

**NEW YORK CITY
BOARD OF CORRECTION**

November 16, 2004

MEMBERS PRESENT

Stanley Kreitman, Chair

Richard Nahman, O.S.A.

Jane Paley Price

Michael Regan

Hildy J. Simmons

Excused absences were noted for Vice Chair John R. Horan and Member John H. Banks III.

..

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner

Tom Antenen, Deputy Commissioner for Public Information

Florence Hutner, Deputy Commissioner for Legal Matters

Mark Cranston, Deputy Warden, Executive Assistant to the Commissioner

Darlene Merritt, Deputy Warden, Inspectional Services & Compliance Division (ISCD)

Elizabeth Myers, Director, ISCD

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

George Axelrod, Director of Risk Management, BCHS

Robert Berding, Director, Clinical Services

Melanie Guinyard, Administrative Manager

OTHERS IN ATTENDANCE

Donald Doherty, Vice President, Prison Health Services (PHS)

Stephanie Gaskell, *New York Post*

Nahreen Khandker, Policy Analyst, Fire & Criminal Justice Services Committee, City Council

Jeff Krupski, Mayor's Office of Operations

Carl Thelemaque, Legislative Financial Analyst, City Counsel

Russell Unger, Legislative Counsel, City Council

Dale Wilker, Legal Aid Society, Prisoners' Rights Project

Chair Stanley Kreitman called the meeting to order at 1:05 p.m.

Chair Kreitman asked DOC Commissioner Martin Horn to comment on a recent incident in which an inmate was found to be in possession of \$5000 cash. Commissioner Horn said the inmate claims he had the money on him when he entered the jail as a sentenced misdemeanant. The Commissioner noted that as a result of court decisions DOC does not strip frisk misdemeanants. He added that DOC believes the inmate's story that he didn't surrender the money because "he didn't "trust us". BOC Executive Director Richard Wolf asked whether the money should have been discovered during intake search procedures. Commissioner Horn reiterated that DOC does not conduct a complete strip frisk of misdemeanants. He added that the good news was that the money was discovered before the inmate could spend it.

Chair Kreitman asked Commissioner Horn to discuss the two inmate homicides that occurred since the Board's September meeting, at the George Motchan Detention Center and at the Bronx Court Pens. Commissioner Horn reported as follows:

Inmate Tyree Abney was assaulted and died on October 3rd at GMDC. Seven inmates have been indicted. The prosecution is pending and the family has indicated in the press that it intends to sue the City. The response of the "B" officer who was assisting Abney out of the housing area at the time he collapsed was outstanding. Seven inmates are being prosecuted by the Bronx DA.

Regarding the homicide at the Bronx Court Pens, inmate Ronald Fesce, who was admitted to DOC on September 19, 2004, was allegedly assaulted by inmate Kenny Taylor and the Medical Examiner has ruled Fesce's resulting death to be a homicide. The charges against Taylor have not yet been upgraded from assault. The DA has limited DOC's ability to interview witnesses and gather evidence, and the Commissioner is limited in what he can discuss about the case. DOC believes there was a fight on October 12th in a pen, which did not result in any immediate serious injury to Fesce. He was alert, coherent and ambulatory and returned to VCBC. An officer saw Fesce's black eye, but Fesce would not say how he received it. Fesce was seen in the clinic on October 13th and the doctor scheduled him for a follow-up visit. Before this could occur, Fesce died.

Board Member Father Richard Nahman asked whether a determination had been made as to the adequacy of the medical care. Robert Berding, Director of Clinical Services for the Department of Health and Mental Hygiene, said that DOHMH will review the care during its mortality review and that it will be discussed during a joint review with DOC. Commissioner Horn noted that the cases pointed out a problem: if DOC does not charge with infractions inmates who are believed to have committed assaults in jail, these inmates, while housed in administrative segregation, are entitled under the Minimum Standards to be

locked out of their cells and go to a congregate dayroom and to visits. He said that BOC staff had assisted DOC in obtaining variances for the inmates allegedly involved in the two homicides, and in a couple of earlier group assault cases. He said that he would like to be able to place such inmates in “pre-hearing detention”, as is done in other systems. Commissioner Horn said DOC will bring to the Board a policy that would “regularize” pre-hearing detention, ensuring that inmates have due process and that the time spent in pre-trial detention would count against a punitive segregation sentence, if one is ultimately imposed. Board Member Jane Paley Price asked whether the Abney case was gang-related, and what is the extent of the Gang Intelligence Unit’s (GIU) latitude to separate inmates. Commissioner Horn said GIU may separate inmates, but it does not have authority to lock-down inmates. Mr. Wolf noted that in most routine cases that are not group assaults, DOC identifies the alleged perpetrator, writes an infraction, and in a tight time frame—usually 24-hours—a hearing is held and the charge is adjudicated. He said that if the inmate is found guilty, immediately thereafter he or she is sent to punitive segregation. He added that the situation described by the Commissioner should arise only when a law enforcement agency asks DOC not to process disciplinary charges until a criminal investigation is completed.

A motion to approve minutes of the July meeting was approved without opposition.

Chair Kreitman said that DOC has made a major variance request, which Commissioner Horn will outline. Chair Kreitman noted that the Board has contacted interested parties, including Legal Aid and the unions, and he said he will read into the record some comments the Board received. He said BOC staff had taken photographs and prepared diagrams showing sight lines in the housing areas that would be affected by the variances. The Chair added that during the next month he expects DOC to present to the Board exactly how DOC would add beds to the dormitories, particularly whether double-bunking would occur. He said the Board would vote on the request at the next BOC meeting.

Commissioner Horn presented DOC’s proposal, as follows:

The City faces a budget deficit in Fiscal Year 06 of approximately \$3.5 billion. The Mayor has directed each agency to come up with cuts of 6%, which would total \$1 billion. DOC’s total is \$47 million. Also DOC has been told to implement a 3% cut, \$23 million, in the current fiscal year to build up a reserve to roll over into next year. The Board’s Minimum Standards, adopted more than 20 years ago, are at variance with the State Commission on Correction’s standards. Some counties operate “better” jails under the SCOC standards. Operating under the “more generous” provisions of the SCOC standards does not “work a hardship” on inmates. Were DOC to add beds to existing dormitories, it could close other dormitories and achieve annual savings of \$2.5 million (\$50,000 per week). This would enable DOC to expedite the closing of some of the older modulars that have the subject of litigation. DOC has identified dorms at four facilities that are the subjects of DOC’s request. At EMTC, capacity at eighteen dormitories housing sentenced prisoners would be increased by two beds (from 58 to 60 beds). At OBCC, capacity in fourteen dormitories would be increased by three beds (from 57 to 60

beds). At BBKC, the capacity of dormitory 8 North would be increased by seventeen beds (from 43 to 60 beds). This dormitory houses City-sentenced workers, so on each shift approximately one-third of the inmates are working and therefore not present in the dormitory. BOC staff has raised questions about sight lines in 8 North, which is somewhat similar housing areas we saw at the Westchester County Jail, although BBKC also has columns that obstruct sight lines. [Commissioner Horn distributed a schematic diagram showing how the beds would be distributed in 8 North. Chair Kreitman reminded the Members that BOC staff had prepared diagrams and photographs for review by the Members.] DOC does not believe that adding seventeen beds “will seriously impair the operation of that dormitory.” If BOC were to grant the variance, DOC would house only City-sentenced workers in 8 North. At VCBC, capacity at twelve dormitories would be increased by ten beds (from 50 to 60 beds). None of the dorms would exceed sixty inmates.

DOC has an agreement on staffing with the Correction Officers’ Benevolent Association. Cross reliefs will be provided. The proposal would free up 247 beds, or five dormitories.

In response to a BOC staff request for violence data in the affected dorms, the following information was presented for the period from January 1, 2004 through October 31, 2004: at BBKC there has been no stabbing or slashing this year; there has been one fight and six discoveries of contraband. In EMTC, in the eighteen affected dormitories, there has been one stabbing, 87 fights, 7 “B” uses of force, 8 use of force allegations and 180 contraband “finds”. At VCBC’s fourteen dormitories, there were no stabbings or slashings, 70 fights, one “A” and fifteen “B” uses of force, and 51 contraband “finds”. At OBCC’s fourteen dormitories, there were 117 fights, one “A” use of force, and 79 contraband “finds”. Fights are occurring in these dormitories at $\frac{1}{4}$ the rate of the rest of the system. DOC does not believe the additional beds requested “will appreciably compromise safety or security”.

Chair Kreitman announced that he would read into the record two letters received by the Board, from COBA and Legal Aid, in response to DOC’s variance request. He said that thereafter Board Members will ask Commissioner Horn questions about DOC’s request, that the Members will review information and materials prepared by BOC staff, and, after careful consideration, the Board will vote on the request at the next meeting.

Chair Kreitman read the COBA letter, as follows:

“Thank you for giving me an opportunity to respond and comment on the variance request by the NYC Department of Correction. The NYCDOC has been closing high quality, secure facilities such as the Bronx House of Detention and the Brooklyn House of Detention and other structures that are maximum security in nature. They argue, in the attached, that this variance will allow them to place inmates at 50 square feet instead of 60 square feet, and will permit them to close 247 beds in the Department’s most deteriorating modular housing. When this representation is placed in context, it is a sham.

“The DOC’s budget has been cut, and the Department has determined that the way to accommodate the budget cut is to crowd inmates into less space. This threatens the security of the inmates and officers. The DOC should take advantage of the reduced inmate count by moving inmates into cells. The DOC should not insult the BOC by insinuating that there is a positive reason, the “deteriorated housing being closed”, underlying their decision. This is strictly about saving money. The safety of the correction officers in the housing areas is secondary.

“I strongly advise you not only to deny this request but to ask the Department to move the more serious classification inmates into cells, and to open some of the first-quality maximum security space that has been closed in recent years. This will have a secondary advantage of allowing them to close the Department’s most deteriorated modular housing. Sincerely, Norman Seabrook, President.”

Chair Kreitman then read the letter from the Legal Aid Society, as follows:

“We have received your October 27 notice of the Department’s variance request. We are deeply concerned about this request since overcrowding has historically been the bane of the City’s jail system and has been linked to inmate-inmate violence, excessive force by staff, and the disruption and sometimes the breakdown of medical care access, food service, sanitation and maintenance.

“While some of the requested changes may seem minor relative to the overall population of the Department, we believe that they may have significant ramifications for facility operations and for the Board’s independent oversight role, a role which does not fit well with DOC’s apparent view that BOC should conform its standards to those of the State Commission of Correction, an agency with vastly less experience and knowledge of the particular problems and history of the City jails. Especially in light of the Department’s pending request for a permanent amendment of the Standards, we are concerned about the prospect of a “race to the bottom” in jail operations that may save the City money but result in recurrence or perpetuation of unacceptable and sometimes dangerous conditions in the jails. We remind the Board that only last year, the Second Circuit affirmed the findings that the jails still did not meet constitutional standards with respect to sanitation, heating and temperature control, ventilation, and lighting.

“Given the importance of the issue, we do not believe that there is enough time between now and the due date of November 10, 2004, for us to make appropriately considered and researched comments on the Department’s proposals. As you know, this office has suffered significant staff cuts, and we remain hampered by lack of access to many of our pre-9/11 files concerning the jail system. We also doubt that there is sufficient time for the Board staff to conduct, and for the Board to review, the detailed and independent examination of jail operations that would be necessary before giving the appropriate consideration to a matter as serious as this one.

“We therefore request that consideration of this variance be put off at least until the December 2004 meeting of the Board, and that the deadline for the submission of comments be extended accordingly. Yours very truly, John Boston, Project Director.”

Chair Kreitman asked for questions from the Members. Board Member Hildy Simmons, noting that DOC's variance request is one piece of DOC's plan to meet targeted cuts, asked whether DOC anticipates seeking to achieve other reductions through variances. Commissioner Horn said that no other reduction measures would require Board action. Board Member Michael Regan asked if the Commissioner could discuss the other measures at this time. Commissioner Horn said that he could not because he had not yet presented them to the Mayor's Office, which may reject some of the proposals. Father Nahman noted that DOC is currently operating at 95.7% of capacity and has 634 additional beds. He asked whether this means that variance beds would not result in population increases in those dormitories unless the overall inmate population increased. Commissioner Horn said that if the overall population were to increase, DOC would open additional space. He said that the savings generated by the variance proposal would be overtime savings. He said that if the overall population reached 14,500 DOC would have to open one of the currently-closed facilities. Ms. Paley Price, noting that the dormitory in BBKC is air-conditioned, asked whether additional inmates would affect quality of life in other dormitories. Commissioner Horn said no, noting that VCBC also is air conditioned, and in the two buildings that are not air conditioned, OBCC and EMTC, the request is to add three and two beds per dorm, respectively. Ms. Simmons asked what percentage of the affected areas house sentenced prisoners. Commissioner Horn said sentenced inmates were housed only in the EMTC dorms and the one BBKC dorm. Father Nahman said he would like to give Mr. Boston the time that he needs to submit a full response. Chair Kreitman said Mr. Boston will have time because no vote will take place until next month, during which time he suggested that Members visit the dormitories in question. Mr. Wolf invited the Members to prepare for site visits by examining the books of photographs of each facility. Mr. Regan asked if the variances would save in the current fiscal year one-half of the \$2.5 million projected annual savings, and Commissioner Horn replied that they would. Mr. Wolf noted that in DOC's written submission, it presented a range of savings, from \$1 million to \$2.5 million. Commissioner Horn said the maximum assumes a ratio of .18 officers per inmate. Mr. Wolf asked Commissioner Horn to explain the term "cross relief" to the Members. The Commissioner said DOC will assure that another officer covers for each officer when the officer is on meal break, so that the staffing complement does not decrease. In response to a question from Mr. Wolf, Commissioner Horn said that a maximum of 60 inmates represents "the extent of what an officer can reasonably manage." He added that DOC would not use double-decker beds to increase dorm capacity. Commissioner Horn declined Chair Kreitman's invitation to respond to the letters from COBA and Legal Aid.

Chair Kreitman turned to correctional health issues, asking for information on the status of the vendor contract. Mr. Berding said the contract was approved by the Mayor's Office of Contracts and the Law Department, is presently at the Financial Control Board, and will be sent to the Comptroller's Office soon. He said the schedule allows for the process to be completed by the end of the year, when the current contract expires.

Mr. Regan, noting the Law Department's opinion that the Board cannot have meetings by telephone, asked whether this would affect BOC's ability to grant emergency variances. Mr. Wolf said the Board could pass a resolution delegating responsibility to a designated staff member to take action, in consultation with one or more Board members, on the Board's behalf, with the proviso that such between-meetings actions would be reported to the full Board and ratified, as appropriate. He added that this suggestion contemplated "routine" emergencies only, such as physical plant problems requiring temporary changes in operations or variances

involving a particular inmate or inmates when circumstances so require. Mr. Regan said it was important for the Board to do this to protect the safety of staff and inmates. Mr. Wolf said his suggestion was a product of conversations with the Director of the State's Committee on Open Government. Chair Kreitman said that he would recommend that Mr. Wolf, in consultation with one or two Members, could grant a variance immediately. Father Nahman suggested that a resolution be drawn up and voted upon at the next meeting of the Board. Commissioner Horn suggested that the Board might consider allowing DOC to make emergency declarations, notifying the Board within 24 hours, with the understanding that BOC would take action within 72 hours. He added that when an inmate is court-ordered into protective custody, DOC should not have to ask BOC for variances to prohibit that inmate from participating in congregate activities. Ms. Paley Price asked that the resolution suggested by Father Nahman be voted upon as quickly as possible. Mr. Wolf reminded the Members that such a decision could only be taken at a public meeting at which a quorum was in attendance.

Father Nahman asked that a joint committee be established, with Board and DOC participants, to examine all of the Minimum Standards. Chair Kreitman asked Commissioner Horn to select two representatives to join with two BOC representatives on an *ad hoc* committee.

Commissioner Horn said that Chief Leroy Grant will be retiring in December. He introduced Deputy Warden Darlene Merritt who has joined Inspectional Services and Compliance. Deputy Warden Tom Tsostoris has been promoted to Acting Warden and assigned to the Department of Juvenile Justice as Acting Deputy Commissioner for Operations. The Commissioner also introduced Deputy Warden Mark Cranston, his Executive Assistant. Commissioner Horn designated Deputy Wardens Cranston and Merritt to participate in the *ad hoc* committee.

A motion to renew existing variances was approved without opposition. The meeting was adjourned at 2 p.m.