

**NEW YORK CITY  
BOARD OF CORRECTION**

**September 14, 2006**

MEMBERS PRESENT

Hildy J. Simmons, Chair  
Michael J. Regan, Vice Chair  
Stanley Kreitman  
Rosemarie Maldonado, Esq.  
Richard Nahman, O.S.A.  
Milton L. Williams, Jr., Esq.  
Gwen Zornberg, M.D.

Excused absences were noted for Members Alexander Rovt and Paul A. Vallone, Esq.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner  
Carolyn Thomas, Chief of Department  
Stephen Morello, Deputy Commissioner for Public Information  
Mark Cranston, Commanding Officer, Office of Policy and Compliance (OPC)  
Florence Hutner, General Counsel  
Ronald Greenberg, Director, OPC  
Harry Ahl, Deputy Warden  
Vaughn Crandall, Special Assistant

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Louise Cohen, Deputy Commissioner, Correctional Health Services (CHS)  
Jason Hershberger, M.D., Acting Assistant Commissioner, CHS  
Robert Berding, Director, Clinical Services, CHS  
George Axelrod, Director of Risk Management, CHS

OTHERS IN ATTENDANCE

Paul Annetts, State Commission of Correction (SCOC)  
Diane Bagle, Rights for Incarcerated People with Psychiatric Disabilities (RIPPD)  
Jonathan Chasan, Esq., Legal Aid Society, Prisoners' Rights Project (PRP)  
Alison Coleman, Prison Families of New York  
Don Doherty, Division Vice President, Prison Health Services, Inc. (PHS)  
Cassi Feldman, Reporter  
Alan Feuer, *New York Times*  
Jennifer Hickin, Logistical Coordinator, Osborne Association  
Gregory James, RIPPD  
Tanya Krupait, Center for Addiction and the Family, Phoenix House  
Patricia Marcus, Executive Director, NY State Ass'n. of Criminal Defense Lawyers

Robert Moore, *Daily News*  
Malvina Nathanson, Esq.  
Kyle S. Nesbitt  
David Newton, RIPPD  
Lisa Ortega, RIPPD  
Trevor Parks, M.D., Medical Director, PHS  
Jennifer Parrish, Director, Urban Justice Center  
Becky Penney, Group Vice President, PHS  
Carlos Sabater, RIPPD  
Sidney Schwartzbaum, President, Asst. Dep. Wardens/Dep. Wardens Association  
MaryLynne Werlwas, Esq., PRP  
Dale Wilker, Esq., PRP  
Eisha Williams, Legislative Financial Analyst, City Council  
Milton Zelermyer, Esq., PRP

Chair Hildy J. Simmons called the meeting to order at 9:35 a.m. A motion to approve minutes of the July 13, 2006 Board of Correction meeting was approved without opposition.

Chair Simmons thanked all Members and noted that the Committee system has helped the Board to move forward on various projects.

Member Gwen Zornberg, M.D., Chair of the Health Committee, reported that the Committee is working with the Department of Health and Mental Hygiene (DOHMH) to draw up a new TB variance. She said DOHMH is computerizing and updating the City's medical health system, which will enhance its approach to identification and treatment of tuberculosis. She noted that an editorial in today's *New York Times* emphasizes the importance of the issue.

DOHMH Deputy Commissioner Louise Cohen presented a report, as follows:

Dr. Jason Hershberger, who has directed mental health services for Correctional Health Services (CHS), is now acting assistant commissioner for CHS. DOHMH is working closely with the Department of Correction (DOC) on a variety of discharge planning initiatives. There have been several discharge planning fairs, in which community-based organizations have been brought to several jails to address a variety of health issues, including primary care, substance abuse and mental health residential programs. There will be a "Take Care DOC" wellness event for correctional officers on September 21<sup>st</sup>.

DOHMH is very close to announcing a vendor for electronic health records. The process has involved examining all of the ways providers document what they are doing.

Dr. Hershberger reported that one of the areas that the Board inspected during its June visit to Rikers Island, the Intensive Treatment Unit, opened on July 31<sup>st</sup> in GRVC. He described it as a part of the punitive segregation unit, with enhanced mental health treatment services. He said the unit has a census of approximately 20 patients. Dr. Hershberger added that DOHMH has hired Dr. Rebecca Ginn as director of the HIV Continuing Care project on Rikers Island. He said that CHS' Division of Public Health is preparing a follow-up report on the health and mental health status of incarcerated people. Dr. Zornberg said she was gratified that DOHMH is doing this work, noting that deinstitutionalization of large mental health hospitals over the past few decades has made it necessary for prison systems to provide psychiatric care. She said Rikers is the second largest provider of psychiatric care in the country. Vice Chair Michael Regan asked who is the largest provider. Dr. Zornberg replied that it is the Los Angeles County Jail. Chair Simmons wished Dr. Hershberger well in his new position.

DOC Commissioner Martin Horn presented a report, as follows:

DOC hosted a training program for BOC field staff at the DOC Training Academy. Subjects included infectious disease detection, classification, investigative report writing, use of force, and a security overview. Evaluations were very positive.

Beginning on July 17<sup>th</sup>, Rikers Island was affected by the loss of power during the heat wave, as two of the four ConEd feeder lines went down. All Rikers Island facilities have generator backup capability and these were pressed into service when, on July 19<sup>th</sup>, all four ConEd feeders were “out”. The outside temperature fluctuated between 99 and 101 degrees. Some facilities, including GRVC, OBCC, RMSC and the West Facility, have so much generator capacity that staff and inmates hardly noticed the difference. The original buildings at AMKC, GMDC, EMTC and RNDC operate only on emergency circuits. On July 23<sup>rd</sup>, power was restored, but on August 1<sup>st</sup> (when the outside temperature was 104 degrees ), DOC was requested by ConEd to “shed load”, which DOC did until August 4<sup>th</sup>. Staff handled the situation very well. Lights were out in housing units. There were no televisions or fans. DOC provided ice, extra showers and extra yard time. During the heat wave, there were 37 to 39 reported heat-related deaths throughout the City, but none occurred in the jails, which is a “remarkable accomplishment”. DOC burned 15,000 gallons of diesel fuel to keep the generators going.

At the end of August and into September, DOC locked down several housing units because of a series of incidents. A small number of housing units in a few facilities account for a disproportionate number of stabbings and slashing, which DOC uses much as the FBI Uniform Crime Reports use robberies and car thefts as “bellweathers” of the level of danger. When two inmates fight and one punches the other, or when one steals sneakers from another, the incidents may or may not be reported. All stabbings and slashings are reported, so DOC uses these incidents as a standard. DOC has reduced these incidents to historic lows, building on the achievements of prior administrations. Last year there were 37 reports; in the preceding year there were 30 – as compared with 1,000 in 1995. When DOC looked at reports from the last 14 or 15 months, it noted that two facilities, RNDC and AMKC, accounted for 54% of the reports. Most incidents occurred in a small number of units within those facilities. This is due in part to the construction of the facilities. Inmates fashion shanks from the plastic coverings of light fixtures and from fins taken from the hot water heating system. DOC counts all incidents carefully. The lockdown was not a total lockdown. Rather, DOC reduced the number of hours that inmates in the units could come out of their cells, so that only half the inmates came out at a time. This resulted in five hours of lock out time per inmate in AMKC’s Lower 9 and 11, from September 5<sup>th</sup> through September 8<sup>th</sup>, and at RNDC’s 4 Upper North from August 24<sup>th</sup> through September 7<sup>th</sup>. Inmates at RNDC’s 4 Main North and South were restricted from September 1<sup>st</sup> through September 7<sup>th</sup>. These changed procedures

enabled DOC to reassert control, and allowed officers to supervise fewer inmates. The changes were necessary because, unlike the NYPD, DOC has fixed posts that must be staffed and is unable to flood a housing area with extra officers. At AMKC, a mid-level manager issued an unsigned directive that inappropriately and incorrectly stated that “this modification was being done pursuant to a variance granted by the Board of Correction.” This was a mistake for which DOC apologizes. The inmates were so informed, and the offending notices were removed.

DOC continues to work in Brooklyn and the Bronx on its plans to reduce the number of jail beds in the City. At the end of the capacity replacement plan, New York City will have approximately 1,200 fewer jail beds than it has today. DOC will build a new state-of-the-art, air conditioned jail in the Bronx and increase capacity in Brooklyn, which will reopen in a “mixed-use setting”. This in turn will enable DOC to close all of the modular and Sprung housing units on Rikers Island.

[At this point the meeting was interrupted by members of the public who attempted to speak without being recognized by the Chair. At 10 a.m., the meeting was adjourned. At 10:05 a.m., the meeting resumed and Commissioner Horn resumed his report, as follows:]

The capacity replacement project is an open process that continues to attract attention. A Uniform Land Use Review will occur, including an Environmental Impact Statement, involvement of the City Council, and input from the community. Not all community groups are “happy”, but there is a structure for the process. DOC has more capacity than inmates. The current census is 13,932 inmates. However, separations required for punitive segregation, male-female, sentenced-unsentenced results in the loss of 5 to 8% of the beds, and another 5% of cells are closed for maintenance. At the end of the project, DOC will have a capacity of approximately 17,000 beds.

Board Member Richard Nahman, O.S.A., asked about a *New York Post* article entitled, “Prison Horror House”. Commissioner Horn said the article reports a series of assertions by someone who is not employed by DOC. He said DOC has no record of this individual making any allegations similar to those in the article. He offered the Board a copy of the complaint, noting that anyone may allege anything.

Board Member Stanley Kreitman, chair of the Minimum Standards Review Committee, reported that he and Committee colleagues Mike Regan and Milt Williams met endlessly with the Department to update the Minimum Standards and have developed a series of recommendations. He said the Committee briefed all of the BOC Members, who made comments which the Committee tried to incorporate into its final document. He noted that today’s vote is not a final vote. Chair Simmons reiterated this point. She applauded the work of the Committee, and everyone who has contributed significantly to this process. She said the vote today is to keep the process moving. Chair Simmons said

the Board is not voting to adopt new Standards today. She said that the Committee's recommendations, as reviewed by all Board Members and presumably discussed among the Members today, would then go to the Law Department and the Department of Correction, and any other City department that needs to review them and comment to make certain that the Board is not in violation of any City regulations or procedures, or exceeding our authority. Chair Simmons said that thereafter, there would be a 30-day notice period and then the Board will hold a public hearing, at a date and place to be determined. She said appropriate notices will go out to all interested parties, broadly defined, and anyone who wishes to comment or testify may do so. She expressed the hope that all Board Members will attend the public hearing. Chair Simmons said that all of the comments will be processed and considered, and only after that will the Board have a vote to adopt the Standards. She said the Board has been talking about the process all year, and in July, Mr. Wolf laid out the procedures to be followed. Mr. Wolf said that the notice includes information about the public hearing, and also constitutes "publication" of the Board's recommendations, as presented by the Committee and voted upon by the Board. He said that actual notice will be given to a wide variety of people and organizations that are described in Chapter 45 of the *City Charter*, the City Administrative Procedure Act, and that this will occur after the Board has heard back from the Law Department. Chair Simmons said all Board Members will be apprised of all written comments that are received, as well as testimony at the public hearing. Mr. Kreitman added that there is much time for public discussion and debate.

Mr. Kreitman said that he asked Mr. Wolf to update the Committee's recommendations, and to distribute them at the conclusion of the meeting. He urged the Members to read the draft document carefully. Father Nahman asked if the document to be distributed includes changes he and other Members suggested. He said because he has not seen the new document, he is not sure that he wants to vote today. He added that at some point there is collective wisdom that comes from a group discussion, which the Board has not had. Father Nahman said his only participation was in a conference call with one or two other Members. He said that before the Board presents a document to anyone else, the Members should talk to one another. Mr. Regan agreed, noting that there is a rich body of knowledge on the Board and outside the Board. He said the Board is now poised to share the document with lots of interested parties, some of whom will agree and others who will not. He said that at this point there is no sense of finality to the process. Mr. Kreitman said the vote is just a step, and asked Mr. Wolf to comment. Mr. Wolf said that the document to which Mr. Kreitman referred is the document the Members already have received, and the Committee has proposed three further revisions that also have been distributed to the Members by email. He said the suggestions for these latest revisions emerged from the briefings, and are to be incorporated into the draft revisions document. Chair Simmons said that within the Committee, there has been a lot of deliberation and conversation. Board Member Milton Williams agreed, noting that there was much "back and forth" among the Committee members and also with representatives from DOC. He said it was a careful and painstaking process, and that all issues were vetted. Chair Simmons recalled that she said at the July meeting that once the Committee had developed its initial recommendations, the Board would arrange for briefings of individual Members or small groups of Members so that they could have

some back and forth discussion about how the Committee reached its recommendations. She said that all Members had participated in the briefings, and have had an opportunity to read the document and present comments, many of which have been incorporated into the draft revisions document. Chair Simmons said that the Board is now at a point where it is ready to ask DOC to make its comments, to ask the Law Department to make sure that the Board has not overstepped its bounds, and then to invite the wider public to comment. She said that once we have those comments, the Board will have, at both the public hearing and a subsequent Board meeting, exactly the kind of conversation that Father Nahman is talking about, at which time all of the Members need to discuss and debate and agree on a final promulgation of new Standards. Chair Simmons said that the Board will have a better conversation, when it has benefited from the feedback it receives from the public, to determine whether the Board wants to go ahead and adopt the changes proposed by the Committee. She said that it remains her commitment to the Board to complete the process by sometime, hopefully early, in 2007. Father Nahman said that the only modification he has seen is under "Personal Hygiene". He asked if the other suggestions were ignored. Mr. Kreitman said that another of Father Nahman's suggestions was proposed by the Committee, to add definitions of "prisoner", "detainee", and "sentenced prisoner". Father Nahman said he had made observations about limiting rules and regulations to English and Spanish. Mr. Regan said this issue has been addressed in the Committee's recommendations as well. Mr. Kreitman said that the draft includes language to "ensure that non-English speaking prisoners will understand all written and oral communications." Mr. Wolf said that the document that is being finalized is the multi-colored document already distributed to the Members together with the three additional items distributed by email. He said these were the definitions, the clarification on what the Committee is recommending with respect to clothing, and the clarification that the lock-in provisions do not apply to prisoners in CPSU. Mr. Kreitman said that several Members questioned the recommendation of uniforms for prisoners, so the Committee is making it very clear that detainees may continue to wear non-institutional clothing until the Department is ready to require all prisoners to wear institutional clothing by establishing and operating laundry services and personal clothing storage and retrieval services. He said Board Member Rosemarie Maldonado raised an issue about the recommendation that DOC no longer should be required to assign Spanish-speaking officers to program areas. He said that as a result, the Committee has recommended that every inmate will be assured that there will be interpreters so that they will understand all orders and procedures. Mr. Kreitman said he is prepared to go over the major recommendations, and discuss them one by one. He added that the Department of Correction made many requests for changes that the Committee is not recommending. He said he did not want to create the impression that the Committee made recommendations simply because they were sought by DOC. Chair Simmons said that the Committee's deliberative process was done with concern for the Board's role – which is not at all the same as DOC's role – and the Board's view of what is appropriate and important. Mr. Kreitman said that the Committee has a reason for recommending each item. He said the Committee's main recommendations to the Board address classification, personal hygiene, overcrowding, lock-in, recreation, access to courts, visiting, telephone calls, correspondence, and variances.

Mr. Kreitman said he suggests that the Board vote to move the process to the next stage. Mr. Wolf said that the document to be presented to the Law Department will follow the legislation model, in which deleted material will be bracketed and new material will be underlined. Mr. Regan said he wanted to reiterate his point that the Board will have an opportunity to benefit from the collective wisdom offered in comments and testimony from advocates and interested parties. He said he looks forward to doing so. The Chair recognized Dale Wilker, an attorney with the Prisoners' Rights Project of the Legal Aid Society, who asked whether there will be an opportunity for interested parties and members of the public to offer amendments. Chair Simmons said that the public process calls for interested parties to make whatever comments they choose to make. She said the Board will review all comments, in whatever form. Ms. Maldonado pointed out that all Board Members are looking forward to the public comment period. She said the comments will be very important to her. She said that some of the recommendations are controversial, and the public debate will be very useful and will provide an additional basis for the Board to carry on its conversations. Ms. Maldonado said that, for example, a recommendation to reduce square footage in dormitories is controversial, and she looks forward to reviewing all comments that are offered, written or verbal. Chair Simmons agreed, noting that it is each Board Member's affirmative obligation to listen and review, and then discuss and debate and thereby learn from the process. Ms. Maldonado said she has not made up her mind on a number of the Committee's proposals, and she will be looking at them very carefully. Dr. Zornberg said that the sooner the Members learn what the interested parties have to say, the better to inform the Board's process. Chair Simmons said that this must await review by the Law Department and then a 30-day waiting period. She said that her goal is that before the end of the year, the comment period and public hearing will have occurred. She added that she also hopes that the Board is able to have its public discussion and vote before the end of the year, but if not, in early January. Mr. Wolf added that after the Board conducts a vote, whatever is approved must be published. He said that after publication and a courtesy copy is delivered to the Speaker of the City Council, 30 days thereafter amendments become effective. Milton Zelermeyer, an attorney with the Prisoners' Rights Project, asked if the public hearing date also is the closing date for public comments. Mr. Wolf replied that this is a decision for the Board. Father Nahman suggested that the Board pick a date in mid-January, not on a regular BOC meeting date, for the Board to get together to discuss the proposals and the comments received. He said the discussion will take a full day. Chair Simmons noted that the discussion must be at a public meeting. Father Nahman agreed. Chair Simmons said that the discussion will be more productive if staff has an opportunity to organize the comments by subject matter. She said that once the comment period begins, the Board should be in a position to schedule a separate discussion meeting. Chair Simmons said that after 30 years, the Board owes those who are incarcerated, the citizens of the City, and the Board itself, a careful, thoughtful and thorough process.

A motion to move forward was made, seconded, and approved without opposition.

Mr. Wolf said that he will report at the October meeting on efforts to fill a field representative vacancy. He thanked DOC for the training assistance it provided to BOC staff, and added that a consultant from the National Institute of Corrections is currently assessing procedures of the Field Operations Unit. He said that NIC trainers will be working directly with BOC field representatives, and reminded the Members that Kenneth Armstead will participate in NIC's Corrections Leadership Training in Longmont, Colorado, from September 19<sup>th</sup> through September 29<sup>th</sup>. Chair Simmons said BOC staff training has advanced significantly. She reminded all present that the Board's next meeting is scheduled for October 5<sup>th</sup>.

After noting that the Standards revision process will result in the Board no longer having to "manage by variance" the Chair entertained a motion to renew existing variances, which was approved without opposition.

The meeting was adjourned at 10:40 a.m.