

**NEW YORK CITY  
BOARD OF CORRECTION**

**July 10, 2008**

MEMBERS PRESENT

Hildy J. Simmons, Chair  
Michael Regan, Vice Chair  
Pamela S. Brier  
Stanley Kreitman  
Rosemary Maldonado, Esq.  
Alexander Rovt  
Paul A. Vallone, Esq.

An excused absence was noted for Member Milton L. Williams, Jr., Esq.

DEPARTMENT OF CORRECTION

Mark Cranston, Deputy Chief of Staff/Commanding Officer, Office of Policy &  
Compliance (OPC)  
Ronald Greenberg, Director of Inspections, OPC

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Robert Berding, Director, Clinical Services, Correctional Health Services (CHS)  
George Axelrod, Esq., Director of Risk Management, CHS

OTHERS IN ATTENDANCE

Harold Appel, M.D. Contract Administrator, Doctors' Council, SEIU  
Chandra Ghosal, Office of Management and Budget (OMB)  
William Hongach, City Council, Government Affairs Division  
Adam Malitz, OMB  
Trevor Parks, M.D., Medical Director, Prison Health Services (PHS)  
Eisha Williams, City Council, Finance Division  
Milton Zelermyer, Esq., Legal Aid Society, Prisoners' Rights Project

Chair Hildy Simmons called the meeting to order at 9:35 a.m. She requested a report from the Department of Health and Mental Hygiene. Correctional Health Services Clinical Director Robert Berding said he did not have a formal report, but would respond to questions posed by Board Members. Chair Simmons said that the Board intended at its September meeting to begin deciding which DOHMH issues the Board will focus on, but that first Deputy Commissioner Louise Cohen must present a comprehensive report. Chair Simmons said that, in the interim, she would speak with Ms. Cohen about issues for discussion, and that Deputy Executive Cathy Potler will coordinate the presentation topics with Ms. Cohen.

Chair Simmons asked DOC Deputy Chief of Staff Mark Cranston to present a report on implementation of amendments to the Minimum Standards. Mr. Cranston reported as follows:

In response to BOC's request at the June meeting, DOC extended for two weeks the process of notifying visitors at jails and prison wards about the amendments. On June 26, DOC provided two and one-half hour executive training for all its uniformed and civilian managers regarding how the amendments would affect jail operations, and the impact on inmates. DOC distributed to each manager a small training booklet that was a compilation of information written by BOC Executive Director Richard Wolf and by DOC staff. The training session was successful, and managers now are capable of using their knowledge and the booklet to train their facility-based supervising and line staff. Jail staff training has begun and will continue until September 1<sup>st</sup> because of summer vacations. Also, DOC provided a summary of the amendments to the Correction Academy for training of all new officer recruits as well as all officers attending annual block training.

73 staff members have been trained to listen to inmate telephone calls. 36 are assigned to the Intelligence Unit, which predominantly investigates violent inmate incidents, and 37 to the Investigation Division, which investigates allegations against DOC staff. These are the only staff persons authorized to listen to inmate phone calls.

Mr. Wolf reminded Members that, when considering amendments to the Minimum Standards provisions regarding telephones, Board Members specified that they did not want DOC staff assigned to posts with inmate contact to also monitor inmate calls, and DOC agreed. Mr. Cranston continued his report, as follows:

DOC has been compiling a "Do Not Record" list of phone numbers with identifying information for persons whose phone conversations with inmates must remain confidential. At the time of the June meeting, the list consisted of 19,000 phone numbers, and it now contains approximately 26,000 numbers. Most of the increase is from official responses to the sixteen letters sent to organizations such as BOC, Department of Investigation, State Commission of Correction, health care providers, and public defender groups. DOC also received more phone numbers in response to its announcement in the New York Law Journal published

June 20 through June 26 (see copy distributed to Members, attached). Some attorney requests were received through the Department's web site but few requests were received from clergy and private medical providers. DOC's telephone system automatically will exclude all numbers on the Do Not Record list that are entered into the system's data base. The DOC Operations Order on monitoring phone calls contains many checks and balances suggested by Ms. Potler, and spells out procedures such as who is authorized to listen to phone calls and how to obtain authorization for one of the trained listeners to listen. DOC is getting up and running on the technical side of recording calls, and is not up to full capacity. To date, there have been no requests to listen to a call.

Members requested that Mr. Cranston regularly report on progress on the technical and procedural sides, and on any experience with the process of staff listening to phone calls. Mr. Cranston said that regarding the correspondence amendment, an Operations Order on reading inmate correspondence, dated June 16, was issued to all DOC staff. To date, no warden has requested permission to withhold or read correspondence.

Chair Simmons thanked Board Members Stanley Kreitman and Milton Williams as well as Mr. Wolf and Ms. Potler for their extensive work on ensuring that DOC's procedures would facilitate proper implementation of the amended Standards, and in explaining draft procedures to the other Board Members. She then asked BOC Director of Field Operations Kenneth Armstead to describe BOC's field staffs' experience with DOC's roll out.

Mr. Armstead said that field representatives continue to actively monitor DOC's efforts to inform staff, inmates, and visitors of the amendments and the implications for daily operations. He reported that DOC had, in fact, extended distribution of the notice to visitors by two weeks, posted the amendments on the DOC web site, and posted notices for inmates above every phone. He explained that BOC staff hand-delivered copies of the amended Standards to each jail's law library. He said that, by teletype, DOC staff were notified of procedures for obtaining, posting, and distributing to every inmate notice of implementation of the amendments. Mr. Armstead reported that BOC staff found that in some intake areas notices were not being included in the Inmate Rulebook given to newly-admitted inmates. He said he spoke with DOC Deputy Commissioner Kathy Coughlin about this problem and about preparation of a revised inmate orientation film. He added that, in the meantime, DOC is providing information about the amendments to new admission inmates during orientation sessions. Mr. Armstead reported that field staff continues to attend Inmate Council meetings, where representatives respond to questions about the amendments and changed jail operations.

Mr. Kreitman reported that for two weeks he carried an executive beeper, on which unusual incidents are reported. He said that uses of force appeared to be going down, but inmate-inmate fights seemed to be increasing. Mr. Cranston said that in Fiscal Year 2008, "A" decreased to 88, down from 113 in FY 07. He reported that serious injuries to inmates declined for the first time since DOC began tracking this incident

category in FY 04, from 207 in FY 07 to 171 in FY 08. He added that stabbing/slashing incidents also declined, from 37 in FY 07 to 19 in FY 08. Mr. Cranston said that hot weather and other variables, such as holidays, often affect inmates' behavior, but said that DOC noted no major seasonal variation thus far this summer. Mr. Wolf told Mr. Kreitman that BOC's part-time Director, James Bennett, compiles statistical information from data the Board receives each day from DOC. Mr. Kreitman asked if violence statistics would be available on the BOC website. Mr. Wolf replied that the Board Members would decide. He added that, in the meantime, BOC staff will provide him with statistical information upon request.

Board Member Paul Vallone asked about the availability and functioning of the air conditioners, given problems DOC reported last year that affected the need for bed space for heat-sensitive inmates. Mr. Cranston reported that DOC does not anticipate problems with addressing heat sensitivity during this year's hot-weather months, having done preventative maintenance on two chillers at the Manhattan Detention Center (MDC) to ensure that MDC air-conditioning remains fully operational this year, and by keeping air-conditioned housing units at the Vernon C. Bain barge (VCBC) well-maintained. Mr. Cranston said DOC expects that, by the end of this year, the Federal Court will terminate the order on heat-sensitive detainees because DOC has demonstrated an ability to comply with its provisions. Chair Simmons requested that he advise the Board of any change in the status of the order.

Chair Simmons next discussed the Board's proposed rule about rulemaking. She reminded Members of the original correspondence from the Prisoners' Rights Project (PRP) about the Board's lack of such a rule, and noted that most City agencies have not implemented a rule, which is required by the City Charter. She reported that BOC conducted a public hearing on the proposal after having a formal written comment period. She asked Mr. Wolf to describe the status of the proposal. Mr. Wolf reported as follows:

Based upon public comments and testimony, one substantive change was made, for clarity, to the published language already approved by the Board. Tracking language in the City Charter, the published proposed rule defined who may petition the Board to make a rule as "any person". A commenter was concerned that this language could be interpreted to limit petitioners to individuals, so the word "entity" was added to the definition of "petitioner" to clarify that organizations, including PRP and DOC, may be petitioners. "Entity" has been added to the text in three places.

The Members now must vote on whether to adopt the rule, as amended. If approved, the language must be submitted to the Law Department, which, pursuant to the City Administrative Procedure Act, must determine that the language and intent of BOC's proposal is within the Board's jurisdiction. Once approved, the Board must arrange for final publication in the City Record, and forward a copy to the Council Speaker for informational purposes. Thirty days after publication, the adopted rule will become effective.

Chair Simmons asked if the Members had comments or questions. Hearing none, she called for a vote, and the Members unanimously adopted the rule. Chair Simmons thanked PRP for its role in the process.

Chair Simmons reported on the status of the BOC website, explaining that she edited the Members' biographies to make the scope of content consistent. She said that Mr. Wolf assisted with the editing process, and would forward the draft biographies for each Member's approval. Chair Simmons stated that if a Member insisted on restoring specific language to his/her biography, she would do so. She said that the Members will have an opportunity to review the entire site before it "goes live". Mr. Wolf reported that Mr. Bennett has been working with the City's Department of Information Technology and Telecommunication (DOITT) to get the site up and running. He explained that DOITT provided the format framework, and type of content common to the websites of other City agencies, and BOC staff submitted materials for DOITT staff to incorporate into a website for the Board. He said that the website should be ready for examination by the Members by mid-August, and that if Board Members are able to review and comment quickly, the website should be online before the September Board meeting. Chair Simmons requested that the Members forward their comments to each other as well as to Mr. Wolf and Ms. Potler because the process can proceed faster if everyone is aware of issues as soon as they are raised. Chair Simmons noted that DOITT probably imposes constraints on the colors, format and style of every agency's website so as to maintain consistency.

Chair Simmons said that she had spoken to the Members about reducing the number of public Board meetings scheduled each year to six. She noted that the Board traditionally scheduled eleven meetings annually, skipping August when most Members are away. She added that, in recent years, the Board scheduled ten public meetings annually, and sometimes had difficulty assembling a quorum. She expressed her hope that, with a reduced annual schedule, Members will be able to attend public meetings. She acknowledged that, particularly during the past two years, Members were very occupied with the Board's work of reviewing and amending the Standards. Chair Simmons proposed that formal, public Thursday morning Board meetings be conducted every other month: in January, March, May, July, September and November. She proposed additionally that, in April and October, Members together would conduct jail inspection visits. She said that inspections could be scheduled at the same time of day as current office-based meetings, but acknowledged that some Board members have difficulty with the 9:30 a.m. time for Manhattan meetings and may find 9:30 even more problematic when travel-time increases to accommodate a jail visit. She said that inspections need not be conducted on the second Thursday of the month, and that Members could decide on the dates in April and October that are most convenient. Chair Simmons noted that Members have expressed interest in conducting jail inspections, and in speaking with BOC field representatives in the jails. She said that increased familiarity with sites and jail issues would result from more frequent inspections. Chair Simmons said that, at the beginning of each month when a public meeting is not scheduled, Board staff will present a report to the Members evaluating DOC performance, and special incidents and issues that have arisen.

Chair Simmons said that changing the Board's existing rule requiring monthly meetings can be accomplished only by adoption of a motion. She added that jail inspections are not public Board meetings and would not be covered by a rule change. The Chair emphasized that she is not seeking to reduce formal Board meetings to reduce Member participation but, rather is seeking better ways for Members to most productively use their time, and a mechanism for Members to commit to participating more comprehensively. She noted that Members would retain the right to call formal meetings on an emergency basis. She said that a revised formal rule about Board meetings would include language such as the following: "The Board of Correction will hold six regular bi-monthly meetings each calendar year – in January, March, May, July, September and November. In addition, the Chair or a majority of the Board Members can call such additional meetings as may be necessary to discharge Board duties." Mr. Wolf explained that the vote would be to amend the Board's Rules of Procedure, and that this can be accomplished by a simple majority vote. He said that the more cumbersome CAPA promulgation process does not apply to the BOC Rules of Procedure.

Board Member Pamela Brier offered a motion to adopt Chair Simmons' proposal. Mr. Kreitman asked if the proposed change would be implemented as of January, 2009. Chair Simmons responded that she anticipated implementation in October, with an inspection visit to Rikers Island instead of a public meeting. She noted that there already is no formal meeting scheduled for August and that, pursuant to the proposed rule, a formal meeting would be scheduled for November but not for December.

Mr. Vallone said that currently the Board schedules only ten public meetings annually and, he is concerned about a permanent reduction to six per year. He said that the substantive work amending the Standards took years, even with the opportunity to have formal discussion among Board Members and with DOC on a monthly basis. He said that, without the monthly meetings, Members could not have achieved the goal of amending the Minimum Standards and could not successfully review the Standards in the future.

Board Member Michael Regan agreed, noting that Members' efforts to meet and talk informally about proposed amendments to the Minimum Standards often were thwarted by Public Meetings Law regulations about the number of Members permitted to conduct Board business without public participation. Mr. Wolf noted that much of the Board's work had been done by a process of having two Members, most recently Members Kreitman and Williams, evaluate DOC proposals and language, and then forward comments and recommendations to the other Members to review and comment upon.

Mr. Vallone expressed concern about the process for calling a formal meeting on an emergency basis. Mr. Wolf said that the language presented today by Chair Simmons already exists in the BOC Rules of Procedure, which were amended in 2006. Mr. Vallone responded that procedural language for calling emergency meetings is less important when eleven formal meetings are scheduled annually than when only six are

scheduled. Chair Simmons reiterated that, to call an emergency meeting, a Member has the option of soliciting support from a majority of Members, or soliciting support from the Chair, who does not need Member support to call such a meeting. Mr. Vallone reiterated the importance of access to formal meetings. He said that, due to his business commitments, he sometimes misses a scheduled meeting but has the assurance that BOC staff and other Board Members will fill him in so that he can catch up, and move forward, at the next month's meeting. He expressed concern that, if only six formal meetings are scheduled, and he misses a meeting, it will be two months before another formal meeting. He said that, in two months, important issues that Members want to raise with each other and, in particular, with DOC or DOHMH, may get lost in the shuffle. Mr. Regan agreed, contending that monthly meetings have been of immense value, particularly by providing Members the opportunity for consistent monthly discussion with DOHMH and DOC officials. He stated that he and other Board Members have very busy business schedules that occasionally prevent them from attending a public meeting. He said that he might have to miss a public meeting even if only six are scheduled annually. Mr. Regan stressed that, given his business, no amount of pre-scheduling or improved organizing could guarantee that his business would not prevent him from attending a meeting. He added that he is concerned about the aspect of the Board's role that is intended to be public and that is designed to provide public access to information about the City's jail system. He stated that he supports the idea of Members spending more time in the jails, but added that this need not occur at the expense of formal meetings. Mr. Regan said that, in the past, when called upon to make an important decision on a subject about which he needed additional information, he took it upon himself to visit the relevant jail site.

Mr. Vallone suggested that the Board not vote on the proposal for a rule-change, and instead cancel some meetings if not essential for work or discussion that is time-critical. He noted that most Members and officials from other agencies probably would prefer to forego a meeting in December, which Chair Simmons proposed cancelling permanently. Chair Simmons responded that she would prefer to implement her proposal for six formal meetings and if, after six months, Members think that this schedule offers insufficient opportunity for meaningful discussion or evaluation of important matters, the Members can vote to increase the number of formal meetings. She added that she would prefer discussing how Members can spend their time better. Mr. Kreitman suggested that the Board follow the Chair's suggested schedule for the balance of 2008, and then vote on her proposal at the January meeting. Mr. Regan and Mr. Vallone said they were ready to vote. Members agreed that after six months, they would evaluate the impact of the amended rule on the Members' ability to perform the work of the Board. Chair Simmons called for a second to Ms. Brier's motion, which was made by Member Rosemarie Maldonado. Five Members voted in favor of the proposal, and Mr. Regan and Mr. Vallone voted against the motion. The motion was approved. Chair Simmons announced that absent Member Milton Williams had previously informed her that he would have voted in favor of the proposal.

Mr. Kreitman emphasized the importance of BOC staff providing detailed information during the months when formal meetings are not scheduled. He said that, if

Members react with alarm to information in a staff report, they reserve the right to call an emergency meeting. Mr. Vallone asked if these reports, or underlying data, would be posted on BOC's website, perhaps by means of a special log-in for Members. Mr. Wolf said that he would ask DOITT if it is possible to install a special link on the website for Members, so they could access information not available to the public.

Chair Simmons noted that the Board meeting will be on September 11<sup>th</sup>, at which time or shortly thereafter, Members can decide the date and site for the October inspection visit. She added that DOHMH already mentioned some locations they would like the Members to inspect, and that DOC probably also has sites targeted for Board visits. She advised Mr. Wolf to consider sites and subjects that he would like Members to see as a group, and that he notify BOC field representatives of the October inspection. Mr. Vallone said he would like to observe procedures implemented by DOC for the amended Standards on correspondence and telephones, and Chair Simmons agreed.

Ms. Brier asked Chair Simmons to arrange for DOHMH to provide for the September Board meeting the year-end budget figures for the last two years, as well as the new budget including details about State and City budget cuts. Chair Simmons said that the Board should obtain the same information from DOC.

Deputy Chief Cranston requested the renewal of existing variances. Mr. Wolf said that the number of the variances is lower since several were made permanent by amendment. He said that with the Member approval, staff will post the remaining variances on the BOC website, along with the first date that the Board passed each variance. Ms. Brier asked for an explanation of the existing variances. Mr. Wolf responded that one variance is from the Board's requirement that dormitories have complete sound separation between the sleeping and the dayroom areas. He explained that some dormitories – Sprung structures – built in response to a persistent overcrowding crisis lacked complete sound separation, but the Board, nonetheless, voted to permit DOC to use these dorms because sound is dissipated due to very high ceiling. Ms. Brier asked for a list of all variances. Mr. Wolf said he would email the list to all Members. A motion to renew existing variances was approved by all Members present, except Ms. Brier, who abstained.

Chair Simmons adjourned the meeting at 10:22 a.m.