

**NEW YORK CITY
BOARD OF CORRECTION**

January 12, 2006

MEMBERS PRESENT

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

An excused absence was noted for Member Alexander Rovt.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Tom Antenen, Deputy Commissioner for Public Information
Judith LaPook, Chief of Staff
Florence Hutner, General Counsel
Mark Cranston, Deputy Warden in Command, Office of Policy and Compliance (OPC)
Rebecca Grayson, Captain, OPC

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Commissioner Thomas R. Frieden, M.D.
Arthur Gualtieri, M.D., Deputy Commissioner
Bruce David, M.D., Assistant Commissioner, Correctional Health Services (CHS)
George Axelrod, Director of Risk Management, CHS
Robert Berding, Director, Clinical Services, CHS
Sonal Munsiff, M.D., Director, TB Bureau
Farah Parvaez, M.d., Medical Director, Correctional Public Health Services
Laura Szapiro, Senior Advisor to Deputy Commissioner, CHS
Bonnie Um, Assistant to the Commissioner

OTHERS IN ATTENDANCE

Tricia Amati, Assistant to the Commissioner, State Commission of Correction (SCOC)
Paul Annetts, Supervisor, SCOC
John Boston, Project Director, Legal Aid Society, Prisoners' Rights Project (PRP)
Don Doherty, Division Vice President, Prison Health Services (PHS)
Michael Donegan, Counsel, SCOC
Tatiana Ortiz, Budget Analyst, OMB
Trevor Parks, M.D., Medical Director, PHS
Becky Pinney, Vice President, PHS

Colleen Roche, Consultant, PHS

Norman Seabrook, President, NYC Correction Officers Benevolent Association

Carl Thelemaque, Legislative Financial Analyst, City Council

Russell Unger, Legislative Counsel, City Council

Paul von Zielbauer, *New York Times*

Dale Wilker, PRP

Milton Zelermeier, PRP

Chair Hildy J. Simmons called the meeting to order at 9:35 a.m. She welcomed Correction Commissioner Martin Horn and Health Commissioner Thomas Frieden, M.D., Correction Officers Benevolent Association President Norman Seabrook, and three representatives from the State Commission of Correction, Michael Donegan, Paul Annetts, and Tricia Amati. A motion to approve the minutes from the December 8, 2005 meeting was approved without opposition.

Chair Simmons reported that both the Health Committee and the Minimum Standards Review Committee have been working hard for the past several months. She thanked Chairs Gwen Zornberg, M.D. and Stanley Kreitman and all the Members for their efforts. Chair Simmons also said goodbye to outgoing Department of Health and Mental Hygiene (DOHMH) Assistant Commissioner for Correctional Health Dr. Bruce David who has accepted a position in Nassau County. Chair Simmons said that a Board meeting will take place on Rikers Island during the spring, probably in May or early June.

Committee Chair Stanley Kreitman presented the report of the Minimum Standards Review Committee. He said the Committee met on January 11th, and is making very good progress. He estimated that the Committee is seventy percent through its review of the existing Standards and DOC's proposals for amendments, noting that the Committee should require two additional meetings, after which it will bring its recommendations to the Board. Mr. Kreitman said that after the Board has internal debate, it will seek input from interested parties, including the unions, Legal Aid and other constituencies. He praised the assistance and cooperation provided to the Committee by Deputy Warden Mark Cranston.

Committee Chair Gwen Zornberg, M.D. presented the report of the Health Committee, as follows:

For almost half a year the Committee has worked on a TB variance request submitted by DOHMH, which is a laudable effort to improve the identification and treatment of tuberculosis. The Committee has worked closely with DOHMH to be very clear about how changes will be implemented. After meeting in November, the Health Committee reported to the full Board at the December meeting that the Committee supported the variance request, but wanted some additional information. DOHMH went through a lengthy and extensive review, which underscores the need for computerized medical records and a registry. Yesterday the Committee learned about all of the cases that were identified in 2004 and 2005 through sputum positive TB. Of the 22 cases, all would have been detected by the new system. Ten cases had a history of a positive tuberculin skin test; five had a history of chronic disease; one had a history of recent active TB diagnosis; one had a history of homelessness; two had a history of alcohol abuse; one was foreign-born; and two were known to the TB registry. In fact, three cases had negative PPDs, which is what happens when the immune system is depressed. The Committee is very comfortable with how the system would identify and treat infectious, active disease, but the Committee wanted more clarification on latent

TB, particularly among high-risk patients among whom it is more likely to advance to active, infectious TB.

The Committee received a letter from Legal Aid on January 2nd, and another on January 3rd, questioning how DOHMH was going to pursue latent TB infection. DOHMH has been implementing advances even without the variance, and have presented a very thorough system. During intake screening all inmates are asked about history of TB. No tuberculin skin test will be given to inmates for whom it does not make sense, such as those with a history of reactive TST who have not had a chest x-ray. Instead of another TST, they will receive a chest x-ray. Inmates with a history of either latent TB infection or active TB again will have a chest x-ray. Inmates with TB symptoms will be referred to the Contagious Diseases Unit (CDU) for evaluation and placement in respiratory isolation. The list of high-risk inmates is very broad, and one would assume it includes most of those who come to Rikers Island, including: HIV/AIDS, intravenous drug use, cancer, jejunioileal bypass, chronic alcohol use, diabetes mellitus, homelessness, silicosis, significant recent weight loss, immuno-suppressive therapy, asthma, foreign-born, gastrectomy, chronic renal failure, and hepatitis C. All HIV positive inmates will receive a tuberculin skin test on intake, and a chest x-ray within one day of admission. This is a great improvement over past practice. In addition, DOHMH will institute cross-matching with the DOC Inmate Information System and DOHMH TB registry, which will be up and running next week. The Committee has made cross-matching with the registry a condition of its variance recommendation.

The Committee has received no information that would cause it to change its recommendation that the Board approve the variance request, so long as the TB registry is up and running when implementation begins, that chest x-rays really are available, that the new procedures are in place with staff trained, and that there is adequate staffing.

Commissioner Frieden thanked Dr. Zornberg for her thorough and accurate summary. He reiterated that the reason for the proposal is to improve TB screening. He added that the challenge of treating patients who do not have active disease is substantial. He said DOHMH's approach has been to focus on those with active disease, noting that convincing patients to complete the long therapy is difficult, even in the community. He said that he ran a City program that provided vouchers to induce patients to show up at clinics, but very few showed up, and none came back after their first follow-up visit. Commissioner Frieden noted that there are real questions regarding a new test, Quanti-feron, which is not currently available in this region. The Commissioner said that DOHMH will study the data from the new procedures and further refine them as appropriate.

Chair Simmons asked if Members had any questions or wished to make further comments. Hearing no response, she called for a motion, which was duly made, seconded, and approved without opposition. Chair Simmons said the variance was

granted subject to the conditions described by Dr. Zornberg. Commissioner Frieden said DOHMH fully agreed with the conditions. Chair Simmons asked that, beginning with next month's meeting, DOHMH present a report on experience under the variance. Chair Simmons recognized Milton Zelmeyer, an attorney with the Prisoners' Rights Project (PRP) who was a signatory on the PRP letter. He said he wished to ask some questions regarding the variance. Chair Simmons suggested that Mr. Zelmeyer direct his questions to DOHMH.

Commissioner Frieden reported that electronic intake records will be introduced at the Anna M. Kross Center in the near future. He said that an RFP is being developed for a comprehensive electronic medical records system. Chair Simmons asked for a timetable once the RFP is issued. He said DOHMH would seek to have as many responsible bidders as possible, and wanted companies to have enough time to present responses that reflect the RFP's objective of dealing with correctional health and also broader public health concerns. He added that once DOHMH has selected a vendor, the vendor must be given considerable time to develop the system.

Chair Simmons next asked for a report from DOC Commissioner Horn, who reported as follows:

2005 was an historic, good year for safety of inmates and DOC staff. There was a 30% reduction in serious assaults on staff (39 as compared with 57 in 2004), and a 30% reduction in serious uses of force by staff (66 as compared to 94 in 2004). Both reductions are far greater than the decrease in inmate population from 2004 to 2005. The reductions reflect the effects of steps taken by DOC, some of which have required variances from BOC Standards. Staff training and supervision has improved as well. There were no escapes in 2005, nor were there any homicides. In 2004, there were two escapes and three homicides. In 2005, there were fewer drug finds (655), due to increased use of the canine unit, the ion scanner, and drug testing of inmates. It is unclear whether the decrease means that there are fewer drugs in the jails or that the inmates are better at hiding them. The numbers will need to be looked at over time to see if a trend emerges. Fewer drugs should mean fewer overdoses and the jails should become even safer, even as scarcity drives up the price of drugs in jail. There was an increase of one in the number of stabbing and slashings – 35 in 2005 compared to 34 in 2004. This nonetheless represents a 29% reduction from 2003 (49).

More than a year ago, we discussed what to do with the six inmates who were accused of committing the homicide of Tyree Abney. Oftentimes a district attorney will request that we not file disciplinary charges for fear of creating discovery material that might undermine the DA's ability to prosecute the criminal case. DOC must decide whether to follow the DA's request, which could result in a dangerous inmate remaining in general population because we cannot place the inmate in punitive segregation. We also discussed that, together with DOHMH, we have looked at our mental observation units where there have been a wide variety of inmate behaviors in MO areas, which are intended to be

safe places but in fact are the least safe. In an abundance of caution, mental health professionals were placing inmates in MO areas who were feigning symptoms and threatening self-harm in an attempt to manipulate the system. Furthermore, some mentally ill inmates are dangerous and others are not. Our review demonstrated that we were violating our own classification principles. In October, having rethought our use of the most restrictive housing, we issued revised classification procedures. We created “no harm housing” in cooperation with DOHMH. We are about to open the “Intensive Treatment Unit” at GRVC to attempt to address the behaviors of inmates who are not necessarily mentally ill.

Dr. David said the inmates who will be placed in the unit are mentally ill and will be treated in the unit. Commissioner Frieden said that the Intensive Treatment Unit was developed by Dr. David, and asked him to explain it to the Board. Dr. David said the inmates are those who may act in a self-injurious manner, but have treatable disorders, often borderline personality disorder. He said treatment will be based upon behavioral modality, and will be unprecedented, involving correction officers as well as treatment staff and psychology program trainees. He said the goal is to change behavior to make it more appropriate during incarceration and after release. Commissioner Horn continued his report, as follows:

We have discussed “pre-hearing detention” In the aftermath of a stabbing, slashing or serious assault, inmates are confined for up to 72 hours while a disciplinary proceeding moves forward. In the past, inmates who committed these acts would be returned to general population only to intimidate witnesses or to be victimized in retaliation.

DOC has created a directive known as “Close Custody”, paying close attention to the State Commission standards and section 1-02(e)(v) of the BOC Minimum Standards. Close custody is a management override for those inmates who have not been convicted of a specific offense, but who require isolation as a result of a history of behaviors demonstrating an inability to live in general population, either because their presence endangers others or because they would be seriously in danger in general population. DOC’s goal is to keep the maximum number of inmates in general population. There is a “semantic concern” with the term protective custody, which has been used in the past by DOC to describe a wide variety of housing situations. Protective custody is contained within the Close Custody directive, which provides for a limited due process hearing for those who are confined in Close Custody involuntarily, or for those who require protection but have not agreed to or asked for protective custody. This is DOC’s “most restrictive housing”, which is the term used in the Minimum Standards. DOC does not use the term Protective Custody lightly. The vast majority of inmates can live and function well in general population. The challenge for DOC is to find the most appropriate housing, and to reserve protective custody for those inmates for whom DOC has no other alternative, such as an inmate who says, “I’m afraid of everyone, but I can’t tell you specifically who.” There are general population solutions for most inmates. For example, an inmate whose status, such

as a high degree of notoriety, may put him at risk, need not be in 23-hour per day lock down. Instead, such an inmate might be housed in the North Infirmery Command in a cell block with 10 cells, every two of which have a common day room area. Last May, following a brawl in the GMDC yard between non-English speaking Hispanic inmates and African American inmates who described themselves as Bloods, DOC moved the Hispanic inmates, who were victims and witnesses, to a small unit where they could live with each other.

When an inmate is in Close Custody, the point is he is kept away from all other inmates. He does not lose privileges: he has property, visits, and recreation, although he will take recreation alone, and cannot go to the dayroom with other inmates, or engage in other congregate activities. Inmates in Close Custody must be escorted around the jail. Close Custody has two categories: protective custody and what had been called Administrative Segregation. There is a mandatory 28-day review, including for inmates who wish to remain in Close Custody and DOC wants to return them to general population.

As the development and implementation of Close Custody was moving forward, at the same time DOC looked at three housing units at GMDC that had been “gay housing”, which until the early 1970s was known as “Homosexual Housing” and was not voluntarily.

Board Member Michael Regan asked the Commissioner to speak to the history of the units. The Commissioner said that, as he understands it, DOC used to identify inmates as homosexual and house them together involuntarily. He said that over the years, the housing became voluntary and accommodated as many as 150 inmates, but was available only to adult male detainees – not for women or sentenced male inmates. The Commissioner said that when DOC looked at who was in the gay housing areas, it found very wide range of classification scores, ranging from near 0 to scores in the 40s. He said gay housing was the only housing operated by DOC that was voluntary. He said that the data showed that in both 2004 and 2005, use of force incidents in GMDC’s three gay housing areas occurred at a rate that was twice as high as the rate in the other 32 housing units in the jail. He said this was true as well for inmate-inmate fights, and that there were almost twice as many contraband finds in GMDC gay housing as compared to general population. The Commissioner said that areas that were intended to be the most safe had become the least safe. He said that DOC found inmates doing well in general population after having been removed from gay housing following a fight with another inmate or having requested to be moved out of gay housing. He said DOC found no problems with inmates who were gay or transgender living in EMTC. Finally, he estimated that there are between 500 and 1000 gay male inmates in DOC facilities, yet only a maximum of 150 had lived in gay housing; the others have been in general population. The Commissioner added that no other major metropolitan jurisdiction in the country has separate gay housing, except Los Angeles, which has involuntary gay housing. He said DOC disbanded gay housing, confident that the classification system can ask an inmate whether he is vulnerable for any reason, that every vulnerability is equally deserving of protection, and that DOC is able to find appropriate housing for all.

He said the Department is closing gay housing by attrition. The Commissioner mentioned two cases that received press attention of inmates who had been housed in “protective custody” in dormitories. He said inmates in protective custody were going to recreation with 200 other inmates, and that an inmate who wished to harm a protective custody inmate could ask for protective custody for himself, and then assault the inmate in the yard. He noted that whenever DOC violates its own classification scheme, it has created less safe conditions. Commissioner Horn stated that since closing the GMDC gay housing areas, four inmates have asked for gay housing: three are in general population and one is housed in one of the small NIC units mentioned earlier. He said that DOC has attempted to make the changes consistent with the State and BOC standards and with applicable case law. The Commissioner again cited section 1-02(e)(v), “which says that activities can be limited to inmates in the most restricted status.”

Board Member Father Richard Nahman asked for the definition of transgender. Commissioner Horn said it is an inmate born of one gender but is living as another. Father Nahman asked if they are confined by what their biological bodies are. The Commissioner said the State Commission standards require that inmates be separated by gender, and DOC relies on medical professionals for a determination. Board Member Paul Vallone asked about the average daily population, which Commissioner Horn said was approximately 14,000 in 2005. Mr. Vallone asked whether DOC will determine on a case-by-case basis which inmates go into protective custody. Commissioner Horn said yes. He added that some dormitories have an extra officer, and some inmates can be housed safely in them. He said that each case must be considered individually, even though most inmates can be managed in general population. The Commissioner said that gay and transgender inmates, notorious inmates (including those who kill their own children), and public employees, such as police officers, require individual solutions. He said that the classification “accounting system” in Directive 4100 R has been in effect for several years. Father Nahman asked if there are reports on sexual violations in jail. Commissioner Horn said DOC is participating as a test site with the Federal government, as a result of the Prison Rape Elimination Act. He said that inmates will be able to go to kiosks and enter information confidentially. He said the results will give DOC a better sense of the frequency, but in any year there are fewer than three or four substantiated incidents of sexual assault. The Commissioner said that in 2005 the Federal government issued a study indicating that the number of sexual assaults in jail in 2004 was approximately .1%, and a separate study reported that the rate of general inmate deaths in custody in New York (suicide, homicide, and natural causes) were among the lowest in the country. He added that the City’s inmate suicide rate was half the national average for jails. Mr. Regan asked if gay housing was created because of a perception that gay and transgender people are more likely to be victims, and whether DOC has data to answer the question. Commissioner Horn said he could only speculate as to why the unit was created, suggesting that stigmatization and segregation in the 1960s were probably factors. He again cited data showing that the rate of inmate-inmate fights was twice as high in gay housing as in general population. Mr. Vallone asked for follow-up information at the next Board meeting on the impact on violence of integrating the inmates into general population. Commissioner Horn said DOC will be tracking new inmates coming into the system who request gay housing.

Commissioner Horn asked for an executive session with the Board to discuss some security matters relating to the Central Punitive Segregation Unit. He added that DOC had a request for a change in conditions to an existing variance that for many years has allowed DOC to put CPSU inmates in jumpsuits. He said the variance required that DOC post procedures for providing access to inmates for personal clothing for court appearances. He said that as part of DOC's review of existing standards, it concluded that there is a legal requirement only that inmates wear civilian clothes during jury trials. Chair Simmons said that the Board planned to go into executive session to discuss other matters, but before doing so, she called on Mr. Vallone.

Mr. Vallone said that when Carl Niles passed away the Board discussed memorializing his outstanding career at the Board. Mr. Vallone reported that the City Council has issued a Proclamation that will be presented to the family at a private ceremony. He read the text into the record, as follows:

Whereas: The Council of the City of New York is pleased and proud to posthumously honor Carl G. Niles for his distinguished service to the City of New York; and

Whereas: Carl G. Niles had a rich and highly significant career with the New York City Board of Correction. After joining the BOC as a field representative in 1984, Mr. Niles was assigned to the Correctional Institution for Men on Rikers Island. Among his responsibilities, he monitored the jail's compliance with BOC's Minimum Standards, which regulate conditions of confinement, including overcrowding, personal hygiene, religion, recreation, access to attorneys and court, and the maintaining of inmates' contacts with family and community; and

Whereas: After two years in this role, Mr. Niles was promoted to Director of Field Operations, the position he held until his passing on July 18, 2005. As Director, Mr. Niles supervised BOC's field representatives who are assigned to the eight jails on Rikers Island and two borough facilities; and

Whereas: Before joining the staff of the Board of Correction, Mr. Niles worked with state prisoners at the Lincoln and Bayview Correctional Facilities, as a rehabilitation counselor for the New York State Division of Alcohol and Substance Abuse; and

Whereas: The youngest of fourteen children, Carl Niles was an active member of the Emmanuel Baptist Church in Brooklyn. A loving husband, father and grandfather, Mr. Niles greatly inspired others with his honesty, compassion and concern for others. He greatly enriched us with his contributions and it is with the deepest gratitude that we honor his life and legacy; now, therefore

Be it known: That the Council of the City of New York posthumously honors Carl G. Niles for his outstanding service to the City of New York.

Mr. Vallone's reading of the Proclamation text was followed by applause. Executive Director Richard Wolf thanked Mr. Vallone for arranging for the Council Proclamation. He said it was particularly important to all of us that Carl's good works be recognized.

A motion to renew existing variances was approved without opposition. The public meeting was adjourned at 10:32 a.m. The Board went into executive session with representatives of DOC until 10:55 a.m., after which it remained in executive session until 11:05 a.m.

The Board took two actions in executive session: (1) Revised Rules of Procedure were adopted (copy annexed hereto) and (2) Michael Regan was elected Vice Chair of the Board.