

**NEW YORK CITY
BOARD OF CORRECTION**

October 5, 2006

MEMBERS PRESENT

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

DEPARTMENT OF CORRECTION

Carolyn Thomas, Chief of Department
John Antonelli, Senior Deputy Commissioner
Mark Cranston, Commanding Officer, Office of Policy and Compliance (OPC)
Ronald Greenberg, Director, OPC
Angel Villalona, Assistant to Senior Deputy Commissioner

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Jason Hershberger, M.D., Assistant Commissioner, Correctional Health Services (CHS)
Robert Berding, Director, Clinical Services, CHS
Maria Gbur, M.D., Medical Director, CHS
George Axelrod, Director of Risk Management, CHS

OTHERS IN ATTENDANCE

John Boston, Esq., Project Director, Legal Aid Society, Prisoners' Rights Project (PRP)
Rebecca Brown, Policy Analyst, Innocence Project
Barry Campbell, Fortune Society
Jonathan Chasan, Esq., PRP
Rosaleen Crotty
Keith DeBlasio, Director, AdvoCare
Maddy deLone, Executive Director, Innocence Project
Keita de Souza, Policy Analyst, Women's Prison Association
Carole Eady, Board member, Center for Community Alternatives
Lionel Francois, Financial Analyst, City Council
Rosalyn Glicksman, M.D., Deputy Medical Director, Prison Health Services (PHS)
Jennifer Hickin, Logistical Coordinator, Osborne Association
Adriene Holder, Attorney-in-Charge, Civil Division, Legal Aid Society
Leah Horowitz, Staff Attorney, Bronx Defenders

Martha Kashickey, Policy Analyst, Innocence Project
Rachel Meeropol, Staff Attorney, Center for Constitutional Rights
Julie Mormando, Community Justice Works
Lisa M. Rappe, Coalition for Women Prisoners, Correctional Association
Marion Rodriguez, Organizer, New York Campaign for Telephone Justice
Jennine Ventura, Legislative Policy Analyst, City Council
Dale Wilker, Esq., PRP
Jon Wool, Senior Counsel, Commission on Safety & Abuse in America's Prisons,
Vera Institute of Justice
Fazal Yussaff, Director of Operations, PHS
Milton Zelermyer, Esq., PRP

Chair Hildy J. Simmons called the meeting to order at 9:37 a.m. A motion to approve minutes of the September 14, 2006 Board of Correction meeting was approved without opposition.

Jason Hershberger, M.D., Assistant Commissioner for the Department of Health and Mental Hygiene's (DOHMH) Correctional Health Services (CHS), reported that he attended a State Commission of Correction conference on improving health and mental health care delivery, and is of the opinion that New York City is doing very well when compared with other facilities around the state. He said that an important DOHMH initiative is for everyone to know their HIV status. He said that on Rikers Island, the number of rapid HIV tests has increased five-fold in the last year. He noted that as a result, many more New Yorkers are able to use information about their HIV status to inform their health decisions. Dr. Hershberger said that DOHMH is preparing to introduce an electronic mental health and discharge planning record. He said that DOHMH has implemented a new set of assessment tools for documenting mental health conditions, focusing on reentry issues. He said providers now will track the community-based resources newly-admitted prisoners were using and what resources they will need upon release. Dr. Hershberger said that a new set of mental health forms will contain a diagnosis and indicate the seriousness of a person's mental condition. He noted that currently the information is on paper forms, but that a vendor is preparing electronic versions, which will enable DOHMH to establish databases and cross-reference data. He said the transition to electronic records should occur over the next several months. Chair Simmons asks what will happen to the information. Dr. Hershberger said that in a more accessible form, the information can be more readily shared with community providers to facilitate continuity of treatment. He said an electronic format also will enable DOHMH to make better decisions about what programs and medications to recommend for a patient at discharge.

Board Member Gwen Zornberg, M.D., asked about the status of programs, including dialectical behavioral therapy to reduce impulsivity. Dr. Hershberger noted that the Board toured the Intensive Treatment Unit (ITU) before it opened. He said the ITU now is operating, and last month reached its capacity. He described the ITU as a punitive segregation unit in which inmates with destructive behavior problems receive morning-to-night mental health programming, using a dialectical behavioral treatment model which is a psychological treatment model that helps people reduce impulsivity and self-injury. He said the program allows inmates who conform to the program to work their way out of 23-hour lock-in to progressively more programs and privileges. Dr. Hershberger said the ITU has a capacity of 35 inmate-patients. Chair Simmons asked how long someone could be confined in the ITU. Dr. Hershberger said confinement would last for the duration of the infraction sentence, noting that the program is built on a 90-day model with inmate-patients moving to different stages based upon their progress. Dr. Zornberg said there is a body of literature that will help guide providers in finding less expensive medications that are at least as effective, and with fewer side effects. Dr. Zornberg added that the Health Committee will be meeting with DOHMH to discuss again the TB variance. Chair Simmons asked when the Board should anticipate the matter coming up for a vote, and Dr. Zornberg said within two meetings from now.

Board Member Stanley Kreitman, chair of the Minimum Standards Review Committee, reported that the proposed amendments have been presented for review to the Law Department. Chair Simmons said that she and Executive Director Richard Wolf have reached out to the Law Department to encourage its prompt and timely response so the process may move forward. She said that she would like to think that the recommendation will be forthcoming before the November Board meeting, and would like the Board to be in a position to begin the publication process before the next meeting. Chair Simmons said she would like the Board to agree on the parameters for the time frames for the process. She noted that the law requires a comment period of at least 30 days, but it is her view that the public comment period should be longer, given that it has been 30 years since the Standards were established and many people will have comments and suggestions. She said the Board wants to ensure it receives the most information it can, so that the Board can have a full conversation about the recommendations it has put forward. She said her proposal is the following: from the moment the Law Department authorizes publication, the Board should set a period of 90 days for comment. She added that in 60 days the holiday season will be upon us, and this is not a good time to hold a public hearing, but would like to schedule a hearing within 40 to 60 days, depending on the time frame, and then have a period of time after the public hearing to digest, sort through and review all the information that is presented at the hearing and in writing. Chair Simmons said that at the next available public Board meeting thereafter, the Board would meet to discuss all of the comments and recommendations. She said that recommendations for each section will be voted upon separately: there will not be one up-or-down vote on the entire package of proposals. She added that if a majority of members vote in favor of a change, the section will be changed. She said she expects that, as a result of the information received during the hearing and extended comment period, the Board will have good conversations about each of the sections for which amendments have been proposed. Chair Simmons added that after the Law Department gives its approval, it will take several days for the Board to publish the materials and distribute them to the public.

Board Member Richard Nahman, O.S.A. said that 15 minutes ago he received a 4-page request from the Legal Aid Society for a 120-day comment period. He said he has not had time to read and absorb the reasons for the request, so he is in no position to decide whether 90 days or 120 days is appropriate. Chair Simmons said she appreciates Father Nahman's point, but believes that the Board should make a decision today or else it will delay the process by potentially another five or six weeks. She said she respects the comments raised in the letter, but also has great faith that the people at the Prisoners' Rights Project will be vigilant in making certain that the Board hears fully their comments and concerns. She added that she believes 90 days to be sufficient, but is prepared to hear other views. She said she does not want to wait five weeks before deciding how long the comment period should be, and noted that the year began with a goal of moving through the process, and she expressed the hope that the process will be completed by the end of the first quarter of 2007. Board Member Paul Vallone said that the Chair's suggestion might be a fair compromise, but is based on the assumption that the Law Department will approve the document presented to it by the Board. He said the

Board needs a fall-back position should the Law Department recommend changes to the draft, because the Board should then re-examine the draft before putting it out for publication. Chair Simmons said that the Law Department will be determining whether we are in compliance with the law. She said that if the Board is told it cannot do something, the existing Standard provision would remain as is. Mr. Vallone said it might be possible to conform with a Law Department request without completely reverting to the existing provision. Mr. Wolf said that the City Administrative Procedure Act calls for the Law Department to determine that the Board has not exceeded its statutory authority. Mr. Vallone said the Law Department may determine that nine of the proposed amendments are within the Board's jurisdiction, and one may be beyond its jurisdiction, so the Board may find it necessary to address just that one item. Chair Simmons said she is willing to think about a contingency that if the Law Department finds that the Board has overstepped its bounds, the Board could revisit the matter at its November meeting. Board Member Alexander Rovt said he supports the Chair's recommendation, noting that he will be absent from the November Board meeting. Board Member Milton Williams asked if the Board could begin with a 90-day period, and extend it if, in its discretion, it determined that it would be useful to do so. Vice Chair Michael Regan said Mr. Williams' point was well-taken, adding that the Board certainly has the flexibility to extend the time period for comments. He said the idea speaks to the spirit of inclusiveness, that the Board is not limiting itself to the statutory minimum of 30 days. He noted that the Board is addressing sensitive and important issues. He described the approach under discussion as "a minimum of 90 days", which may be extended. Chair Simmons noted that there was a sense of the Board that, assuming the Law Department authorizes the Board to go ahead before the Board's November meeting, the Board would send the materials out with a 90-day time period. She said that Mr. Wolf would check with the Members to determine a suitable date for a public hearing, between 40 and 60 days after initial publication, so that the maximum number of Board members will be able to participate in the hearing. She said that after the public hearing, and after assessing the volume of comments received by the Board, that the Board will decide whether to extend the period beyond 90 days. Mr. Regan said the minutes will reflect this discussion and Father Nahman's point as well. The Chair asked the Members if they were comfortable with the plan she described. Father Nahman said he was not, noting that Legal Aid had presented a four-page request for 120 days and he has not had an opportunity to review the request. He said that after 90 days, should Legal Aid say they need another 30 days, there is no guarantee to them that they would have additional time. He said that he therefore would like to establish a 120-day comment period. Mr. Vallone asked whether, if the Board wanted to "tweak" one of the amendments, the process would begin again. Chair Simmons said that once the Law Department approves the document for publication, it will be presented to the public for comment in writing and/or at a public hearing. She said that the Board's process, after receiving the comments, will be to process and absorb the comments, and then the Board will meet and, section by section, have a full discussion in what will be a public forum, during which Members will discuss and debate and suggest alternatives, or suggest retaining the proposals as recommended, or suggest retaining the original provisions, or some combination of these possibilities. Chair Simmons said that each decision will be made by majority vote of the Board, and the issues are not returned to the public thereafter, but rather stand as Board

decisions. She said that all Members will have every opportunity to comment, discuss and propose changes. Mr. Regan said advocates and the public will also have opportunities to do so. Mr. Vallone asked Mr. Wolf to send to all Members whatever information is received from outside groups so the Members will have an opportunity to digest the information. Chair Simmons said she was sensitive to Father Nahman's concern, but said she is very comfortable with a 90-day comment period that could be extended. She said that if Father Nahman feels strongly about it, she will ask for a vote. Mr. Kreitman said that it is the view of the Chair and the Committee that the entire process must be fair to all parties, with full disclosure, and that the proposal for a 90-day comment period, which can be extended, is very fair, especially since the statutory requirement is 30 days. Mr. Vallone said the Members seem to have reached a "fair consensus" on a 90-day period, with the Board retaining the ability to extend for an additional 30 days. Chair Simmons said the Board will not select a date for a public hearing until all Members have been polled for availability, thereby promoting the possibility that all Members have the opportunity to attend the hearing.

Chair Simmons called for a report from the Department of Correction. DOC Senior Deputy Commissioner John Antonelli said that DOC had nothing to report, other than to note that since the Board's September meeting the inmate population had increased by approximately 500. He said DOC did not anticipate having to open another facility, although this remained a possibility in the future. Mr. Kreitman asked if the increase represented a trend. Mr. Antonelli said arrests were up slightly, but not so much as to suggest a change in arrest policy. Mr. Regan asked how the current population of approximately 14,000 compares with the recent past. Mr. Wolf said that in May, 1991, the City confined 22,630 inmates. Mr. Regan asked how today's numbers compare with 1996 and 1998. Mr. Wolf said he would provide the information to Mr. Regan, noting that until recently, DOC had been reporting fewer inmates in custody than one year ago. Mr. Vallone asked whether DOC's recruitment efforts had yielded enough new officers to replace retirees. Mr. Antonelli said recruitment is a problem, but DOC is very aggressive. He said DOC has been able to add enough new officers to offset retirements. Chair Simmons asked the size of a typical recruit class, and Mr. Antonelli said approximately 400. Mr. Vallone asked if DOC was pursuing contracts with food vendors, such as MacDonald's, to operate at a site on Rikers Island. Mr. Antonelli said DOC is seeking to determine whether there are vendors interested in offering food to visitors, contractors, and staff. Chair Simmons said it would be important for DOC to contract for healthy food.

Mr. Wolf reported that BOC's Director of Field Operations, Kenneth Armstead, recently returned from leadership training at the National Institute of Corrections in Colorado. He said Mr. Armstead is reviewing resumes submitted for the vacant field representative position, and soon will begin interviewing.

A motion to renew existing variances was approved without opposition.

Chair Simmons recognized John Boston, Project Director of the Legal Aid Society's Prisoners' Rights Project (PRP). Mr. Boston said that PRP appreciates the

Board's willingness to extend the schedule for comments and a public hearing regarding proposed amendments. He said that PRP is concerned about the Board's plan to hold a public hearing as soon as 40 days after publication of the proposed amendments. He said this gives advocates very little time to prepare, noting that PRP's written comments and testimony could be "crucial" to the Board's consideration. Mr. Boston said he would strongly urge the Board to grant more time before the public hearing, and then give 40 or 60 days thereafter for final comments. He said he would send a letter to the Board with PRP's suggestions for a timetable. Chair Simmons thanked Mr. Boston for his comments, and adjourned the meeting at 10:10 a.m.