

NEW YORK CITY  
BOARD OF CORRECTION

May 14, 1997

MEMBERS PRESENT

John R. Horan, Acting Chair  
Canute C. Bernard, M.D.  
Louis A. Cruz  
Stanley Kreitman  
David Lenefsky  
David A. Schulte

Excused absences were noted for Members Barbara Margolis and Peter J. Johnson, Jr.

DEPARTMENT OF CORRECTION

Michael Jacobson, Commissioner  
Tom Antenen, Acting Deputy Commissioner  
Antonio Figueroa, Deputy Commissioner  
Elizabeth Loconsolo, General Counsel  
Vincent Cara, Assistant Commissioner  
Roger Parris, Assistant Commissioner  
Ronald Galletta, Bureau Chief  
Ralph McGrane, Bureau Chief  
Sheila Vaughan, Assistant Chief

HEALTH AND HOSPITALS CORPORATION

Audrey Compton, M.D., Acting Executive Director, CHS  
Andrew Harris, Associate Executive Director, CHS  
Michael Tannenbaum, Associate Executive Director, CHS

OTHERS IN ATTENDANCE

Erica Goodman, Finance Division, City Council  
Dan Janison, Newsday  
Tracy Lucas, SCOC  
Dale Wilker, Legal Aid Society  
Milton Zelenmyer, Legal Aid Society

Acting Chair John R. Horan convened the meeting at 1:08 p.m. A motion to accept the minutes of the April Board meeting was seconded and approved unanimously. Mr. Horan then called for reports from the Members. Member David Schulte praised the work of Commissioner Michael Jacobson and his staff.

Mr. Horan asked Executive Director Richard Wolf to present the staff report. Mr. Wolf asked Commissioner Michael Jacobson to comment on the lower-than-expected number of inmates confined in the City's jails. The Commissioner noted that State prisoners remained low in all categories, particularly parole violators (daily average reduced by 1000) and newly-sentenced State readies (reduced by 200). Also, he noted that although admissions are up, there is a much higher proportion of misdemeanor arrests, resulting in shortened lengths-of-stay for detainees. These factors combined to enable the Department to recently close the Bain Barge (VCBC), and to keep the Brooklyn Correctional Facility closed as well. The Commissioner said that for each week that the VCBC is closed, the Department saves approximately \$350,000. He added that DOC's projections suggest that it may be able to keep the VCBC closed at least until July, and that it would reopen when other beds were closed for fire safety or "cook — serve" renovations.

Mr. Schulte suggested that the Department lease one of the closed facilities to the State, to house State-ready prisoners. Commissioner Jacobson agreed to consider the suggestion, noting that his concern was to increase the \$34 per day reimbursement rate paid by the State to compensate the City for housing State prisoners. He said that the actual per-day cost to the City is \$166 per day.

Board Member David Lenefsky asked Dr. Audrey Compton, Acting Executive Director of Correctional Health Services, to discuss the status of plans to make protease inhibitor medications available to inmates with HIV/AIDS. She confirmed that inmates who had been taking protease inhibitors prior to incarceration were provided with the medication while in jail. Dr. Compton noted that the executive budget will provide an additional \$5.3 million

to enable HHC to provide protease inhibitor medication to anyone who needs it, and that it will be available to all beginning on July 1, 1997. Protocols have been developed to enable HHC to offer the medication before July 1, but an issue remaining to be resolved is discharge planning. Dr. Compton said she expected that HHC could begin offering protease inhibitor medication within four weeks to all inmates who meet the criteria. Board Deputy Executive Director Cathy Potler asked Dr. Compton to discuss discharge planning. Dr. Compton said it was important to ensure that people continued to take the drug after discharge from jail to prevent the development of mutant strains of HIV. She noted that this had occurred with tuberculosis, and to avoid it, discharged inmates would be given appointments at HHC facilities. Dr. Compton added that the drug will be continued in State facilities for inmates who are transferred from City jail to State prison.

Dale Wilker of the Prisoners' Rights project said he had spoken with doctors "in the system" who wanted to begin providing protease inhibitor therapy immediately, and he asked Dr. Compton why this could not be done. Dr. Compton responded that discharge planning must be established before the therapy can begin. She added that negotiations with the Health and Hospitals Corporation to determine community sites would be concluded soon.

Mr. Horan asked for a status report on the Department's plans to eliminate smoking in the City's jails. Commissioner Jacobson said that providers will "train the trainers" and that this process should begin within the next four to six weeks. He said that when the training is concluded, DOC will begin phasing in a smoking ban over a period of seven weeks. This will begin in December or January. The Commissioner promised to provide details at the June Board meeting.

Mr. Wolf asked about the status of the Department's plans to privatize fleet maintenance. The Commissioner said there had been no movement on the issue, and that he would keep the Board informed as developments occurred.

Board Member Louis Cruz asked if DOC participated in the

Work Employment Project. The Commissioner said DOC did not, noting that there were not enough jobs in the jails for sentenced inmates who wish to work, and that bringing civilians into the jails to work would create security concerns and legal issues.

Mr. Horan raised the issue of stun shields. He told the members that he, together with Mr. Wolf, Ms. Potler and Director of Field Operations Carl Niles, met on Rikers Island with personnel from the Emergency Response Unit. Mr. Horan said he discussed the technology with ERU personnel, who described the training they had undergone and the circumstances under which they have used the stun shield. Each instance was a cell extraction of a recalcitrant inmate. Mr. Horan stated that he was briefly "stunned", as was Mr. Wolf. Mr. Horan expressed concern that the Department had begun using the stun shield without first establishing written procedures for its use. In particular, he noted that ERU personnel were not videotaping use of the stun shield.

Commissioner Jacobson said that the Department was in a "pilot", or testing phase, which would continue for another month. He said the technology is not new, and is used in numerous jurisdictions, including the Immigration and Naturalization Service, U.S. Marshals, Colorado, Alaska, Pennsylvania, and Wisconsin. The Commissioner said DOC was interested in the technology because it is expected to reduce injuries to staff and inmates during cell extractions, for which it will be "primarily used". He said stun shields may be preferable to gas because the latter does not work in all situations, and it pollutes the environment in which it is utilized, sometimes affecting staff as well as inmates. The Commissioner said that other jurisdictions have reported "very favorable results" using the stun shield. He said that thus far there had been no injuries resulting from the use of the stun shield in City jails.

Mr. Horan asked why cell extractions needed to occur. The Commissioner said that oftentimes extractions are unnecessary, but that if there is information that inmates generally, or a

particular inmate, has a weapon, the inmate must exit the cell so that a search can be conducted. In the past, extractions have been accomplished using officers with shields and batons, or with gas, or both. He said he hoped that the stun shield would prove to result in fewer injuries to staff and to inmates. He reiterated that only ERU personnel are trained to use the stun shield. Commissioner Jacobson stated that it is the Department's operating policy that whenever a use of force is anticipated, the incident is to be videotaped. However, recent large tactical search operations in CPSU have involved "as many as 30 or 40 cell extractions at a time, so we could not possibly have videotaped all of them". Mr. Wolf noted that the Department has only one stun shield, and asked why an officer with video camera could not accompany the officer with the stun shield. Commissioner Jacobson said that cell extractions will be videotaped in the future, whether or not the stun shield is used.

DOC General Counsel Elizabeth Loconsolo said she is finalizing written procedures for use of the stun shield. She said that an existing CPSU order requiring that all anticipated uses of force be videotaped will apply to use of the stun shield. Mr. Wolf asked why the Department had failed to follow its existing requirement to videotape all anticipated uses of force. The Commissioner said this was because multiple extractions had occurred simultaneously, but added that from now on, all uses of the stun shield will be videotaped.

Chief of Security Ronald Galletta added that all ERU captains and 46 ERU officers had been trained in use of the stun shield. In response to questions from Mr. Lenefsky, the Commissioner stated that New York State does not use the stun shield, and that several jurisdictions that use the stun shield have detailed written protocols.

Mr. Schulte asked whether the stun shield could cause a fatality. He noted that someone with a pacemaker could be at risk. He suggested that research be conducted, and urged that the issue of stun shield use be referred to Corporation Counsel because of liability issues. Commissioner Jacobson reiterated

that other jurisdictions have used the stun shield for years. Mr. Wolf noted that Board staff, particularly Ms. Potler, had been doing extensive research and had spoken with the manufacturer and with several jurisdictions. Board Member Dr. Canute C. Bernard asked about the susceptibility of inmates to cardiac arrest as a consequence of "stunning", and whether officers know the medical background of any inmate against whom the stun shield will be used. Assistant Chief Sheila Vaughan said that the manufacturer "makes no mention of any medical concerns". The Commissioner added that there was no evidence that any death occurred in any jurisdiction using the stun shield. Mr. Wolf said that a Texas correction officer with a preexisting heart condition died after being stunned twice during a training session. Ms. Potler noted that the Assistant Director of the Federal Bureau of Prisons (BOP) informed her that BOP regulations prohibit use of the stun belt on pregnant inmates, or anyone with heart disease, multiple sclerosis, muscular dystrophy or epilepsy. Dr. Bernard said it was critically important that an inmate's medical history be known before the stun shield is used. The Commissioner agreed, but noted that there are many instances where inmates and officers have died during uses of force in which stun technology was not used.

Board Member Louis Cruz expressed his dismay that there were no written protocols during the testing period. Chief Galletta responded that there was a draft order, and that the changes to it are "side issues" such as videotaping. He added that extensive training had occurred, and that the procedures are the use of force procedures that already exist. Chief Galletta said that the manufacturer recommends a maximum of two six-second applications of the stun shield, but that the Department limits its use to one five-second application.

Commissioner Jacobson said that thus far there have been no injuries to staff or inmates during extractions using the stun shield. Mr. Wolf disagreed, noting that although there are no injuries directly attributable to the shield itself, there are reports of numerous injuries to inmates, including head trauma,

during the extractions. The Commissioner agreed, but said it was his sense that there were fewer injuries.

Mr. Lenefsky asked if a cut-off mechanism could be installed on the shield to limit the length of its application, to reduce the likelihood of "adverse biological consequences". Assistant Chief Vaughan responded that the shield is turned on, and is "crackling and sparkling", when the cell is entered. Oftentimes, this display causes the inmate to cease resisting. She suggested that a cut-off switch would impede the operating officer's ability to do this. Chief Galletta added that during the time needed to reset the mechanism, staff safety could be jeopardized. Mr. Wolf suggested that the Department obtain a device to measure and record the amount of time that the stun shield is activated. He noted that all use of force reports thus far all indicate that a one-second application was used. He added that this is inconsistent with the manufacturer's assessment that a four to eight second application is required to immobilize an inmate. This suggests that officers are under-reporting the length of time that the stun shield is being applied. Ms. Potler asked whether the draft written protocol contains any requirement that the medical condition of the inmate be ascertained prior to use. Chief Galletta said that the only time a review is required is prior to the use of gas. He said that the Department currently has no information that would require such a check to be undertaken prior to use of the stun shield. He added that whenever a use of force is anticipated, "checking with the medical staff should be done", when possible. He noted that this usually is not possible during a tactical search operation, because it would unduly delay the search.

Mr. Horan asked Mr. Wolf to discuss other CPSU issues. Mr. Wolf raised three concerns: (1) CPSU inmates exiting their cells to assault inmate workers; (2) CPSU inmates throwing bodily wastes on staff and on inmate workers; and (3) increases in stabbing and slashing incidents in March and April. Commissioner Jacobson reported that the OBCC warden had decided that sentenced workers would bring the meals to CPSU inmates. CPSU inmates did

not like this decision, because the sentenced workers replaced CPSU inmates who had heretofore brought the meals. This meant that an important means of communication among CPSU inmates was eliminated, as was the primary means by which contraband moved within CPSU. According to the Commissioner, the CPSU inmates were acting out in an effort to force the warden to reverse his decision. The Commissioner said the decision will not be reversed. He noted that the throwing of bodily wastes is now a felony assault, and inmates are arrested and are subject to consecutive sentencing to additional State prison time. In addition, modifications are being made to the cell doors to make it more difficult for inmates to throw liquids on passers-by.

Mr. Lenefsky asked if sentenced prisoners are punished if they refuse to work in CPSU. Commissioner Jacobson said that infractions are written, but he does not believe that such inmates lose good time. Assistant Chief Vaughan added that the refusing inmates receive reprimands.

A motion to renew existing variances was passed unanimously by those present.

The Board went into Executive Session from 2:15 p.m. until 2:30 p.m., at which time the meeting was adjourned.