BOARD OF CORRECTION
CITY OF NEW YORK
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Board of Correction Meeting
Held on June 14, 2007
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ONE CENTRE STREET
NEW YORK, NEW YORK 10007

BOARD OF CORRECTION
MEMBERS PRESENT
Hildy J. Simmons, Chair
Stanley Kreitman
Rosemarie Maldonado, Esq.
Richard Nahman, O.S.A.
Alexander Rovt
Paul A. Vallone, Esq.

Excused absences were noted for Vice Chair Michael J. Regan and Members Milton L. Williams, Jr. Esq. and Gwen Zornberg, M.D.

DEPARTMENT OF CORRECTION
Stephen Morello, Deputy Commissioner for Public Information
Mark Cranston, Deputy Chief of Staff
Ron Greenberg, Director, Office of Policy and Compliance (OPC)
Sam Orlan, Intern
Vaughn Crandall, Special Assistant
Winter Drayton, Project Analyst

DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Louise Cohen, Deputy Commissioner
Jason Hershberger, Assistant Commissioner
George Axelrod, Director of Risk Management

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OTHERS IN ATTENDANCE
Harold Appel, M.D., Contract Administrator, Doctors Council
Gabriel Arkles, Esq., Sylvia Rivera Law Project
Olga Akselrod, Staff Attorney, Innocence Project
Allen Blake, Corresponding Secretary, COBA
John Boston, Esq., Project Director, Legal Aid Society (LAS), Prisoners’ Rights Project (PRP)
Bobby Cohen, M.D., PLC
Joe Goldstein Brayer, Intern, PRP
Rebecca Brown, Policy Analyst, Innocence Project
Robert Calandra, Esq., Committee on Fire & Criminal Justice Services, City Council
Barry Campbell, Fortune Society
Jonathan Chasan, Esq., PRP
Maddy deLone, Executive Director, Innocence Project
Shauneida DePeizi Saldinha, Intern, PRP
Kenta Darley, LAMBDA Legal
Carole Eady, Board member, Center for Community Alternatives
Thomas Farrell, Acting Legislative Chairman, COBA
Jane Fox, Intern, PRP
Ariel Herrera, Amnesty International USA
Darcy Hirsh, Cardoza PRAC
Adrienne Holder, Esq., Attorney-in-Charge, Civil Practice, LAS
Elias Husamudeen, Treasurer, COBA
DeAvery Irons, Project Associate, Juvenile Justice Project, Correctional Association
Martha Kashickey, Public Education Associate, Innocence Project
Dori Lewis, Supervising Staff Attorney, PRP
Felicia Lin, Intern, PRP
Amanda Lockshin, Legal Aid Society
Dora Manning, Correctional Association
Samantha Marks, Intern, PRP
Miguel Martinez, Chair, Committee on Fire & Criminal Justice Services, City Council
Michael B. Mushlin, Esq., PACE University Law School
Trevor Parks, M.D., Medical Director, Prison Health Services
Graham Rayman, Village Voice
Jewell Robinson, Trinity Partners
Diana Sands, Amnesty International
Hannah Sadtler, Correctional Association
Kate Skolnick, Intern, PRP
Corey Stoughton, Esq., New York Civil Liberties Union
Baxter Thomas, Divine Consults
MaryLynne Werlwans, Esq., PRP
Dale Wilker, Esq., PRP
Eisha Williams, Legislative Financial Analyst, Finance Division, City Council
Milton Zelermyer, Esq., PRP
HILDY SIMMONS: I’d like to call the meeting to order, and the first item on our agenda is the approval of the minutes from the May 10 meeting. Is there a motion?

STANLEY KREITMAN: Second.

FEMALE VOICE: We can’t hear you.

SIMMONS: Sorry. I’ll just try to speak loudly.

The meeting is called to order, and the first item on the agenda is the approval of the minutes from the May 10 meeting. Is there a motion to approve the minutes?

BOARD MEMBER: Moved.

SIMMONS: Second. All in favor?

BOARD MEMBERS: Aye.

SIMMONS: Opposed? The minutes are approved.

RESOLVED, the minutes of the May 10, 2007 meeting are approved.

SIMMONS: The next item is the Report of the Chair which I will make quite brief, but I want to use this to thank all of you who have joined us today. As we decided at our last meeting, we have invited representatives from Legal Aid and the Coalition To Improve Minimum Standards. I’m sorry if I don’t have the name quite right, I apologize. To have a discussion with us. This is not a public hearing. I want to be clear to
everybody who might be in the room but not understand that. This is a regular meeting of the Board where we have invited representatives who both publicly testified and provided written comments to share some of their thoughts and engage in a conversation with the Board Members. Unfortunately, a few of our members were unable to be here, but we do have a quorum, so this is a formal meeting.

So I’d like to just set the ground rules so everybody understands what we’re going to do. As soon as I finish my Chair’s report, we will invite the representatives we’ve invited to come join us at the table, and we will, with the help of Stanley Kreitman, who has chaired the process for reviewing the minimum standards, try to facilitate a conversation where all of the participating Board Members will ask questions.

We would ask those of you who have been invited and who are representing the organizations, we do not want written statements, I mean we don’t want you to make a speech to us. That’s not the point of this. You’ve had your opportunity to do that in a variety of settings. You’ve had your opportunity to submit written comment to us, and we appreciate that very much. The point of this is a conversation. So if you have prepared remarks,
please put them in your pocket and either submit them separately. The comment period extends through the end of this month, so we can still take written comments, but we really want to try to make this as reasonable as possible in conversation.

It’s awkward to have a conversation. It’s kind of like having a dinner party with a bunch of people sitting in the rafters, and it doesn’t make me particularly comfortable to think about it that way, but it’s the best solution we’ve come up with at this moment in order to comply with all the various things that we need to comply with. So I would ask the rest of you who are observing this to please give us the opportunity to have this conversation.

The other thing that I want to just mention is that we have this room till noon. Most of my colleagues are prepared to be here that long if need be, but no one can be here after that. If, in fact, we go that long and we have to leave, I don’t want anyone to take that as a sign that we’re not interested or that we’re somehow not listening. It is really the constraints of our professional time and also actually the constraints and availability of this space.

The public comment period, again, I would remind
you all, is open through the end of this month which
really takes it to the --

    WOLF:  July 2.

    SIMMONS:  -- July 2. So should you still have
something you want to put in writing for us to hear or
see, I would encourage you to do that.

    And the only other item that I want to make clear
for in terms of Board business is that our July meeting,
the plan for the July meeting is to be at Rikers and that
Richard and, with the work of Mark Cranston from the
Department and others, we will put together some sort of
plans and time frame, and we’ll get back to everybody on
that well before the time of the meeting. So I just want
to make sure that everybody from our end knows that that’s
what the plan is for July.

    And I think that concludes my - oh, excuse me,
one other thing. Just as we had discussed before, after
the comment period is over, after this conversation and
any other conversations, whatever, the staff will be
compiling the summaries of the comments, and we’ll all
have a document that we can all work from that cross-
references all the various things that have come in. Is
that correct?

    WOLF:  That is correct.
SIMMONS: We will have that before the end of the summer.

WOLF: Right.

SIMMONS: And I think that concludes my comments. So the next item on the agenda is the conversation - actually should we do item 4? Excuse me, we’re going to just reverse the order of the agenda, and we will, since we have one regular item of business which is to renew existing variances with the Department, I’d like to request that.

CRANSTON: Yes. Request renewal of all existing variances.

SIMMONS: Is there a motion?

BOARD MEMBER: Motion.

SIMMONS: So moved. All in favor?

BOARD MEMBERS: Aye.

SIMMONS: Opposed? Okay, the renewal is approved. Thank you.

RESOLVED, the renewal of existing variances with the Department is approved.

SIMMONS: So we’ll now go to the conversation, and could I ask the representatives from Legal Aid and the Coalition to join us at this table. Thank you. Maybe
right before we start, we could just ask everybody to
identify themselves. It’ll be helpful for us.

    JOHN BOSTON: I’m John Boston from the Legal Aid
Society.

    GABRIEL ARKLES: I’m Gabriel Arkles from the
Silvia Rivera Law Project and the Coalition To Raise
Minimum Standards.

    COREY STOUTHON: Corey Stoughton from the New
York Civil Liberties Union and Coalition.

    DORA MANNING: Dora Manning, Correctional
Association.

    BARRY CAMPBELL: Barry Campbell, Fortune
Society, Coalition To Raise the Minimum Standards.

    MADDY DELONE: Maddy deLone, from the Innocence
Project and from the Coalition.

    RICHARD NAHMAN: There are microphones if you
would take one.

    WOLF: Including, if you have any trouble with
those, you can use the wireless one that you have, Miss
Manning.

    SIMMONS: Maybe we can just - John, why don’t
you move down a little bit. We don’t need to have the
artificial separation.

    KREITMAN: Again, everyone should know that
there are no decisions have been made on any changes from any Minimum Standards. We’ve gone through the process very carefully. We all learned a lot from the public hearings. I personally changed my mind on certain things. I learned a little from all the speakers, and that’s good, and that’s how the process is supposed to be. And hopefully during this conversation, if anyone from the Coalition has thoughtful suggestions, we’re certainly going to consider them.

The Board will then compile all of what we’ve gone through for the several months, and we will then vote on them on a line-by-line, item-by-item basis. And, again, my feeling is even if there are some changes to minimum standards, before they’re implemented, the Department will have to come up with a protocol of how they’ll be implemented and so it’ll be subject to that protocol no matter what we do.

So whatever, Madame Chair, if you want to have everyone, we’ll answer any questions, and we’ll debate as much as we want to debate.

SIMMONS: Well, since we have five representatives from the Coalition, then we’ll start with the Coalition, how’s that? No disrespect, John. But since you’re also part of the Coalition. Whoever would
like to start. Again, we’re not looking for speeches. We’re looking for you to tell us, there are particular issues that you want to speak to, you’re concerned about, or you’d like us to think about differently, then here’s your chance to tell us.

And I would ask my colleagues on the board, because I’m going to try to be very quiet after I finish this statement, to not interrupt you, but if they’re unsure about what you’re saying or to ask you a question or to engage in something, hopefully throughout the conversation.

CAMPBELL: My name is Barry Campbell. I’m from the Fortune Society. One of the major issues coming out of my organization and the Coalition is the overcrowding and changing it from 50 to 60 individuals in a dorm.

We think, and first let me say this, I am someone who spent quite a bit of my life on Rikers Island. I’m 40 years old, 41 now. I’m 41 years old, and I was in and out of Rikers Island up to the age of about 27. There’s something different about living in a dorm with 50 people. Everyone’s fighting a case, everyone has tension, there’s stress. You’re deprived of what you consider to be the little luxuries in life. So it kind of makes tension very, very high.
Currently, there are 50 people in a dorm with some variances where they have 60 individuals in a dorm. In the summertime especially, tensions really get high. The conditions that are there for 50 people, and when they change it to 60, it kind of elevates the tension and the stress. I myself, I have problems just living with my significant other. So, you know, when I think about 50 people in a dorm and I can remember back to my Rikers Island, and most currently I was there in 2003, so I’m not talking about 1990, 1989. My other current stint was in 2003.

And we believe that it’s a situation that should not be brought about. I mean just the sheer fact of living with 50 people is rough enough, and then you add 10 more people to the equation, it’s very difficult to do. It is very difficult to do.

The other piece that we actually look about is the piece about having uniform clothing for everyone. If you take a tour of Rikers Island and you go into the housing unit and you walk into the day room, what you’re going to see is all of the chairs in the back of the room is actually lined with people’s clothing that they’re washing, that they’re washing in the bathroom sinks and hanging over. When you think about taking away their
personal clothes and no real system set up that is going to clean the uniforms and make sure that they’re set. And the other piece about it is that whenever a person leaves to go to court, whether it’s a pre-trial hearing or whether it’s trial, they should be afforded the luxury of wearing their personal clothing. There’s an issue about when you walk into a courtroom with shackles and a jumpsuit, you’re automatically thought of as guilty. Regardless of what people think about it, you’re automatically looked at as someone who’s committed a crime, and you’re guilty.

KREITMAN: Can we respond?

SIMMONS: Absolutely.

KREITMAN: I thank you very much for your remarks. They were very good, and I understand everything you’re saying. And we’ll certainly take that into consideration. Your issue about cleanliness of the uniforms, etc. is really part of what I said before, that if, if we implement it, there will have to be a protocol from the Department of --

(inaudible section -- static on tape)

-- exactly how they are to be cleaned.

(inaudible section -- static on tape)

-- you’ve also correctly thought about that, and
that’s a very important consideration that people going to
court shouldn’t be in jumpsuits when they’re detainees. I
understand that. I think everyone on the Board
understands that, and I thank you for your comments.

ROVT: I totally agree with my colleague about
the clothing because until the Correction is not ready to
do something what we cannot change, maybe we will not
(inaudible).

But I disagree with you on the 60/50 people
because when we’re talking about (inaudible), and I’m not
saying anything else. And I think to change from 50 to 60
doesn’t make a big change. I wasn’t there, but I know a
lot of people who were there, and this will give maybe
some savings what we can turn to other things where we
have to improve. Because you know how much cost the whole
Rikers Island, the whole system. I think that to change
from 50 to 60 not otherwise will not (inaudible) unless we
know where we can put the place, chair, a bed, and it’s
not too tight. The place has to be perfect for this.

So in this case I will not agree with your
comments. Thank you.

CAMPBELL: I don’t think it’s a point of whether
someone should agree or disagree with it. I think it’s
just the mere fact is that once you’ve actually been in a
house with 50 or 60 people, you’re talking about adding 50 or 60 different attitudes. The Department of Corrections right now has a rough time with only having two Correction officers in the house which would be the A and the B officer. So you’re talking about adding ten more people to that equation, and you’re also talking about ten more people on each side of the house.

So what you’re doing is you’re creating a situation where you’re instituting ten more attitudes, ten more personalities, and ten more bits of tension into what’s already a hectic situation. And I understand that the Department of Correction needs to looks for savings, but I think they need to look elsewhere for them. There are other areas where they can save in the Department of Correction other than crowding people in from 50 to 60.

NAHMAN: From your perspective, I hear it also from the Corrections officers’ perspective. I mean there’s no one on the scene that thinks it’s a good idea. The Corrections officers see it as a security, you see it as a human dignity situation. So I would hear and agree with what you’re saying.

VALLONE: I think for some, you know, in this type of setting, we actually have a chance to talk to each other, and we also have our individual thoughts, and as
you can see, especially Alex and I will disagree on that point. If it’s any consolation, I think that particular standard that we’re talking about probably the least likely to go forward.

So based on the overwhelming type of testimony that’s been presented here at the council hearing, that’s been submitted in writing, what Richard Nahman just said is pretty summary of what we have seen.

The only time that we had ever passed, from when I was on the Board, a variance to allow that type of situation was in the extreme heat in the summer and the limited amount of air-conditioning. So what we had done was given a variance for that particular month or couple of months to allow additional detainees and inmates to benefit from the limited air-conditioning. But I don’t want to, I think it was stated before that we had granted this and that we should continue to grant this.

That’s not a true statement. The only time we had done that was for air-conditioning purposes. Hopefully, they’ll be more of those type of facilities. But personally and speaking with many of our board members, that is hopefully for today maybe not an amendment we spent too much time on because I’m pretty confident to say that one’s not going to be going forward.
But, again, I speak individually.

There are other standards I think we can have some pretty good dialogue on, maybe assist us like we did with that one because you guys pretty much covered that from personal perspective, like you said, and from professional perspective from the Correction officers and everyone else that’s been associated. When we go to see, it’s quite obvious when you go to the dorm settings, you just, I would put 60 of my friends in a room, it would be difficult to try to keep them in hand, let alone 60 gentlemen who are in a frightening situation, or 60 women. So I thank you for your comments.

DELONE: Can I just add two things just on that very briefly? I’m glad to hear that you’ve heard us on that. One thing is just that historically there have been variances in times of overcrowding, and one of the things that occurs to me is that if you ever have another situation of overcrowding, and populations have changed, that if you start at a standard of 50, you have to overcrowd at a standard for some emergency which is even smaller. And I think that should be of concern.

The other thing that I think hasn’t been raised, and I’ll just put it out there, is that the American Public Health Association does have standards about
crowding. The standard of space is 60 square feet, 70 square feet per person if you’re keeping people in the space together for more than ten hours at a time. That standard was developed in 1976 and is still the standard today. We ratified the Environmental Health Section of the ADHA in 2002. And it’s sort of I think further fuel in support for what a standard that addresses both the psychological, safety, and public health disease transmission, you know, concerns should be.

So I just, I will leave you with a section of the standards just for your own review in your deliberations.

MANNING: Can I say something? I lived in the dorm, and if you were to add ten more people is like really crazy because 50 is already overcrowding. For me to lay in my bed, and I’m able to touch the next person in their bed, that tells you right there there’s not enough room.

There’s 50 different attitudes. Everybody’s in there for different reasons. She uptight, she uptight, I’m uptight, we fighting because there’s not enough space. If she want her friend to come over and visit her, she’s in your space and my space. I can’t get no sleep because you all want to talk. And it’s unsafe. If she got a cold, everybody got to get a cold because we’re so close
to each other.

The officer that’s in the (inaudible) she can’t see the whole dorm. She cannot see the whole dorm. It’s impossible. And for me to live like that, you know, it was like something I never imagined. It was like unbearable, you stayed fighting. Everybody fighting for their own space. When you don’t even have your own space. And that’s just going to keep everybody more uptight.

It’s going to be more fighting breaking out.

One officer can’t control all of that, and she definitely can’t see who did what when and where. Because if you already got 50 people in a dorm, you talking about adding 10, and you can’t even see 25 of us as it is. And those were the worse conditions I’ve ever lived in. I see people in the shelter live better than that.

SIMMONS: Okay, well, we appreciate all of the (inaudible). Is there another --

BOSTON: I’d like to make one very brief comment on that subject. I appreciate hearing that this is not likely to pass, but the vote hasn’t been taken yet.

It should be kept firmly in mind that there are two parts to the crowding standard. One is the space requirement and one is the sheer number in the dormitory, and it would be a mistake in your further consideration to
believe that one of those could be traded off against the other.

There is a sheer issue of how much space people have to live in, which is an important issue which I think has been expressed. There’s also an issue of how many people are thrown together in a single, undivided space, the issue of the other, both Mr. Campbell and Miss Manning have referred to, in terms of the interactions among people. Having to deal with so many different personalities, so many different attitudes, all in the same space, strangers, people you do not chose to be with in an atmosphere of no privacy at all, that is something that responds to the number of people and to the amount of stuff.

So we ought to do as the Board Member said and to defeat the proposed amendment here and to defeat both aspects of it, both the 50 square feet and the 60 person aspect of the proposal.

NAHMAN: I didn’t know – you said epidemiologically the public health system says 70 square feet.

DELONE: The American Health Public Health Association, which has had health standards since 1976, says 60 square feet in normal dormitory settings, but if
you’re in a system which keeps people in the housing areas for more than ten hours a day, then they recommend 70 square feet of space per person. I’m happy to pass this out.

VALLONE: Mady, I agree with you. I think if there’s an emergency situation or something, that’s why we have a variance. So if there was a situation where there was overcrowding or air-conditioning issue, that’s why we have this variance process that can come to us, and we can grant it on a limited basis. I’m not comfortable granting it on a permanent basis.

But that information right now at 60, public health is saying it should be 70, it goes down to 50 –

SIMMONS: Public Health is saying 70 if you’re keeping people confined to that space for ten hours a day, which we are not, so let’s be clear that we’re not mixing different standards here. But really we appreciate the comments in the sense that certainly board members have been hearing you, and I think maybe we should go to another item given the time constraints that we all have.

ARKLES: Gabriel Arkles from the Silvia Rivera Law Project and the Coalition. As I’m sure you know, one of the other issues that is of very great concern to us is the change to the lock-in standard. And our concern here
is that the change would permit people who are put in close custody simply for their own protection, vulnerable inmates, and I’m talking about it because this particularly impacts transgender people, gay people, other people who are likely to be targeted for violence in the general population, this change would permit those people to be put into basically solitary confinement, 23-hour lock-in a day if they’re placed in close custody for their own protection. That’s not necessary, that’s not safe, and that’s not fair. It ends up basically punishing people simply because they’re at a risk of violence in general population.

Twenty-three-hour lock-in has been shown to have devastating consequences on people’s mental health, and there’s just no reason to require it here. People who are vulnerable from violence in jails, including transgender people, deserve better than 23-hour lock-in a day. I’d be interested to hear on where the Board is on that issue right now.

KREITMAN: Are you talking about lock-ins for people there for their own protection or are you referring to inmates that cause problems for others and disobey regulations and just antisocial? Which group are you referring to?
ARKLES: I’m talking about people who are placed there for their own protection. The change would specifically say that people who are placed there for protective custody purposes are allowed to be locked in for 23 hours of the day, which really would permit people to be faced with a choice between facing terrible violence in general population or facing the terrible mental health consequences of --

KREITMAN: Assuming your –

(cross-talk)

KREITMAN: What would you suggest we do with someone who’s put there for their own protection?

SIMMONS: Let’s be clear, these are people who have chosen, in essence, you know, to be there. They’ve asked for, you know, the custody at the moment, they’re about 30 inmates that fall into this category in the entire system.

ARKLES: I hear that there are not very many right now, but, of course, in the future that could always change. The current Department practices aren’t set in stone. And also I certainly do know that there are some people, well, I hope that most people are there to their own accord. I’ve heard of at least one person recently who was put there against her will.
And I believe the current screening processes for a general population escort, which is another type of classification, is that your first placed in close custody for two days to evaluate whether you can go to general population escort. I mean correct me if I’m wrong, but I believe that that is the current practice. So, therefore, people who are maybe saying I want to be placed in general population escort, which is not 23-hour lock-in, are placed in close custody for two days to evaluate whether that’s going to work for them. So not everybody is there because they want to be there, and it’s still unacceptable choice.

KREITMAN: Well, what would your suggestion for those inmates that the Department feels are at risk of their own safety? What would be your suggestion rather than lock them down?

ARKLES: I’m sorry, Mady, go ahead.

DELONE: Mady deLone, Innocence Project. One of the comments, I think it was a Legal Aid comment, which looks at the State protective custody system and says that in the State there are at least there hours of lock-out provided to people who are in protective custody.

And so I think the question is, I mean we think you should afford people more time out, the time in is
harmful. Complete time in is harmful and that you could use staffing and close supervision in small groups to let people out. Particularly for the Department at this point, if there are only 30 people in this category, it should be possible to figure out who is not dangerous to each other and allow people to recreate or lock out at the same time.

And I think this point about the standards are really forever, and good Department practices may well be in place right now, but they cannot be (inaudible), and the Board standards really have to protect people in the times when administrations are bad. And that’s the job of the board, and the (inaudible), you know, good exercise, creativity, and do the job well. But if anybody should be able to figure out how to do this in a more humane way, it may be the current Department, and they shouldn’t have, they shouldn’t change the rules so that later people can make it that much worse.

If the State can figure out with all of its people in protective custody how to let people out three hours a day, it seems to me that at the very least the Board should be able, should impose that on the Department, and the Department should be able to figure out how to do that.
SIMMONS: We know that the Department actually is already working on that very point. I think so that it may well be by the time these standards are approved or not, we will have a practice that we can point to that can be the exemplar of what we would hope to have happen.

I think, frankly, my concern is that we are all concerned about the safety of inmates and staff and that we have to err on the side of safety. So even keeping somebody isolated for two days until there’s a determination whether or not escort is the better approach, I’d rather err on the side of safety than put somebody in general population or have them have more access and have an opportunity for something to happen.

So I think our goal is to find – we understand that these are complicated, difficult choices to make, and it’s not anybody’s intention to penalize someone more by being kept in some kind of closer confinement. The question is how do we best assure the safety responsibly within the physical constraints that we have, given the nature of the physical plant, given the staffing resources that are available, and given the options that are available to ensure that someone who essentially asks for protection gets the protection that they need.

So it’s very helpful, and, Mady, your comments
are helpful. We, again, will be looking at practice and seeing what legitimately can happen. But the broader point, and I would hope we’re not setting standards to anticipate bad administrations, frankly, I don’t think that’s a good policy either. I think we want to set standards that respect the need for safety and security and that we come up with something that any future administration would be able to live with. But these are also, as we now know, no standard is forever. It may have been 30 years since we’ve looked at these, but I would anticipate that future Boards going forward will be looking at things over time as well.

DELONE: If I could make another couple of points. I think that --

VALLONE: Before you get to those points, maybe a little bit of history. Richard, your extensive knowledge in this would be helpful at this point. Getting to today’s point from where we were in the past, could you explain to us the previous voluntary lock-in day as opposed to how we got to where it is today where it’s 23 hours. I believe it’s been by a current variance that’s been continually renewed.

WOLF: The past practice had been that people who were in protective custody were segregated from the
general population in a housing area that was specially
designated as protective custody or whatever terminology
that the Department was using at the time, and that those
people, more often than not, those would be cell settings,
although not exclusively, and what would happen is that
those inmates would be kept apart from the general
population but were permitted to mingle among themselves
so that, for instance, if there was a day room at the end
of one corridor of a chevron housing area, they would be
allowed to lock out in the same fashion that people in
general population would do so. But the point is they
would only be with people who similarly were in protective
custody.

And then the general notion of getting them to
services and programs would be followed with special extra
escorting of people. They wouldn’t just go with passes
the way other inmates in general population would go. The
would be accompanied by staff to make sure that they were
as best could be kept separate from general population as
they traveled throughout the jail.

VALLONE: And for how long was that process?

WOLF: You mean how long --

VALLONE: In years-wise, how long has that been,
prior to our current standard?
WOLF: I can’t answer that other than to say my recollection which, you know, fades as I get older, is --

VALLONE: Which is better than ours.

WOLF: -- that was the practice for the time that I was at the Board until the recent changes.

BOARD MEMBER: And when was the change begun?

WOLF: Somebody help me. I’m not sure. Cathy, do you know?

POTLER: Like a year and a half ago.

WOLF: Is that close to right? About a year and a half ago – the Department representative is nodding his head yes.

VALLONE: One of the things that --

MALDONADO: Let’s finish that because that’s important.

MALDONADO: Right, I wanted to follow up on this. And what precipitated this change? Being a new board member, I’m not exactly sure.

VALLONE: Is there a representative from the Department who can --

SIMMONS: I don’t know that Mark is in a position to necessarily speak on behalf of the Department at this point. So I think if we have a question, we should reserve that question. Go back to our minutes and
ask the Department for a response.

VALLONE: Well, I think that most of the criticism we hear or want as to why we’re not at the past system, other than maybe the Department had asked for a simpler way of managing this process, I think most of our concerns are on that same group, the voluntary group who have asked for protection. I’m not happy with the amount of time that they have to stay there before their process is reviewed again and they be let back out into general population. I think there’s a big difference between the involuntary and the voluntary.

But like the Chair mentioned, there’s a very small group of people that this affects, but that doesn’t mean we shouldn’t look at this anyway. I tend to like past history, and I thought it worked well. I’m not too thrilled with how it got to where it is now, and I think maybe we should examine that, and that’s why I was asking for Richard’s advice on that because there are a lot of new Board Members. So a history lesson as well.

BOSTON: One of the things I still can’t wrap my mind around, a person asks for physical protection. They’re giving the option, okay, you have physical protection to the jeopardy of your mental health. And it seems that all the evidence seems the way it is now,
whether it’s called post-custody segregation, protective custody, 23-hour lock-out is jeopardous and injurious to a person’s mental health. So something has to be done. This is not to me an acceptable answer to the need that it has for protective custody.

MANNING: Dora Manning, Correctional Association, you said that changes went into effect a year and a half ago. I don’t see how that’s possible. When I was on Rikers Island in 2000, and the inmates who was in protective custody was in the bing with me and I was in the bing for punishment --

SIMMONS: No, we’re talking about two different things, and I just want to clarify. There’s punitive protective, I mean there’s – Mark, I’m not using the right terms. Punitive segregation, when there’s an infraction or some abuse of something, and somebody is moved. What we’re talking about, so we should not confuse the two, are inmates who have self-identified or have been identified through the classification process for being at risk for being in general population for whatever combination of reasons that might. And in most cases, almost overwhelmingly, it’s inmates who have said I want to be apart from everyone else. There has to be an assessment. We’ve worked with the Health Department and
mental health people. I mean there are lots of things
that are involved here.

And as Stanley points out when he asks you the
question, you know, this is complicated to figure out
what’s the right balance that ultimately protects the
safety of the individual but not without abrogating
certain opportunities for them to not be isolated as much
as possible. So we’re all working through a very
complicated process, but these are people, at the moment
there are about 30 who are self-identified as saying they
want to be for their own perceived safety away from the
general population.

CAMPBELL: But we understand, we understand that
you’re talking about individuals that are requesting
safety, but when you look at the whole situation of
punitive segregation, it’s a form of punishment. And I’m
not saying that the system is something that needs to
stand pat. I’m saying that we need to find another way,
whether it’s more conversations like this or a
conversation with the Department of Corrections is besides
the point.

What I’m saying is that punitive segregation is a
form of punishment. So now if somebody comes to you and
they say I fear for my safety, I fear for my life. So
what my response to them is, okay, you fear for your life, let me lock you up like I do people with I punish them for infractions. And when you set that as a standard, what are you saying to somebody? That if you want to be safe and if you want to be well taken care of, I have to treat you like I treat the individuals that I am punishing.

I don’t have the answer for it, I really don’t. I wish I did but I don’t. But what I’m saying is that we have to find a better way to deal with the situation of protective custody. I understand that they have the escort service, but locking people up in 23-hour lockdown is not the way that you treat an individual that says I am scared, I need help. You don’t punish them like you do other people that have infractions. And, again, I don’t have the answers.

SIMMONS: Well –

CAMPBELL: But that’s clearly not the way to do it.

SIMMONS: I think the intent is to find the least restrictive way of accommodating people, and in the end, because we don’t have good solutions yet, there are 30 who end up in the most extreme of the least restrictive opportunity. But even within that group, and it’s something I was out there in Rikers within the last month
and a half viewing this first hand, that the Department has been working to figure out within the constraints of space and other things like that ways to get people out of their cells and into other settings during the course of the day so that they are not spending 24 hours locked in a cell.

But, again, the goal is to have, for most people, the least restrictive piece of that. I completely agree with you, no one should be punished further, the question of how best within the fact that we’re running a jail system and not, you know, the nursery school, you know, where there are lots of options, how do we protect people, and that’s the challenge I think. You raise a very good point, and I appreciate it.

MANNING: Dora Manning of Correction Association. Like I had stated before, I know the difference between somebody who wants to be protected and somebody who’s being punished. I’ve seen with my own eyes where they took a protective custody inmate and placed her in the bing and had her locked down, not even 23 hours. She was locked down for 24 hours and she was a witness to a case. And like you said, they did have a special unit that was in PC, but they also started locking them up in the bing with people who was in there for being punished
for things that they did that they shouldn’t have done.

WOLF: Miss Manning, when you raised this before, you referred to the time period being about the year 2000, right?

MANNING: Right.

WOLF: Okay, the only thing I could say in response to that is what we’re talking about in terms, what we’re talking about is when the Department officially implemented a new policy dealing with protective custody and created close custody, and that happened about a year and a half ago. I don’t know the particulars of the individual case you cited, and I’m not challenging. All I’m saying is that the time frame that we were talking about has to do with when the Department formally changed its practice and created new directives and all the paperwork and the bureaucracy implemented what they implemented. That’s when it officially - I don’t know the particulars of the case you’re talking about though. Okay? Just so we understand that we’re talking about.

MANNING: But, see, this is the thing that you all fail to realize. Saying the Department is doing this and they doing that, you have to be on Rikers Island because all these changes you all talking about you all want to do now, they been being done already. This isn’t
nothing that’s just starting. A lot of things we’re here
fighting is being done on Rikers Island. There isn’t
nothing that they trying to change now. It’s being done.

BOSTON: Let me make a comment on the history of
this and on the use of these units. We understand that
there’s a very small number of people in this situation
now, and we also understand that the Department is looking
for different approaches to the problem.

Last year, before all of this external attention
began to be focused on the problem, we had received a
number of complaints from people who were in close
custody, a number of whom were adolescent prisoners with
mental health histories who were supposedly there for
their own protection. And they were kept, in our view,
completely inappropriately in that setting, quite often in
the same units, by the way, as adult offenders of very
serious charges. We complained to the Department of
Correction about the situation, and I believe a number of
people were moved out of close custody in response to our
complaints, and we appreciate it.

But my point here is that not only is there a
future prospect that the close custody housing or its
equivalent under another name will be used differently and
less cautiously than is the case today, but there is also
a track record of that happening with this Department and this Administration. So I cannot stress too strongly the need for this practice to be put under fairly strong and explicit curbs and further, that it is something as to which the Board of Correction needs going forward to monitor the implementation of.

I think we can all agree that safety has to be the first concern here, but there are a variety of different kinds of threats to safety, and there has already been one suicide, as you know, in the close custody units I believe of an individual who was there voluntarily for protection, and this is a case where the cure can be as bad as the disease.

ARKLES: I also want to add that obviously safety is absolute top concern for all of us, and that having the option for safety involving 23-hour lock-in is actually a huge disincentive to people requesting it, even if they do need protection. And I have worked with a number of people in a variety of correction settings who’ve decided, even if their condition in general population is a vulnerable and exploitive one, where they might actually get beaten up or sexually assaulted, that is preferable to being locked up for 23 hours a day for an extended period of time.
So to the extent we really want to protect people, this particular choice is not actually accomplishing that because it’s a huge disincentive to report assaults and to report risks of violence, if that is the option and it is being posed to people as the only way that they can be protected.

But I also appreciate everything about the history. I also wondered, the Department has apparently needed work, someone in the past for extended periods of time to have people locked up for more than 23 hours a day, for more than one hour a day. And in the State system it’s been working as well. I’m not sure why this is the one system where now we need, we can see 23-hour lock-in as the only possibility for people who need protection.

DE Lone: I’d also just suggest that the term close custody, if you’re going to use it in the standards, should be defined because it not a term of art internationally or nationally and could change, and you wouldn’t want things that you don’t intend to be able to slip into that category which is particular to this Department.

The other – I just have another point on lock-in/lockout. It’s in Section D actually on the schedule.
You said you have to have a schedule and post it. I think it would be worth adding to that standard that it must also be followed because that has historically been a terrible problem. You can have a schedule, but if, in fact, no one’s doing it, that is a problem, and it wouldn’t be terrible to add that it should be followed.

The other thought I had on the exercise periods, particularly if you’re going to allow close custody, you’re going to add close custody into this section, would be that the recreation time must come during regular daylight hours because right now we had a client who was in close custody last summer, and his option for lockout was 5 o’clock in the morning, and that’s in some ways not really an option. It doesn’t really give you an option to leave. So in other systems, I think in the State system, lockout times are between 7 a.m. and I don’t know if it’s 8 p.m., but there are other, define that period so it becomes a viable option.

I think that we all do agree with the concerns about security. It is a very difficult question. I would ask that people, Board Members considering holding off on the vote to accept this until there’s been a more careful conversation and that the intent of what you really expect to have happen is clearly articulated in the standards.
So that if you expect it to happen, if you expect it to happen very rarely, if you expect screening to happen for two days, you imagine that it’ll be used for very narrow category of prisoners and only when all other, you know, options have been exhausted, whatever the parameters are, that those actually be spelled out. The standards says that the Department must have rules that very narrowly use this in only the most exceptional circumstance, and they be subject to some review and that there’s some specificity in it so that the intent of your standard, which seems totally fine, is, in fact, articulated in the standards so that when you’re not here in two years or four years, if you aren’t – maybe you will be. Others have served for 30 years. You may all be here. But if you’re not here to explain what you intended, that the language of the standard is very clear.

I’ll just say that one of my past lives, I worked for the Board of Correction. Earlier in this life actually. And one of the things that gave lots of trouble was the lack of clarity in some of the standards, some of which I know you’re clearing up here, and I’m happy to go through those clarifications later. But a lot of time is spent with prisoners in the jail arguing with the staff about what their right is under the standards, with staff
in the jail arguing with wardens about it, and people writing to the Board of Correction, Legal Aid Society, Prisoners Rights Project, trying to say this is what the -- (tape 1, side B) -- make sure that what you mean to say and what you intend to have happen is actually covered by the standard that’s written.

SIMMONS: Thank you for that.

ARKLES: I’m sorry, one last thing. I just also want to say this is obviously a huge issue for vulnerable populations in all different facilities. But one of the reasons why it hits transgender people so hard is because right now, which I’ll be really concerned because there are women who are being locked in men’s jails. There are transgender women who are being locked in men’s jails right now, and it’s a set up for extremely unsafe situations, people who identify and live their lives as women and who are very easily perceived as feminine. And people who live their lives as women are being placed in men’s jails which is an extremely unsafe situation. Another measure that would increase safety would be to place transgender people in men’s or women’s facilities based on safety concerns, taking into account people’s gender identity which is consistent with practice in other
city agencies.

VALLONE: Well, based on what was said, would you agree that the policy that the Department did before was preferential to what’s being proposed now?

SIMMONS: I’m sorry, Paul, I couldn’t hear the question.

VALLONE: Sorry. Based on what Richard’s history lesson and what we learned that the Department had provided prior to this current variance where it’s 23 hours, where there was a separate facility and they were let out together as a group and had their own area separate and apart from the rest of the inmates and detainees, is that prior system a better system, since we’re looking for going forward, than what is currently being implemented and being proposed? Would you agree with that?

ARKLES: Well, certainly between the choice of 23-hour lock-in or general population, I certainly think that the gay unit was preferable to that. The Department of Correction currently has general population escort which is also I think better than just 23-hour lock-in for general population, but I still think that it’s not enough to actually protect people’s safety in an appropriate way.

I actually think that transgender people should
be placed in facilities on an individualized basis based on safety and gender identity that leaves open the possibility of transgender women being placed in women’s facilities. Within that, there are a lot of community members that feel that transunits are a safer way to go or trans and gay units are a much safer way to go.

I think there are a lot of different solutions that can be worked out, and I think that we need a lot more ongoing conversations about what the best solutions are. I certainly don’t think that changing the standards having 23-hour lock-in and having no additional protections or standards regarding transgender inmates is the way to go at all.

SIMMONS: Can I ask you a question? Do you know of any jurisdiction in this country, do any of you know, I mean to the point of where transgender inmates are housed? It’s my understanding the Department follows gender identity by anatomy. And I don’t know of any jurisdiction that doesn’t have that same standard, but I’m wondering if you know of something somewhere in the country where that’s not the case because I’d be interested in knowing.

ARKLES: Well, in the corrections context --

SIMMONS: In the corrections context, only in the context of jail. We’re only talking about corrections
context.

ARKLES: Washington has a county that now has --

SIMMONS: Washington State?

ARKLES: Washington State, it’s actually Kings County in Washington State has a policy that --

DELONE: Seattle area --

ARKLES: It’s Kings County, yes. Has a policy that involves a multifactor analysis of where transgender people should be placed that includes identity and also includes gender and other factors and safety. I don’t know it’s an policy, but it is certainly different and better than what is happening here right now. And there, I mean in other countries, in Spain, they don’t go by genitals anymore.

But I think this is an area where people are really starting to look at and examine and trying to figure out the best policies and it’s where New York City could be a leader.

NAHMAN: I wonder, a transgendered female placed in a female facility, how the females in that facility would feel. I would really need to know that. You got to be either with the males or the females, you (inaudible) with the males, but how one would value also the females.

ARKLES: Right, it’s always an issue that
wherever transgendered people or any other member of marginalized people are going to placed, there may still be issued of harassment or violence. Generally, transgendered women are safer when placed with other women than when they’re placed with men, but that doesn’t mean there aren’t issues, it doesn’t mean there’s safety, it doesn’t mean there aren’t lots of (inaudible).

I mean there have been some transgendered women who have been placed in women’s facilities, I mean I’ve heard of it happening on a sort of ad hoc basis, not as a course of a general policy, but I’ve even heard of it happened within New York State, Pennsylvania, and Maine, of people who have not had surgery and also there are more people who have had genital surgery who are placed in women’s facilities, and sometimes there has been harassment from the other women inmates and sometimes there hasn’t been, and people have gotten along fine. There are always going to be some type of issues that will need to be addressed, but in general it seems to be a much better solution than blanket placing all transgender women in men’s facilities.

BOSTON: I wonder if I could comment briefly on the member’s question a minute ago about the old system versus the new system.
I would say that the old system was preferable to a 23-hour lock-in system. There were problems with the old system. Certainly as we heard those problems from the prisoners, a lot of them had to do with administration and supervision because people were allowed to come into protective custody units who didn’t really need protection and who are allowed to prey on other people and because the level of staff supervision that was given to those units was not adequate to prevent that kind of conduct from happening. We think the notion that you must have 23-hour lock-in to some extent is the Department of Correction, you know, almost blaming the victims for the inadequacy of its own past practices in supervising inmates that do present supervision problems and need to be watched more closely.

Locking somebody in a cell and walking away is very easy to do. Supervising a group of people who need supervision and doing that consistently is a much better way to treat people, both for their sake and for the system’s sake.

VALLONE: Jack, could I ask, if we hypothetically go back to that system, for everybody, not just transgender or gay, but for anyone who says I fear for a particular reason. Another concern I have is if we
establish that type of standard where the past is continued, if I was in that situation, I would obviously chose that type of environment versus general population, and I think that’s where the Department of Correction was leaning as to this is just too beneficial of a situation. We can’t manage it. Most people would rather choose to be there because it’s just safer in general.

So one criterion of standards we have to establish or create in order for someone to meet that particular custody where it’s not just say, okay, you, yes, you have a good argument, you don’t have a good argument.

BOSTON: Well, I don’t think there is any substitute for an assessment of the actual need. If people say I want to go into protective custody, you need to find out why. Who do you need to be protected from? Is this because you’re the kind of person that everybody picks on? And there are people who are just generally vulnerable by the way they present themselves, and the Department has acknowledged that, and, in fact, it’s now reflected in their intake classification system. There are also people who will say I’m a witness against so and so, and he has friends throughout the jails. or, you know, I’m in trouble with the XYZ gang and they’re all
over here. And there are different kinds of reasons that people need protection.

I would also not say that in every case that protection has to be done in a setting that’s sets identical general population. That really never has been the case. Even in the old system, many people who needed protection for something more than just general vulnerability were placed in higher security units such as the North Infirmary Command formerly at the Brooklyn Detection Center. But we are suggesting that any kind of presumption that the need for protection means 23-hour lock-in is inappropriate, and it’s really an abdication of the responsibility of the people running the system to make rational judgments and to provide appropriate supervision on a consistent basis.

VALLONE: I’m agreeing with you on that point. I’m just trying to find now the next fallback point as to where to go from here. So that’s why I was – if we agree, consensus, well, you and I anyway, that the 23-hour lockdown is not the most ideal situation for of us, we then need to take the next step. And my fear is just saying I don’t have the answer is not good enough at this point because we then may be faced with no decisions, either make a yes or a no vote, but I can’t tell you which
way that’s going to go.

BOSTON: That’s fair enough. I think maybe this is an issue that we should consider in light of this discussion, and we may have some supplementary comments before the end of the period or not.

SIMMONS: Certainly if you do you should --

VALLONE: That’s not limited, that’s every one who’s here.

DELONE: I think one more, Barry’s comment, that we just shouldn’t, as a city, as a society treat people who need protection the same way we treat people who decided to punish is a very important principle that I think really should be articulated by the Board. One practical thought and this is not a Coalition position, in fact, the Coalition has very few unified substantive positions because we haven’t had the time to figure out exactly what we would do if we were you, is to continue to the extent we need to give a variance on this issue while you work on a standard which more adequately and appropriately and fully reflects your collective sense and our collective sense perhaps of how to handle this very difficult problem in a way that’s decent and respectful of people and not harmful. That would be a recommendation.

BOSTON: I would also suggest on that subject,
you’ve indicated that the Department of Correction is, at least to some degree, going back to the drawing board on this problem. It may be that one way to approach this is to see what the Department of Correction comes up with and then for us to react to that. Because on some level, if they are moving away from the present proposal and we’re still reacting to the present proposal, that’s not much of a conversation.

SIMMONS: Duly noted as well. Thank you. Other people who haven’t spoken or other comments?

STOUGHTON: This is Cory Stoughton again from the New York Civil Liberties Union and the Coalition, and really I’m here to speak about the censorship business, so maybe we can shift --

VALLONE: I didn’t quite hear you.

STOUGHTON: I’m here to speak about the surveillance and censorship provisions really predominantly so. Unless there’s more on lock-in, why don’t we shift to that.

VALLONE: Any other comments on the lock-in?

Okay thanks.

STOUGHTON: I’d like to begin –there’s been a lot of discussion I think about the telephone surveillance provision, and I am eager to talk about that, but I’d
actually like to jump to some of the surveillance and censorship provisions that haven’t been given as much attention and I fear might fall through the cracks. And one of them is the limitation, the grant of the Department authority to limit correspondence rights altogether for prisoners and also limit the right to send and receive packages.

There’s really two themes that I see running through all of the surveillance provisions, and by these provisions I mean both the telephone surveillance provision, the provision I just motioned about limiting package rights and correspondence rights, the provision that lowers the standard for the Department to read correspondence, and then the censorship provision which allows them to restrict more correspondence than they’ve been permitted to, or more publications than they’ve permitted to restrict in the past.

And the two themes I see running through both these are a lack of a compelling reason to lower those standards, and then even if there were a compelling reason and the Board were to decide to lower those standards, a lack of safeguards to ensure that whatever mission has been articulated, safety missions, security mission, has been articulated to justify increasing the Department’s
authority in these areas is done in a way that minimizes the impact on the privacy rights and the civil liberties really of both the prisoners and the people with whom they correspond and communicate of course, their family members, husbands, wives, and children, as well as privileged communicators and communicatees such as attorneys, clergy, treating medical professionals, and, of course, oversight agencies that they might be corresponding or communicating with.

And so jumping to the limitation on correspondence and sending and receiving packages, you know, currently the Department is permitted to search correspondence and packages for any kind of contraband, and the ability to prohibit prisoners from engaging in correspondence and sending and receiving packages altogether wherever they determine that there’s some belief that there’s a public safety or facility order and security issue – that’s the kind of language as I remember it from the standard – there isn’t a reason to move to grant that additional authority. The current minimum standard recognizes that prisoners have a fundamental right to correspond with whomever they chose. And if the issue is contraband, that seems like it’s already taken care of by the ability to search that mail.
What reason the Department has for reading or completely limiting and reading correspondence really hasn’t been articulated, and I’ve been eager, and I’ve been combing through the Department’s comments since these proposed standards came out, and I haven’t been able to find anything that really articulates that reason for lowering those standards.

And there’s really in this provision particularly no even articulated aspiration to protect privileged correspondence. So if, for example, there was a reason to, that someone in the prison decided there was a reason to restrict correspondence rights, there’s no recognition that privileged correspondence between an attorney and the client under no circumstances could be restricted. That I think would present serious Sixth Amendment problem.

So there reflect in those two themes a lack of justification and a lack of thoughtfulness in terms of ensuring that if the standard is put in place, that it is limited in appropriate ways to protect privileged correspondence and to ensure that it’s not being abused. Those are just a few examples. I could keep talking.

There’s not been any questions.

Another example I think of a lack of safeguards in that particular provision is that there’s a lot of
discretion in those provision which creates that kind of possibility of overreaching, and it’s something that Mady said earlier that really echo for me with regard to these provisions which is that you want to be very clear what authority you grant the jail officials the right to do. And the standards that are articulated, you know, things like a reasonable belief that a limitation is necessary to protect public safety or security, there really ought to be some meat on those bones. We know from decades and decades of constitutional litigation over things like proper cause and reasonable suspicion that these are kind of just words.

And without really restricting those and making sure that the standards are clear, there’s a possibility for abuse, and particularly where certain provisions grant the authority to restrict communications rights and to censor publications very broadly.

Some of the provisions, particularly the provision allowing jail officials to read correspondence, restrict that right to the warden of the facility. But then other provisions, including the provision to limit correspondence rights, limit package rights and censor publications don’t contain that limitation. So it’s a recognition that when you generally grant broad authority
and disburse it among jail officials, that creates a potential for abuse when the standards are not, particularly when the standards are not very clearly articulated.

So those are a few things on the provisions, and we submitted written comments that go into much more detail about our concerns with the specific nature of the standards, and I don’t want to belabor all of that here. So let me speak also a little bit about the telephone surveillance provisions, unless there are other (inaudible).

The telephone surveillance provisions also I think reflect those two themes that I mentioned earlier – the lack of dislocation and the lack of safeguards, and particularly on both of these. I’ve heard some justifications for, I mean let me be clear, the telephone surveillance provision is a dramatic departure from current Department (inaudible). Currently they have to have a warrant to listen to prisoner telephone calls, the change would allow the Department to implement a suspicion list, standard list, universal telephone surveillance program. And to make a dramatic change like this it seems to be kind of uncontroversial that there ought to be a compelling reason for that. And the reasons that I’ve
heard articulated don’t seem to go far enough to justify such a broad sweeping program.

One of them that’s been articulated and that I read in Mr. Horn’s *Law Journal* piece the other day is the need to restrict contraband, that there is a reality probably, I believe, that the prisoners are using telephones to coordinate illegal activity in bringing in contraband. But what’s missing from the articulation of that is a reason why the current Department, that a warrant is obtained when there’s reason to believe that’s happening, is inadequate to the task. Or a reason to believe that other, less restrictive alternatives, can accomplish the goal.

For example, I’ve heard that part of the problem is that they’re using telephones to coordinate with staff members as a conduit to bring in contraband items, but there is no reason, for example, that there couldn’t be particular restrictions on telephone calls to the numbers of staff members, for example. Rather than going to far as to have a universal surveillance program. Because on the other side of the coin of the universal surveillance program, is a real impact on the lives and human and civil rights of prisoners and (inaudible) that become their friends and their family members, and a risk to privileged
And I want to talk specifically about the lack of a system to protect privileged communications, but even in the abstract, if a prisoner knows that all telephone calls are subject to surveillance, that creates a real risk of their ability to discuss their case with their lawyer even if their was assumed a place to protect those calls is chilled in some way. You would be very reluctant, and it’s just a matter of common sense, to have a frank conversation on a telephone system that is wired for monitoring 24 hours a day, 100 percent of the time.

In addition, discussions about a prisoner’s case, keeping in mind that the particular population (inaudible) are people who’s cases are ongoing and just beginning. These people often have a reason to contact witnesses, you know, public defenders do a great job but their case loads are incredibly high, and particularly, you know, in New York City and in New York State there’s a lot of work in preparing a case that the prisoner, him or herself, ends up doing, including contacting witnesses. And those conversations would be monitored, which inhibits the prisoner’s ability to prepare a defense to their case.

And then, of course, there is the entire category of conversations with a person’s family when they’ve been
locked up. And knowing that those conversations are being monitored by prison officials is a real and enormous cost to prisoners and to their lives and their quality of life, and quite frankly, to their human right of privacy, which is not evaporated simply because they’ve been arrested and haven’t been able to make bail.

So before going so far as to do this dramatic surveillance program, I really urge the board to both think yourselves, and then demand of the Department a real specific articulation of what the need is here and a consideration of whether there are other ways to address that need that wouldn’t have this collateral impact on innocent, possibly protected and privileged conversations.

And then the last thing I really wanted to say about this is again the lack of safeguards. There is an aspiration in the standard, the telephone surveillance standard, as it’s currently written, to protect privileged communications. But I think, and I appreciated the comment earlier that before these standards, that the Board anticipates before these standards were implemented that there would be protocols that the Department would be required to put in place, and I’m going to assume that you would also, that that would apply here and you would expect the Department to come up with some explanation.
But I think that even in the event that the Board decided that this broad surveillance program was required, that something more specific in that regard should be put into the standard. And the reason for that is that like Maddy has said earlier, these standards last forever. And the paramount importance of protecting privileged phone calls in this situation really demands a specific program and guarantee in the standards, themselves, that these conversations will be protected. And without that, I think that there should be no movement towards a complete suspicion list surveillance program.

SIMMONS: Do you have language that you would suggest that would offer that protection that you just requested?

STOUGHTON: Well, I see, I think the language would have to be specific. I have to understand more about the technology that the Department would want to use to surveil the telephone calls. And I think that without understanding how that is going to operate, it’s difficult to construct language that would insure that those conversations are exempted from surveillance.

SIMMONS: It would be important, recognizing to your point and to Maddy’s that these standards could be (inaudible), the technology will change inevitably. So I
wouldn’t want a standard that speaks to a specific technology because that would make a mistake, as well. So I would ask you, seriously, recognizing your concern about that, but if you sort of --

STOUGHTON: Let me give you an example. I read the standards for the first time when you proposed those changes. You know, at NYCLU, we are a prisoners’ rights organization, so we’re not as immersed in these issues, and I noticed in the original standards that there are a lot of provisions, I made this comment actually in the written comments I summated in April, there are a lot of provisions in the minimum standards that were implemented in the ‘70s that were conditioned upon the Department presenting a plan expressly, and this provision is not conditioned in that way. And I think it would be a good step in the right direction to condition the authority to implement a surveillance program upon a demonstrated program that satisfactorily proves to you that privileged communications were protected

Now I can’t let that comment go without reiterating that I do, before we jump to that point, that I do think there is still no (inaudible), and I think the chilling effect on privileged communications of such a program in the abstract even is something that really
ought to be considered, even if there is a program in place, it really will have a dramatic effect on communications. Especially given something I’ve learned recently which is that phone calls even between attorneys and clients, are limited to six minutes.

I have never had a meeting with a client that lasted six minutes and accomplished anything. And to have to have a careful conversation with a client because your client is pussyfooting around an issue because they’re nervous, because they know that telephone calls are monitored and they fear that this one is being monitored as well, really, really hampers the attorney/client relationship which is one of the most important relationships that that person at that moment in their life has.

KREITMAN: Let me, first of all, the lawyer/client privilege should be observed. As I said before, whatever is changed in these standards, there has to be a protocol for how you are going to do it for the next (inaudible). Let me present to you part of the dilemma. We have got communications from at least four or five district attorneys, police, law enforcement, that there are hits being ordered on the telephone, witnesses are being intimidated on phone calls. There is a National
Security Area, they picked up terrorist threats coming from jails that have been picked up on court ordered monitoring, and they feel that it’s in the safety of most to monitor phone calls, that witnesses wouldn’t be intimidated, hits wouldn’t be ordered from jail.

So I appreciate what you’re saying but there is another side to the coin that has to be thought out.

STOUGHTON: Yes, absolutely, and I think in the comment, I think the fact that a lot of these things are being picked up on court ordered surveillance really goes to the question of, well, then what’s being missed. And I have not seen any reason to believe that there is a substantial amount of illegal activity that’s being missed that couldn’t be gotten with a warrant, with reasons to believe that if you have a reason to believe that someone is going to be intimidating a witness.

KREITMAN: You and I aren’t privilege that those type of statistics, the people that are privileged seem to think there is a lot that are being missed and they wouldn’t be missed if they were monitored. So I just pose that to you, we’re not deciding anything now, but I just pose to you the other side of the coin. The law enforcement people think there is a lot being missed.

ROVT: (inaudible)
VALLONE: I think this is one of those areas, this variance, and probably the laundry, requirement for facilities to provide particular jumpsuits that might be in where we’ve been starting to talk about tightening the language because those were proposed. And as we see these areas and hear your comments, there is probably a need to tighten or change some of the existing proposed amendments to reflect that. And that’s one of the things that we’re going to ask Richard and his staff to do over the summer as they analyze this.

And then the other comment was something I was also echoing about the conditional precedent. I think those are important, they had a place in the past and I think they have a place now. It’s tough to rule on something that there is no current format. So I think that type of precedent needs to be, to address your concerns and exactly what Stanley just said, it was also very moving testimony from the District Attorney in Nassau County and Queens County about the domestic abuse situations between husbands and wives and as an attorney, like yourself, I see that on a daily basis.

So that’s one of, these are one of those issues where it can be weighted.

STOUGHTON: Absolutely, and, you know, on the
domestic violence question, it’s something I take very seriously, we take very seriously. But again, you can think about ways maybe to more narrowly draw a rule. Maybe there should be a different rule for people charged with domestic violence crimes. That might, you know, this is an issue I haven’t looked at very carefully, but it immediately jumps to mind that if that is a particular case that requires a different rule, then that rule, there is no reason, just because that is a problem, to extend, to implicate the privacy of other prisoners who are not necessarily charged with that kind of crime and don’t raise those particular problems.

And, you know, the other thing, you are absolutely right, we haven’t seen those statistics, but I would urge you to look at it. Because before you implement a standard like this, there definitely are two competing considerations here. It would be ridiculous to ignore that. But when deciding how to balance them, it matters what actually will be accomplished by expanding the surveillance authority.

So I think it would be, I would encourage you to actually look at those statistics and try to have a very clear understanding of what will be accomplished and then weigh that, against, like you said, the other side of the
coin, that, which, of course, are the privacy considerations. And then come to an understanding. If it appears that surveillance is something that is necessary, then make sure that it’s implemented with the kind of safeguards, for example, for privileged communications. And then also, you know, there are other ways to insure that going forward that the system operates in a minimally impactful way on civil liberties and human rights, which is part of the Board’s continuing oversight responsibilities. So I would encourage the Board also to think of maybe putting in a recording requirement. This standard is a very broad and bold step of increased authority, so --

VALLONE: Let me just, you had started off, and I think this will help us, because if you actually, and not everyone has it in front of them, but after for today to come back to us, in Section 1-11 where we’re proposing these telephone calls, in H, it says supervision of telephone calls, this entire last 15 minutes is based on that conversation. But you started off by, one, that there may be surveillance, but you left out the two conditions precedent that we put in that are in sub I and sub 2, in order for them to do that. And the area that I’m talking about and we’re asking about, or Hildy asked
for additional comment, maybe there can be a 3 or maybe there can be a determination.

But I think we need to read what 1 and 2 are so that the people in the audience and everyone understands that this is not just an open-ended you can tap the phone calls. One says “this determination must be based on specific acts committed by the prisoner during the exercise of telephone rights that demonstrates such a threat or abuse. Prior to any determination, a prisoner must be provided with written notification or specific charges and the names or statements of the charging parties and be afforded opportunity to” --

SIMMONS: This is actually about access to using telephone rights, this is different than listening --

STOUGHTON: Yes, there is no limitation like that in the surveillance --

VALLONE: But where I was going is these types of conditions are things that I would like to see also on the other side. I think these are the type of steps that there is good language in here that maybe we can mirror image and put in --

STOUGHTON: Well that proposition would be basically a middle ground between the power that the Board, that the standard would give the Department and the
power that the Department currently has. Currently they
have to have a warrant, and what you’re suggesting would
be a warrant is not required but some level of
individualized suspicion is required before you can
actually listen to a prisoner’s telephone calls.

And I think that would be a vast improvement over
the current standard and again would alter that balance in
terms of really it should be incumbent upon the Department
to show that having an individualized suspicion standard,
that could be made by prison officials in, you know, in
the circumstances on the ground without necessarily having
to get a warrant as they are currently required would
accomplish whatever it is that is not being accomplished
or they are not able to accomplish right now because of
the requirement of getting a warrant. And that would be
like a middle group between the current proposal and the
current reality.

BOSTON: Let me also suggest on this subject
that there are other things that can be done of an
intermediate nature rather than confer the certain
sweeping powers on the Department. For example, in the
domestic violence cases, which I don’t think anyone
disputes is a serious and difficult problem, if the
concern is that the complaining witness and others will be
intimidated, then there is no reason at all that at the request at that person, perhaps assisted by the District Attorney, you could simply say that Mr. Smith will not be allowed to call these numbers. Well that’s no good, because Mr. Smith will get Mr. Jones to convey the threat. So a person can say I want no telephone calls from the Department of Correction system to my number or to my cell phone and simply block those numbers. I see no reason why that is not feasible in a modern telephone system. And I am sure that there can be further (inaudible) as well, but this other thing can happen. And then we can have further discussion of ways that that can be blocked.

My concern here is that that kind of thinking is not what is reflected in the current proposal and it seems to me that before doing anything sweeping, it’s really incumbent on the Board to say, number one, for the particular problem that we’re concerned, first can we have a special rule for that problem that will not implicate the privacy of everyone in the system and all of those outside that might be caught in the system. And number two, when there is a narrow concern, is there a way to serve that concern that is less broad, and I just sketched out an approach to domestic violence cases which I think would be quite viable, it would require a little more
thought than simply saying we’re going to listen to
everybody’s conversations.

But, frankly, I have considerable doubt as to
what the practical effect of listening to everybody’s
conversations is. So you have, you know, 14,000 people in
the system, using the telephone all day, and, you know,
who is going to do that surveillance, who is going to
decide what needs to be surveilled. It seems to me that
that’s a kind of over breadth in the operation of the
system that on some level will gather up more information
than anyone is capable of assimilating and working with.
So I wonder if this is not only a proposal that is more
intrusive than it needs to be, but is impractical and
inefficient in terms of its own stated purpose. And I
don’t think anybody has really addressed that concern yet
in this process.

STOUGHTON: The last thing I would like to say
about this, whenever you have a surveillance system there
also need to be protocols in place for what happens to the
recordings. And missing also from this standard is any
protections, protocols for disposing of and storage of
these recorded conversations and assurances that the
recordings will only be used for legitimate legal
purposes. And so, you know, there are pages and pages of
such protocols that federal and state law enforcement authorities have to follow when they conduct surveillance which they have to do pursuant to a warrant. Just because there is no warrant requirement under the proposed standards doesn’t mean that those protocols shouldn’t also be in place.

So again, as John was saying, it kind of reflects, the current as currently drafted reflects that broad range of authority without, it seems to me, a clear thinking through of the procedural protections that must be in place whenever such broad surveillance authority is given to any government facility.

BOSTON: Let me just make another observation on procedural protection. Setting aside the surveillance issue, there are also issues of stopping communications, stopping correspondence, stopping telephone calls, stopping publications. And even though the necessity for some sort of procedural protection, and I include in that the specificity of rules that allow the obstruction in the first place, even though the problems are all essentially of the same nature, the procedural protections that are provided in the proposed rules are an absolute patchwork, they are completely inconsistent, for purposes of deciding if someone should be forbidden to correspond with another
person or whether a particular publication is too
dangerous to allow prisoners to read it, or that a
particular person should not be allowed to have telephone
conversations with another person.

If you take all the procedural protections that
are floating around in these different provisions and make
sure that all the provisions that appear anywhere apply to
all of them, then you will have something like a uniform
system that will approach a reasonable system of
protection. So it seems like no one has thought through
the problem of pursuing (inaudible) in a systematic way
for all three of these things and put the pieces together.
We pointed out some of those inconsistencies in our
written testimony.

STOUGHTON: And not just procedural protection,
but also for the basic standards, themselves. They found
it kind of bizarre that there was a different standard for
when you could restrict communications rights than when
you could read correspondence and a different standard for
when correspondence could be banned as a privilege and
then what particular publications could be restricted.
There really ought to be a uniform standard across the
board on those things, and the reason for that is that it
really is an aid to the jail officials who are
implementing those decisions. Because if there is a consistent standard, however that standard is defined, then, you know, a uniform body of thought about what’s appropriate, what triggers, you know, the ability to restrict a prisoner’s right to communicate, what triggers the ability to read correspondence, it’s just an easier way to develop, you know, this is when we do it, this is when we don’t, as opposed to there are different standards.

You, as a jail official, are left to parse, well, it might be okay to restrict re-correspondence in some situations, but, you know, it might not be okay to, you know, investigate packages in another situation. And so making sure that those provisions are consistent across the board. You know, in some situations, for example, some of the provisions require the reason for restricting the privilege be put in writing, and others don’t. And, you know, it’s kind of a conflicting signal to people who are in charge of making decisions about when it’s appropriate and what circumstances and how seriously to take that decision when there are provisions like that in some standards and not in others.

BOSTON: I have one more thing to say on this issue which I think is not completely redundant. The
substantive standards for censorship and intrusion need to be as explicit as possible. Phrases like reasonable belief and that there is a threat to safety or security really are not good enough because they invite abuse, and sometimes they invite paranoia in good faith, but nonetheless, overbroad censorship. And sometimes there is a sense that, well, we don’t know what’s going to happen, so how can we make this more specific; that really isn’t true.

What we have done, what Legal Aid has done in its written comments is we’ve reproduced the so-called media review rules of the Department of Correctional Services just as an example of how specific you can be about what it is you’re afraid of when you sit down and actually make the effort. And I would suggest to you that if you are talking about the censorship of publications, the censorship of mail, the prohibition of correspondence, any of those subjects, that it is possible to be equally explicit and you should be equally explicit in setting out the triggering criteria or concerns that would allow the Department to engage in either type of interference with correspondence.

KREITMAN: Well again, the Department has to come up with a protocol and there is a difference in a lot
of things that you said. There’s a difference in
publication as opposed to mail, as opposed to packages,
and there has to be a protocol (inaudible). Publication,
I can agree on one set of standards, but contraband is
another issue.

BOSTON: Well, physical contraband certainly
presents different issues, but when you are talking about
written or oral communications, you are really generally
talking about the same categories of things. You don’t
want information to come in about how people can do bad
things, you know, you don’t want people out to get, you
know, “Lock Picking Made Easy.” You don’t want people to
engage in correspondence from somebody who says, hey, I
used to work for Folger Adams and I can tell you how you
can get around some of these things. You know, whether
it’s me writing a letter to an individual or whether it’s
a book that’s published and is available to the general
population, the issue is the same.

Similarly, if the concern is that information is
being passed that, you know, a particular person has been
covertly cooperating with law enforcement, information
which in a confinement setting can be very dangerous,
whether that’s in a publication, a letter, a telephone
correspondence, it is the same problem that you’re concerned
about and the same risk you are concerned about
preventing. So even though the protocols for physically
handling the problems may be different, the underlying
problems of what it is you are trying to stop are more
similar than different for all the different types of
communication.

KREITMAN: Well, let me have the last word on
this. I certainly have a lot of feelings about
censorship, but I also have feelings about intimidation of
witnesses by telephone and ordering hits out of jail, and
national security issues, and terrorist threats being
made, so those are very separate issues that we have to
deal with.

DELONE: I just wanted to add another point. I
just wanted to add also that if this does happen, that
mental health professionals also have to have access to
privileged conversations. Thank you. And then also,
(inaudible) confidential calls, people have to be able, I
just think it should be listed that access has to be
something that is quick, it’s not something you an set up
a week from today. When we people are calling us about
things they are experiencing in jail, we need to know that
they’ll be able to do that quickly.

Also, I just wanted to add into the mix with the
censorship of publications, one of the changes is adding a catchall privilege in about security reasons. And I agree with John that anything specific far better, partly because in other systems that do not have minimum standards, like the ones that have (inaudible) here, I know that can be abused. And one of the things that can happen is that people will censor publications that are related to transgender or gay issues that there is no legitimate security risk. But people will use those like a catchall in abusive ways, so I think the more specific provisions possible, the better.

And I just also want to throw into the mix that balancing that there are people badly here experiencing abuse also from the correction officers. So the conflict of having correction officers listening in on every call you’re making to your friends or your family seeking support is one that, you know, it’s pretty devastating to people, just to throw that into the balance that we’re trying to strike, that’s another thing that exists, another form of abuse that people need to be aware of.

MANNING: Dora Manning, Correctional Associates. I don’t, you know, from my experiences, I know the telephone and writing letters, a lot of inmates (inaudible) officers. And if you got a officer listening
to your conversation (inaudible) that is going to create a hostile environment between you and the officers, that’s going to cause being beaten by officers, that’s going to cause you to be locked down by officers. So therefore, if you know that your conversations and your letters is being monitored, ain’t nobody going to tell on these officers and they’re going to get away with everything that they’re doing right now. That was our only way of communicating a officer did something wrong to us.

And most times, when they felt that you was gonna write them up, they would go in the mailbox and take your letters.

BOSTON: Many of the complaints that Legal Aid receives about staff misconduct come not directly from the prisoner to the Legal Aid Society, but by way of the prisoner’s family or friends, maybe because they don’t know the Legal Aid Society is there. So I think what she says is a significant problem, just protecting privileged communication, we will not assist with that.

SIMMONS: Any other --

STOUGHTON: Well we wanted to talk about the language provisions. We have been concerned, there has been a lot of, at least in my own mind there’s been a lot of confusion about --
SIMMONS: Can I just clarify this, you have concerns and I know there were issues about protocol or whatever, but I want to be very clear, I thought I was at the last meeting, but I want to say it again, I’ll keep saying it, it was never the intention of anyone on this Board to diminish the Spanish language interpretation. The only intent, and it may be unartfully have been worded, and we’re looking at wording that would clarify that, we didn’t anticipate the reaction and confusion that seemed to emerge, was that in 2007 as opposed to 1978 or whatever it was, there are infinitely more languages spoken among people who are housed in the city jails. (Tape 2, Side A)

SIMMONS: -- to interpretive services so they would never be in a situation where they didn’t know what they were being told or what was happening to them. And that by singling out any one of them, which even if Spanish is the most dominant of the other languages, it was inappropriate to give some special status at this point in time to one language relative to the thirty-some or forty or whatever the number is now, languages that the department finds inmates coming in at any moment in time.

So if you have substantive comments about wording or issues related to that, but please, it was never
anybody’s intention, and we don’t need to have a
conversation about excluding Spanish and not recognizing
others, because that was never our intention, okay?

STOUGHTON: I think that’s been made clear I
think as things have progressed. I think what we would
suggest is that you don’t change the current standard and
then just add on to it.

SIMMONS: The point is we didn’t way to add, say
Spanish and, you know, Farsi, and whatever, whatever,
whatever, because, again, to your point that these
standards last for a long time, for all I know there will
be 20 more languages. So we wanted to make the point that
anybody who needed language interpretation would have
access to it, rather than trying to specify specific
languages, which in fact could then lead to a point of
somebody then coming in, speaking some language that isn’t
on that list, and somebody saying, well, you are not
entitled to interpretive services.

DELONE: I guess our feeling, I think it’s
pretty much the feeling of most of the people in the
coalition is since last we heard numbers, 33% of the
Department of Correction population, the prisoners are, in
fact, Hispanic. Many of them, although not all,
monolingual, and many of them have Spanish as their first
language. It is absolutely appropriate and right to have the different kind of standard for them. Because if you had no Spanish speaking staff in any of the jails you might have on any given day the need for thousands of interpreters to get you through the day, particularly if you extend the translation requirement from just directives of communication about rules and regulations and policies, to the translation services to allow people to participate in programs.

And we think you should do that in the second part that you have now added for additional language. We think there should be slightly more specific and broader in where translation services should be available. We think that you should add that policies should address the confidential needs of those interpretive services where appropriate, certainly in medical care and mental health care, and discussion of legal problems, perhaps there are other issues, I don’t know them all, so that should be broader. But that the requirement that there be Spanish speaking staff in every facility is really a necessity because we don’t believe that you can simply (inaudible) that the same kind of translation services address the need of such a large population. It is totally reasonable and really required we think in this day and age in New
York City, and has been for a while, and if it changes, maybe this is one of the standards that gets reviewed before the next 30 years, we will come back and change it. But we don’t see the Spanish population doing anything but increasing in New York so the projections suggest that that will be true. We assume that that will be reflected also in the city jails and it is absolutely reasonable and appropriate to have a different kind of standard for such a large population in a facility.

Although I wholeheartedly agree, a sign language interpreter, you know, Russian, every other language, it is devastating to be in those places, as you recognize by your addition as a standard, and not be able to communicate. So we just think it is, and we would ask you to maintain the standards, one for Spanish speaking people and one for, you know, everybody else, which includes them, but also recognizes that they are just in a different volume and number in the jails. And that is appropriate and right, that’s our sense.

SIMMONS: Thank you for your comments. Any other topics that you all want to raise? Be mindful that it’s about 11:25.

NAHMAN: One of the things I would like to ask the people, what you have said so far is what has been in
the standards and ought not to be. What is not in the
standards as presented, and ought to be? What issues
should be addressed, what have we missed?

BOSTON: Well if you ask me where you should
start doing a real comprehensive review of the standards,
first I would say you should have the conversation with a
much broader range of people that are represented in, you
know, at this table or in this room. But I would say that
a couple of good places to start would be with the
treatment of visitors who try to go to the jail to see
their loved ones, which we receive many complaints are
often treated arbitrarily and abusively. And the conduct
of searches in the Department of Corrections jails, which
despite paper policies that say that searches shall be
conducted in an orderly and safe way, and people’s persons
and property will be treated with respect, in fact, we
receive complaint after complaint that that is not the
case. That on a good day, that the people’s property is
strewn all over the place, and on a bad day people are
physically pushed around and abused.

Searches of housing areas are one of the flash
points of physical violence between staff and inmates in
this system. And frankly, I think that that’s external
attention and scrutiny, both in the form of standards and
the form of monitoring by the board of what actually happens, that would be an urgent priority. So those are a couple of examples.

Other examples, and when we cited these in our written comments, the grievance process, which on a theoretical level are sort of a fundamental element of maintaining a fair and humane jail system, is in large part dead in the water it appears, even though the Board of Correction is the largest -- the Board of Correction represents the final appellate level in the grievance system. I understand that it’s been several years since you had a grievance appeal to decide and in recent years you did have a few, it was always a few. And I think we can all agree that that is not because everybody in the jails is happy and doesn’t have any complaints, nor is it because everybody in the jails gets their complaints solves in the short run without having to go any further.

What we hear from our clients is that I can’t get to grievance. Apparently some of the jails you have to physically go there to file a grievance. We hear from our clients, we go there and they won’t take my grievance, they say it’s not grievable, even though the thing they are talking to us about clearly is grievable. I filed a grievance and I never got an answer. That makes probably
the (inaudible) that we hear.

We also hear, by the way, with some frequency, I went to grievance and the guy was really helpful. That doesn’t mean the grievance (inaudible) in the appropriate way, but we hear over and over again that the grievance system is not functioning in the manner that the rules spell out, and in many cases it seems to be functioning just to suppress and divert people’s complaints.

I can go on about different things you could be doing for a long time, but let’s let somebody else have an opportunity.

DE Lone: I guess I had suggested that there are some comments about other standards that we didn’t touch on, and maybe I’ll go through some of them and people can elaborate or even ask questions, and I’ll give the sections under your new numbers.

103D-2, personal hygiene, restricting showers. I think that there is some concern that this could be forever and that there should be some more formalized review for how long the standard can be invoked. And that the level of infraction that revokes shower privileges should actually be a serious infraction, and that should be specified in the standard.

We also think that there should be an explicit
statement that the denial of showers, even to people
(inaudible) segregation, cannot be used when temperature
is exceeding 85 degrees outside and when otherwise
emergency provisions must go into effect. That even
people who have committed serious infractions should not
have their health and wellbeing jeopardized in those
circumstances.

SIMMONS: Are many of these things (inaudible).
DELONE: This is not in written comments,
certainly not that I have provided. I also don’t spend my
day doing (inaudible) work so I’m not sure that they’ll
all be good, but I will try to do what I can.

In the hot water for shaving, we just recommend
that everywhere you talk about hot water and its
appropriate addition to the standards, that you consider
adding the standard of 100 to 120 degrees for purposes of
being clear what you mean by hot, and also that there is a
public safety and public health reason to stop to say 120
degrees is the top.

We bring forth, I think it is a written comment,
that you don’t take “with care and comfort,” out of the
standard on shaving.

On personal clothing, just one other thing to
consider, and I think there are so many barriers to
actually implementing a uniform proposal that it may be a long time before you could even imagine getting there. Two things, one is that in the American Public Health Association Standards there are standards about laundry, and if you look at them, and to the extent you find any of those standards appropriate, consider adopting them in your prerequisites about cleaning.

The other thing is that there was a lot of discussion in the public hearings about the visit time and what it does to a person’s family and particularly their children and having people come to visit in jumpsuits. And if you are going to ever get to --

SIMMONS: By the way, there is no determination that it’s a jumpsuit, so --

DELONE: Right, and so what we would like to suggest is that if you are going to go to a uniform standard, currently visits are done in jumpsuits, but if you are going to go to a uniform standard, that you consider a uniform standard that is not like a convicts, that is, in fact, respectful, that has some personality, that perhaps has some variation to try and reinforce the notion of innocent till proven guilty and (inaudible).

(cross talk)

BOSTON: Just to add to what Maddy said, I think
this is what she meant, but let me make it explicit, if
you’re going to make a change in clothing, then the
jumpsuits at visiting should go, is that what you were
saying?

DELONE: Or even if you don’t make a change in
clothing, we should ask the Department to let the
jumpsuits (inaudible). The children’s testimony, the
young people’s testimony is very compelling. And whether
or not there is a change in clothing standards, I would
ask that people have access to under garments that match
their gender.

SIMMONS: The clothing is usually sensitive to
those issues of gender identity in general.

DELONE: I mean I can’t emphasize how incredibly
important it is to people, people who have gone through so
many things that I have heard in prisons, are attempting
suicide because they can’t get access to the clothing they
need in a variety of systems. But it is so devastating to
a person’s dignity and mental health not to be able to at
least wear underwear that matches their gender.

MANNING: Dora Manning, Correctional
Association. Why should I be dressed the same as a person
who’s been convicted and I’m not convicted? And not only
that, those uniforms they give you, they are soiled,
(inaudible) soiled, used, and they give them to you and they tell you that you have to wear them. I felt I shouldn’t have to wear something like that. Who wants to wear soiled uniforms? And they have a laundry in there that they claim, the same way they do personal sheets and blankets and all that, I don’t feel I should have to wear, if you are convicted and you have to wear a uniform and I’m not convicted, why should I have to wear a uniform? I really don’t see, you know, the purpose in that.

DELONE: On the recreation standards, we would encourage the Board to either develop on its own or the Department develop a definition of inclement, since the issue of, I don’t think it’s ever happened and there are in fact times when it is too cold or too wet to go outside and the standards should be clear so that there can be a discussion when, in fact, people should be afforded an opportunity for indoor recreation.

We think that the level of seriousness of the infraction and consecutive deprivation should not be allowed on recreation, and you should look more carefully at putting some limits on when you would allow restricting recreation to people.

I think the concerns about a broad discretion on the definition of religion and religious congregation ha
already been raised. We heard some comments what it is, I echo, again, with the coalition.

Attorney visit, there are no proposals on access to courts and legal services. There were no proposals made, but it may be consistent even within this guideline that there should be time standards imposed on the timeliness of attorney visits. And I would suggest within one hour arriving at a facility or one hour of arriving at a central area or 45 minutes of arriving at a facility, or one hour everywhere that lawyers and their clients get to meet. It will encourage lawyers to visit their clients on Riker’s Island or in the jails. It is currently the Department’s practice, it had been court ordered, it seems a reasonable standard, and did encourage increased attorney visiting, which I think in the long run suggests this is a good thing.

VALLONE: Where was that specific to?

DELONE: That’s in 108, I think it’s C3 on attorney visits, we’d be adding a timeframe, a standard for that timeframe.

VALLONE: Thank you.

DELONE: We would also ask in the law library areas there may be a couple of changes, people made comments of either adding time or people in special
populations not taking time away from people, from general population to give more library time to people who need it. I think Legal Aid had a recommendation of five additional hours per week per facility respective housing, that should be looked at. And I would also encourage the Board not to eliminate its requirement that the Board get periodic reports on what materials are supposed to be in the law libraries.

The quality of material in the law libraries is extremely important, Corey talked about it earlier, for people to do some (inaudible) work on their cases and the Innocence Project people use law libraries to find out what their statutory rights are and to makes plans of innocence or (inaudible) conviction. We just encourage that monitoring provision to remain, it suggestion omission, and perhaps that the standard of materials, add that materials must be in good condition.

We ask you to consider the possibility adding people to have access to computers, that is separate from the internet, but to move away from the typewriter standard which has been there since 1978. Just that it would be easier and actually cheaper to repair and replace computers these days than it is typewriters.

One thing that we didn’t talk about today but we
would ask that you not vote to restrict visits within the
first 24 hours to non-contact, you allow those visits to
be contact. There are, in fact, very few visits within
the first 24 hours, we’re not sure that there has been any
incident where there has been a problem, particularly for
family members and young people, people with mental health
frailty, having some contact and the ability to touch
someone in that early days. It seems very important to us
and there hasn’t been any compelling reason that we have
heard articulated to disallow that and we would ask you to
reconsider that proposal.

There is a proposal about having at visits having
visitors give their property and put them in lockers. We
will assume that will come with the requirement that the
Department have such facilities for storage, which is a
big improvement, it would be terrific, in the city jails.
We assume you don’t mean the removal of religious medals
or wedding rings, and if you don’t mean that, if you’d
please amend the standard to make that clear so that
people can continue to wear religious items or wedding
bands.

I think, unless I have forgotten something, those
are specific additional comments that we had, and I’d be
happy to answer questions or other people who probably
would, too. Is there anything I have forgotten here?

BOSTON: I would just add on closing, in addition to the concerns that have been expressed, there is a very serious problem in the Department of Correction with temperature control. This is one of the issues that we are still litigating about, I regret to say, and it is too cold in the winter, it is too hot in the summer, and sometimes it’s even too hot in the winter, I don’t understand this. But we have the recurrent problem that some housing areas have temperatures in the 90s in the winter.

And the relevance of that to clothing is this. At present, people are able to obtain from families long underwear, shorts, clothing that is adaptable to temperatures that are not well controlled. And if you do make a change in the clothing standard, it seems to me that you must make some sort of change to provide prisoners with a sufficiently wide array of clothing that is responsive not only to changes in the season, but also to the deficiencies in the temperature control in the jails.

And I -- go ahead.

DELONE: I have two other (inaudible), one in, I think we followed your rules and tried to stick to
substance, so just one moment of apology, which is just that I am going to give to you for filing of comments a petition signed by over 900 people which references the overcrowding, the 23 (inaudible) law, and makes the Spanish language issues, contacted within the first 24 hours, and the enhanced surveillance procedures (inaudible) a concern of the nine people that are here.

So just on behalf of the folks who are here, the other 25 organizations in the coalition, and lots of individuals who have concerns, I’m sure if you wanted to have additional discussions about any of these, if you have any additional questions, you know, talk specifically about language, if there are answers you didn’t have today or things you didn’t hear from us, we are available for ongoing discussion. And I think, in general, we would ask that, for the exception of those standards which are very clearly articulated which we have expressed absolute support, we would really ask you to consider not adopting them now and to have a longer and more thorough discussion which a much broader community as we go forward and that is really a request of you. But that if you have to vote on most of these proposals now, we would ask you on most of them to vote no.

SIMMONS: Thank you very much, is there anything
else --

    NAHMAN:  Well I would ask things that are not there, do any of you think something addressing education, or what about the witnesses that are hearing the rights of children of prisoners, or something within the idea of is the process of discharge planning, and maybe a lot of the consent decrees that have come down.

    CAMPBELL:  I just recently visited Rikers Island, and I think in the form of programming, in general, there is a great need, you know, after taking the tour of Rikers Island, you know, Joann Paige, who is the President and CEO of Fortune Society, described it as “punishment by boredom.”

    So many people are just laying in their bunks.  I mean if you want to say to yourself discharge planning is one great way of setting an individual to go out, but you have to give an individual the tools that are necessary to keep them from coming back into the system, education, programming, answering the point of addiction and substance abuse.  You know, there were issues raised that a person’s stay there may only be 45 days, well that may be true, but there are a lot of individuals that are there for much longer.  And I think programming is a major piece about it.
You have to get into the business of saying what’s bringing you here and what do we need to do to make sure that you don’t come back. I mean punishment is one form for, you know, taking care of an individual who’s committed a crime, but as a society and public safety issue, you want to make sure that individuals are not going out and recommitting these crimes. And one of the ways that you do it is you provide a level of programming that addresses those issues, and it is not being done right now in the city institutions. It’s being done on the state level, but it is not being done on the city level.

BOSTON: I think in addition to those concerns, Legal Aid has set forth in its comments a number of areas where we believe that standards ought to be promulgated. That’s at the end of our longer set of written comments. And in addition to the areas that I’ve mentioned earlier, grievances and search practices, and the treatment of visitors, there are time limits for intake processing, which used to be the subject of a court order and are not, there is the confinement in cells without working sinks and toilets, another matter which used to be the subject of a court order, but is not, and we believe continues to be an occasional problem in the system.
There are both the attorney visits, the delays in both attorney visits and social visits. We have had court orders on those subjects in the past and since the social visit court order was terminated there has been a very substantial deterioration in performance. The standards used to be one hour from the time you arrived at Rikers Island to the time that you saw your visitor, and while they didn’t conform to it all the time it came pretty close after the order and (inaudible), and they worked out the procedures, and that is apparently sadly deteriorated, but it’s been shown that it can be done.

Similarly, with the attorney visiting standards, what Maddy described, was a court order, it was achieved, it’s been terminated, it should be preserved. There is a substantial problem with delays in court transportation, people languish for hours sometimes after court appearances that can be very brief before they can be brought back to the jails. Sometimes this can happen day after day, an individual is on trial, and that can have a substantial impact on a person’s ability to participate in a trial if they’re in court until five o’clock and then they wait several hours before they get back to jail and they have to get up at the very early hours and people are awakened. I think that’s a very serious problem, it’s a
practice that the Department of Correction needs to clean up and make more efficient and hasn’t for a number of years, although they are now better at actually getting people to court. And that is an appropriate subject for a standard.

Education, you mentioned (inaudible), and that is part of our list, that the rights of education that are embodied in state law, and that we have been prosecuting in federal litigation are a fit subject and necessary subject for this body to deal with.

Issues of cross gender surveillance, which is somewhat related to the conduct of searches, need to be dealt with. And beyond the discrimination discussion that we’ve had, the language provisions, there needs to be substantial thought to adding additional categories, most notably transgender persons and gender identity and sexual orientation, and disability, which nobody really thought much about in 1978. And I think that beyond simply adding new categories to the list, thought needs to be given, and I’m not in the position to elaborate on it at the moment, to making sure that some of these guarantees are actually carried out.

I can tell you, you have heard this from Gabriel, but I can (inaudible) relay this experience, as well, the
treatment of transgender people in the jails has at times been beyond shameful, people have almost been put on display like animals, and something needs to be done about that. It is (inaudible) but it is an intensely abusive treatment that some (inaudible) have got to go through.

And the issue of the abusive treatment of people with disabilities and accessibility is an issue (inaudible) for many years and the problem is far from solved, and into the systematic retention, and in addition to adding the category of disability (inaudible) to a national standard.

DELONE: Isn’t that one of the recommendations, and maybe Silvia Rivera has made it in their comments, but on the issue of disability and on gender identification, the place to look, first place to look at the specific language is the New York City Human rights – (cross-talk)

SIMMONS: And I thank you, John, for your comments. I want to distinguish, however, there may be endless issues of operational difficulties or concerns that you and we have in terms of execution of programs or practices that’s different than what gets embodied in the standards in my mind. So, you know, I appreciate what you’re saying, so to the extent that there are operational
concerns, that there is a procedure or standard in place in the Department for whatever set of reasons, is not meeting that because operationally they are having difficulty, that is an issue that we should be concerned about, as well. But I see that as distinctive from thinking in the context of what we codify with regards to standards, our job is not to day to day manage the Department, our job is to provide oversight.

So all of the concerns that many of you have raised around particular instances, we have field staff that are on Rikers all the time, we want to hear those things, if we don’t hear it, we can’t respond to it, but I do want to distinguish between those issues and the ones that relate specifically to --

BOSTON: I take you point and I don’t disagree with it in the abstract, but I think there are many areas where the operational problems in the field really inform what the Board should do in terms of regulation. Because frankly if the Department does not seem able or willing to carry out a general directive, then you may have to give them a more specific directive in order to make sure it works and make sure it happens.

DELONE: Can I ask a question about your July meeting which is a public meeting on Rikers --
SIMMONS: It’s not a meeting.
SIMMONS: It’s not a meeting.
: It’s a tour and inspection.
DELONE: Okay.
WOLF: Can I move that we adjourn, I think that we’ve accomplished what we want --
VALLONE: Before we adjourn, I think we need to just take a look, since we don’t really have an opportunity to do that, July we’re going to be at Rikers Island, August we don’t have a meeting, September is the next time we get together as a board, do we want to suggest possibly a forecast for September, October, November, December?
SIMMONS: I’m not very good at forecasting. What I want to be able to say is we’re going to have our inspection in July, by the end of August the staff will produce the documents that we have asked for in terms of gathering all various commentary, like it’s the mid rush or something, I don’t know how to think about what they’re doing, but they’ll have the various commentary related to the particular standards and all the other comments that have come in in some clear form. I mean we all have the original text and then we will have this document that we can all work from that will be a summary prepared by the
staff, the staff will not be doing anything this summer by
doing this obviously. But by the end of August I expect,
you know, by Labor Day or whatever, I expect we will all
have that in our hands and I would like to feel that we,
from my perspective, anyway, and if you have it before
Labor Day, all the better, so, you know, my goal would be
to have it August 15th, but I’ll defer to the staff in
terms of their ability to generate this and we’ll send
out, make sure by July we’ll know when to expect this.

And then we should talk at our meeting, you an
agenda item obviously in September will be how much more
time, other questioning, whatever Board members feel that
they need before we move to a point where we actually want
to formally vote on any of these or whether we want to
look at new language, I just don’t want to, you know,
that’s part of the conversation we’ll have in September,
and if we need to have that conversation beyond September,
so be it.

VALLONE: I think that’s the important step, I
think for us in September to realize there will be an
opportunity for our individual comments and review, maybe
we set some type of additional subcommittee hearing for
the minimum, otherwise we’ll just keep talking amongst
ourselves so that we don’t say, okay, October we’re
voting.

I think based on the tremendous information that’s been given to us, I personally want to thank everyone for coming and I’m sure everyone has the same feeling, this is the type of meeting where we learn more in two hours than going through, you know, when you’re studying for a final and you choose which textbooks you are going to look at, it’s impossible to look at each one of these. But now the challenge is what to do with it, and that’s what I just wanted to, so everyone understood, September will be our first attempt then to dissect this and go through this.

SIMMONS: And presumably, during the course of the summer, as well, despite the summary document that the staff is going to be preparing, we have all the comments and everybody on the Board has an affirmative obligation to be reviewing and reading all of that, the testimony from the hearing and I know several of you testified at a City Council hearing, although that wasn’t our hearing, we have several copies of that testimony, as well, anyone who wasn’t there wants to read that, so that we all, you know, we get, our affirmative obligation as Board members, our job now is to digest this. The commentary isn’t over, there’s still a few more weeks and there may be more
things coming in, but that was the whole point of the process was to put things out there, to receive comment, and then for us to be able to individually digest it and form new opinions, change opinions or reinforce our opinions, whichever it is, and then to have a conversation with ourselves.

But again, on behalf of certainly myself, and for everyone else it’s been very helpful and we appreciate the efforts to be a part of this process. Thank you.

VALLONE: Move to adjourn.

SIMMONS: All in favor.

ALL BOARD MEMBERS: Aye.

SIMMONS: Adjourned.

(Whereupon the meeting is closed at 11:50 a.m.)
CERTIFICATE

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the Board Meeting regarding Proposed Amendments of the New York City Board of Correction, was prepared using mechanical transcription equipment and is a true and accurate record of the proceedings.

Tape 1, sides A and B
Tape 2, side A

Signature_____________________________________________________

CAROLE LUDWIG

Date: June 23, 2007