

**NEW YORK CITY
BOARD OF CORRECTION**

November 9, 2009

MEMBERS PRESENT

Hildy J. Simmons, Chair
Michael J. Regan, Vice Chair
Catherine M. Abate, Esq.
Pamela S. Brier
Robert L. Cohen, M.D.
Stanley Kreitman
Rosemary Maldonado, Esq.
Alexander Rovt

Excused absence was noted for Milton L. Williams, Jr., Esq.

DEPARTMENT OF CORRECTION

Dora B. Schriro, Commissioner
Florence Hutner, Esq., General Counsel & Deputy Commissioner for Legal Matters
Stephen J. Morello, Deputy Commissioner, Public Information
Mark Cranston, Chief of Staff/Commanding Officer, Office of Policy & Compliance (OPC)
Harry Ahl, Deputy Warden, OPC
Ronald Greenberg, Director of Inspections, OPC

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Louise Cohen, MPH, Deputy Commissioner, Health Care Access and Improvement (HCAI)
Suzette Gordon, Esq., Counsel, HCAI
Charles Luther, M.D., Executive Director for Mental Health, Correctional Health Services (CHS)
George Axelrod, Esq., Director, Risk Management, CHS

OTHERS IN ATTENDANCE

Harold Appel, MD, Doctors' Council, Service Employees International Union (SEIU)
Charles Davis, Applicant Investigations Unit, City Council
Elizabeth Fine, Esq., Counsel to the City Council
William Hough, City Council
Jenna Libersky, Independent Budget Office (IBO)
Robert Newman, City Council
Kerry Spitzer, Budget and Policy Analyst, IBO
Dale Wilker, Esq., Legal Aid Society, Prisoners' Rights Project (PRP)
Milton Zelermyer, Esq., PRP

Chair Hildy Simmons called the meeting to order at 9:04 a.m. A motion to approve the minutes of the September 10, 2009 Board meeting was adopted without opposition.

Chair Simmons introduced the new Correction Commissioner, Dr. Dora Schriro who assumed her duties on September 21st. Noting Dr. Schriro's extensive corrections experience, Chair Simmons reported that Dr. Schriro served as an Assistant Commissioner in the Department of Correction (DOC) in the late 1980s. Commissioner Schriro said that, at the request of Mayor Bloomberg, she is making a comprehensive review of DOC, adding that she will share her findings with the Board. She said that DOC became isolated from correctional theory and practices that proved effective elsewhere, and said she intends to showcase things that DOC does exceptionally well and also introduce practices from other jurisdictions. She said that the City's financial situation requires that each staff member becomes more efficient and effective. The Commissioner reported that she has visited every facility at least once and held many substantive conversations with staff about her definition of an effective organization, and the role that each person must play if a workforce of approximately 11,000 is to transform the agency. She noted that jails have an immediate impact on public safety because most inmates return to their communities within days or months.

Chair Simmons asked for a report on two recent events, an escape and a suicide. She noted that the Board is aware that, in response to the September 30th escape from the Manhattan courts, DOC began requiring that two categories of prisoners wear uniforms to court. Commissioner Schriro reported that, after high security inmate Ronald Tackman walked out of court in a civilian suit, she took advantage of the authorization granted by the Board when it amended the Minimum Standards to place prisoners in DOC clothing. She said DOC decided to begin imposing new security precautions for only the categories of prisoners who pose the highest public safety risk, and assured the Board that the Department enables on-trial prisoners to change into personal clothing before making courtroom appearances. Citing an ongoing criminal investigation, the Commissioner said that DOC had learned most of the particulars of the escape, and also is completing an assessment of contributing factors. She said that activities in the pens and courts contributed directly to the escape, adding that she believes DOC procedures at several locations and levels contributed to a set of circumstances that enabled the inmate to escape. Commissioner Schriro said the Department must verify that every staff member is well-acquainted with specific post descriptions as well as core competencies associated with carrying out responsibilities in specific areas. She announced that she is working with the National Institute of Correction (NIC) to improve DOC's classification system, and with the Criminal Justice Coordinator and court administrators to implement procedures to maintain security while expediting prisoner access for attorneys and other criminal justice personnel in courthouses, but not necessarily in courtrooms. She said that interim procedures have been posted, and permanent changes will be in place by January.

BOC Executive Director Richard Wolf said that the amendment to the clothing standard includes the requirement that before requiring all prisoners to wear institutional clothing, the Department must have in place adequate laundry and personal clothing storage and retrieval services. He explained that BOC staff now closely monitors DOC movement of uniform-wearing Central Monitored Case (CMC) prisoners and red I.D. card prisoners to assess: condition and size of uniforms and outerwear; appropriateness of footwear; adherence to medical restrictions on restraint mechanisms; opportunity for on-trial prisoners to change into personal clothing before entering courtrooms; and, retrieval of personal clothing for all prisoners upon

return to assigned jail. He reported that no problems were observed, and no complaints received. Noting the small number of newly-uniformed prisoners, a combined total of 30 to 35 daily from all jails, he said that staff will remain vigilant but BOC's major concern about DOC clothing services remains "down the road". Commissioner Schriro thanked Mr. Wolf for his feedback about uniform use, and assured the Board she understands that the Department lacks the facilities that would enable it to implement uniform use for larger categories of prisoners.

Chair Simmons thanked DOC for a report updating the Members on steps taken thus far to address the Board's concerns about visiting. Mr. Wolf noted that the report revealed no substantive disagreement with the many findings he presented in his September 19th visit report, and that DOC is working through the problems reported by BOC. He asked if the fact that DOC commented only on sites reviewed by BOC – the Visit Control Building (VCB), Anna M. Kross Center (AMKC), George Motchan Detention Center (GMDC), and Robert N. Davoren Center (RNDC) – means that DOC is not evaluating operation of every jail visit house, and revising all accordingly. Deputy Chief of Staff Mark Cranston responded that DOC is evaluating and updating all facilities.

Chair Simmons asked for time frames by which DOC will resolve outstanding visit issues. Mr. Cranston said that the nature of each issue and the resources required will determine how long each issue will take. Chair Simmons said that the Board will maintain a tickler system for unresolved issues, adding that if the Department's monthly reports do not report movement, or if the Board's monitoring identifies problems, the Board will take other action. Mr. Cranston explained that DOC first addressed issues that could be resolved quickly and now is targeting more complex issues. He added that DOC is conducting a comprehensive review of the visiting process, and reported touring sites on November 4th with BOC staff to point out changes and improvements in posters, ID requirements, bathroom sanitation, and equipment. Member Catherine Abate asked that DOC pursue the more difficult and perhaps more costly issue of refining Visitor Express technology so that pre-visit registration and movement actually are accelerated. Commissioner Schriro responded that she will review other technologies to learn if they might produce better results. She said that, despite the consistently moderate census level, DOC must transport visitors to as many jails as in the past. She said that DOC will determine the optimal time from visitor arrival on Rikers Island until departure, and work to achieve and maintain it.

Member Dr. Robert Cohen asked the Department to evaluate the use of ion scanning equipment on visitors, saying that he observed it during two tours of visit sites. He said visitors and DOC staff argue over test results that visitors claim are false and insulting, and that staff cites positive results to impose booth visits. Citing international studies revealing a high level of false positives, Dr. Cohen asked if DOC had found that scanning visitors enhances control over jails, or promotes safety for visitors, staff and prisoners. Commissioner Schriro said that she read about tests showing that large percentages of bills were found to have come in contact with drugs, and this can yield false positive ion test results. She said she will evaluate DOC's use of ion scan equipment, noting that it was used effectively in other jurisdictions, and noted that airport scanners are effective in detecting explosives and other contraband.

BOC Deputy Executive Director Cathy Potler asked when the Board will receive a long-awaited response about DOC policy regarding drug testing of prisoners. She said that a positive test results in DOC suspending the prisoner's contact visits. Mr. Cranston said that a new draft

Directive on the Department's DOC's drug testing policy should be finalized by the next Board meeting.

Chair Simmons asked Commissioner Schriro and DOHMH representatives to comment on the recent suicide of John Moore to the extent permissible in a public forum, including decedent's background and incident location. Commissioner Schriro said the cause of death has been established as a suicide. She said that investigations demonstrate there are opportunities for improvement, and that some things will be done differently in the future. She reported that Mr. Moore was admitted to DOC custody on October 10, 2009 and took his life on October 15th. Responding to an inquiry from Member Pamela Brier, Dr. Charles Luther, Executive Director for Mental Health for Correctional Health Services, said that this suicide was committed in the same jail as the last suicide, AMKC, but in a different housing area. Commissioner Schriro reported that Mr. Moore had mental health issues, but deferred to DOHMH Deputy Commissioner Louise Cohen when BOC Vice Chair Michael Regan asked if the decedent had been seen by mental health providers and if he was on a suicide watch. Ms. Cohen cited confidentiality requirements and declined to respond. Mr. Regan said that basic information was presented in the past. Chair Simmons stated that information was discussed in executive session. Ms. Cohen said that DOHMH always investigates thoroughly, and collaborates with DOC investigators. She said this includes a review of care by individual providers, whether existing policies were sufficient and followed, and whether systems were operational and appropriate. Ms. Abate asked the Department to determine whether old bathroom stalls have bars from which inmates can hang themselves, as she had heard. Mr. Cranston said DOC will do so. Ms. Cohen described suicide as a risk that never can be fully eliminated and which requires vigilant effort, through physical plant inspections and training, to minimize.

Dr. Luther announced that CHS scheduled Dr. Robert Simon, a national expert, will make a Grand Rounds presentation on Rikers Island, after the Board meeting, on the topic of assessing suicide risk. Dr. Luther explained that such presentations augment regular mental health training for providers, as well as for DOC staff who receive mental health training at the Correction Academy and on an ongoing basis.

Dr. Cohen said that he reviewed medical records and reports about both the Moore suicide and the previous one, and appreciated the opportunity to have met with DOHMH clinical officials. He added that he met with Dr. Luther last week to discuss some general issues and, informally, some particulars of the incidents. He said he was pleased that DOHMH is undertaking a serious review, noting that he identified issues from the Moore death about which the Board should be concerned. He said he would present them at the next Board meeting, when the Members will discuss the Prison Death Review Board (PDRB). He said the suicides and his DOHMH meetings demonstrated the intrinsic value of having a formal process for review by DOHMH, PHS, DOC, and the Board of some cases. Dr. Luther explained that DOHMH performs three extensive morbidity and mortality reviews for every death in custody: one by CHS staff, one by PHS, and a joint review to develop a formal set of findings with proposals for corrective actions. He said the joint report is reviewed by DOHMH Commissioner Dr. Thomas Farley.

Ms. Abate requested information about mental health procedures, in general and for identifying persons at high risk for suicide. She asked for DOC and PHS procedures for new admission inmates who self-identify as depressed or having a mental health history or report

being on certain medications. She asked about procedures for imposing a suicide watch or removing one, and procedures involving mental observation aides. Ms. Cohen said that she distributed a detailed description of the entire mental health process to the Board last year, including flow charts and diagrams. Ms. Brier described this document as complicated, and asked Ms. Cohen to provide a narrative document. Chair Simmons asked Ms. Cohen to distribute this simplified document in advance of the January Board meeting to enable Members to review it for discussion with DOHMH Commissioner Farley, who she announced will attend that meeting.

Noting that Members asked for an update on H1N1 influenza, Ms. Cohen reported that the virus is circulating slowly in New York City as reflected in a small uptick in hospitalizations, almost exclusively of children aged zero to four. Noting that there is no increase in ER runs or hospitalizations from the jails, she reported a small increase in influenza-like illness symptoms in the jails, characterized by fever, cough or sore throat. Ms. Cohen said the protocol implemented by DOHMH, PHS and DOC is that symptomatic inmates are transferred to a contagious disease unit or other quarantine area until test results are returned negative and/or patients are treated and restored to good health. She said this protocol is sufficient to handle effectively all influenza-like or influenza illness. She said that, outside of DOC jails, only hospitals tested so many people. She reported that last spring there only were 109 confirmed H1N1 cases adding that the low number of H1N1 cases among inmates may be due to the fact that inmates are older than the target population of H1N1. She added that cases among staff or newly-admitted inmates might be traced to their having young children at home who transmitted the disease.

Mr. Regan asked about the correlation between staff and prisoner illness last spring. Ms. Cohen said that the number of staff who called in sick during that time period was not significant, and not specifically tied to H1N1. She said that DOHMH tracked medical providers who called in sick, reporting that most seemed to do so due to sick children rather than to their own illness. Commissioner Schriro reported that staff absences due to illness currently are not out of the ordinary, and she praised the efficiency of the inoculation process established between DOC, DOHMH and PHS. She said the Department was fortunate to have received two rounds of H1N1 vaccine earlier than other organizations because prisoners and jail workers are given the same high-priority level as health care providers. Ms. Cohen reported that H1N1 vaccine is not being accepted in high numbers, but is being offered to staff by means of a triage system based on risk: pregnant staff, staff who work with adolescents or women, staff with young children, and staff working visit posts, which involve close contact with the public, including children. Ms. Potler thanked DOHMH for including BOC staff in the priority group. Ms. Cohen reported that more than 3300 doses of H1N1 vaccine recently were given to DOHMH for the jails and that as of November 6th, 600 doses already had been administered to high risk inmates. She said that the Federal government gave DOHMH funding for additional nurses solely for the purpose of doing H1N1 vaccinating, which enables nursing teams to visit housing areas where DOC arranges for speedy, orderly inmate access. Mr. Regan said that he again wished to compliment DOHMH and DOC for their handling of the outbreak last spring, noting that he expects they will be able to handle the upcoming flu season as well.

Ms. Cohen, noting that the contract with Prison Health Services will end on December 31, 2010, said that DOHMH issued a concept paper regarding prospective services that should be incorporated into a new contract. She again asked for comments, pointing out that the concept paper is posted on the DOHMH website. Ms. Brier said that she is interested in DOHMH's

assessment of PHS' methods and services and responsiveness beyond the charted indicators regularly given to BOC. Ms. Cohen said she could include information in a discussion at the January BOC meeting. She noted that Commissioner Farley's presence at that meeting will provide an opportunity to speak about critical issues and broad types of indicators that DOHMH has learned are important when seeking and hiring providers.

Chair Simmons introduced the next agenda item, a discussion of Close Custody housing (CCH), and reminded the Board that at the September BOC meeting Dr. Cohen asked for the CCH discussion. She reported that Mr. Wolf submitted a report in October on the history of CCH, its procedures, and staff observations of CCH daily operations. She asked if Members had comments or questions, adding that the Board had anticipated that a decision would by now have been issued in Jackson v. Horn. Chair Simmons stated that, inasmuch as the litigation remains pending and Commissioner Schriro is new to the subject and is evaluating it, she is prepared to defer a Board policy decision until Commissioner Schriro completes her review. She asked if Commissioner Schriro wished to share analytic or policy information with the Members. Commissioner Schriro responded that, when making her first jail visits, she toured CCH areas, and that she later toured with Mr. Wolf while discussing CCH in detail with him. She thanked BOC for giving her time "to get her ducks in a row", noting that she already identified some adjustments that DOC can make in CCH, and that she expects the overall review of DOC's classification system to bring some improvements to CCH as well. She added that she looked forward to talking to Members in more detail, but would wait for the moment on presenting additional comments. She accepted Chair Simmons' offer of a copy of the BOC staff report on CCH.

Dr. Cohen told Commissioner Schriro that he appreciated her comments and looks forward to changes she will make in classification and Close Custody. He added, however, that, in his opinion, BOC has a responsibility to act on this situation now. He said that he would read a statement into the record, speaking for himself as one Board Member since the Board has not yet taken a position on CCH. He added that he is not alone in the views that he would now present, noting that many international standards and researchers agree with his views, and formed the basis for the Board enacting Minimum Standards Section 1-05 in the first place, and retaining it over the years. He read the following statement:

The placement of prisoners requiring protective custody in lockdown, including transgender prisoners, isolating them continuously, and only letting them out of their cells for one hour a day of isolated activity, is cruel and dangerous in my opinion as a Board Member. Prisoners with mental illness are driven psychotic in these settings; two prisoners in Close Custody killed themselves in the past several years. The Standards were established because it has been recognized in New York and throughout the world that, when men, women and children are deprived of their liberty by a government entity, they are likely to be injured, abused, degraded or worse. The Standards provide a set of rules, and a preventive mechanism to prevent the recurrence of abuses that have occurred in the past and are likely to occur again. The Board always has engaged issues that are under litigation. For the past thirty years, much of the Board's Standards have been incorporated into litigation or settlement agreements, or been the subject of litigation by individual prisoners or groups of prisoners. The fact that there is ongoing litigation does not, in my opinion, absolve the Board from enforcing its Standards when it is aware of a violation. All

of the Standards are important; they are minimum standards. The fact that, at any moment, a prisoner may choose to not avail himself or herself of the right to read a newspaper, visit with family, exercise, or lock out of a cell for an hour, does not mean that they limit their access to these rights in the future. Prisoners can refuse at any particular moment to take advantage of the rights afforded them by the Standards, but DOC cannot take away the rights mandated by the Standards. It is not reasonable to say that men and women who sought protective custody, and were offered and accepted the only available option, Close Custody, did voluntarily give up their rights. This is not what we mean by “voluntary”, and the Board itself, as I read in the minutes, unanimously supported that position, that the Close Custody system does not meet our Standard 1-05. Twenty-three hours lock-in is punitive, inhumane and dangerous. In my professional experience, not only in New York but also all around this country, terrible abuses occur in punitive segregation units. The Board has recognized this, and the DOC knows this to be true. The Close Custody units created by the NYC DOC are a clear and conscious violation of the Board’s Lock-in Standard, particularly given the text that we all have seen of the minutes of Board meetings. The DOC asked the Board to exempt these units from the Lock-in Standard, and the Board declined, recognizing the danger of increasing the use of this highly restrictive, punitive setting for prisoners, many of whom simply require protection. In my experience, DOC historically has provided safe protective custody units in all facilities. DOC can, and should, provide these necessary housing areas for the population that needs them, and should end the unnecessary use and expansion of compulsory lock-in, which violates Board Standard 1-05, and Board attempts to protect the Department and the prisoners from unsafe housing conditions.

Chair Simmons thanked Dr. Cohen for his comments, but reiterated that she wants Commissioner Schriro to have an opportunity to present to the Board her own assessment of CCH. She added that, by the January meeting, there also may be a court decision on CCH. Ms. Abate said that she voiced the concerns of a number of Members when she discussed safeguarding the rights of prisoners who need protection as well as the dangers of locking-in any prisoner extensively. She added that representatives of the transgender community sought her counsel, questioning the validity of DOC offering restrictive Close Custody as the only housing option. Ms. Brier added that one need not be highly-educated about Close Custody or its history to tour those housing areas and know that something is not right. Mr. Regan said he is one of the several Members who are disturbed by CCH operations, and noted that many Members also disagreed with then-Commissioner Horn’s decision of to eliminate gay housing as a subset of the old Protective Custody category. He said he hopes Commissioner Schriro will re-visit the issue.

Commissioner Schriro noted that Close Custody now consists of several different populations: traditional Protective Custody, with mostly voluntary and some involuntary placements due to the Department’s determination that some prisoners would be vulnerable in another setting, and predators who need to be isolated from all other prisoners. Mr. Wolf observed that prisoners deemed “predatory” are housed in a different jail from those deemed “vulnerable”. Commissioner Schriro reported that the day’s total of prisoners in CCH areas was seventy-five: 52 protective custody and 23 non-protective custody.

Chair Simmons asked Ms Abate to present the agenda topic she had proposed, issues involving adolescent prisoners. Ms. Abate said that all Members view the adolescent population as vulnerable and requiring attention and support to ensure safety while in custody, and to get on

the right track, so that violence does not continue in jail or in the community. She cited data on adolescent violence prepared for her by Mr. Wolf as revealing comparable levels in 2008 and 2009 of “A” and “B” Uses of Force, as well as other types of violence. Mr. Wolf distributed the data to all Members. Dr. Cohen thanked Ms. Abate for raising this issue, noting that violence is both a correctional issue and a health issue, and that DOC may not always be able immediately to identify a broken nose as more than a broken nose. Dr. Cohen said that injuries cumulatively may reflect an underlying correctional issue, and suggested that health providers often can be a useful source of information for corrections officials.

Ms. Abate asked Members to accompany her on a morning tour of RNDC. Members Rosemarie Maldonado, Stanley Kreitman, and Dr. Cohen as well as Chair Simmons volunteered, and discussed touring before the January Board meeting. Ms. Abate suggested that all Members email to her and Chair Simmons topics they would like to pursue at RNDC, and copy Mr. Wolf. She identified her own interest in programs, education, mental health, and special needs services. Commissioner Schriro said that, if BOC’s topics are conveyed to her in sufficient time before the tour, she will gather data for Members specific to their interests. Chair Simmons responded that background information, and a briefing before the tour, would be beneficial. She suggested that Members meet with the RNDC warden, programs officials, and other staff to get an understanding of services offered to adolescents by DOC, by other organizations, and by volunteers, and to learn ways in which BOC can assist. Commissioner Schriro reported that she discussed with the Rikers Island School Superintendent targeting adolescents over the compulsory age of seventeen, with the goals of reducing idleness, improving literacy, and developing skill sets. Members accepted her offer to arrange for them to meet with the Superintendent, and said they would contact each other about selecting a tour date.

Mr. Wolf reported that the Department requested renewal of a variance first granted on May 22, 2009 from the Classification Standard in response to the ongoing H1N1 crisis. He said the variance permits DOC to confine in one housing area at the Rose M. Singer Center all categories of uninfected pregnant prisoners. He said the variance enables close monitoring for H1N1 symptoms, and prompt testing and intervention as warranted. Mr. Wolf said the variance had had no negative impact. Chair Simmons called for a vote on renewal of all existing variances, and a motion was approved without opposition.

Chair Simmons adjourned the meeting at 10:02 a.m.