

NEW YORK CITY
BOARD OF CORRECTION
MEETING OF DECEMBER 11, 1991

Members Present

William H. Booth, Chairman
John R. Horan, Vice Chairman
Louis A. Cruz
Peter J. Johnson, Jr.
David Lenefsky
Barbara Margolis
David Schulte

Representatives of the Department of Correction

Allison Lewis-Smith, Deputy Commissioner
Vito Turso, Deputy Commissioner
John Shanahan, Assistant Commissioner
Marian Tsuji, Assistant Commissioner
Hector Eugui, Deputy Chief of Operations
Richard Monroe, Assistant Chief
Stephen Ricci, Acting Assistant Commissioner
Roger Parris, Director of Health Services
Burton Schall, Agency Contract Officer

Others in Attendance

Nancy Adler, Policy Analyst, NYC Comptroller's Office
Paula Clair, Special Assistant to Director of Field Services, DOH
Laura Szapiro, Deputy Director of Field Services, DOH
Kevin McGrath, Director of Field Services, DOH
Michael Tannenbaum, Deputy Assistant Commissioner, DOH
Dale Wilker, Legal Aid Society, Prisoners' Rights Project
John Guzman, NYC Unit Supervisor, State Commission of Correction

The meeting began at 2:05 p.m. Chairman Booth welcomed all present. He noted the recent death of former Board Chairman Robert Kasanof, and requested that Vice-Chairman John Horan initiate plans for commemorative actions by the Board in honor of Mr. Kasanof.

Mr. Booth announced that Captain Stephen Ricci had been appointed Acting Assistant Commissioner of Legal Affairs for the Department of Correction (DOC) and, as such, would be the new liaison to the Board.

Deputy Commissioner Allison Lewis-Smith informed the Board that Mr. Ricci would be supervise the Department's compliance and auditing efforts.

The Chair then called for a motion to adopt the minutes of the Board meeting of November 13, 1991. The motion was made by Board member Louis Cruz, seconded by Board member David Schulte, and approved by all Board members present.

Ms. Lewis-Smith informed the Board that she had requested the presence at the meeting of Deputy Commissioner Turso, Assistant Commissioner Tsuji and Burt Schall, an attorney for the Legal Division and the Agency Contract Officer, to address any questions the Board members might have with respect to the contract issue involving BI Monitoring, Inc.

Board member David Schulte requested a complete explanation of the Department's development of the electronic monitoring program, and about the Department's refusal to provide information requested by the Comptroller's Office regarding the bidding process which resulted in the awarding of the contract to BI.

Mr. Schall reported that the Comptroller's Office had requested from the Department the RFP (Request for Proposals), the contract proposals submitted and the drafts of recommendations for awarding the contract. He explained that, pursuant to the rules of the City Procurement Policy Board and the advice of the Mayor's Office of Contracts, the Department decided not to turn over the drafts of recommendations for award because to do so might compromise the Department's ability to negotiate further.

Mr. Schulte reminded Department representatives that the City Charter grants the Board the right of access to all information.

Board member Louis Cruz asked Department Representatives, because of the sensitivity of the issue, if they would rather discuss the electronic monitoring contract with the Board in executive session due to the sensitive nature of the subject. He

stressed that he intended to exercise the Board's power under the City Charter to review all of the relevant documents.

Deputy Commissioner Vito Turso explained that, as the Hearing Officer for the electronic monitoring contract, he had heard all the testimony. He added that transcripts of the hearing had been received that morning. He explained that, after the hearing, all documents regarding the contract had been forwarded to the Department's Inspector General, Michael Caruso, for his review.

Ms. Lewis-Smith informed the Board that she would ask Corporation Counsel for an opinion regarding a meeting in executive session to discuss matters pertaining to the contract.

Board member Peter Johnson, Jr. stated that the Board's proper role as an oversight agency is to review this issue but, in a matter of fairness, to do it in executive session.

Mr. Schulte stressed that he would like to review and discuss in executive session or elsewhere how the Department grants its contracts and how this controversy arose so that such a controversy does not arise again. He stated that this incident taints the Department publicly, although perhaps unfairly, and needs to be resolved quickly.

Ms. Lewis-Smith noted that questions had been raised about her involvement with the BI contract. She explained that she had recused herself from the bidding process but that, in general the reorganization of the Department placed contract issues under the jurisdiction of the General Counsel rather than her own authority. She informed the Board that the Department remains confident that everyone will be satisfied with the findings of this investigation as to her ethics and the propriety of the Department's contract process.

Mr. Schulte stated that he appreciated Ms. Lewis-Smith's input but believed it was the responsibility of the Commissioner to personally address these issues directly to the Board.

Mr. Booth reported on the issue of State-ready inmates housed in DOC jails. He stated that, during the past week, 641 State-readies were picked up by the State Department of Correctional Services. These transfers were facilitated by DOCS reinstatement of double-bunking inmates in its own facilities. He explained that double-bunking would create 3000 beds for State-ready inmates from the entire State of New York, not just from New York City. Mr. Booth noted that last month the Board requested that he take all steps necessary to increase the number of State-readies removed from City jails by DOCS.

Chairman Booth informed the Board that he had spoken with

the State Director of Criminal Justice and Commissioner for the Division of Criminal Justice Services, Richard Girgenti, on several occasions and was promised that the state would begin double-bunking. Mr. Girgenti had promised that by December 9, 1991 the number of State-readies would decrease to 1000. Mr. Booth stated that, to date, that promised had not been fulfilled since there still are 2,500 State-readies housed in the City system. He stated that Board Counsel Annette Gordon-Reed recently prepared a memo concluding that the overdue State inmates cost the City \$300,870 per day for a total of \$76 million dollars that the City has spent during the past year because the State failed to take its State-ready prisoners.

Chairman Booth stressed that it is the Board's duty to make problems known so that they can be remedied. He stated that he informed Judge Mollen of the seriousness of the State-ready problem.

Mr. Schulte read a quoted from page 4 of the November 13, 1991 Board minutes with regard to the \$40 per day refund for overdue State inmates which the State is responsible to pay to the Department. "Deputy Commissioner Allison Lewis-Smith informed the Board that Commissioner Sielaff had requested an audit to determine whether or not funds were being obtained. Chairman Booth requested that a report on this matter be forwarded to the Board once all the relevant information was

obtained." Mr. Schulte stated that he had not seen or received such a report, and inquired as to when it would be submitted to the Board.

Ms. Lewis-Smith apologized for not forwarding the report to the Board and explained that, due to the recent reassignment of Department staff, particularly the transfer to the Training Academy of Assistant Commissioner Bair and his replacement by Acting Assistant Commissioner Ricci, she had forgotten to bring the report with her to the Board meeting. Chairman Booth requested that the Board receive the report by next week. Mr. Schulte stated that he felt that this delay was yet another example of Commissioner Sielaff slighting the Board, and stated that he expected that the Board would express its displeasure with the Commissioner in the Annual Report.

Ms. Lewis-Smith again apologized for the delay in complying with the Board's request for information. She stated that the report was complete, and that she personally would make sure that the report would be faxed to the Board's office as soon as she returned to the Department's Central Office.

Mr. Schulte, after quoting from the minutes of November 13, 1991 regarding the overdue State inmates, said that he believed it was now time to act on Board member Stanley Kreitman's motion that the Board issue a statement and/or support a lawsuit seeking

to force the State to take out its prisoners.

The Chair responded that as soon as he received from the Department the information requested, which he believed essential to preparation of the Board's position paper, he would carry out the Board's mandate.

Mr. Schulte then commenced his Member's Report by informing the Board that problematic conditions previously cited in the Manhattan Detention Complex had improved slightly and that some painting had been done. Mr. Schulte then described problems within the Manhattan Court holding pens. He stated that the air conditioner in the pre-arraignment pens was broken, and that the resulting poor ventilation amounted to inhumane treatment of both the inmates and the correction officers. He reminded the Department that he had suggested 8 or 9 months ago that prisoners assigned to the Work Release Program be used to prepare and serve hot meals to the inmates in the holding pens. This idea still not been implemented, and inmates in the Court pens still receive cold sandwiches.

Mr. Schulte then informed the Board that the Department has taken action to repair the kitchen floor at the James A. Thomas Center which had been the subject of complaint at previous Board meetings.

Board member David Lenefsky informed the Board that, on several occasions, the Board's Executive Staff had unsuccessfully requested information about the Contagious Disease Units (CDUs) from the Department's Director of Health Services Roger Parris. He asked that a commitment be made by the Department for the timely receipt of requested information. Ms. Lewis-Smith stated that some of the materials already had been forwarded to Deputy Executive Director Cathy Potler, and Mr. Parris agreed to forward the remainder immediately.

Board member Louis Cruz stated that it had been brought to his attention that the Anna M. Kross Center had no heat for a night and day when the temperature was at 30 degrees or lower. He asked that Department representatives comment on this problem.

Deputy Chief Hector Eugui informed the Board that the problem had been rectified.

Chairman Booth then asked for the staff report from Executive Director Richard Wolf. Mr. Wolf informed the Board that the staff report concerned the tuberculosis epidemic. He stated that the Acting Commissioner of the Department of Health (DOH), Margaret Hamburg, had appointed Chairman Booth and him to a City-wide TB Task Force. Mr. Wolf requested that Deputy Executive Director give the report.

Ms. Potler informed the Board that she had prepared the in-house memo previously distributed to the Board members in which the current situation with the CDU's in the New York City correctional system was explained. She stated that she had included an outline of the problems caused by tuberculosis in a correctional system, as well as information about the history and current status of Department construction of the CDU's. Ms. Potler then inquired if there were any questions about these issues.

Chairman Booth stated that he was surprised to read that the national case rate average for victims of tuberculosis is 9.5 per 100,000 residents whereas the average rate in New York City is 50 per 100,000 and in areas such as Harlem the average rate is 175. Mr. Booth noted that the most alarming figure is the rate of 600 per 100,000 inmates in Department custody who are placed on active TB therapy, which represents a doubling in this rate since 1988.

Mr. Schulte then inquired as to how much money the Department already had spent on the inoperable CDUs which had been the subject of discussion at a series of earlier Board meetings.

Ms. Lewis-Smith explained that the Department had the CDUs constructed according to guidelines provided by the Department of

Health (DOH), the health care providers and the specialized construction team. She noted that the issue now before the Department is whether or not the Units as presently constructed meet the criteria of the standards set by the health care community. She explained that the Department had asked Acting Health Commissioner Hamburg to review and make a determination as to what these guidelines should be, which Ms. Lewis-Smith was told would be done in the following week. She added that the Department had been prepared to open the Units as scheduled but had been served with court papers by the Correction Officers Benevolent Association (COBA) challenging the safety of the Units operation as regards negative air pressure and ultra violet lights. Ms. Lewis-Smith noted that the Department still is in State court on this matter, explaining that the Commissioner had taken the position that he would not open the Units until he was certain they could operate safely according to DOH guidelines.

Ms. Lewis-Smith explained that the Department also had received a grievance from the maintenance workers union questioning the safety of the CDUs.

Ms. Lewis-Smith reported that the Department had commissioned from the Silver and Ziskind Group - which currently is doing an environmental audit on Rikers Island in preparation for the COBA trial - a quick structural evaluation of the CDUs. She explained that, beginning Friday, December 13, 1991 through

Wednesday, December 19, 1991, the Department would be conducting a squatters session that the Board has been invited to attend. The session will offer advocacy groups a forum within which to present their concerns about the CDUs. She stressed that the Department is not absolutely certain that the CDUs will not work properly, noting that in the opinion of the Department the CDUs are suitable at present.

Assistant Commissioner Shanahan reported that excluding the cost of Department personnel, the total cost for the construction of the CDUs was \$106,800. This included the purchase of materials, light fixtures, and experts employed for construction guidance.

Mr. Lenefsky asked Department representatives when commencement of new construction would begin.

Ms. Lewis-Smith informed Mr. Lenefsky that construction is complete on the existing Units. Mr. Lenefsky stated that these CDU's are non-functional. Ms. Lewis-Smith repeated that the Department is not certain that the CDUs are unacceptable. She informed Mr. Lenefsky that DOH had participated from the onset in the design of the Units. The issue is whether the Units meet current criteria.

Mr. Wolf asked Mr. Shanahan if the CDU's were to open on the

following day how many beds would be available in private rooms with negative pressure? Mr. Shanahan responded that the George R. Vierno Center (GRVC) has 13 beds, the Rose M. Singer Center (RMSC) has 13 beds and the area in the George Motchan Detention Center (GMDC) will hold less than 44 beds.

Mr. Wolf inquired if the 44 are were non-tuberculosis beds. Mr. Shanahan confirmed that they are. Mr. Wolf stated that at a recent press conference regarding the TB epidemic, Acting Commissioner Hamburg stated that a minimum of 100 beds for men and 20 beds for women are needed on Rikers Island. Mr. Wolf inquired, on the assumption that a large number of CDU beds still must be added, whether the Department has some sense of how quickly the construction can occur.

Ms. Lewis-Smith stated that the Department does not have a sense of how quickly the construction will occur or when it will begin. She explained that the number of CDU beds that were originally constructed at GRVC and GMDC was based upon a needs assessment made two years ago. Since that time the City and the Department have encountered a TB epidemic. A new assessment must be made as to how the Department should address the problem.

Mr. Wolf stated that Dr. Hamburg had already made it clear that there was a need for respiratory isolation units on Rikers Island, and questioned why Ms. Lewis-Smith was suggesting this

matter is unsettled. Ms. Lewis-Smith explained that the Department must plan any such construction on Rikers Island within the context of the environmental study which is not yet complete.

Chairman Booth interjected briefly to commend Board member Barbara Margolis for her training program "Fresh Start", upon its fourth graduating class. He extended an invitation to all Board members to attend the ceremony. Mr. Lenefsky added that there was an impressive article in the New York Times praising the program for its impact on the recidivism rate of its participants, who are trained for employment in top City restaurants.

Dale Wilker, of the Legal Aid Society Prisoners' Rights Project, informed the Board that in a memo dated July 10, 1989, Mark Goldberg, an environmental epidemiologist at DOH, reported that he visited the CDU at GMDC on June 29, 1989 and found it to be inappropriate for use as a CDU. Mr. Wilker reported that Mr. Goldberg's recommendations had been given to DOC and clearly stated that, "before an attempt is made to either renovate the old system or to construct a new one with an appropriate system, it should be designed under the guidance of an engineer with knowledge of the sometimes exacting requirements of hospital ventilation systems." Mr. Wilker pointed out that the Department had not followed this advice and had not sought expert advice

from a hospital ventilation engineer. He asserted that the Department had used in-house staff to design the CDUs. Mr. Wilker stated that if the Department had followed the 1989 recommendations there would be operable CDUs today and perhaps the TB epidemic would not have become as severe within Department facilities.

Mr. Cruz stated that the Department has given the Board numerous excuses as to why the CDUs are not operable. He stated that the Department must accept responsibility for current status of the CDU's. He inquired as to why inmates with active TB are being housed in the inoperable CDUs. Mr. Parris commented that active TB inmates are sent to City hospital. Kevin McGrath, Director of Field Services for DOH, explained that there are cases which DOH considers suspicious for TB but those patients may not be admitted into a Health and Hospital Corporation (HHC) facility, due to HHC's criteria for admitting TB cases. He explained that this is one particular category of patients which is of concern to the prison health providers since, without the appropriate CDUs, there is no suitable housing area for these patients.

Ms. Potler reported that it is also of concern to the Board that the number of beds in HHC for Isolation Units for inmates who are actively infectious with TB, may already be insufficient and that plans must be made in the event that the number of

active TB inmates exceeds the number of Isolation Unit beds allocated or available in the outside hospitals.

Chairman Booth asked for variance requests to be made. Roger Parris requested on behalf of the Department a two month variance for the CDUs.

A motion to deny this variance request was made by Mr. Lenefsky and seconded by Mr. Cruz. Mr. Johnson urged the Board to table the motion for one day, and to require Commissioner Sielaff to come before the Board to explain the delays in construction and justify the Department's variance request. The question was called, and the motion to deny was passed, with all voting in favor except for Mr. Johnson.

Acting Assistant Commissioner Ricci requested on behalf of the Department a renewal of all existing space and program variances.

A motion to grant this variance request was made by Mr. Lenefsky, seconded by Mr. Cruz and approved by all members present.

The meeting was adjourned at 3:30 p.m.