much personal property in CPSU cells, and also telephones that inmates had refused to return. Mr. Lanigan said that all 112 reports were of "B" uses of force, meaning that no serious injuries were reported. Mr. Lanigan added that DOC has no plans to retrofit the remaining CPSU cell doors.

Mr. Wolf asked whether DOC had developed plans to change policies or operating procedures or practices as a consequence of the diminishing role of the Federal Court in City jail operations. He asked whether DOC had established a working group to consider revisions, and whether a written document identifying operational changes would be prepared. Mr. Lanigan said that DOC does not foresee any drastic changes because many of the court-related restrictions have become good operating procedures. He added that some restrictions that were not necessary would be eliminated, such as a requirement that windows be washed four times each year. He said that all activities related to court orders will be reviewed. General Counsel Elizabeth Loconsolo said that the only change that has been implemented was one about which Mr. Schulte had been concerned. Visitors to Rikers Island now are searched twice: first, at the Visit Control Building, by walking through a special security door that detects metal, and thereafter at the facility at which the visit will occur. Mr. Wolf concluded the discussion by reminding the Department representatives that although court orders and consent decrees are being eliminated, the Minimum Standards remain in effect and must be followed.

Mr. Cruz raised the issue of revision of the Standards. Mr. Horan noted that the process is ongoing. Mr. Cruz said that part of the process was that DOC was to report to the Board on which activities would no longer be continued. Mr. Schulte restated the issue by suggesting that it would be useful to know whether some consent decree provisions should be reinstated by the Board. Mr. Horan said that this will be part of the revision process.

Mr. Wolf asked if the Department had anything new to report on its plans to ban smoking

in the jails. Mr. Lanigan said there was not.

Deputy Executive Director Cathy Potler asked whether findings had been made regarding the August suicide at GMDC (Frank Johnson). She noted that at BOC's August meeting, the matter was reported to be under investigation. Mr. Lanigan noted that the crime scene videotape was delivered to BOC yesterday, and he apologized for the delay. He said DOC had not yet received the final coroner's report.

Acting Chair Horan asked Correctional Health Services Executive Director Ernesto Marrero for an update regarding a contract for correctional health services. Mr. Marrero said that HHC lawyers are working on a contract, and noted that yesterday there were extensive negotiations with Prison Health Services (PHS). He expressed optimism that an agreement will be reached. Mr. Marrero said that a critical component that has been agreed upon is staffing levels, per facility (which was described as any place where care is delivered, including mini-clinics) and per shift. A penalty matrix identifying liquidated damages for failure to meet staffing levels has been established, including requirements that particular posts (such as infirmary posts) are filled 100% of the time. Internal HHC contract approval procedures have been delayed slightly by the negotiations. Mr. Marrero said that the new contract will require that a physician be present in every institution, an enhancement from present requirements permitting physician's assistants. He added that CHS had solicited and received input from BOC staff, particularly Ms. Potler. Mr. Lenefsky asked about the electronic medical records system. Mr. Marrero said that CHS had asked PHS to come up with a proposal for a system that, if acceptable, will become a rider to the contract. He added that litigation continues, and no decision has been issued as to whether St. Barnabas Hospital or HHC owns the Smart Medical Records System. Mr. Marrero said that as the end of the current contract approaches, a decision is needed. He said CHS is prepared to revert temporarily to a paper system, if necessary. Mr. Schulte asked for one jurisdiction where they currently have a contract. Mr. Marrero said PHS has 128 contracts, and the one that most closely mirrors New York is Philadelphia, which has 7,000 inmates in five facilities. He said the selection committee visited the Philadelphia system and observed PHS's operations. Mr. Marrero said that although the HHC Board of Directors cannot authorize the HHC President to enter into a contract until the end of November, PHS understands that a two-month transition is needed, and expects to be working without a contract beginning on November 1.

A motion to renew existing variances was passed without opposition.

Father Nahman urged Acting Chair Horan to reach out to the Department to resolve our current differences. He requested that a verbatim transcript be prepared of the first half of the tape recording of today's meeting.

The public meeting was adjourned at 2:22 p.m. Thereafter, the Board went into Executive Session to discuss a litigation matter, and adjourned at 2:45 p.m.