

**NEW YORK CITY
BOARD OF CORRECTION**

September 14, 2000

MEMBERS PRESENT

John R. Horan, Acting Chair
Canute C. Bernard, M.D.
Stanley Kreitman
David Lenefsky
Richard Nahman, O.S.A.
David A. Schulte

Excused absences were noted for Board Members Louis A. Cruz and Barbara A. Margolis.

DEPARTMENT OF CORRECTION

Gary Lanigan, Acting Commissioner
Roger Jefferies, Deputy Commissioner
Elizabeth Loconsolo, General Counsel
Robert Dash, Bureau Chief
Catherine Raymond, Assistant Chief
Roger Parris, Assistant Commissioner
Liz Myers, Inspection and Compliance Division
John Mohan, Office of Public Information

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Executive Director
Michael Tannenbaum, Chief Operating Officer
George Axelrod, Director, Risk Management
Arthur Lynch, Director, Mental Health
John Russell, Director, Inter-Governmental Relations
Robert Berger, Director, Delivery Assessment Unit

OTHERS IN ATTENDANCE

Milton Zelemeyer, Esq., Prisoners' Rights Project, Legal Aid Society

Acting Chair John R. Horan called the meeting to order at 1:00 p.m. Minutes from the July 13, 2000 meeting, with a correction to note the excused absence of Board Member David Schulte, were approved unanimously.

Mr. Horan reported that yesterday the City Council presented David Schulte with a proclamation honoring him for forty years of devoted service to the Board and the City. Following applause and congratulations from all present, Mr. Horan noted that Mr. Schulte was appointed to the Board in 1960 by Mayor Robert Wagner. Executive Director Richard Wolf showed a picture taken at Mr. Schulte's swearing-in ceremony, which included Mr. Schulte, Mayor Wagner, and then-Commissioner of Correction Anna Kross. Mr. Schulte identified other dignitaries in the photograph: First Deputy Commissioner Freddy Reber, Commissioner Cass of the State Commission of Correction, and DOC Deputy Commissioner Maurice Grey.

Mr. Horan called for Members' reports. Mr. Schulte reported that, at the suggestion of Mr. Wolf, he made his monthly visit to the Rose M. Singer Center (RMSC). Accompanied by Mr. Wolf and BOC Field Representative Sherie Brown, Mr. Schulte inspected Sprungs I and II. He reported that the Sprungs have capacities of 50 inmates per side. He said staff asked him to inspect the bathrooms. He said he only two toilets were working in the bathrooms he inspected, too few to meet the requirements of the Building Code or the Minimum Standards. Mr. Schulte reported that the broken toilets were stuffed with newspapers, "presenting a scene of the utmost degradation".

At this point Police Commissioner and former DOC Commissioner Bernard Kerik joined the meeting. He said he came to say goodbye and to thank the Board for its support, without which Commissioner Kerik said he would not be where he is today. He also expressed his thanks to the Board for what it does "for the City of New York and for the Department." On behalf of the Board, Mr. Horan congratulated Commissioner Kerik on his appointment and on his accomplishments at the Department of Correction.

Mr. Schulte then continued his report. He said that, under a prior administration, the shower heads were installed incorrectly, so that water shoots out directly onto the floor, which tends to rot and is then covered with plywood, which weakens as it rots. Mr. Schulte expressed concern that someone will fall through one of the floors. He added that the Sprungs are areas in which the Department attempts to rehabilitate drug-abusers, and that this goal will not be accomplished if the participants are angry and disrespected. Mr. Schulte reported that he sat down to discuss issues with the Warden while eating eggs, and that after initially being told that there was no butter for the toast, he was given a small quantity. He added that he was told there were no knives with which to spread the butter. Mr. Schulte said that these deficiencies suggested poor management. He expressed concern that with all the supervisors in the Department, conditions in the bathrooms were nonetheless allowed to deteriorate. Mr. Schulte said that he had been told that officers are penalized if they ask for more than one work order at a time. Mr. Schulte said that Mr. Wolf told him that "they decided to close the institutions just after my visit". Mr. Wolf said that during the discussion with the Warden, she was asked

whether she had suggestions that would enable her to manage more effectively. He said the Warden would like to be able to use the facility's internal cable television system to broadcast messages to the inmates about program services. Acting Commissioner Lanigan responded to Mr. Schulte's report by saying that "as you said, the housing area was closed so thank you for your visit." He said the inmates were moved to Buildings 8 and 9. Mr. Lanigan said that DOC has been renovating shower areas throughout its facilities, and has completed approximately 50% of the renovations. He said each affected area is closed for 8 to 13 weeks for complete renovations of the shower and bathroom areas. Mr. Lanigan said that contrary to what Mr. Schulte had heard, DOC insists that officers submit work orders because without work orders DOC cannot justify additional staff. He noted that in the last budget cycle, DOC had finally obtained permission to hire 70 additional trade staff, based upon work orders submitted. Mr. Schulte asked Mr. Lanigan where are the supervisors who could have seen what Mr. Schulte saw and informed Mr. Lanigan.

Mr. Horan reported that the Board is reviewing the Minimum Standards and has made progress with the Recreation Standard. He said that a subcommittee, consisting of David Lenefsky, David Schulte and Mr. Horan would review possible revisions to the Recreation Standard and thereafter bring revisions before the full Board. Next, he said, proposed revisions will be sent to the Department for comment. Mr. Horan said that the other Standards will be reviewed thereafter.

Mr. Wolf discussed census and capacity issues. He noted that since the last meeting, the Bronx House of Detention had been added to the list of closed facilities. He asked for the status of renovation work at the James A. Thomas Center (JATC). Acting Commissioner Lanigan said he was not aware of the exact status. Mr. Wolf said that since 1980, when Judge Lasker imposed a limitation of 150 inmates per cell block, the third tiers in JATC's cell blocks had been closed. He said that he understood that DOC's plan was to renovate all cells at JATC. Mr. Lanigan said he was not sure of the scope of the renovation. Mr. Wolf asked whether the Department intends to seek to utilize all of the available housing at JATC when the facility reopens. Mr. Lanigan said that currently, the answer is no. Mr. Wolf asked if DOC intended to petition the Court, if necessary, to get permission to use the third tier. Mr. Lanigan reiterated that currently, DOC has no plans to use the third tier. General Counsel Elizabeth Loconsolo said that one of the court orders that is still at issue in the *Benjamin* litigation is "this one". Nonetheless, reiterated Mr. Lanigan, there is no plan to use the third tiers.

Mr. Schulte suggested that DOC could save money by stopping the renovation of the Sprungs and instead moving female inmates into housing areas of the contiguous George Motchan Detention Center (GMDC), which could be vacated by moving some of GMDC's inmates into another institution in which males are housed.

Mr. Horan said that the Board was becoming impatient with the lack of movement towards a smoking ban for the jails. He said the Board intends to look closely at why the City law is not being implemented. Mr. Wolf added that DOC told the Board, in January, 1996, that

by the end of January, 1996, sales of cigarettes in commissaries would be reduced, and that by the end of March, 1996, cigarettes would be considered contraband. He said that numerous delays ensued, including the need to wait for a new health vendor - St. Barnabas Hospital - to begin working in the jails, so that new medical and mental health staff could help inmates with the transition away from cigarettes. Mr. Wolf said that more recently, DOC has reported that union objections have led to the matter requiring the involvement of the Law Department and the Office of Labor Relations (OLR). Acting Commissioner Lanigan said that former Commissioners Jacobsen and Kerik had kept the Board abreast of developments. He added that the Department continues to work with OLR because the "no smoking" issue is a matter for collective bargaining. Mr. Lanigan noted that OLR has raised some issues regarding areas on the jails that DOC had identified as places where smoking would be permitted. Mr. Wolf asked how long it would take for DOC to implement its plan once OLR gives its approval to go forward. Mr. Lanigan said he could not answer precisely. He said that if OLR does not sign off soon, implementation could be delayed to await the arrival of a new correctional health vendor. Board Member Dr. Canute C. Bernard reminded the Department that the adverse health consequences of second-hand smoke in the jails should be presented to OLR and all participants in the process. Mr. Lanigan said that this had been done, and he thanked the Board for its support. Ms. Loconsolo said that the Clean Air Act, as well as subsequent arbitration decisions, recognize the right to collective bargaining over this issue, regardless of the health issues. Mr. Lanigan said that DOC has submitted at least three different plans in response to various objections.

Mr. Horan asked Ernesto Marrero, Executive Director of Correctional Health Services, for a report on the Health and Hospitals Corporation's efforts to secure a new correctional health vendor. Mr. Marrero said that at 2 p.m. the selection committee will hopefully choose the vendor it will recommend to the HHC Board of Directors. He said that contract negotiations could begin as early as Monday. Board Member David Lenefsky asked who sits on the selection committee. Mr. Marrero said there are eight members - three from HHC corporate headquarters (Senior Vice-Presidents for Operations, Financial Affairs, and Medical and Professional Affairs - Frank Cerillo, Rick Langfelder and Dr. Van Dunn, respectively), two from CHS (Mr. Marrero and Chief Operating Officer Michael Tannenbaum), and one representative each from DOC (Assistant Commissioner Roger Parris), DOH (Assistant Commissioner Scotty Owens-Leaks, and DMH (Assistant Commissioner Patricia Harrison). Mr. Marrero said that three potential vendors remained, but declined to say whether CHS was leaning towards awarding one contract for the entire system, or two contracts - one for Rikers Island and a second for the Manhattan Detention Complex and the Vernon C. Bain Center (VCBC) barge. Mr. Marrero then described the process by which a contract(s) will be finalized: a vendor is selected; the HHC Board authorizes CHS to enter into negotiations; a contract is negotiated; the contract is presented to HHC's Contract Review Committee for approval; the contract is presented to HHC's Medical and Professional Committee; and finally, the contract goes to HHC's Board of Directors for final approval. In response to a question from Mr. Schulte, Mr. Marrero said that the contract terminates on December 31st. Mr. Lenefsky asked for a status report on litigation involving St. Barnabas, and whether there is a request by SBH for the court to appoint a monitor for the transition. Mr. Marrero said that SBH made a motion based upon its contention that when CHS took over services at VCBC, patient care suffered. SBH had suggested the State Health Department assume a monitoring role, but it has written the court that it does not wish to assume

that role. As to the litigation regarding ownership of the electronic medical records system, Mr. Marrero said that he expects the judge's decision before the end of the month. He added that Corporation Counsel had written to the court impressing upon it the importance of resolving the issue early, in light of upcoming negotiations with a new vendor.

Mr. Lenefsky asked for the results of CHS's review of the May 24th suicide, as well as the review with DOC of the suicide in the Brooklyn Court Pens in June. Mr. Marrero said that he had just written to Board staff about the May 24th suicide, advising BOC that no programmatic changes were necessary and that two people were terminated as a result of their treatment of the decedent. He said one was a substance abuse counselor and the other was a LINK employee. Regarding the Court Pens suicide, Mr. Marrero said that the question of what information about the inmate is transferred from one agency to another assuming custody of the inmate is under review. He said that internal CHS discussions have occurred and that CHS soon will meet with other agencies. Mr. Lenefsky asked Mr. Marrero to share the results of the inter-agency review, and Mr. Marrero said that he would. Ms. Potler asked if DOC had had internal discussions about how an inmate's mental health status information is transmitted from a Rikers Island facility to transportation officers and to DOC officers and Court Officers who assume custody incidental to court appearances. She noted that there recently had been an attempted suicide by a mental observation inmate in the Manhattan Court Pens. Acting Commissioner Lanigan said that DOC was reviewing the issue. Ms. Loconsolo said that there will be a follow-up meeting on Monday. Ms. Potler stressed that there were two separate but related problems: the intra-agency transmittal of information and the transmittal between agencies.

Mr. Lenefsky said that in the third quarter of 1999, St. Barnabas failed 18 of 28 performance indicators, and were fined approximately \$90,000. He said he assumed SBH is rapidly losing staff, and said he based this assessment on SBH's position on providing services at the VCBC. Mr. Marrero said that he is "credentialing" more people, which is necessary for per diem staff. Mr. Marrero said that if there has been a greater than usual exodus of SBH staff, they are being replaced to some degree by per diems. He added that his monitors report that staffing is adequate, and that required work is being completed on time.

Ms. Potler asked for a report on the suicide that occurred on August 2nd. Mr. Marrero said that CHS's review led to a programmatic change, so that the system by which an inmate is signed out of a Mental Observation Unit requires the written approval of the head clinician, the unit chief, and a psychiatrist. He added that there were two main providers - the SBH provider has resigned and CHS is looking to discipline the CHS provider. Ms. Potler asked if the SBH provider was a social worker. Mr. Marrero said yes. Mr. Lanigan said that DOC's investigation is continuing, but that at this point no charges are being made against officers.

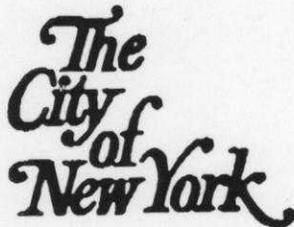
A motion to renew existing variances was approved. The meeting was adjourned at 1:40 p.m.

Meeting of the New York City
Board of Correction

October 12, 2000

A G E N D A

1. Approval of September 14, 2000 BOC meeting minutes
2. Acting Chair's report
3. Members' reports
4. Staff report
5. Department of Correction requests for variances
6. Discussion of Correctional Health issues



NEW YORK CITY DEPARTMENT OF CORRECTION

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October 1, 2000

Richard T. Wolf
Executive Director
Board of Correction
51 Chambers Street, Room 923
New York, N.Y., 10007

Dear Mr. Wolf,

This memo has been prepared in response to comments made by Board of Correction members during the scheduled monthly Board of Correction meeting that was held on September 14, 2000.

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.

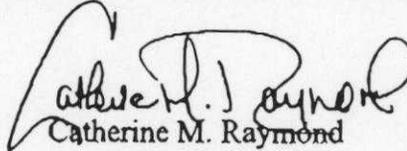
The Board of Correction did not deliver an agenda to ISCD until Monday afternoon, September 11, 2000.

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 the renovation of JATC and use of the third tier. Given the current low census and many previous discussions concerning the JATC renovation project, we can not understand what prompted this inquiry. 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?

After a thorough investigation I can only conclude that the report of Board member David Schulte deliberately misled those at the meeting. Mr. Schulte reported to the members and had recorded into the minutes that he discovered the deteriorating conditions in Sprungs 1&2 at Rose M. Singer Center on one of his usual tours and that the closing of these two Sprungs was somehow the result of his visit. This is 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. As you know, Mr. Schulte also made the allegation and had recorded into the minutes that the conditions observed in Sprungs 1&2 were the result of poor management. This is completely untrue and it is documented that the facility had been trying to have these Sprungs closed for some time.

In addition, Mr. Schulte made of point of stating that during his meal in the Blue Room (the supervisory staff dining room) he had difficulty obtaining butter for his toast and could not get a knife to butter his toast. 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.

In conclusion, I understood the goal of these meetings was to discuss pertinent issues ongoing in the Department of Correction. By deviating from the agenda it does not serve any useful purpose to either party.


Catherine M. Raymond
Bureau Chief
I.S.C.D.

c: Gary M. Lanigan, Acting Commissioner
William J. Fraser, Chief of Department
Elizabeth J. Loconsolo, General Counsel
John R. Horan, Acting Chair

Accordingly, it is ORDERED, ADJUDGED, AND DECREED:

1. The following provisions of the Stipulation for Entry of Partial Final Judgment in Benjamin v. Malcolm, 75 Civ. 3073 (MEL), signed November 29, 1978 ("Benjamin Consent Decree"), are terminated, in the absence of evidence supporting findings of a current and ongoing violation of Federal rights:

§ A, Possession and Receipt of Clothing Items

§ B, Inspection of Clothing

§ C, Inmate Jewelry

§ E, Receipt of Packages

§ F, Possession and Receipt of Publications

§ G, Correspondence

§ H, Confiscation of Property

§ I, Procedures for Cell Searches

§ K, Body Cavity Searches

§ L, Commissary Costs

§ M, Dayroom Access

§ N, Eating Outside of Cells

§ P, Inmate Council Participation by Special Status Detainees

§ Q, Communal Religious Services for Segregated Detainees

§ U, Punitive Segregation

§ V, Food Service, subsections titled Nutrition and Menu Planning and Food Services

Personnel

§ W, Movement

§ X, Significant Family Events

§ Y, Housing for Homosexuals, Transvestites and Transsexuals

§ Z, Access to Newspapers

§ AA, Law Library

§ BB, Lock-In/Lock-Out Time

§ CC, Telephones

§ DD, Optional Lock-In

§ EE, Implementation Dates for various provisions