

MEETING OF THE NEW YORK CITY
BOARD OF CORRECTION

HELD NOVEMBER 8, 2007

SPECTOR HALL
NYC DEPARTMENT OF PLANNING
22 READE STREET
NEW YORK, NEW YORK 10007

BOARD MEMBERS PRESENT:

HILDY J. SIMMONS, CHAIR
MICHAEL REGAN, VICE CHAIR
STANLEY KREITMAN
ROSEMARIE MALDONADO, ESQ.
RICHARD NAHMAN, O.S.A.
ALEXANDER ROVT
PAUL A. VALLONE, ESQ.
MILTON WILLIAMS, JR., ESQ.
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(tape 1, side A)

MS. HILDY SIMMONS: Before we actually get into all of our business, I need to have every Board member say their name. Is that what you want us to do? Before you speak, please say your name, the first time only, so that

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BOARD MEMBER: Actually, as frequently as you can would be helpful.

MS. SIMMONS: Oh, as frequently as you can, okay. All right, for the transcript purposes.

1. Approval of Prior Minutes

MS. SIMMONS The first item actually on the agenda is the approval of the minutes from the September meeting. You all got copies of those minutes. Is there any comment?

BOARD MEMBER: So moved.

MS. SIMMONS: So moved. All in favor.

BOARD MEMBERS: Aye.

MS. SIMMONS: Okay, the minutes are approved.

**RESOLVED, the minutes of the
September 2007 meeting are
unanimously approved.**

2. Minimum Standards

MS. SIMMONS: All right, the next and

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2 only other item on the agenda is the minimum
3 standards, but before we start out deliberations,
4 I'd like to just take the privilege of the chair to
5 say a few things. So, first of all, again, good
6 morning to my colleagues and to all of you who have
7 joined us this morning.

8 I really want to begin by thanking the
9 staff of the Board of Correction and my fellow
10 Board members for the hard work that you've all
11 been engaged in over the better part of two years,
12 some even longer. I want to emphasize that. This
13 has been a long process, and everyone has worked
14 very hard, and I personally am grateful. I hope
15 that, as we go forward, everyone will appreciate
16 fully the work that went into today's particular
17 deliberations.

18 I also want to use this opportunity to
19 thank the representatives of the community and the
20 advocacy community - I'm not going to name
21 everybody who's here and all of the various groups
22 who have testified and all the rest of that because
23 we would never get through the agenda - but I
24 really want to say to all of you, and I know many
25 of you are represented in this room, how much we

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appreciate, collectively and individually, the contributions that you've made to this process.

It seems to me, and I'm not a lawyer, so I learned along the way, but if the procedures for this process involve public comment, which is what we wanted, we put thoughts and ideas and we wanted your comment, and you certainly gave it to us and that's great, and we've listened. And that was what I believe good public process should be about. And so we thank you for your contributions, and we hope that when we're through with this process, everyone will feel that they had a significant contribution to be made, that voices were heard, and that we took seriously all of the comments that have been made.

I also want to thank the elected officials who have weighed in on all of this and who have contributed their thoughts and comments. Those are very much appreciated as well. And the representative obviously of the Department of Correction who have also contributed time and effort to this overall process.

Having been involved in the Correction system going back more than 30 years, I remember my

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2 father saying to me why would you want to work in
3 that business when I first hired by the State
4 Department of Correction. And he said no one's
5 ever interested in prisons or jails or any of the
6 rest of that. If we've accomplished nothing else
7 through the two years of this process, we've
8 engaged this city and this community in a topic
9 that is really the most important, I think, that a
10 civilized society can address.

11 And so I thank you all and really wanted
12 just to say I appreciate the work that everyone's
13 done.

14 I also want to say, and assure everyone,
15 that while we've taken all those comments, and I
16 think the results of this meeting will reflect
17 that, the purpose of the public process was to
18 solicit comments, to listen to testimony, some of
19 which happened in this very room, and to take all
20 those issues and concerns into account during our
21 deliberations. But today is the day for
22 deliberations, and those deliberations are among
23 the Board members. So while this is a public
24 meeting, the only people who will be conversing in
25 this meeting are members of the Board.

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2 We will not be calling on anybody, the
3 rest of you, will not be taking questions,
4 comments, or anything else from those of you who
5 are assembled. Our purpose here is to deliberate,
6 and that's what we'll do. The time for all of the
7 other commentary and discussions and meetings and
8 all the rest of that has now past. So I welcome
9 your presence again but want you to understand the
10 process that will go forward.

11 I also would like this to be an orderly
12 process, and I'm mindful of all sorts of things
13 here. So I'm going to ask our Executive Director,
14 who really has done an extraordinary job in getting
15 us to this point, Richard, and, again, I thank you
16 personally for that. To, as we proceed, summarize
17 each proposal. All of you have copies of
18 everything in long form, in short form, and you
19 have copies of all the comments, so you have all of
20 the documents.

21 Richard will summarize each proposal. I
22 will then ask for comments. You may propose
23 changes, clarifications, amendments. And depending
24 on whether that transpires or not, we will vote on
25 either of the changes or amendments and/or the

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2 proposals. Every Board member has the opportunity
3 to say something should they desire. I don't want
4 to keep anybody from saying anything, but I'm also
5 mindful that in some cases there may be clear
6 consensus, and, therefore, we don't need a lot of,
7 necessarily a lot of discussion.

8 So an item will be put up for a vote after
9 the discussion or any amendments. It's a majority
10 vote on each item, which means five votes in favor
11 pass the item, five votes against turns down the
12 item, will be rejected. Everybody's clear on that?
13 Any questions from any Board members on this
14 process?

15 Okay. If not, I want to thank everybody
16 again and let's begin. So -

17 MR. RICHARD WOLF: Shall I?

18 MS. SIMMONS: Yep.

19 MR. WOLF: Good morning. The way I think
20 it might be useful to move through this is to
21 start, first, with a couple of technical items
22 before we go to the substantive proposals
23 themselves. There are a few things that recur in
24 the draft that need to be corrected, and there are
25 a couple of proposed changes that were, that have

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been published but can be passed as a group if you so desire so that we can speed the process a little bit.

For instance, there's some general updating that's required of the standards because they were written in the mid and late 70's and passed in 1978. For instance, when the standards were first written, the Department was required under the standards to establish some new systems. For example, Subsection A of Section 1-02 ("Classification of Prisoners"), the policy, and this is in your office document on page 9, reads, "The Department shall establish a classification system." And I just give this way of example. Obviously, long ago the Department of Correction established a classification system, and now they need to continue under the standard to use it, to employ it.

So changes like that where the standards originally called for the setting up of something, the language just needs to be changed, and it's already published that way. So I thought it would be useful to begin by entertaining a vote to pass those as a group.

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MS. SIMMONS: I believe there are five of those items. You've all had a chance to review them. Is there any question or comment on any of them? Can I call for the vote on these five? All in favor. Okay, let the record show it's approved.

RESOLVED, the language of five items in the Standards is changed to reflect use and employment of standards rather than setting up of standards is unanimously approved.

MR. WOLF: And that was unanimous.

MS. SIMMONS: That was unanimous.

MR. WOLF: Okay, similarly, in the draft, in the published draft, was the suggestion that the dates for implementation, in other words, these things were passed in February of '78, there's language throughout that says by September 1, 1978, for instance, thus and such must happen. Clearly, for those of us who had been pay attention, that time has passed --

MS. SIMMONS: That clock has rung.

MR. WOLF: That's right. So that too should be corrected, and you can vote on all those together now if you so wish.

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MS. SIMMONS: Motion to approve. All in favor.

BOARD MEMBER: Aye.

MS. SIMMONS: Let the record show that two was a unanimous vote.

RESOLVED, throughout the Standards, that dates indicating implementation by which changes should be made is changed to reflect current dates is unanimously approved.

MR. WOLF: Further, to conform with the format for City regulations, there is some word changes that don't change any meaning whatsoever that need to be accomplished. The word Section should replace the word Part which appears throughout. And let's see, I think there was one other like that. No, that's it. Oh, we're also choosing, for some practical reasons that aren't even worth going into, to change wherever the word Institution appears in the standards, we propose that the word be changed to Facility. And that's through. So, once again, if you could consider that.

MS. SIMMONS: Okay, is there a motion?

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All in favor? Father Nahman, are you in favor of this - yes. Okay, unanimous again. Thank you.

RESOLVED, throughout the Standards, that the word Institution is changed to Facility and the word Part is changed to Section is unanimously approved.

MR. WOLF: And I'm getting slightly ahead here, but there's going to be a need, I think, to renumber various sections as we go forward with this process. And to the extent that the votes that you take reflect that need, maybe it would be good to have approval of that at this time.

MS. SIMMONS: Is there a motion to approve the potential renumbering, should we need to do that? It's a tough one, guys. Let the record show it's approved.

RESOLVED, that the Sections throughout the Standards will be renumbered, if necessary, is unanimously approved.

MR. WOLF: And, finally, there are miscellaneous - this is the oops section. There are a number of - well, we'll give you the microphone so that you can say that clearly on to the tape. There are some miscellaneous

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2 typographical errors. Some words are improperly
3 capitalized, there are a few typographical errors.
4 For example, in Section 1-10(e) ("Duration of
5 Telephone Calls"). It was pointed out to us --

6 BOARD MEMBER: What page?

7 MS. SIMMONS: It's on your summary notes
8 - well, if you look at the bottom of page 1 on the
9 summary, you'll find it. Number 5.

10 MR. WOLF: The intention here was muddled
11 by some typographical errors that were pointed out
12 to us in several of the comments, and the language
13 should read, "The Department shall allow telephone
14 calls of at least six minutes in duration," which
15 has always been the case. So we want to correct
16 that.

17 Also, there are brackets that, on page 13,
18 Section 1-03(g)(3) ("Clothing"), there are brackets
19 that are misplaced that obscure the clear intent of
20 the Board, at least in the draft, to continue to
21 allow detainees to wear non-institutional, now it's
22 going to be non-facility, clothing until the
23 Department implements, if the Board so passes, an
24 amendment allowing for pre-trial detainees to be
25 required to wear uniforms. But the purpose of this

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one here is to state that the Board keeps in effect the status quo until such time as the Department implements, if you pass it, the change. So it's just a matter of moving the brackets, and that's it.

MS. SIMMONS: Okay, is there a motion to approve this change? All you're doing is moving brackets here, folks. We're not doing anything else. All in favor? Let the record show it was a unanimous vote.

RESOLVED, that the typographical errors will be changed and misplaced brackets will be properly placed to reflect the intention of the Board throughout the Standards is unanimously approved.

MS. SIMMONS: Thank you very much. That takes care of some housekeeping and our fallibility problems.

Okay, we're now onto the next set of issues, and I will, we will go, as I said, item by item. So, Richard --

MR. PAUL VALLONE: Madam Chair, may I have a moment.

MS. SIMMONS: Sure.

MR. VALLONE: Paul Vallone, one of the Board

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Members. I'd just like to say a thank you to everyone, and I know some people didn't realize, but most did, that we had a traumatic event in our life in the last few weeks, and my son's doing well, and I wanted to thank everyone for their prayers and wishes. I've been trying real quick to get caught up to speed because we did not make the September meeting.

But I want to use this, and we're all going to use this meeting as to talk frankly amongst ourselves. We do have a lot of people watching us, and that's fine, that's what the requirements look for. But just to state some of the things, observances that's going to happen today, I think that would help us, and I think what we're going to do, because I know we've prepared very long for this, and there have been a lot of deliberations, and the subcommittee has presented a wonderful draft for us. This is truly our very first time as an entire Board to discuss nothing else but these, every word, sentence, comma.

I know Richard just changed some of the procedural things, and those are fine, those needed to be done.

What I'd like to do is state, and I think we all agree, we're all going to have comments, we're all going to ask for either things be added, changed, keep them

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2 exactly as they are, to strike one down, pass one down.
3 But at the end of the day, we will have a new set of
4 minimum standards in some way, shape, or form that may or
5 may not substantially change anything, but it will be a
6 new document.

7 And personally I think it would be very
8 difficult to vote on something that we do not have in
9 front of us. A lot of things we may have ask for might be
10 for the Department of Correction to provide some protocol
11 for us to see, like exactly what you just said using the
12 new clothing, you know, how are they going to do that, how
13 are they going to provide that. Some of the things we
14 have on here are constitutionally touched, like privacy of
15 conversations and speech and correspondence. How are they
16 going to be monitored? We really don't know that yet.

17 So we may conditionally approve something, we
18 may not. But that's not really I think in our realm of a
19 possibility to vote a yes or a no.

20 I think the process has been amazing. We've had
21 some great insight. Personally, it's helped me. I mean
22 there's been amazing expert correspondence and things
23 given to all of us. It has been difficult to sort through
24 all of it.

25 What I'd like to do is see, if everyone agrees,

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2 make a motion that we do exactly what we're doing, discuss
3 every one of these, clean them up, change them, drop some,
4 go forward with some. But then at the next meeting we
5 actually vote, when Richard has a chance to give us the
6 document very succinct, we won't have all of these things
7 around us, to just vote, probably quickly, on all the
8 things that we did today as opposed to voting today on
9 each of these matters. That was what I was thinking.

10 MS. SIMMONS: I don't know whether we can - I
11 would like some opinion from you as to - because we can't
12 - I think that's a very interesting idea, Paul. We have
13 to, in order for Richard to produce a new document, we
14 have to vote on things. There's no way to produce a new
15 document but by voting because that's the only way one
16 would know whether a particular proposal was accepted or
17 rejected. So we have to take a vote today.

18 MR. VALLONE: Yes, I would propose --

19 MS. SIMMONS: And by definition we will, as I
20 understand it, each of these are independent items, so
21 that it's not a document in total, it's each independent
22 item. Whether you want to have, depending on the outcome
23 of today's meeting, immediately prepared by the Board
24 staff, which I think could happen, a complete document
25 that shows everything that was decided upon, or not -

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right? - I mean everything that was voted on. I'm not saying immediately like tomorrow, Richard, don't get too panicked, but within the next, whatever, week or ten days --

MR. VALLONE: That's what we can do, but it won't include the Department of Correction's feedback.

MS. SIMMONS: But let me be clear about that because I know that's been a concern for a variety of people, and I at least have had extensive conversations with the law department, with Richard at my side. There is a distinction, and it needs to be made very clear, between setting a standard and an operating procedure, and our mandate by the charter is to set the standards. It's the Department's obligation to implement those standards. And while there may well be language that emerges today that speaks to wanting, you know, if something is approved, that we will want to see their procedures. They will be obligated to provide us with those procedures.

And we will have an opportunity in a public hearing - public setting, not hearing, sorry - public meeting to review those procedures, to discuss those procedures, and to tell the Department what we think of those procedures. It's their job to propose them, and we can denounce them, we can say we think they're fine, we

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can offer suggestions to them, we can do all sorts of things, but that's their purview not ours.

And if in the end, they came up with procedures that we're unhappy with, we have a fair amount of recourse with regard to how to deal with that that extends quite broadly actually, but our job is not to manage the Department, that's the Department's job. So in proposing these and approving them today, the expectation will be that the Department will come back, where there are standards that are proposed that are new or that change procedures that currently exist, it's the expectation that the Department will come back to us, and I personally am going to ask them to come back to us by next month's meeting, to show us what procedures they have in place, or what have in place, so we can review those and have a conversation about those, and that would be part of our conversation either December or January, whatever the timing is.

But we can't sort of vote and then vote again, I don't think.

MR. VALLONE: That's my problem. That's exactly the concern --

MS. SIMMONS: In essence, you're saying we're voting on stuff today, and then you're saying that we're

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going to take another vote, like a master vote next month, and I don't believe that that's, that we can do that.

MR. VALLONE: No, I said to hold off the vote. I think we should do exactly what we have today is to discuss these things, and then vote either, if December doesn't work for religious for many people, celebrations, then maybe in January. But not to stop the process, not even delay the process, just almost finalize the process.

See, we're asking to say yes to some of these things based on some of the operational procedures the Department is going to put in place, so we don't know what they are yet.

MS. SIMMONS: That's right.

MR. VALLONE: I understand that that's not their, what their regulations are does not control our minimum standards. But if we're going to place a minimum standards, that's going to be forever, until there's another one of these. Based on what the Department's going to do in order to satisfy our concerns, how could we vote today on it? We don't know what they are yet.

MS. SIMMONS: Because we'll have a chance to review their standards, their proposals rather.

MR. VALLONE: But we have already voted yes.

MS. SIMMONS: Yes, but all we've set is a

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standard, Paul. We will have a chance to see their procedures.

MR. VALLONE: A standard that will live on forever.

MS. SIMMONS: No, it won't live on forever because, frankly, we can always repeal a standard. Nothing's going to live on forever, so let's not --

MR. VALLONE: But I don't understand what your concern is. Your concern is that somehow this is going to be stopped, it's not going to be stopped. I'm saying that we should not have to vote until we have - a lot of things are going to happen. A lot of this is subjective. I don't know, I might be speaking personally, but we have concerns on things, and we're going to be adding language, we're going to be tweaking language, we're going to be changing language, we're going to be striking things, adding things. To take then a finality vote on the totality of what's going to happen today I think is unfair to all of the work you've done already and the Board has done.

MS. SIMMONS: Milt, did you have something you wanted to say?

MR. MILTON WILLIAMS: Paul, you know, I had the same concerns, and I really kind of worked through this

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2 the last two weeks. And it's my understanding that when
3 we set these standards, we don't even have to put in the
4 standards that we're going to ask the Department of
5 Correction to review their procedures. That's implicit.
6 So we can set the standards, and then we have every right
7 to request to see the procedures, and if we don't like the
8 procedures, we can tell the Department of Correction and
9 work with them to change them so they're to our liking.

10 By setting these standards today, we're not in
11 any way waiving any right we have to object or to tweak
12 procedures, and that is what gave me a comfort level here.

13 MR. VALLONE: And I agree with you on that, but
14 we are putting in specific language which is actually
15 statutory in nature, as to what has to be done in these
16 guidelines. Some of that language is exactly what we're
17 asking for to change and then to delete. We're not asking
18 - that's the language of our standard. I'm not talking
19 about the policy of the Department of Correction. But we
20 have something passes based A, B, and C, but if we're
21 going to change A, B, and C and add a D or an E, I think
22 that should be given to us to vote on together.

23 MR. MICHAEL REGAN: And I hear what you're
24 saying, Paul, too, and as always I agree with you on lots
25 of stuff, but I think today we've got to move ahead. I

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2 was on the Standards Committee with Stanley Kreitman who's
3 done a terrific job and who's a great leader on this
4 stuff, I and others have listened to the advocates, and I
5 know that there are issues here that I'm going to vote no
6 on.

7 But I think at today's juncture, we've been
8 through this process for quite some time, and I think that
9 - are we going to hear from the Department today on some
10 of these issues?

11 MS. SIMMONS: No.

12 MR. REGAN: I think as we get through them, if
13 we're not satisfied perhaps on individual issues, that we
14 should consider that option rather than tabling the entire
15 --

16 MR. VALLONE: I would agree with that. I think
17 if we have a unanimous on going forward or stopping, if we
18 don't have any problem on those, we can go forward. My
19 concern was then if there are other ones that are going to
20 be approved based on additional language and things that
21 we may want to see, if you could hold off on one or two or
22 the ones that may be able to be done. Richard, is that a
23 possibility?

24 MS. ROSEMARIE MALDONADO: I think that it's a
25 case by case determination. Some of these we'll go

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forward; some of them we might need additional language or changes. And I guess what we're asking for is the flexibility to actually see the language before we take a final vote on them. And that may have to be the case for some of them.

MR. WOLF: The procedure that has been agreed to by the Board members is, provides, or it could provide exactly for that because the idea as Chair Simmons has indicated is to have votes one by one. So there'd be first a discussion, and then if you're prepared to vote, a vote. If you're not prepared to vote for whatever reason and a majority doesn't want to vote, then you could table it or whatever. But you'll go item by item through it.

MR. ALEXANDER ROVT: I think we should go ahead and work with it, and if anybody adds to that, he can add or vote yes or no.

MR. STANLEY KREITMAN: I don't agree with you, Paul. I think that this process has gone on in the most democratic way. Not only did we adhere to all of the City requirements, but every one was given double and triple the amount of time. I think this Board has reviewed ad infinitum every item. I think we should take it to a vote, and if people - in a democratic way, there's been no electioneering, there's been no arm-twisting, everybody is

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very independent. And if someone doesn't like the language, vote no, and then maybe we'll come back to it at some future time.

But the process can't go on forever because I don't think anything will change. These are complicated issues, they're human issues, and there'll always be people that disagree. And that's the purpose of an election. If anyone doesn't agree, vote no. But I think we should do item by item and vote item by item, and do it within that democratic process.

MR. VALLONE: I agree (inaudible), addressing my comment, however - Paul Vallone - but this is the first time we're doing this totality just us as the Board. It's not the amount of what has been provided to us, it's not a criticism of what everyone has done and provided. That has got us wonderfully to today. However, this is the first time the eight of us are going to have a sane, normal conversation on all of this, and I think it's with due diligence and prudence that we should listen to each other, our comments. And I think as we're talking - and that's what I meant, this is going to be a dialogue - as we talk about it, it's starting to take shape. I'm starting to agree with what Mike and Rosemarie said about let's go forward on an individual basis, and if it does

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pass. However if there are some major or serious concerns about language of a certain particular item, there are quite a few, that should be tabled before we take that vote.

MS. SIMMONS: Father Nahman, do you have something you want to say?

FATHER RICHARD NAHMAN: Yes, my name is Richard Nahman. Paul has said many times, this is the first time we've talked together. The whole process so far reminds me of a long jury trial, you know, we've had testimony for over two years. Finally, the jury, that's us. I can't see any trial with a 46 point case, each one reviewed and discussed and taking each person's considerations seriously and expect a jury to come to a verdict on all 46 cases within a two-hour framework.

I think this opportunity for us now is to talk, to discuss. Whatever happens today in the time frame we have today, we get that far. And then we then decide how do we, you know, set up a time line for the rest.

What we have before us, and in what was proposed here, are other proposals that were given to us by the subcommittee, but yet we have not taken any kind of time or consideration in what's presented before us right now to consider perhaps in the last 30 years some new issues

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2 should be discussed and should be added to the standards.
3 There's nothing that has been formulated, nor has the
4 thing, as we've looked through the whole standards, maybe
5 there are issues that each one of us individually may say,
6 well, the committee really didn't address that, but that
7 should be addressed.

8 So all we have done is taken what this committee
9 has done and just worked with that, and we haven't gone
10 beyond anything else. So I think there's much more on our
11 plate I think that we should just set, we can do what we
12 can do today, perhaps going point by point, and if the
13 issue is still not at a point where we can make a
14 decision, well, we don't make a decision. We'll keep on
15 going.

16 MR. WILLIAMS: You know, there are a lot -
17 you're right, Father, there's a lot here to digest.
18 However, I got to tell you, from my assessment, I would
19 say probably 41 of the items, I don't know there's going
20 to be that much discussion. There certainly wasn't a lot
21 of commentary from the advocates one way or the other.
22 There's really five, if you ask me, hot button topics that
23 may warrant some discussion, and even some of those may go
24 a lot faster than we think. So I think we should just get
25 started and see where we are.

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BOARD MEMBER: Agreed.

MS. MALDONADO: I agree.

MS. SIMMONS: Is there agreement on the Board?

MS. MALDONADO: Yes.

MS. SIMMONS: Father Nahman, let me just address your final point in terms of new things. As I said at the September meeting and as I said at the hearing and at many other times, to the extent that there are new issues, new items, new proposals that someone wants to make, that will be a new process that we can commence in 2008. I personally, as I again said at the September meeting, reviewed all of the various suggestions that came at the public hearing from topics that people felt should be somehow included in minimum standards.

Regrettably, many of them fall outside the boundaries of what we can include in a standard. They may be good ideas, but they're not appropriate to a standard. That doesn't mean we shouldn't care about them and it doesn't mean we shouldn't discuss them and figure out ways to be helpful, but that to me is a new process. This process has to come to an end at some point, and then we can, if there's a sense of the Board, and I'm certainly open to whatever suggestions are made after the first of the year, whether to start a process again to think of new

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things or to proceed however we want.

But this process, I don't believe, given all the work that's been done, should be delayed any further, and I appreciate the comments that have been made. So let's get going, and we'll see where we end up.

Okay, so the first item, Richard.

MR. WOLF: Proposal number 1 is to add the following language to Subsection A of Section 1-01 ("Non-Discriminatory Treatment"), the new language is definitional. The term Prisoner means any person in the custody of the New York City Department of Correction. Detainee means any prisoner awaiting disposition of a criminal charge. Sentenced Prisoner means any prisoner serving a sentence of up to one year in Department custody.

MS. SIMMONS: Before discussion starts on this, I just want to make one point. There seem to me in conversations that we actually have had at Board meetings, that there was a consensus among members to add the terms Gender and Disability to the list of factors that should not provide a basis for discriminatory treatment of prisoners. We talked about it at our meeting. It seemed to me it was everyone's sense. So I would like to propose an amendment to this to add that language. Anybody else

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has anything else they'd like to talk about with regard to this, that's fine, but I'd like to take the privilege of the Chair to propose that.

MR. REGAN: Just on this note, because I forget, did we examine the issue of sexual orientation on this as well? Or does the language include --

MS. SIMMONS: Gender.

MR. WOLF: Yes, we've looked at the definition of gender in the New York City Human Rights Law, which I have. Thank you very much. And it reads as follows:

"The term gender shall include actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression."

And it goes on.

MS. SIMMONS: Any comments or questions about this particular item? Father Nahman.

FATHER NAHMAN: From Mike's question, then is that specific definition going to be the one that is prevailing in our standard? In other words, will the footnote or somebody say according to Human Rights Law 8(1)?

MR. WOLF: Well, there's no need to directly reference it because the City law would govern, so there's

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no need to do it. That's the way it would work.

MR. REGAN: I'm comfortable with that. I just wanted it read into the record that that is what the City's requirements are.

DR. GWEN ZORNBERG: I'm actually not comfortable with it.

MR. REGAN: Excuse me, hold on for one second.

DR. ZORNBERG: Gwen Zornberg, member of the Board of Correction. Gender does not imply sexual orientation. Are you saying that that's what that definition implies?

MR. WOLF: I'm saying we could use more microphones. No, my answer was actually just limited to reading the definition which I didn't get all the way through. So why don't I just read that fully into the record, and then you can continue with the discussion as you wish. The term gender shall - and I'm citing, by the way, Section 8-102, this is Chapter 1, this is from the Administrative Code, the Commission on Human Rights, sub 23.

"The term gender shall include actual or perceived sex and shall also include a person's gender identity, self-image, appearance, behavior or expression,

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whether or not that gender identify, self-image, appearance, behavior or express is different from that traditionally associated with the legal sex assigned to that person at birth."

That's what that definition is.

DR. ZORNBERG: Is there a process to add sexual orientation to gender and disability here?

MR. WOLF: It's already there. And nothing's being deleted. This is just an addition. This is to cover more categories of people.

DR. ZORNBERG: I'm just making sure this is clear. Thank you, Mr. Williams, in making sure that this is clarified and clear for all.

MS. SIMMONS: With that, can we call for a vote on this item?

BOARD MEMBER: So moved.

BOARD MEMBER: Just so that it's clear --

MS. SIMMONS: Yeah, we're voting on the amendment.

MR. WOLF: As I understand it, what's before the members now is the published proposed change as well as adding the words proposed by the Chair, gender and disability.

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BOARD MEMBER: And the legislative history of this proceeding will reflect the reading of the definition in the record.

MS. SIMMONS: Is there a motion?

MALE VOICE: So moved.

MS. SIMMONS: All in favor.

BOARD MEMBERS: Aye.

MS. SIMMONS: Let the record show it was unanimous. The vote was unanimous.

RESOLVED, that the published proposed changes as well as adding the words proposed by the Chair, gender and disability, to Item 1 are unanimously approved.

MS. SIMMONS: Thank you very much. Okay, the next two items I would propose, although I've said all along we're taking item by item, I want to suggest, again, and this is an omission that I feel personally responsible for, so I, again, taking the privilege of the Chair, I'm going to propose that we consider items, proposals 2 and 3 together. In our effort, I believe in the work that was done by the Committee to expand language services to inmates, we got carried away with ourselves and didn't, in fact, mean in any way, shape, or form to diminish the

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existing services that were already provided to Spanish-speaking inmates. It was never any intention to do that. I think I can speak fully and completely on behalf of everybody who participated in this process.

And, again, I take person responsibility for this glitch that went through, and I know it caused considerable concern among many people, and every time anyone raised it, I tried to say we goofed, and I admit we goofed, but in order to rectify what I believe is a concensus of the Board on this issue, I'm going to propose that we reject Proposal 2 and approve Proposal 3 which would retain the existing services and add what we originally intended which was the notion to say that 30 years after these original standards were prepared, New York City has become even more culturally diverse than it was then, and that is -

(tape 1, side B)

MS. SIMMONS: -- Rikers Island inmates, and we want to make sure that language services are provided for everybody. So, Richard.

MR. WOLF: Just so that the record is painfully clear on the subject, Proposal 2 was the one that contemplated deleting Subjection (c)(1). That's the one the requires that each facility, is the word that's going

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to be substituted for institution, shall have a sufficient number of employees, etc. And what the Chair is proposing, am I correct, is that that language be retained and not be deleted and that corresponding to the wishes to expand access to services, Proposal 3, be adopted, and the language of that is:

“Procedures shall be employed to ensure that non-English speaking prisoners understand all written and oral communications from facility staff members, including, but not limited to, orientation procedures, health services procedures, facility rules, and disciplinary proceedings.”

MS. SIMMONS: Mike Regan.

MR. REGAN: Thank you. And I don't want to speak for Chairman Kreitman on this issue, but there was much dissatisfaction among some of the comments on this issue, and I don't want to speak for my fellow Board Members, but I'm glad that we're taking the position of deleting the language which was of concern to folks. I just want to make the record clear on this point too, it was the Committee and the Department's - the Department, at length in our discussions with them, it was the

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Department's intent to be inclusive here and not to do anything but be inclusive, and I think that the record should reflect that that's what the Department is trying to do on this issue.

DR. ZORNBERG: I also want to compliment the chair on adding this subsection because this makes it clear that we're expanding access to translation services, and we're all in agreement. Thank you.

MS. SIMMONS: And I apologize profusely for any glitch that occurred otherwise. So is there any more question or comment on this? And I think we have to vote these separately, is that right? Okay, so I'd like to entertain a motion on the proposal, and I would remind you because this will get confusing, if you vote to reject the proposal, a no vote means that the conditions that we hope to remain will remain. Okay? So all in favor? Well, let's say there was a unanimous vote against the proposal, and we will retain that other language, and now we could maybe move to the proposal 3 which is adding the language which makes all of this more inclusive.

BOARD MEMBER: So moved.

MS. SIMMONS: Any - can I see a show of hands? Father Nahman, are you agreement with adding the additional language? I see everybody's hands but yours.

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FATHER NAHMAN: I just had some several other observations, but, in general, yes.

MS. SIMMONS: Okay, then let the record show that that's unanimously approved. Thank you all.

RESOLVED, that Proposal 2 is unanimously rejected.

RESOLVED, that Proposal 3 is unanimously approved.

MS. SIMMONS: To move to the next Proposal 4.

MR. WOLF: Proposal number 4 deals with Section 1-02 of the Standards.

MS. SIMMONS: Oh, sorry.

FATHER NAHMAN: I mentioned that within the different languages, the coalition had made the suggestion that we also should require that the Department should promulgate and follow specific procedures. Within that we don't indicate that there is any demand on our part that the procedure be provided for these things to take place.

MS. SIMMONS: Father Nahman, again, with regard to that, as we discussed previously, the procedures are the responsibility of the Department. We cannot set their procedures. We can ask them for their procedures, and ought to, and, in fact, I'll take the opportunity of your comment right now, since this was passed, to ask the

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Department to provide us all of the procedures that they use with regard to language at our next meeting. We can review those procedures, we can discuss them with the Department, but we can't make those procedures.

FATHER NAHMAN: I'm sorry, as phrased now, when somebody says procedures shall be employed, I am suggesting that those words be changed to that the Department shall.

MS. SIMMONS: Well, we just voted on this, so now are you asking to --

FATHER NAHMAN: Well, that's what I, you know, I'm sorry, but, you know, with so many things being thrown at us, that's what I said, when you asked me what I was thinking, I said there was other things I wanted to consider. And that was the other thing that I wanted to consider.

Definitely the content, fine. If procedures shall be employed, that's fine, but it doesn't say who is to develop the procedures. I'm just saying that that thing should be refined so that we know who is to develop the procedures.

MS. SIMMONS: I think it's only the Department that can develop the procedures. It's their, I mean there's no one else that can, that legally can do it. So

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they have to develop the procedures. We'll review the procedures, and if we're uncomfortable with the procedures, they will hear from us.

FATHER NAHMAN: Okay.

MS. SIMMONS: Okay, thank you. Next item, Proposal 4.

MR. WOLF: Proposal 4 deals with classification of prisoners. This is Section 1-02 of the standards as they currently appear. And Proposal 4 would add language to Subsection (b), Categories, authorizing the Department to house detainees and sentenced prisoners together in special housing areas, those being punitive segregation, medical housing areas, mental health centers, mental observation cell housing areas, close custody housing areas, and the nursery. That's the Proposal.

MS. SIMMONS: Father Nahman.

FATHER NAHMAN: I think a big issue is the close custody issue. So I think in line with what Paul was alluding to, we have not discussed even the whole issue of allowing close custody, and, therefore, to approve this without addressing that issue would be premature.

MS. SIMMONS: Do others have other comments?

MR. KREITMAN: I think it's pretty clear that

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the proposal is what the proposal is. And, again, we're not micro - our function here is not to micromanage the Department but just to set standards. And I think there were very few comments on this when it was, any of the advocacy groups who we listened to very carefully, and let's just move ahead.

MS. SIMMONS: I'd also just clarify, this particular Proposal simply codifies long-standing variances under which the Department has been operating, and I would just remind everyone one of the goals of this process was to reduce the opportunity to manage by variance so that this was proposed, in fact, to deal with some very long-standing variances that have been operating.

I hear very clearly your concerns about close custody, which I know we'll be discussing later on and which also has to do with other Departmental requirements with regard to classification. So I'd like to call - unless there are other - Paul, do you have --

MR. VALLONE: I do agree, I'm concerned about the close custody issue, but I think on this particular matter, just so you feel comfortable, we're not addressing the concerns that it's in an additional proposal later on that we will discuss. This is just more of a

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classification housekeeping item that we have already granted in previous variances. So I'm comfortable with the way this one particularly stands.

However, although I am comfortable with certain other statements by Board Members saying that these standards are in any way shaping policy of the Department of Correction, that's just completely degrading to what our process is here. Our minimum standards directly results in how the Department of Correction handles everything that happens on that Island.

So I don't personally want to keep hearing that, well, we're not responsible for the regulations of the Department. We damn well are. So this process is exactly what we're doing. We may not have to specifically cite the language in here, but what we're creating is a new day for the Department and the Board of Correction. So I would like to stop continually saying we're not creating policy for the Department of Correction. But I do agree with Father Nahman.

MR. KREITMAN: I think it's important to emphasize that we don't want the Department to manage by variance, and a lot of these items, including this particular one, if a variance comes up, let's continue the variance, let's continue - we don't want that. You don't

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want to manage by variance. You want to manage by standards, and what this does is it cleans up and sets a standard.

MR. VALLONE: This particular one, yes --

MR. KREITMAN: Period.

MR. VALLONE: -- but a lot of other ones won't. So I agree with you on that.

MR. WOLF: If I could just make one clarification, throughout the standards, it was the intent of the subcommittee to substitute for the term administrative segregation, wherever it appeared, the term close custody, and that was not at the time, and members should correct me if I'm mistaken in this, it was not at the time the intention to validate or to repudiate or to pass any judgment on the way close custody operated but rather to simply reflect the reality that the Department no longer uses the term administrative segregation and now does use close custody.

MS. SIMMONS: Can we call for the vote on this? All in favor? That includes Mr. --

BOARD MEMBER: He said yes.

MS. SIMMONS: Let the record show that this was unanimously approved.

RESOLVED, that the Proposal 4, adding

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2 language to Subsection (b) ("Categories"),
3 authorizing the Department to house
4 detainees and sentenced prisoners together
5 in special housing areas, those being
6 punitive segregation, medical housing
7 areas, mental health centers, mental
8 observation cell housing areas, close
9 custody housing areas, and the nursery, is
10 unanimously approved.

11 MR. WOLF: Proposal number 5, again, is also
12 having to do with classification. It is a proposal to
13 amend Subsection (b)(2) and (c)(2), with respect to civil
14 prisoners, to provide that prisoners are considered adults
15 upon reaching their 19th birthday rather than their 21st
16 birthday. And I would just add, if I may, that not only
17 was there no opposition to this, but this would simply put
18 the standards in line with the definitions in the State
19 Correction Law.

20 MS. SIMMONS: Any questions or comments on
21 this? And I call for the vote, all in favor?

22 BOARD MEMBERS: Aye.

23 MS. SIMMONS: The vote is unanimous. Thank
24 you.

25 **RESOLVED, that the Proposal 5, Subsection**

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2 (b)(2) and (c)(2), with respect to civil
3 prisoners, providing that prisoners are
4 considered adults upon reaching their 19th
5 birthday rather than their 21st birthday,
6 is unanimously approved.

7 MR. WOLF: The record should reflect, actually

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9 MS. SIMMONS: I'm sorry --

10 MR. WOLF: -- that there was no opposition but
11 that Mr. Regan was not present for that vote.

12 MR. KREITMAN: That's eight.

13 MR. WOLF: So it was eight, right. Eight in
14 favor, none opposed, one not present.

15 Proposal number 6 addresses Section 1-03 of the
16 minimum standards, Overtime for Correction Officers, and
17 the proposal is to repeal this section in its entirety,
18 and as a consequence, if the Board chooses to do that, to
19 renumber all the subsequent sections. That's what's
20 before you.

21 MS. SIMMONS: Any discussion on this issue?
22 I'm mindful of your presence, but seemingly this is
23 outside of our purview, and this is, again, something
24 being done to put us in conformity with where we should
25 be. So any discussion? Could I call for the vote? All

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in favor? Okay, the record will reflect that eight votes were in favor, and one opposed.

RESOLVED, that Proposal 6, addressing Section 1-03 ("Overtime for Correction Officers"), will be deleted, is unanimously approved.

MS. SIMMONS: We just voted on Proposals 5 and 6, the vote was unanimous. You were not recorded as voting. Would you like to be recorded as voting?

MR. REGAN: Same way.

MS. SIMMONS: Same way, okay. The record will reflect that his votes now were counted. Right? Okay. No dangling chads.

MR. WOLF: Proposal number 7 deals with now renumbered Section 1-03 ("Personal Hygiene"). Proposal 7 would be to amend Subsections (b)(2) ("Showers") and (c)(2) ("Shaving") to authorize the Department to deny prisoners confined in punitive segregation daily access to showers and shaves upon an infraction conviction for misconduct on the way to, from, or during a shower. And the Proposal provides for additional denials for repeat infraction convictions. And what this proposal would do is codify long-standing variances.

MS. SIMMONS: Right. That's the first point

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2 that I think is important to make, and the second is
3 though, again, taking the privilege of the Chair and
4 being mindful of concerns that have been raised in
5 comments, I would like to propose an amendment which
6 would add the following language. Let me find out where
7 I put it exactly here. Prisoners confined in punitive
8 segregation may be denied daily access to showers except
9 for court appearances, and this is the new language that
10 I'm proposing, and during hot weather when access to cool
11 showers protects prisoners' health.

12 We're mindful of the fact that various people
13 were concerned about that. We know that there are
14 sections of facilities that can be excessively hot during
15 the summer months and we certainly don't want to be in a
16 situation where we've done anything that would jeopardize
17 anybody's health regardless of whether they're being held
18 in punitive segregation or not. And so my proposal would
19 be to add that language and would suggest amendment
20 accordingly.

21 MR. VALLONE: Madame Chair, is there any - when
22 we state infraction, just because I'm not one of the few,
23 I don't have it right in front of me at the moment, are
24 we saying there's a particular type of infraction? What
25 is going to lead to this being used by the Department for

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2 people who are punitive segregation? Have we set a bar
3 as to what's going to allow them to implement this?

4 MR. WOLF: Yes, the language provides for, the
5 infraction must be an infraction that occurs during the
6 showering process. So that means that it's something
7 that, it's some misconduct, some violation of the jail
8 rules that occurs while the person is being brought from
9 or to the shower or in the shower.

10 MR. VALLONE: Can we add that language?

11 MR. WOLF: That language is in there.

12 MS. SIMMONS: It already exists.

13 MR. VALLONE: I understand, but do we have that
14 the actual rules of conduct was the infringed offense? I
15 mean what is the infraction? I understand it's in the
16 shower, but what are they violating at that point that's
17 going to lead to the infraction so we can clearly say
18 that there was an infraction based on the rules of
19 conduct?

20 MR. WOLF: As you know, the Inmate Rule Book
21 that is distributed to all prisoners lists, describes
22 conduct that is not permitted and offenses - typically I
23 can tell you, from what we've monitored in the past,
24 problems occur when someone comes out of their CPSU cell
25 and seeks to get away from the escort or engages in an

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attempted or actual assault on staff or, I mean it's typically that kind of --

MR. VALLONE: Then can we make a reference to the rule book as set forth in the --

MS. SIMMONS: But that already exists, Paul. I think that's - I hear what you're saying, but I think that's unnecessary because the inmates have the rule book, they know what the rules are, and this is, you know, I don't think, the Department has to operate under - I mean I don't know where we would go. It's sort of like adding an extra, you know, belt and suspenders, for something that already exists. It's kind of like the discussion we had earlier where the City law already says something, so we don't need to repeat it.

MR. VALLONE: I agree. A lot of times that's the case, but the clarification sometimes don't hurt. We just put as set forth in the rules conduct.

BOARD MEMBER: We have the inmates rule book that says --

MS. SIMMONS: I mean the rule book exists.

MR. VALLONE: I would like to put the language, just so we're clear as to what it is, the infraction we're talking, as set forth in the, whatever the official title of the inmate rule book code of conduct is.

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MR. WOLF: Are you referring to specific conduct that you want this to be or just to the name, you know, all this stuff is found in the inmate rule book, which do you mean?

MR. VALLONE: Well, I'm open to discussion on that and what other members think.

MS. SIMMONS: I don't think we want to go - I personally would not think it would be appropriate for us to identify specific conduct because we're not going to be there at the determination.

MR. VALLONE: Well, that's what I mean. I think if we just kind of guide it. So then let's not make any specific mention of a particular infraction, but just reference the code book would be preferable there.

BOARD MEMBER: Whatever the note book says.

MS. SIMMONS: Father Nahman has a comment.

FATHER NAHMAN: On this proposal, just for specificity, because of some of the recommendations that have been made, that the definition of hot water be between 100 and 120 degrees. Also an indication that was pointed out that the Benjamin Order required that the showers be cleaned once a day. What is stated here is once a week. Therefore, we could be subjected to having it countermanded by another court order if something

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happens. Why not make it in compliance to what the court order, although the decrees are no longer binding, they give an indication.

Then also the suggestion that Hildy made which is constant with the Benjamin Order, but the recommendation was to define the inclement weather or the weather to be when it's over 85 degrees, and then showers would be allowed. And then the other question is to exclude women who are menstruating, that they would not be subject to these punitive measures.

MS. SIMMONS: Well, are you proposing -

AUDIENCE MEMBER: (inaudible)

MS. SIMMONS: Excuse me, excuse me. I'm sorry, if you keep speaking, you're going to be asked to leave. I'm sorry.

AUDIENCE MEMBER: I went through this. This needs to be known. I went through this. If you're going to penalize me for an infraction (inaudible) can't shower --

MS. SIMMONS: I'm sorry, I have to ask you to be quiet. Let's --

MR. REGAN: Let's get back to Father Nahman's issue.

MS. SIMMONS: Father Nahman, I want to make

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sure I understand because we have to vote on whether you're proposing amendments related to these things specifically or whether your --

BOARD MEMBER: Additional language --

MS. SIMMONS: You know, if there's additional -
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FATHER NAHMAN: Well, it's really additional - well, one would be to change each week to daily to be in consort with what was the Benjamin Court Order. Just it seems to be a norm that should be kept. So that's perception one. Then the idea of women menstruating, for excluding them from punitive, this punishment just because of the situation, to make sure that that is, you know, they're protected. And then the other, the wording, I'm just asking because it was suggested to us, that we define what hot water is, between 100 and 120 degrees according to the Public Health definition, and also if Hildy's comment, want to be more specific, then we say the weather that requires it is when it's over 85 degrees.

MS. SIMMONS: Personally, in terms of setting the temperature, if that seems appropriate, if that's the sense, that's fine. I would be concerned about setting a degree for outside whether because I think we want to

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2 have people use good judgment, and there are days when 85
3 degrees can be a problem, and there are other days when
4 it might not be. And so I don't think we should be
5 enshrining in standards a particular --

6 BOARD MEMBER: Excuse me, does the Benjamin
7 Order set forth what hot weather is?

8 FATHER NAHMAN: No. No, that was a suggestion
9 according to the American Public Health that hot water's
10 defined and whether we want to be that specific.

11 MR. VALLONE: I tend to, my thought is the
12 suggestion doesn't really hinder the proposal in any way.
13 It just adds some additional language.

14 MR. WILLIAMS: I just want to make sure. Under
15 showers, I'm looking under 1-3(b). The only language
16 that seems to be up for discussion is under number 2 and
17 not number 1. Number 1 I think is already established.
18 The only change there that's going to happen is
19 institutional is going to be changed to facility. So any
20 language I think we're really considering based on what
21 we published to the public is number 2.

22 FATHER NAHMAN: That was precisely my point in
23 the beginning, that what we are addressing is the
24 proposals but there may be other things that were not a
25 proposal that we as a Board are here to discuss, and they

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2 didn't come up as a proposal, then now is the time. It's
3 the only opportunity we've had to talk to each other to
4 say there is something else here that ought to be
5 changed. So that was one of my points.

6 MR. WILLIAMS: Wait a minute, let me just make
7 a little record here. This is the first time I guess
8 we've talked to one another at the table, but the way the
9 minimum standards committee operated, and I was a member
10 with Stanley and Mike and Hildy, was we went around and
11 we had meetings to discuss the proposals in small groups,
12 and we went over them in detail. So this is not the
13 first time that the Board has seen these and gone over
14 them. So I just want to make that clear. And so
15 everyone I would hope is familiar with these at this
16 particular point.

17 FATHER NAHMAN: It's the first time that we've
18 talked to each other as a Board.

19 MS. SIMMONS: Is there proposed wording for the
20 amendment with regard to this item?

21 MR. VALLONE: We are talking about punitive
22 segregation, I mean let's not get lost, it's not in
23 general every inmate (inaudible). We're just talking
24 about that one --

25 MS. SIMMONS: Right, exactly. Exactly. Yes,

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precisely.

MR. VALLONE: I believe Father Nahman's concerns could be implemented by Richard I think with some simple language there. I agree with the Chair, maybe we shouldn't control the weather, but we should be able to control the temperature of the water and some of the personal hygiene requests with women and change the weekly to daily. Anything else, Mike?

MR. REGAN: I'm not sure that - and I share Father's concerns - I'm not sure that we're in the business of setting standards on water temperature.

MR. VALLONE: We can maybe set a guideline not to exceed or not to be less than, you know, something to give it some type --

MR. REGAN: Paul, the mike. The mike.

MR. VALLONE: I keep taking it away from someone else. Maybe we can add some type of language where we give them a minimum or a maximum, not to exceed, not to be less than 100 degrees or not to exceed, you know, water temperatures not to be colder than 75/80 degrees. Something that we can just give a guideline so they know there is some parameter there. What do you think, Richard?

MR. WOLF: Father Nahman, could I just ask you

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a clarifying question? You're talking about the terms daily and weekly, and could you give us, just so that I could point to exactly what you're talking about.

FATHER NAHMAN: It says (b), subsection (1), the shower area shall be cleaned at least once --

MR. WOLF: Oh, this is specifically with respect to the cleaning, the maintaining, the sanitation of the area.

FATHER NAHMAN: Right.

MS. SIMMONS: That's a different -- that's not what we're talking about now, right?

MR. KREITMAN: It's a different issue.

FATHER NAHMAN: Yeah, we're talking about subsection, we're talking about personal hygiene. The proposal deals with everything that's underlined, the changes. I'm also saying that in that area, as we're going through the standards piece by piece, this is another issue that should also be addressed. It's not part of the proposal, but it's another issue.

MS. SIMMONS: Here's the point. If you --

MR. KREITMAN: I thought his language was directly to --

MS. SIMMONS: Yeah, we're only speaking, if you're talking about something in the future, then I

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would tell you we'll have that conversation in January.
We're --

FATHER NAHMAN: The standards are here before
us. We're going to revise them again in January?

MS. SIMMONS: No, but what we've all agreed to
is if there were new items and new items --

FATHER NAHMAN: We didn't all agree to it, I
never agreed to that.

MS. SIMMONS: Well, I think a majority of your
fellow Board members agreed to that.

FATHER NAHMAN: I don't know.

MS. SIMMONS: So we're only discussing --

MR. REGAN: Just on the new standards, I think
we're all aware that in order for us to consider, and I
advocate that we do consider new standards, that we could
not do that today. That we would have to go through a
very lengthy and deliberative and inclusive process,
which would include seeking the advice of folks in the
audience, and I'm sorry that my back and some of my
colleagues' backs are to the audience, but we would be
prohibited from passing standards that we have not made
published announcements of our intent to consider
changing.

DR. ZORNBERG: On this proposal, I actually

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don't agree with using access to hot showers and shaving as a punitive measure so I'm just recording my dissent on this.

MS. SIMMONS: We do have I think before us an amended proposal, which I'm going to try to restate, but I probably won't get right, which is both the language that I suggested at the beginning which was for, during hot weather, when access to cold showers protects prisoners' health, if you're concerned about women who are menstruating and you want additional language that protects that, I guess we would have to add that in as well. Can we artfully come up with language that would include that?

MR. WOLF: Given enough time, I'm sure we can.

MS. SIMMONS: And the other question I guess is whether we want to set at least some parameters of how we define hot water.

FATHER NAHMAN: Instead of temperatures, the reference that was given in the suggestion, according to the norms of the American Public Health Association, so let them determine the temperature.

MS. SIMMONS: Fine, okay. So I'd like to call the question on this as amended. All in favor? One, two, three, four, five, six, seven - seven in favor.

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Those opposed? Oh, six and three, okay. All right.

RESOLVED, that Proposal 7, addressing Subsections (b)(2) ("Showers") and (c)(2) ("Shaving") of Section 1-03 ("Personal Hygiene"), with new amended language, is approved (6 in favor, 3 opposed).

MS. SIMMONS: Next is Proposal 8.

MR. WOLF: Proposal 8 is to amend Subsection (c)(1) and (c)(2) and just move some language around, resulting in a deletion of the phrase "with care and comfort" from the current language of Subsection (c)(2), the current language reading, "hot water sufficient to enable prisoners to shave with care and comfort shall be provided."

MS. SIMMONS: Again, mea culpa here, no one was trying to take away care and comfort from anybody, and so my - I guess what you have to reject, we would, my recommendation is that we reject this proposal as written so that the old standard which includes the terms care and comfort remains. Mr. Regan.

MR. REGAN: Father Nahman gave an example of what would be acceptable hot water standards. Perhaps we could be consistent with what he said just earlier.

FATHER NAHMAN: Well, I think that's once it's

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in the standard, it's there.

MR. VALLONE: Well, let's not presume anything.
Let's keep adding that language.

MR. WOLF: So you wish to add the language
there as well regarding the --

MS. SIMMONS: All right, any other questions or
comments on this one? So, wait, we can't - this gets
complicated because if we're rejecting the proposal, we
can't then add - all right, we're going to reject the
proposal and then --

MR. WOLF: And then to the existing language
add the --

MS. SIMMONS: Two votes, okay, first vote, all
in favor of rejecting care and comfort - can I do it that
way?

MR. WOLF: You can do it anyway you want. Why
don't you do it as follows? The vote on this proposal,
the proposal is to delete the phrase "care and comfort."

MS. SIMMONS: Anybody in favor of deleting that
phrase? Okay, it's unanimous --

MR. WOLF: It's unanimously rejected.

**RESOLVED, that Proposal 8, deleting the
phrase "care and comfort" from Subsection
(c)(1) and (c)(2) is unanimously rejected.**

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MS. SIMMONS: Then can I get a vote on including the hot water standards with the new proposal, all in favor of that? Unanimous, okay.

RESOLVED, that Proposal 8, as amended with proposed language, is unanimously approved.

MS. SIMMONS: Okay, let's move on. Thank you very much.

MR. WOLF: Proposal 9 is amending Subsections (g)(2) and (h)(2), and this is still Personal Hygiene 1-03 is the section. This is Clothing. To authorize the Department of Correction to require all prisoners to wear facility clothing, except for trial, only after DOC first establishes and operates two things: first, a laundry service sufficient to provide clean facility clothing to prisoners upon admission and thereafter every four days, and, two, operate a secure prisoner clothing storage and retrieval facility. That's Proposal Number 9.

RESOLVED, that Proposal 9, amending Subsections (g)(2) and (h)(2) of Section 1-03 ("Personal Hygiene") to authorize the Department of Correction to require all prisoners to wear facility clothing, except for trial, only after DOC first

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2 **establishes and operates two things:**
3 **first, a laundry service sufficient to**
4 **provide clean facility clothing to**
5 **prisoners upon admission and thereafter**
6 **every four days, and, two, operate a**
7 **secure prisoner clothing storage and**
8 **retrieval facility, is unanimously**
9 **approved.**

10 MR. REGAN: Hildy, can I speak to this?

11 MS. SIMMONS: Yes.

12 MR. REGAN: Just on this one, there are a
13 number of these issues, and, again, my appreciations to
14 Chairman Kreitman on this, but there are a number of these
15 issues which are clearly driven by the issue of safety -
16 detainee safety, inmate safety, and Correction Officer
17 safety. It is clear - and I know that there are going to
18 be some rules promulgated by the Department and coming
19 back to us on some of this stuff. But I really believe
20 that it's important that those rules require two different
21 uniforms, one for detainees and one for sentenced inmates,
22 and I really believe that there has to be a requirement
23 that when folks are going before juries, that the
24 Department has to have the ability to provide them with
25 civilian clothing so as not to any way prejudice their

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appearance before a jury.

MS. SIMMONS: Are you proposing amendments that specify that to this --

MR. REGAN: I'm proposing that the Department is coming back to us in this unique way of voting first and then understanding regulations later, but I'm proposing that those issues, which were talked at at length in the committee - Milton Williams who was a leader on this issue spoke very eloquently of the need to protect the rights of prisoners. I think many of us who spend some time in Rikers understand that there is a safety enhancement, and we believe that this is a safety enhancement, but it requires some very complicated and focused management in order to correctly implement this program.

MR. WILLIAMS: The provision as written now I think we could vote on. I actually am comfortable with it, and it does have, except for trial, and I think as we've all said, we will request the Department to come back with the specific procedures, and then we'll work with them to make sure it's to our satisfaction.

MR. VALLONE: I like how it's developing. I like how we're developing and growing with this, I believe with the amendments that Richard and yourself propose and

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as Michael has added. There was some pretty strong testimony, maybe one other exception we can add in from family members who came forward, especially children, that during the visitation, of meeting their parents for the first time, that they not been seen, especially for detainees, be seen in a uniform, and that it was a - (tape 2, side A)

MR. VALLONE: So I would like to add that one additional exclusion that when there is a visitation with a family member, that the Department also allow a civilian or normal clothing for that visitation.

MR. ROVT: I disagree with my friend Paul on this case because we're talking about security, and what is the security. We want to supervise the clothing, the Correction Officer is able knowing that it's not hidden pocket or something there. And if we do this, again, not that this will be just bring house for the Department, but will also do after the meeting some work, changing the clothing, will get another problem. Maybe something can be brought into the (inaudible).

I personally just for the clothing what will the uniform has to be cleaned, it has to be sized for the person, not three, four sizes higher, not humiliate the person, and has to be separated from the people who are

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convicted and from inmates who is there. This is my opinion, thank you.

MS. SIMMONS: Thank you. Paul, let me just, if I might, I appreciate what you're saying, but I think it would cause a logistical and security, severe security and logistical problems given the number of visits, given the array of scheduling visits, and all of the rest. I do think it could create a big problem.

It's been my contention on this issue personally, I've had two particular concerns. One is that everyone get clean underwear every day, and this new standard will provide for that. Whether they chose to wear it is their choice, but I want to make sure that we have not done anything that doesn't provide for it.

And the second thing is though that whatever uniforms are created, and I agree completely with Mike that obviously there should be distinctions between those who are detainees and those who are sentenced inmates, that these be designed in a way that respects the humanity of the people who are wearing them. And so I've asked the Department and I expect the Department when they come back to us, that they will make every effort. We live in a city that is controlled by fashion, that there are fashion experts in this City who will be able to help design

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appropriate attire that will be not only perhaps, you know, that will be safe and secure and not cause obviously institutional problems that can be laundered and withstand all of that other kind of stuff, but that also, in fact, gives people clothing that makes them look decent.

There was somebody at the hearing, if you recall, who talked about khaki pants and polo shirts, which fine with me, except that I've learned that collared shirts are a problem for security. But maybe there's the equivalent of that or something else so that no one should be facing their children in anything other than something that makes them appear hopeful but not with - I think the problem of adding back in personal clothing would be very problematic in the sense of visits, personally.

MR. KREITMAN: A lot of deliberation went into this modification or proposal, and I agree with Mike and I certainly agree with the amendments. One of the key things that we considered is we've spoken to a lot of the Correction Officers and former inmates. Young inmate comes into Rikers Island with fancy sneakers, he gets beaten for someone stealing his sneakers or a fancy jacket. There are so many class A assaults because of clothing, that this is such an important safety issue for not only the inmate but for the Correction Officer

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breaking of fights, they start melees. I'm on that beeper and I see it happen time and time. This is a very important issue, and this would stop it immediately, someone comes in with a fancy jacket, doesn't get beaten for his jacket.

MR. VALLONE: I'm agreeing in principle. I think this amendment is sweeping, and it's the first time I believe the City's doing this. And I'm not saying not to not implement it. I think the way it's being amended and changed is a good thing and probably would allow my vote to go forward.

I'm just adding that one additional - and Stanley is exactly right, that's where most of the incidences occur. I am uncomfortable with someone who's a detainee, not convicted of something, meeting their family member for the first time in a uniform. I think that would be, have a long-time lingering effect for that family and that person and who may not be convicted of anything.

So I'm not asking for a sweeping amendment or a change, just for that very limited reason. Maybe we could talk about. This is my view personally.

MR. REGAN: On this one, the Department has a lot of work to do. I think in the committee we

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2 understood, we heard reports and saw photographic
3 depictions of jails in Philadelphia, I think jails in San
4 Francisco which had an organized, well-managed process so
5 that inmates could easily collect their personal
6 belongings to be prepared for trial, as you said, Milt.
7 That this is a big ticket item, this is an expensive item,
8 this can't be managed in any way but a professional and
9 thorough way. I myself don't believe that this can be
10 done in a quick manner.

11 So speaking as one Board member here, we really
12 look forward to the Department's coming back to the Board
13 and presenting us with regulations and a process and a
14 management approach that has to be quite comprehensive.
15 It's a very, you know, nobody - and Commissioner Horn does
16 a terrific job. Nobody has the challenge that
17 Commissioner Horn does with regard to a population of this
18 size. This is a big deal. I think all of us understand
19 it's about safety, but this is a significant management
20 challenge in figuring out how to do it.

21 MS. MALDONADO: I agree that this measure will
22 enhance security in the prisons, but I also think that if
23 the Board passes it, we need to be committed to really
24 monitor closely. This is a huge task. Laundering is an
25 issue in the prisons now; this will only enhance it ten-

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fold. So I think it really would take a commitment from all of us to really look at this and monitor it very, very carefully as this is being implemented.

MR. KREITMAN: As you recall, we had a visit to the new Westchester County Jail who has this procedure implemented. It was quite extensive. You're absolutely right, it is a big deal but a very necessary big deal. They implemented it quite nicely. They had a facility, it looked like a huge dry-cleaning establishment with automatic things so the prisoners would get, the inmates would get their clothes back properly cleaned, that their personal things were protected. There are ways to do it. We've seen it work. It's a challenge, but it's a necessary challenge, and you're quite right, this has to be monitored.

FATHER NAHMAN: On this whole issue, there's several observations I'd like to ask about. To specify that the clothing be seasonally appropriate.

MS. MALDONADO: That's in the language.

FATHER NAHMAN: That except for trial, I would say for all court appearances. I think it's been brought to our attention that judges are also subject to prejudice. So for all court appearances.

I agree with Paul on that, however, the uniform

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2 may be, that special consideration with visiting with
3 family members, you know, if they're in jumpsuits, then
4 some other, it could be institutional, it could be a
5 visiting uniform, so that there would be something
6 specific. And that until the Department establishes and
7 operates clothing services, I would add acceptable to the
8 Board of Correction so that we are the ones that determine
9 the acceptability.

10 And then, finally, I think the detainees shall
11 be permitted to wear all items of clothing that are
12 generally acceptable in public, I think we should be
13 specific in indicating the people that are gender identity
14 appropriate because I think, you know, a male, a person
15 with a male body who wants to wear a bra would not be
16 generally acceptable in public, but it is I think
17 necessary.

18 MR. REGAN: I'd like to move to vote on this,
19 but before I do, I'm just reminded that when we had the
20 committee meetings, that the Department - and I was in
21 Rikers yesterday, and a Correction Officer spoke to me
22 about this yesterday - the ability to minimize the amount
23 of contraband that comes in in doing this is a very
24 significant safety issue.

25 MS. SIMMONS: I've heard several different

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2 comments in terms of how to proceed. I would like to take
3 my notion of calling for a vote. I want to be mindful of
4 some of the comments that have been made and see whether
5 we can, if there are tweaks to the wording that seem
6 appropriate - one that you mentioned, Father Nahman, is
7 that all court appearances not simply trial before a jury,
8 so that's one. So do we want, in other words, we need to
9 decide among the various suggestions, mindful, again, that
10 the Department has to come back to us with procedures.
11 They can't implement this until we've reviewed those
12 procedures. And I guess, Paul --

13 MR. VALLONE: If I may to help this, this is
14 what you're going on, I think we like the very first two
15 amendments that you spoke about and including that
16 language. But if I may, just to clarify, I believe this
17 was a conditional approval based on the Department coming
18 back to us with laundry facility capabilities. Was that,
19 Richard, the first thing that --

20 MR. WOLF: The condition that must be met
21 before they can implement is that they have to establish
22 and operate laundry facilities to accomplish all this and
23 clothing retrieval system to accomplish this.

24 MR. VALLONE: Okay, that's very important --

25 MR. WOLF: That's already in there.

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MS. SIMMONS: Yes.

MR. VALLONE: Could we just add "adequate" in that sentence because I don't know if that laundry facility is two 50 cent machines in the back or is it an actual facility.

MS. SIMMONS: No --

MR. VALLONE: If they can put in "adequate" laundry facilities in there.

MS. SIMMONS: I'm deferring to --

MR. WOLF: You certainly can, but just as a general overlay to all this stuff, I just think it's worth mentioning that one of the things that the Staff is supposed to be doing on your behalf, and to the extent that you're able to go out and see all these things yourself, that you want to be mindful of as well is that we have a responsibility to evaluate, under the Charter, to evaluate the Department's performance. And taking that literally means that when stuff gets set up, it's our responsibility to make sure that the procedures that are put in place, that the facilities that are put in place are, in fact, adequate. And whether we, whether you wish to include it in the standard itself, that's fine, but we need to do it no matter what.

MR. VALLONE: What about since there's been

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2 about three or four additional ideas? Instead of taking
3 the vote right now on the whole amendment, why don't we
4 agree as a Board which one of those we want to include and
5 then take the vote? Or do you want - then otherwise you
6 might get confused as to what it is we're adding.

7 MS. SIMMONS: So can we get a sense of how many
8 people are comfortable in including the language that says
9 all court appearances?

10 MR. VALLONE: Right, let's take it one --

11 MS. SIMMONS: Can I see a show of hands?
12 Sorry, you're not -

13 AUDIENCE MEMBER: Excuse me, when you all
14 proceed, can you please consider --

15 MS. SIMMONS: I'm sorry, sir, I have to ask you
16 to be quiet.

17 AUDIENCE MEMBER: Excuse me, the safety and the
18 security (inaudible) in these jails is maintained by the
19 Correctional staff. The clothes does not promote the
20 violence. You know what I'm saying?

21 MS. SIMMONS: Sir --

22 AUDIENCE MEMBER: If you're --

23 MS. SIMMONS: -- I'm asking you to be quiet --

24 AUDIENCE MEMBER: -- if you do a security
25 measure to be --

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MS. SIMMONS: Sir, sir, you may either stop speaking or leave the room. I'm sorry, you may not --

AUDIENCE MEMBER: As it is already, as it is already --

MS. SIMMONS: Sir --

AUDIENCE MEMBER: -- the inmates in there feel like they got to learn the rules. If you take the clothes and everything else, what they going to have?

MS. SIMMONS: I'm sorry, Milt.

AUDIENCE MEMBER: She's never been in there. What do you know about it? You shut up.

MR. WILLIAMS: Yeah, hold on.

AUDIENCE MEMBER: That's because you're all making this too complicated.

MS. SIMMONS: Please.

AUDIENCE MEMBER: Now I'm going to speak.

MS. SIMMONS: No, you are not.

(cross-talk)

AUDIENCE MEMBER: I am going to speak.

MS. SIMMONS: No, you are not going to speak. Mr. Seabrook, you may not speak --

(cross-talk)

MS. SIMMONS: Excuse me, excuse me, we will take a break when we finish this item. You will not -

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excuse me, excuse me, you can sit down please.

AUDIENCE MEMBER: You can't do that, ma'am.

MS. SIMMONS: You can sit down. Excuse me, I'm the Chair, would you please sit down.

AUDIENCE MEMBER: -- supposed to be talking --
(cross-talk)

MS. SIMMONS: Would you please - no, I'm not having --

AUDIENCE MEMBER: This is not about --

MS. SIMMONS: Would you please sit down or --
(cross-talk)

AUDIENCE MEMBER: -- it's either yea or nay and move on. And you keep adding stuff to it, you either vote yes or vote no.

MS. SIMMONS: All right --

AUDIENCE MEMBER: Don't try to have a conversation about it now.

BOARD MEMBER: Take a break.

AUDIENCE MEMBER: It's either yes or no and we move on, that's it.

MS. SIMMONS: We're going to call --

(cross-talk)

BOARD MEMBER: Why would you be upset?

AUDIENCE MEMBER: Because I'm the President of

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the Union, and you don't have no idea of the assaults on staff that occur. You have no idea --

MS. SIMMONS: Okay --

AUDIENCE MEMBER: -- how violent it is for a young 16-year-old to get slapped with his sneakers or his jacket. You have no idea and no experience.

MS. SIMMONS: Please, please stop now. All right, Paul, I want to go back to your suggestion. Can we go back - Milt, I'm sorry.

MR. WILLIAMS: Yeah, Mike, you asked me to address the issue about prisoners, detainees going before a judge while --

MR. VALLONE: As opposed to a jury.

MR. WILLIAMS: As opposed to a jury. Well, obviously, in front of a jury it's absolutely necessary that they be addressed in civilian clothes. I go back and forth with regard to all court appearances, and here's where I am. In terms of the, I guess the dignity of the detainees and how they feel about themselves, I see those arguments, although I can tell you that if I was the Department of Correction, I have legitimate security concerns about having to change the clothes so often because there are a lot of court appearances.

So that I have concerns about, and that would

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probably lead me, although I hate to want to do anything to dehumanize the detainees or the prisoners, that would lead to probably just leave it as except for trials.

In terms of the judges and the way they perceive, most of the judges have been around for years. They know who's being produced from Rikers and who's not. I got to tell you, and I know people argue strongly against this, but I don't really think it makes a difference. I think if a judge is good, he's going to do what he can to make sure the proceeding is fair. I don't think that it really makes a difference.

MS. SIMMONS: Stanley, do you have more things to say, then I'd like to go to --

MR. KREITMAN: That'll be the last comment. I think that this can get overly complicated. I think we should vote on the amendment as proposed, I agree completely with Milt. I think the judges know who's coming from Rikers, who's not. The changing for visitors, you create the same security problem. They'll have to put their sneakers on, kids will get beat up for it, they'll pass drugs back and forth. This is an operational nightmare for the safety of the Correction Officers and the younger inmates themselves. We should pass this amendment as it is written, period. And let's vote it.

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MR. WILLIAMS: Why don't we just vote on it?

MS. SIMMONS: Let's vote.

FATHER NAHMAN: I made some specific things I think. I would like to have the specific things addressed, accepted or rejected, and then vote. One is should we specific that the clothing be seasonally appropriate.

MS. SIMMONS: I think that's already addressed in the standards. Seasonal appropriate is already addressed in the standard.

FATHER NAHMAN: Is it? I'm sorry. Then a second is all court appearances. We've heard Milt. What are people's feelings on that?

MS. SIMMONS: Do we have a vote on court appearances? All in favor of all court appearances?

BOARD MEMBER: It's either all court appearances --

MS. SIMMONS: Or just trials.

BOARD MEMBER: - trial, and sentencing?

MS. SIMMONS: The existing proposal refers to trials. Existing proposal refers to trials. So I'd like to see, let's have a vote on changing the existing proposal from trials to all court appearances. All in favor of all court appearances. Two. All opposed. Okay,

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so that's rejected.

**RESOLVED, that the language to include
"all court appearances" is rejected (2 in
favor of the language, 7 opposed to the
language).**

FATHER NAHMAN: The second is --

MR. WILLIAMS: Let me make sure I - we just
voted to reject, to keep it as is. To keep the proposal
as is.

MS. SIMMONS: Exactly, yes, as is. Yes, we
voted to keep the proposal as is.

FATHER NAHMAN: Then to add --

MS. SIMMONS: a 7 to 2 vote to keep the
proposal as is.

FATHER NAHMAN: -- to say that the clothing may
be gender identity appropriate.

MS. SIMMONS: All right, all in favor of making
sure that the clothing is gender identity --

MR. WILLIAMS: Let me say something on that.
Wouldn't that come into play when the Department of
Correction comes back to us with the actual program?

BOARD MEMBER: Yes.

MR. WILLIAMS: Yeah, so, yeah, I think we ought
to wait and see what they come back and then we can tweak

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it. So let's vote on it.

FATHER NAHMAN: No, I would say no. We were saying detainees shall be permitted to wear all items of clothing that are generally acceptable in public, and I would like to add and/or gender identity appropriate. And we are there now, to put it in the standard now.

MS. SIMMONS: Well, let's vote on it. All in favor of Father Nahman's proposal?

BOARD MEMBER: 3.

MS. SIMMONS: All opposed. Okay.

RESOLVED, that the language to include "gender identity appropriate" is rejected (3 in favor of the language, 6 opposed to the language).

MR. REGAN: I just want to explain my vote on this. This issue will be resolved when the Department comes and talk to it. I think some of us who are voting the way we are not voting because we're not interested in addressing this issue. We believe the Department's going to address this issue and rules as they are promulgated.

MS. SIMMONS: And we will have ample opportunity to discuss those rules with them. Absolutely.

MR. KREITMAN: Let's vote on the proposal.

MS. SIMMONS: So can we vote on the proposal?

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Can we vote on --

FATHER NAHMAN: There's one more thing. That we add that the Department establishes and operates clothing services acceptable to the Board of Correction, that it has to be with our approval.

MS. SIMMONS: I don't know - I mean I think that's - personally, I think that's a given. I don't think we need to add that language. Is there a sense of the Board - is there a vote?

(cross-talk)

MR. REGAN: Hildy, you did add at the beginning that we're adding the one for detainees and one for --

MS. SIMMONS: Separate. Yeah, distinctive uniforms for, yes, distinctive uniforms, absolutely. That is - okay, so let's vote on that too just to be clear. So can we take a vote on making sure that the uniforms are distinctive between detainees and sentenced inmates?

MS. MALDONADO: Yes.

MS. SIMMONS: All in favor? Okay, that's approved unanimously.

RESOLVED, that the Proposal that uniforms will be distinctive between detainees and sentenced inmates is unanimously approved.

MS. SIMON: Paul, your motion about visits.

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MR. VALLONE: That's the last one.

MS. SIMMONS: That's the last one. So all in favor of excluding the uniform policy for first family visit.

MR. VALLONE: For first visits.

MS. SIMMONS: Right, I think that's what you said.

MR. VALLONE: I think that's important.

MS. SIMMONS: There are two in favor. All opposed? Seven against.

RESOLVED, that the language to include "excluding the uniform policy for first family visit is rejected (2 in favor of the language, 7 opposed to the language).

MS. SIMMONS: So now we have the proposal, can we vote on the proposal? All in favor of the proposal as amended? Okay, unanimous. Okay, great

RESOLVED, that Proposal 9, amending Subsections (g)(2) and (h)(2) of Section 1-03 ("Personal Hygiene"), as amended, is unanimously approved.

MS. SIMMONS: I'm mindful of time and the need for a break perhaps, but --

BOARD MEMBER: (inaudible)

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MS. SIMMONS: But I would like to get to 10.
I'd like to get to 10.

MR. WOLF: Proposal 10. Proposal 10 is the final proposal in the personal hygiene section of the standards, so it's a good place to finish up for now. Proposal 10 would amend Subsection (j), which is entitled "Housing Areas," to exempt prisoners from cleaning and maintaining their housing areas when doing so is contraindicated by medical staff, in which case DOC shall make other arrangements for the cleaning of those areas.

MS. SIMMONS: Is there anybody who is opposed to this proposal?

MR. KREITMAN: Move the item.

MS. SIMMONS: Okay, all in favor?

BOARD MEMBER: Aye.

MS. SIMMONS: Let the record show that it was approved - Father Nahman, are you --

FATHER NAHMAN: I'm sorry, let me abstain on that vote please.

MS. SIMMONS: Okay, so we have 8 in favor and 1 abstention.

RESOLVED, that Proposal 10, amending Subsection (j) ("Housing Areas"), is approved (8 in favor, 1 abstention).

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MS. SIMMONS: We're going to take a five-minute break. It's 11:15, not 12:15, and we will reconvene here in five minutes.

(off the record at 11:15 a.m.)

(Whereupon a recess is taken.)

(on the record)

MS. SIMMONS: We are reconvening. Obviously, I can't count minutes, more than five minutes, but let's keep going here.

It's come to my attention during our break that language that I was convinced I saw which had seasonally appropriate with regard to the uniforms was not in the language, so I'd like to just make sure that we're all on Board on that and we formally vote. Can I get a unanimous agreement that we want the uniform policy that we just voted on to be seasonally appropriate? All in favor? Unanimously recorded. Thank you very much.

RESOLVED, that Proposal 11 to include the language "seasonally appropriate" is unanimously approved.

DR. ZORNBERG: And for the record again, we'll be overseeing the process.

MS. SIMMONS: Right. Next item, Richard.

MR. WOLF: We now move to Section 1-04 which is

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2 the "Overcrowding" section, and the first proposal is
3 Proposal 11 which would amend Subsections (b)(2) ("single
4 occupancy)" and (c)(1) ("multiple occupancy") to require
5 that each prisoner be provided with a closable storage
6 container for personal property rather than what the
7 standards originally required, which was a locker or
8 drawer that can be closed.

9 MS. SIMMONS: Can we take a vote on this? Is
10 there any discussion? All in favor? Okay.

11 DR. ZORNBERG: I'm sorry.

12 MS. SIMMONS: Let the record show that it was
13 approved unanimously.

14 **RESOLVED, that Proposal 11, regarding**
15 **Section 1-04 ("Overcrowding"), Subsections**
16 **(b)(2) and (c)(1), is unanimously**
17 **approved.**

18 MS. SIMMONS: As we get to Proposal 12, I'm
19 going to also take the privilege of the chair to suggest
20 the following: There are actually two proposals, Proposal
21 12 and 15, is that right --

22 DR. ZORNBERG: Yes.

23 MS. SIMMONS: -- that are uniquely connected.
24 And so my first suggestion is that we take them up
25 together rather than independently. And, secondly,

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2 perhaps we could call for, I could take the privilege of
3 calling for a straw vote. It is my impression from
4 various conversations with many of you, and certainly
5 based on all the commentary that we've received, that
6 there is - at least it's my observation that there are a
7 majority of members who are opposed to these two
8 provisions. And if that's the case, I would like to
9 propose that we vote, and if that's the case, let's
10 dispense with them and move on.

11 MR. KREITMAN: Hildy, I just would like to let
12 my colleagues know that I have now changed my mind on this
13 issue, and I am against making any change. After
14 listening to all the groups, I am opposed to it.

15 MS. SIMMONS: We're going to vote on 12 and 15
16 --

17 MR. VALLONE: Can I speak to this too?

18 MS. SIMMONS: Sure.

19 MR. VALLONE: This is another item, and I think
20 we spoke a lot in the Committee about this with regards to
21 the Board's position as it relates to the Department's
22 desire, responsible desire to save money. And many of us,
23 even in the community, said that's not the position,
24 that's not the requirement of what the Board does. And I
25 plan on voting no on this because I don't think it makes

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sense but also with regard to the issue of finances. We're about safety, we're about inmate safety, we're about detainee safety, we're about Correction Officer and Correction Supervisor Officer safety. And I believe to vote positive for this one would be not in the mindset of safety.

DR. ZORNBERG: As a psychiatrist and a public health scientist, I would have to say that I would not be able to vote for increasing the density. So I am glad that we're moving forward dispensing with this.

MS. SIMMONS: Richard will read the two things and then we'll vote them together. Can we vote them --

MR. WOLF: You can proceed as you wish, but the record needs to reflect what these are. So Proposal 12 is a proposal to amend Subsection (c)(2) of Section 1-04, to reduce the required minimum amount of floor space per prisoner in sleeping areas, of dormitories from 60 square to 50 square feet. And Proposal 15 is a related proposal to amend Subsection (c)(5) to increase the number of detainees that may be housed in a dormitory from 50 to 60.

MS. SIMMONS: Can we call - so now this is another one of those, we're voting not --

MR. WOLF: Voting to reject.

MS. SIMMONS: You're rejecting the proposal.

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So all in favor of both Proposal 12 and Proposal 15.

MR. KREITMAN: No, rejecting.

MS. SIMMONS: No, I'm taking a vote in favor, and then we'll take a vote opposed. Yes, thank you though, but I get your - anyone in favor of Proposal 12 or 15? Okay. All opposed? Okay, unanimously those two proposals are rejected.

RESOLVED, that Proposal 12, to amend Subsection (c)(2) of Section 1-04, is unanimously rejected.

RESOLVED, that Proposal 15, to amend Subsection (c)(5) of Section 1-04, is unanimously rejected.

MS. SIMMONS: Let's keep moving.

MR. WOLF: Proposal 13 is the next one, and this has to do with multiple occupancy areas and the fixtures that are found in them. To amend Subsection (c)(3) to require dormitories have at least one operable sink for every twelve prisoners rather than the current ratio of one sink for every ten prisoners. And I'll just note that the proposed amendment would conform to the City's Building Code.

MS. SIMMONS: Father Nahman.

FATHER NAHMAN: According to some of the input

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2 we had, the Public Health norm is one in ten not one in
3 twelve, and also especially now with the rise of the staph
4 infection and so forth, I think any kind of minimization
5 of sanitary conditions would be inappropriate. So I would
6 be opposed to the change.

7 MR. ROVT: What is the difference between ten
8 and twelve? And I would like to understand what this
9 proposed instead of ten, twelve. What to save water? No.
10 To save Correction Officers? I don't believe. I just
11 want to a small explanation, can you explain to us, why
12 was proposed from ten to twelve? What was the --

13 MS. SIMMONS: I think it was building, I think
14 it was just because the City Building Code, it conforms
15 with the City Building Code.

16 MR. WOLF: And I believe it also might have
17 been connected - it was done to go along with, had the
18 Board decided that it wanted to reduce the square footage,
19 and had the Board decided that it wanted to increase the
20 number of detainees that could be in a dormitory, this was
21 an attempt to say, well, you don't have to build more
22 stuff.

23 MR. ROVT: Then is automatically no.

24 MR. WOLF: Right.

25 MS. SIMMONS: All right, so - all in favor of

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this proposal? All opposed? There we go. The record should show that it was rejected.

MR. WOLF: Unanimously.

MS. SIMMONS: Unanimously, sorry.

RESOLVED, that Proposal 13, to amend Subsection (c)(3) of Section 1-04, is unanimously rejected.

MR. WOLF: Proposal 14, if I may, is the last one in the "Overcrowding" section. And this in particular has to do with a very small number of what are called jumbo cells in the A.M. Kross Center on Rikers Island, and this is an attempt to grandfather in what has been a longstanding variance in practice by which the Department is allowed to have more than one prisoner housed in the jumbo cell, so long as each prisoner gets at least 60 square feet of space inside that cell.

So, therefore, Proposal 14 read, well, the plan is to amend Subsection (c)(4) to exempt jumbo cells designed for two or more prisoners and opened no later than January 2, 2000, and that date, again, is in there for grandfathering purposes from the requirement, that a multiple occupancy area must have an adjacent day room space. The way it works instead is when these are in operation is that the prisoners are let out and go to a

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day room in the housing area, but it's not immediately next door to the cells because it's a cell housing area.

MS. SIMMONS: Any comments, discussion? All in favor of the proposed amendment? All in favor, no?

MR. KREITMAN: I'm not sure I'm understanding (inaudible) if you're in favor of what you're voting for. Let me just try to understand that.

MS. SIMMONS: Say it again what this is.

MR. KREITMAN: Explain that a little further. I'm not sure what I'm going for. I understand what we're talking about -

MR. WOLF: There are, okay, there are some, a small number of cells that can accommodate more than one prisoner, giving each prisoner at least 60 square feet. In other words, it's big enough to have two prisoners or it's big enough to have three prisoners in it, and they still get the same amount of floor space in their sleeping area that they would get if they were in a large, large dormitory.

So it's the same thing, keeping things at 60 square feet, and all that this is doing is it would codify longstanding variances that the Board has granted authorizing the Department to operate these things - in other words, it's a mini dormitory, and it authorizes the

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2 Department to have two people in a space that's
3 appropriate for two or three people in a space that's
4 appropriate for three. The only problem, the reason that
5 a variance has been required and now an amendment is being
6 considered is because the multiple occupancy provisions in
7 the standards otherwise for dealing with regular
8 dormitories requires that there be an immediately adjacent
9 day room. In other words, you can walk right from your
10 bed without having to go through any doors or anything
11 right into the day room. And that's not possible because
12 of the way this thing is set up, but the square footage is
13 the same, and people come out of their dormitories and go
14 to an area right down the hall is the point.

15 MS. SIMMONS: But there is a day room.

16 MR. WOLF: So this is not inconsistent with
17 what you've just done in terms of maintaining a 60-square-
18 foot standard. It doesn't offend that at all. The
19 question --

20 MR. KREITMAN: (inaudible)

21 MS. SIMMONS: All right, so a vote, all in
22 favor? Opposed? Okay, so 8 to 1 the amendment is
23 approved.

24 **RESOLVED, that Proposal 14, to amend**
25 **Subsection (c)(4) of Section 1-04, is**

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approved (8 in favor, 1 against).

MS SIMMONS: Item 16.

MR. WOLF: Correct. Item 16 moves us to the section entitled "Lock-In", and the proposal is to amend Subsection (a) ("The Policy") to exempt prisoners confined in punitive segregation, close custody, or for medical reasons in a contagious disease unit from the policy that "time spent by prisoners confined to their cells should be kept to a minimum and required only when necessary for the safety and security of the facility." Should I go through these individually?

MS. SIMMONS: No, I don't know that you have to. I think we should see if there's conversation.

MR. WOLF: Wait, wait, excuse me, Mr. Kreitman.

MR. KREITMAN: Richard, so this is, again, one of these variances that we've been granting time after time after time.

BOARD MEMBER: No.

MR. KREITMAN: It's not?

MR. WOLF: No.

MS. SIMMONS: That's not completely true. It is true for - I'm sorry, it is true for medical CDU prisoners. It codifies a longstanding variance, right? So the proposal speaks to three different classifications

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2 of inmates. Those in punitive segregation, those in close
3 custody, and those for medical reasons because they have
4 contagious disease, they're determined to have a
5 contagious disease. So on the first aspect, it, in fact,
6 institutionalizes a longstanding variance with regard to
7 people who have contagious diseases. The second one is
8 for people who are in punitive segregation, and that also
9 codifies longstanding practice. The only new piece of
10 this is the inclusion of the term close custody which
11 wasn't in the previous standards because it wasn't a term
12 that was used and that speaks to the approximately 30 or
13 so inmates at any moment in time who are now so
14 classified.

15 MR. WILLIAMS: It's my understanding that close
16 custody is referring to individuals who have asked to be
17 segregated - go ahead.

18 MR. WOLF: That's one of the two categories.
19 There's one group of prisoners or people who have
20 requested protective custody or for whom the Department
21 determines that protective custody is necessary and for
22 whom they determine that. The second group are people who
23 have been identified as needing, for security reasons,
24 needing to be isolated from the rest of the population
25 because they either pose a risk to the safety and security

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2 of others, other prisoners or of staff. And with that
3 group, that's the group that currently are confined at the
4 Manhattan Detention Complex as opposed to the people, the
5 housing areas that you saw on the visit to Rikers Island.
6 So there are two different groups, and the number of 30 or
7 thereabouts deals with the protective custody number as
8 opposed to, and then there's another smaller group that is
9 at MDC, and that's usually like, what, 13, 14, 15 people.

10 MR. VALLONE: So now they're going to be in the
11 same classification?

12 MR. WOLF: The Department's close custody
13 directive has the definition that includes both those
14 groups as close custody.

15 MR. VALLONE: All our amendment is dealing with
16 that --

17 MS. SIMMONS: Both of those groups, the
18 voluntary and involuntary. But, again, the numbers
19 altogether on any average day are very small, but just for
20 the record.

21 MR. VALLONE: Hildy, didn't we talk about
22 possible (inaudible) that we were going to discuss too? I
23 had thought we were going to talk about a possible
24 amendment to this based on the interest of nature that 23
25 hour and the lock-in and the close custody.

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MS. SIMMONS: Well, you can propose --

MR. VALLONE: It sounds like, but we're really not really talking about anything, so my concern is that we should have some dialogue --

MS. SIMMONS: That's the whole - but, Paul, that's what --

MR. VALLONE: No, but no one's saying anything.

MS. SIMMONS: Do you have an amendment? Do you have an amendment to propose?

MR. VALLONE: Well, I'd like us to discuss the ramifications of - these two groups now are now being placed together, and I'm concerned that there isn't any type of disciplinary hearing or any type of qualification for this to happen. It just kind of happened, and then there's not going to be any way to counteract the decision.

MR. WOLF: There is a hearing. It's not a disciplinary hearing because the individuals are not accused of having committed an infraction from something that violates a rule in the rule book. But there is a disciplinary, excuse me, there is a hearing that occurs prior to placement.

MR. VALLONE: How is that addressed here?

MS. SIMMONS: Well, the Department has

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2 classification procedures, and the Department is entitled
3 within the purview of the standards to have classification
4 procedures. And so this is one more piece in terms of
5 that particular type of housing, I mean that determination
6 is one more piece in the kind of array of classification
7 options that are available to the Department.

8 MR. VALLONE: I understand the concept --

9 MS. SIMMONS: And the classification
10 determinations are guided by Departmental policy, an
11 assessments that the Department does relative to the risk
12 or security concerns or whatever of any particular inmate
13 at any moment in time. Right?

14 MR. VALLONE: But then we're leaving it the way
15 it's written completely up to the Department's policy
16 without our putting any type of guidelines down as to what
17 that might be. So my concern is that this is, maybe in
18 thought, something that can be worked on, but there's no
19 specific language in here that is - that's too broad
20 basically. It's not giving --

21 MS. SIMMONS: Are you saying it's too broad for
22 all three categories or are you only saying it's too broad
23 for the close custody category?

24 MR. VALLONE: Close custody is that I'm
25 directly dealing with at the moment. I don't know if any

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members have some thoughts and ideas.

DR. ZORNBERG: In terms of the inmates with serious legitimate concerns for safety, I want to make sure that they are not subjected to 23-hour isolation. So whoever we address that, I want to be very clear about that.

MR. VALLONE: I agree.

FATHER NAHMAN: I am also - close custody, as I've experienced it in visiting, I don't see much difference between that and punitive segregation. So on this item I would not want to exclude, to include close custody or whatever it would be called and punitive segregation as to say that if you're in close custody, then we don't have to make sure that you are out of your cell.

MS. SIMMONS: Can I make a suggestion because I know there are a lot of concerns and I'm also mindful of time and everything else. I would propose that we amend this to, this proposal to only include the two items that are of longstanding variance, meaning people with contagious diseases and people who are in punitive segregation, and that we abandon the third piece, and hopefully that will get us to that point. If at some future date we want to engage in conversations with the

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Department on other related policies for this very small group of inmates for whom there are difficulties, and we all acknowledge that, then we have the opportunity to do that. Is that acceptable?

DR. ZORNBERG: Yes.

MS. SIMMONS: So could I take a vote on my amendment, how's that?

BOARD MEMBER: All in favor --

MS. SIMMONS: All in favor of my amendment?
All in favor, we'll show that Mr. Regan was not here, but 8 in favor.

RESOLVED, that the amendment proposed by Chair Simmons to Proposal 16, to amend Section 1-4 ("Lock-In") Subsection (a) is approved (8 in favor, Mr. Regan absent from vote).

MR. WOLF: And just so that the record is exquisitely clear on the subject, what the Board has just done, correct me if I'm wrong, is to approve the proposal after first deleting the words close custody.

MR. VALLONE: Well, we haven't taken a vote on the proposal. We just voted on Hildy's --

(cross-talk)

MR. WOLF: Oh, I'm sorry. See, that's why I

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said you'll correct me.

MS. SIMMONS: So now can we vote on the proposal?

BOARD MEMBER: Yes.

MS. SIMMONS: All in favor - as amended, the proposal as amended. Can we vote?

DR. ZORNBERG: Yes.

MS. SIMMONS: All in favor?

BOARD MEMBER: All in favor.

MS. SIMMONS: Thank you, Paul, for following Roberts Rules of Order much better than I do. That's why you are a lawyer and I'm not.

RESOLVED, that Proposal 16, as amended, to amend Section 1-4 ("Lock-In") Subsection (a) is approved (8 in favor, Mr. Regan absent from vote).

MS. SIMMONS: All right, next item. I want to move through a few of these. We hopefully can --

MR. WOLF: Okay. We now move to section on "Recreation," and the proposal is to amend Section (a) ("The Policy"), to add the following sentence: "Recreation is essential to good health and contributes to reducing tensions within a facility.

MS. SIMMONS: All in favor? Anybody opposed?

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Okay. Thank you. The record shows unanimous, except for, 8 because Mr. Regan was out. Eighth in favor.

**RESOLVED, that Proposal 17, to amend
Section 1-06 ("Recreation), Subsection (a)
is approved (8 in favor, Mr. Regan absent
from vote).**

MR. WOLF: Proposal 18 is a proposal to amend Subsection (d)(2), recreational equipment, to require each facility to provide appropriate outer garments upon request to prisoners who participate in outdoor recreation during cold or wet weather.

MS. SIMMONS: This is where I got caught up on the seasonally appropriate because I read something somewhere. Anybody - excuse me, can I call for the question on this one? All in favor? Father Nahman, are you in agreement on this?

FATHER NAHMAN: It's going much more quickly than I can think. Each facility shall provide for prisoners upon request with appropriate outer garments?

MS. SIMMONS: Yes.

MR. WOLF: That's correct.

FATHER NAHMAN: In good condition. And including a coat, hat - I'm just writing what some suggestions that were put in, that it be expanded to say

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that the clothing be in good condition including a hat, coat, and gloves, when you anticipate outdoor recreation during cold or wet conditions.

MS. SIMMONS: Are you proposing an amendment to this then to reflect that language?

FATHER NAHMAN: I'm saying that this is, this was suggested that there be added to this, I think it's a good idea, so I'd like to see something like this much more succinct.

MS. SIMMONS: Are you proposing an amendment to that effect?

FATHER NAHMAN: Yes.

BOARD MEMBER: Can we change, maybe making that good to satisfactory condition? (inaudible)
(laughter)

FATHER NAHMAN: Okay, in satisfactory condition.

MS. SIMMONS: All right --

BOARD MEMBER: Isn't that what appropriate is?

MS. SIMMONS: I would think that's' what appropriate is too. If people want - can we vote on the amendment? The amendment is for clothing in satisfactory condition and that to include hat, gloves, and coat.

FATHER NAHMAN: Coat.

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MS. SIMMONS: All in favor of the amendment?
One, two, three, four, five, six. Okay, there are 6
votes in favor of the amendment, the amendment passes,
now can we vote on the entire proposal as amended? All
in favor of the proposal? Proposal passes unanimously.
Paul will buy you a new jacket.

**RESOLVED, that amendment as put forth by
Father Nahman to Proposal 18, to amend
Section 1-06 ("Recreation), Subsection
(d)(2) is approved (6 in favor, 3
opposed).**

**RESOLVED, that Proposal 18, as amended, to
amend Section 1-06 ("Recreation),
Subsection (d)(2) is unanimously approved.**

FATHER NAHMAN: Again, I don't know where this
fits in --

MS. SIMMONS: We're going to go to the next
item.

FATHER NAHMAN: I just would like to make a
comment here, that the definition of inclement is, should
that be defined?

MS. SIMMONS: I think we dispensed with that
actually earlier when we determined that we couldn't
precisely define what weather conditions might mean and

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that we will trust those who are experienced and at the moment will make those determinations, and it is voluntary besides.

FATHER NAHMAN: Okay.

MS. SIMMONS: We're now on Proposal 19, is that correct?

MR. WOLF: That's correct. Proposal 19 would add a new Subsection (e)(1) under "Recreation" for prisoners in the contagious disease units to indicate that the Department need not provide an indoor recreation area for use during inclement weather for prisoners housed for medical reasons in the contagious disease units.

(tape 2, side B)

MS. SIMMONS: -- codifies a longstanding variance. Is there any discussion on this point? All in favor? Any opposed? You're opposed. Okay, so the record would be 8 in favor, 1 opposed.

MR. WOLF: So Proposal 19 carries.

RESOLVED, that Proposal 19 to add a new Subsection (3)(1) to Section 1-06 is approved (8 in favor, 1 opposed).

MR. WOLF: Proposal 20 would add a new Subsection, "Limitation of Access to Recreation,"

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2 authorization the Department to deny a prisoner access to
3 recreation for up to five days for misconduct on the way
4 to or from recreation, and I just need to add that it was
5 the intention of the Committee when it proposed this that
6 the misconduct would be determined through an infraction
7 hearing, in other words, the way that everything else,
8 that other sanctions in the standards require that the
9 limitation be opposed upon an infraction conviction, that
10 that was inadvertently left out and that that needs to be
11 put in.

12 MS. SIMMONS: So do we need an amendment to, we
13 need to amend it to say that.

14 MR. WOLF: That's right.

15 MS. SIMMONS: Okay, so --

16 MR. WOLF: What it would say?

17 MS. SIMMONS: Yes, but let me just take the
18 privilege of the Chair to add the amendment that
19 Richard's now going to say what it is.

20 MR. WOLF: A prisoner's access to recreation
21 may be denied for up to five days, only upon a
22 conviction, an infraction for misconduct on the way to,
23 from, or during recreation. That's the amended proposal.

24 MS. SIMMONS: We have to vote on the amendment
25 first. On the amendment, all in favor? Okay, I think

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2 the record shows unanimous. And all in favor of the
3 proposal as amended? Unanimous. Okay, thank you.

4 **RESOLVED, that the amendment to Proposal**
5 **20 is unanimously approved.**

6 **RESOLVED, that Proposal 20, as amended, to**
7 **add a new Subsection, Limitation of Access**
8 **to Recreation," is unanimously approved.**

9 MS. SIMMONS: We now move to Section 1-07
10 ("Religion"). Proposal 21 would amend Subsection (c),
11 congregate religious activities, to provide that
12 prisoners confined for medical reasons in contagious
13 disease units need not be permitted to attend congregate
14 religious services or other congregate religious
15 activities.

16 MS. SIMMONS: This too codifies a longstanding
17 variance designed to prevent the spread of contagious
18 diseases. Anybody in favor of the spread of contagious -
19 no, all right, can we call the --

20 MR. VALLONE: Just before we do, for the
21 record, Richard, this will not infringe or not allow
22 anyone access to a person of whatever religious
23 designation they have, right? They can continue to be
24 counseled privately, they can continue to see religious
25 folks on a regular basis. It doesn't prohibit anyone

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from practicing his or her religion.

MS. SIMMONS: Not at all.

MR. VALLONE: Okay.

MS. SIMMONS: All in favor? Unanimous approval.

RESOLVED, that Proposal 21, to amend Section 1-07 ("Religion"), Subsection (c), is unanimously approved.

MS. SIMMONS: Which takes us now to 22.

MR. WOLF: Proposal 22 is a proposal to amend Subsection (d), as in David, (1), religious advisors, to identify the Department's Executive Director of Ministerial Services as the official to approve religious advisors on behalf of the Department.

MS. SIMMONS: I'd like to take this one and Proposal 24 together, if we might, and - yes, why don't you read 24.

MR. WOLF: Proposal 24 would amend Subsection (i)(3), recognition of a religious group or organization, to identify the Department's Deputy Commissioner for Programs as the official to approve prisoner requests to exercise the beliefs of a religious group not previously recognized by the Department.

MS. SIMMONS: And my personal recommendation to

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2 my colleagues on my Board is that we reject both of these
3 proposals because I deem them to be micromanaging the
4 Department in determining who's responsible for what. Is
5 there any discussion or comment on that? May I call for
6 the vote on both proposals? All in favor of rejecting -
7 wait, all in favor of the two proposals? All in favor of
8 rejecting the two proposals? The two proposals are
9 rejected unanimously - Father Nahman, have you joined us
10 with this?

11 FATHER NAHMAN: You go much quicker than I
12 could think, I'm sorry.

13 MS. SIMMONS: Sorry.

14 DR. ZORNBERG: Father Nahman, I would like to
15 say that rejecting these proposals is also protective of
16 the First Amendment. So I would hope that this will be a
17 unanimous vote to reject it.

18 FATHER NAHMAN: Yes, I'm looking at my
19 reflections, and I now vote with everybody else.

20 MS. SIMMONS: So it's a unanimous vote. Thank
21 you very much.

22 **RESOLVED, that Proposal 22 to amend**
23 **Subsection (d)(1) of Section 1-07 is**
24 **unanimously rejected.**

25 **RESOLVED, that Proposal 24 to amend**

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**Subsection (i)(3) of Section 1-07 is
unanimously rejected.**

MS. SIMMONS: So we're at Proposal 23.

MR. WOLF: Proposal 23 would substitute the term "close custody" for the term "administrative segregation" in Subsection (h), the exercise of religious belief by prisoners in segregation, which states that "prisoners confined therein or in punitive segregation shall not be prohibited from exercising their religious beliefs, including attending congregate services 'with each other' or with other prisoners."

MR. KREITMAN: Can you explain that a little more please? My memory is a little vague on that one.

MR. WOLF: This is, again, the Committee's intention here was to have the standards use the terminology that the Department has adopted since 2005 which is the term close custody because it no longer calls something administrative segregation.

MR. KREITMAN: Okay.

MS. SIMMONS: This doesn't do anything other than substitute language. Is that right?

MR. WOLF: Well, that's not quite right because, of course, close custody is procedurally not the same as administrative segregation. So it's not quite

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the same. But that was the intent of the Committee, was limited to just conforming the - Doctor.

DR. ZORNBERG: Please provide further clarification because my understanding is both the Department of Correction as well as the Coalition To Raise Minimum Standards in New York City Jails is opposed to this. So what was the spirit of this in the first place?

MR. WOLF: I don't know that I can elaborate further on what the original intent of the members was other than to conform the language. The terminology that the Department was using, as you know, the Coalition and the Department opposed this for completely different reasons. But the intent was purely to substitute one term for another.

DR. ZORNBERG: So if we reject this, then it means the term administrative segregation --

MR. REGAN: I think we should consider, and I intend on voting no on this. I think that this is an item that we could take up in January or whenever we go back to considering new language and/or new standards.

BOARD MEMBER: I agree.

MR. KREITMAN: Because really the term close custody which is semantics more than anything here --

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MS. SIMMONS: Let's keep moving then. So is there, if we can call for the vote, all in favor of this proposal? All against the proposal? Okay, the proposal is rejected unanimously.

RESOLVED, that Proposal 23 to amend Subsection (h) of Section 1-07 is unanimously rejected.

MR. WOLF: So the record will reflect that for now this standard will remain unchanged.

MS. SIMMONS: Yes, correct. Exactly. 25.

MR. WOLF: We now move to Section 1-08 ("Access to Courts and Legal Services"), and I would begin by noting that this section has been, until now, assuming that you vote in favor of doing this, been called "Access to Courts." It was suggested that it be changed to "Access to Courts and Legal Services" because it's very much, the provisions here are very much about access to legal services. So that's the first item.

Related to that in Proposal 25 is proposal to amend Subsection (b)(1), first of all, judicial and administrative proceedings, to indicate that prisoners' communications with courts or administrative agencies may be restricted only pursuant to court order.

MS. SIMMONS: Is there any comments with regard

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to this? Can we call for a vote? All in favor?

BOARD MEMBER: Aye.

MS. SIMMONS: Unanimous.

**RESOLVED, that Proposal 25 to amend
Section 1-08 to be called "Access to Court
and Legal Services, and to amend
Subsection (b)(1) of Section 1-08 is
unanimously approved.**

MS. SIMMONS: 26.

MR. WOLF: Proposal 26 would amend Subsection
(d), access to co-defendants, to require the use of
teleconferencing, if available, for co-defendant visits
if one or more co-defendant is in Department custody.

MS. SIMMONS: All in favor of this proposal?
It's unanimously approved.

**RESOLVED, that Proposal 26 to amend
Subsection (3) of Section 1-08 is
unanimously approved.**

MS. SIMMONS: We're now on number 27.

MR. WOLF: Proposal 27 would amend Subsections
(f)(2)(1) and (2), law libraries, to delete the phrase
"during lock-out hours," thereby authorizing the
Department to operate facility law libraries during hours
when prisoners are locked in their housing areas and to

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count such hours towards the minimum numbers of total hours that law libraries must operate on each day that they're open.

FATHER NAHMAN: Could you explain that?

MR. KREITMAN: Or put it in Brooklynese.

MR. WOLF: Okay. Depending upon the size of the facility, five days a week the facility has to have the law library open during lock-out hours. The standard addresses only during lock-out hours and says that it must be open for eight hours or ten hours, depending upon size, during lock-out hours. But the Department - what the proposal is is to count, within those ten hours, two hours of time generally when there is lock-in, meaning that the general population prisoners are not, are confined to their housing areas and are not out elsewhere in the facility.

FATHER NAHMAN: They're locked in, they do not have access to the library?

MR. WOLF: No, well, the Department has presented the notion that it can provide law library services to special populations, potentially vulnerable inmates, better if the other, if it does so during the time when the prisoners, when the other prisoners are locked in. It can facilitate their movement to and from

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2 the law library. So that's the Department - may I just
3 say the other piece of it? The other side of it is the
4 question of what that does for the much larger group of
5 people, the general population prisoners and their
6 access, and the Department has assured the Board that it
7 can, that the Department can provide appropriate access
8 to all general population inmates on what potentially
9 would be a slightly reduced law library schedule for the
10 general population people to expand the number of hours
11 for the special population.

12 FATHER NAHMAN: The explanation is clear to me,
13 but the way it would be written would then give future
14 administrations the opportunity to just have the law
15 library open during the night. In other words --

16 MS. SIMMONS: No, it wouldn't.

17 FATHER NAHMAN: It says for a minimum of ten
18 hours, and it doesn't have to be during - so they can
19 have all the time during lock-out hours or lock-in hours,
20 whatever it is those people are confined to their cell.
21 So it can be abused. I think if you say, okay, we put a
22 window of two hours in there that people can be locked in
23 their cells so that the more vulnerable people can have
24 access to the law library, that's fine, but as it's
25 stated now, it just gives them a blank check to open it

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whenever they want.

MS. SIMMONS: Well, I don't think anything - to be honest, Dick, I don't feel that anything gives anybody a blank check because our job as a Board is to make sure that our standards are enforced. So if some future administration were only opening law libraries at night and our inspectors found that out or our colleagues in Legal Aid came and reported this to us, I can assure you we would be all over the Department for not complying with what we set our standards --

FATHER NAHMAN: But they're not violating your standards, so what do we --

MS. SIMMONS: Well, they would be pretty close to be violating a standard. So --

FATHER NAHMAN: Close is no cigar.

MS. SIMMONS: Well, and it would be for us to determine whether we think they're violating the standards. So I appreciate your concern. I don't know how we might add language that would --

FATHER NAHMAN: I would confine it to two hours, that they can be open for a minimum of ten hours, and two hours would be during lock-out, something in that order.

MS. SIMMONS: All right. Okay, can we make

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sure - is everybody okay with that? Okay, you're proposing an amendment to that.

FATHER NAHMAN: Yes.

MS. SIMMONS: So can we have a vote on the amendment? All in favor? It's unanimous. Then we'll vote on the proposal as amended. All in favor?

BOARD MEMBER: I vote against it.

MS. SIMMONS: Oh, you vote against. Okay. All right. So 8 to 1, carries.

RESOLVED, that the proposed amendment to Proposal 27 to amend Subsections (f)(2)(1) and (2) of Section 1-08 is approved.

RESOLVED, that Proposal 27, as amended, to amend Subsections (f)(2)(1) and (2) of Section 1-08 is approved (8 in favor, 1 opposed).

MS. SIMMONS: Proposal 28.

MR. WOLF: Proposal 28 would add a new Subsection (f)(4)(a), authorizing the Department to deny access to law library for prisoners housed in contagious disease units for medical reasons. An alternative method of access to legal materials that enables effective legal research must be provided.

MR. KREITMAN: That's a longstanding variance.

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MS. SIMMONS: Right, this codifies a longstanding variance. All in favor of the proposal? Unanimous.

RESOLVED, that Proposal 28, to add Subsection (f)(4)(a) is unanimously approved.

MS. SIMMONS: Proposal 29.

MR. WOLF: Proposal 29 would delete Subsection (f)(7), removing a requirement that the Department must periodically report available law library resources to the Board.

MS. SIMMONS: I would note here that we have the opportunity to audit the law library resources any time we wish regardless of whether the Department reports to us on them, just so everyone understands that.

FATHER NAHMAN: What was the reason for this asked to be omitted?

MR. WOLF: I don't remember, Father.

MR. VALLONE: Was periodically determined to be quarterly or can we just make this annually? Is there somehow a middle road we can make on this? How often --

MS. SIMMONS: We can do whatever we want.

MR. VALLONE: How often was it being reported? Because that's not something I remember.

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MS. SIMMONS: I can't recall the last time - I think the notion was that we have an affirmative obligation to review them when we're there. We have an obligation for the Staff to be checking them all the time. So the notion of having any kind of formal reporting on them wasn't perhaps as necessary as it might otherwise be because it's part of our ongoing obligation. But if you are comfortable, if you want language that --

MR. VALLONE: Maybe at least on their annual report, when the Commissioner gives us the rundown of the year, we can add in to say at least on the annual and if we require something else, like you have there in the comments, we could audit something if something comes to our attention throughout the year, if there's an abuse of something, we can always do that. But at least make the minimum that there's an annual accounting of the library.

MS. SIMMONS: So you're proposing --

MR. VALLONE: An annual and that we have at least an annual update as to what's going on with the law libraries, and if we require an audit, like the comments say, we'll just do that later on.

MS. SIMMONS: So the amendment is to, we're going to vote on the amendment to --

BOARD MEMBER: Reject the proposal.

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MS. SIMMONS: Well, we reject the proposal and amend the - how do we - so all in favor of --

MR. VALLONE: If you amend the language, you don't have to reject the proposal.

MR. WOLF: Actually, the way it's set up, you do because the proposal is to delete it.

MS. SIMMONS: So all in favor of the proposal as prepared? All opposed? That's unanimous. All in favor of the amendment to change periodically to annually?

MR. VALLONE: And to leave the rest of the language --

MS. SIMMONS: Language in place.

MR. VALLONE: -- as is, correct. Thank you.

MS. SIMMONS: That's unanimous. Great, thank you, Paul.

RESOLVED, that Proposal 29, to delete Subsection (f)(7)(a) is unanimously rejected.

RESOLVED, that a Proposal to amend the language of Subsection (f)(7)(a) from "periodically" to "annually" is unanimously approved.

MR. WOLF: Proposal 30 is perhaps the most -

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I'm sorry.

FATHER NAHMAN: Excuse me, again, while we're on this, further down it says sufficient number of operable typewriters. Just to get into the 21st century, or dedicated word processors, that, you know, would also be added.

BOARD MEMBER: Good point.

MS. SIMMONS: All right, so you're proposing an amendment?

FATHER NAHMAN: I'm proposing that, yeah, typewriters include dedicated word processors.

MS. SIMMONS: All right, all in favor of the amendment? All opposed? Amendment is carried unanimously.

RESOLVED, that a Proposal to amend the language of Section 1-08 to include "dedicated word processors" is unanimously approved.

MR. WOLF: Now for the controversial one, Proposal 30 would amend Subsection (g)(3) --

MS. SIMMONS: Speaking of moving into the modern age.

MR. WOLF: -- legal documents and supplies, to delete carbon paper from the list of legal clerical

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supplies that must be available.

MS. SIMMONS: Can anybody find carbon paper anymore? Is there anybody opposed - all in favor of this? Except for the carbon paper industry. All opposed? It's approved unanimously.

RESOLVED, that a Proposal to amend the Subsection (g)(3) to delete carbon paper is unanimously approved.

MS. SIMMONS: 31.

MR. WOLF: We now move to Section 1-09 ("Visiting"). Proposal 31 would amend Subsection (d)(1), initial visit, to authorize the Department to provide a non-contact visit rather than the currently required contact visit within 24 hours of admission.

MS. SIMMONS: Any comments on this? Father Nahman.

FATHER NAHMAN: I just recall the young people saying --

MS. SIMMONS: Say your name please.

FATHER NAHMAN: Richard Nahman. Just saying when they come in to visiting their parent for the first time, I mean the idea of not being able to hug them, not be able to touch them is really a hardship. So I did not see any compelling reason to really prevent a contact

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visit from the arguments that were presented.

MR. REGAN: I agree with you, Father, and in Committee we spent a lot of time on visits, and there's a lot of issues here that didn't make it out of the Committee. There are initiatives that spoke of reducing the number of visits, there were initiatives that required the reduction of visits on weekends, there were discussions about including press visits as family visits. And the Committee saw fit to not allow some of that stuff out of the Committee. So I agree with you on this one. Visits are a very sacred thing today.

MS. SIMMONS: I think you've expressed that quite fairly. I would simply point out in your comment Father, it doesn't say that there - this only relates to the first visit within the first 24 hours. It's not all visits. I was also quite moved by the comments of the children, but, in fact, the number of inmates who receive a visit of any kind in the first 24 hours is very small, very, very small. And so it doesn't preclude when they ultimately have their first visit necessarily having a contact visit; it just means within the first 24, the idea here was to say that within the first 24 hours, the Department for public health reasons, for security reasons, and for other reasons might need that first 24

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hours to assess the particular inmate, not that the inmate can't have the visit within the 24 hours, but perhaps a contact visit might not be the best idea given the related public health and security issues. That's all.

FATHER NAHMAN: It was precisely, because it's 1.44 percent is such a minimal number, I can't see - it's happening now. I don't see anything that has happened because of that --

MS. SIMMONS: I just want to clarify that. It wouldn't preclude a contact visit at some point from a family member.

DR. ZORNBERG: Again, I'm in favor of Proposal 31 to enhance the safety and security of the system. By the same token, I want on the record that this Board is mindful of the heightened risk of suicide in adolescents and young adults, and we are continuing to work with the Department of Health of minimizing that risk.

MS. SIMMONS: Paul, I'm sorry.

MR. VALLONE: Based on the minimal impact, I don't see the need for us to have to address and change a standard. I think we should just keep it the way it's been existing, and if need be, in the future, this rises again for some type of security standard, we'll address

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it then.

MS. SIMMONS: Well, let's call for a vote then, if that's all right. All in favor of the proposed new standard? One, two, three, four, five. All opposed? It carries. The proposal carries.

RESOLVED, that Proposal 31, to amend Subsection (d)(1) to Section 1-09 ("Visiting") is approved (5 in favor, 4 opposed).

MS. SIMMONS: Okay, number 32.

MR. WOLF: 32 would add language to Subsection (f), contact visits, indicating that prisoners housed in contagious disease units for medical reasons will not receive contact visits.

MS. SIMMONS: Again, this codifies a longstanding variance. Can we call for the vote on this? All in favor? Opposed?

RESOLVED, that Proposal 32, to amend Subsection (f) to Section 1-09 ("Visiting") is unanimously approved.

MS. SIMMONS: 33.

MR. WOLF: Okay, 33 is a little bit complicated, and you're going to have to bear with me here. First, it would amend Subsection (g)(4), visiting

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security and supervision. To authorize the Department to require visitors to store personal property, including bags, outerwear, and electronic devices, in a lockable locker.

And I need to tell you that there was a major typographical error that requires correction. There were brackets that were inadvertently placed around the first two sentences of Subsection (g)(4), and those need to be removed, so that the following language is retained:

Objects possessed by a prospective visitor, including but not limited to handbags or packages, may be searched or checked. Personal effects, including wedding rings and religious medals and clothing, may be worn by visitors during a visit. It was never anybody's intention to take that stuff out, and that was just a typographical error that everybody in the world, except some of the commentators, missed.

MS. SIMMONS: So do we have to amend, do we have to amend the proposal to reflect the correction of the typographical error?

MR. WOLF: It wouldn't be a bad idea.

MS. SIMMONS: So I'm going to take the privilege of the Chair to propose an amendment that, one, corrects the typographical error that I'm not going to

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2 repeat because I don't think I can say it, and, two, to
3 suggest, based on my own read of comments and other
4 things that have come in, a slight additional amendment
5 to the wording which would add language that would say
6 that a visit may not be delayed or denied because no
7 working lockable locker is available. So I would like to
8 call for a vote on the one amendment with two items,
9 how's that? All in favor? Unanimous.

10 **RESOLVED, that the amendments to Proposal**
11 **33, to amend Subsection (g)(4) to Section**
12 **1-09 ("Visiting"), are unanimously**
13 **approved.**

14 MS. SIMMONS: Now can we vote on the proposal
15 as amended, all in favor? Unanimous.

16 MR. WOLF: Good.

17 **RESOLVED, that Proposal 33, as amended to**
18 **amend Subsection (g)(4) to Section 1-09**
19 **("Visiting"), are unanimously approved.**

20 MS. SIMMONS: Number 34.

21 MR. WOLF: Proposal 34 takes us to Section 1-10
22 ("Telephone Calls").

23 FATHER NAHMAN: Excuse me. Just to be
24 consistent, again, under (h), visiting rights shall not
25 be denied, revoked, limited, or interfered with based on,

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and there's a whole list, but to change the word sex to gender or sexual identity and also add disability. That parallels what we did previously in another section.

MS. SIMMONS: All right, can we call for the question?

MR. WOLF: So, okay, we're on --

MS. SIMMONS: Section (h)(1) is that where --

FATHER NAHMAN: (h)(1) under --

MS. SIMMONS: This would be on page 30 of the proposal changes in the notice document that you have, page 30, at the top is *Limitation on Visiting Rights*, one word change, and, again, the proposal there is to add gender and disability to the list I assume. Is that correct, Father Nahman?

FATHER NAHMAN: Yes.

DR. ZORNBERG: Gender identity in terms of sex is already there.

MS. SIMMONS: All in favor? All in favor?
Unanimously approved. Thank you very much.

**RESOLVED, that Proposal to amend
Subsection (h)(1) to Section 1-09
("Visiting") to include "gender" and
"disability" to the list is unanimously
approved.**

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MS. SIMMONS: Proposal 34.

MR. WOLF: Proposal 34, telephone calls. This proposal would amend Subsection (h), supervision of telephone calls, to authorize the Department of Correction upon notice to listen to or monitor prisoner telephone calls without obtaining a warrant. Telephone calls to the Board of Correction, the Inspector General, and other monitoring bodies as well as to treating physicians, attorneys, and clergy shall not be listened to or monitored.

MR. KREITMAN: This issue was debated vigorously at our Committee hearings, and we went back on it several times during the months of deliberation. We checked with almost every other major jail system in the country, and they all have permitted this, including the state system. We also had a lot - I beg --

BOARD MEMBER: And the federal system.

MR. KREITMAN: And the federal system, thank you. We also received letters from four of the five district attorneys and the Police Commissioner voicing their opinion that it's vitally important to the safety of the jails because what's not said and what happens is that, among other things, is that detainees waiting to go on trial are intimidating witnesses that they won't

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testify against them, they'll kill them or their family. The gang violence escalates. We also received word from Homeland Security that there are a lot of Homeland Security issues being transmitted by phone. I think this is vital to the proper running of this system is to bring this up to date with the rest of the country.

MR. WILLIAMS: I would concur with Stanley, and the only thing I would add I think in the provision itself, where it says only when notice has been given to the prisoner, I think you need to make that plural and say to the prisoners. And that's the only thing, other than that.

MS. SIMMONS: So that would be an amendment adding as to prisoners.

MR. VALLONE: I thank the subcommittee for this because this was a very controversial topic, and we value all the advice given on this because this is, you know, Constitutional and very broad changes that we're going to be implementing.

Based on that, I think maybe we can just, if we're going to go with the assumption it's going to be approved based on whatever vote is determined, I think the blanket notice saying upon notice I would us to look at and maybe just whether we put adequate and proper

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2 notice or whether we want to see. The courts have upheld
3 certain types of notice, whether it's signs on the wall,
4 during their initiation and orientation proceedings that
5 they're told. I'm not comfortable with just upon notice.
6 I think we should, since this is a very controversial
7 topic, I think we need to expand the notice.

8 And the other thing that's kind of left toward
9 just I guess the Department's monitoring is the
10 protection of protected phone calls. All we're saying is
11 that they can't be listened into, but we're not being
12 told or given any leading advice from the Department as
13 to how that's going to happen. How do you differentiate
14 between a privileged phone and a non-privileged phone
15 call and how are the privileged phone calls going to be
16 kept sacrosanct and not being touched and say, oops,
17 sorry, we didn't know that one was a privileged phone
18 call.

19 MR. WILLIAMS: Paul, my understanding is that
20 just like with the laundry that we will be getting the
21 procedures from the Department and vetting them with them
22 to make sure that everything you're saying meets your
23 satisfaction. I mean I think we can all go on the
24 record, I know I spoke to some of you, that as of today,
25 if we approve this, we would request the Department to

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get right back to us as to how they're going to do this,
and it needs to meet our satisfaction.

MR. VALLONE: Well, maybe we should think about
doing the same thing we did with the laundry because that
was a conditional approval based on them providing, the
Department providing --

MR. KREITMAN: That wasn't conditional.

MR. VALLONE: Well, I mean based that on point
showing that the laundry services --

MS. SIMMONS: Again, in all of these instances
where there are new procedures in place or new standards
in place, the Department has to come back to us with
their proposals on how they're going to implement them,
and we have all the authority vested in us to discuss,
debate, you know, express concerns and do all the other
things that we want --

MR. VALLONE: Well, I think we should add the
language has to be approved --

MS. SIMMONS: We can't approve their
procedures, Paul, that's not our job. They have meet --

MR. VALLONE: You just said --

MS. SIMMONS: -- they have to provide
procedures that meet our standard, and we can say whether
they do or not, and then they will have to do something.

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2 But we can't include in the language here approval of
3 their procedures. The law department has been very clear
4 about specifying where we can - so it is absolutely
5 correct that the Department is going to have to come back
6 to us with presumably draft procedures, I don't want to
7 say procedures, with draft procedures that we'll have a
8 chance to review and comment on.

9 MR. WILLIAMS: You know, Paul, again, I went
10 back and forth on this a lot, and I satisfied myself also
11 through counsel of making certain that we really have the
12 right to ask the Department to come back to us with the
13 procedures and that we have the right to look them over
14 and reach some kind of understanding which meets our
15 satisfaction. And if it doesn't, then we'll take
16 appropriate steps.

17 MR. VALLONE: Well, that's definitely --

18 MR. WILLIAMS: Wait, what I'm saying is I don't
19 think that approving this today will give the Department
20 the unfettered right to just do whatever they want at
21 all. I think there are some controls in place, and we
22 don't have to have it in the standard, it doesn't have to
23 say that we will ask to review the procedures. That's
24 automatically assumed, that's implicit in our rights as a
25 Board.

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MR. VALLONE: Well, then the only thing I would like to do then based on that is at least call for a vote or an amendment on the notice saying proper and adequate or legally sufficient or proper and adequate, something of that nature toward the notice be added.

MR. REGAN: Just on this one, as Milt and Paul and Stanley and others have said here, this is a big deal. We listened to a terrifying story from the Assistant District Attorney in Queens about a horrendous domestic violence case that was planned in Rikers Island, and it involved a witness. It was a horrible story. Some of us asked why wouldn't she have just gotten a warrant. Some of us asked why isn't the process of a warrant sufficient.

In my mind, the district attorneys have made a clear and compelling set of reasons - I agree with Paul that we have to be very careful about how we implement or how the Department implements this plan. But whether it's terrorism, domestic violence, general crime, or other horrible criminal acts that have been established in Rikers Island, I think this is a necessary tool. I look forward to the promulgation of the regulations, I look forward to a discussion on how the Department will best ensure confidentiality, a reasoned approach, some

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2 thoughtful processes into how someone is determined to be
3 subject to listening device. We live in a world that
4 requires very reasonable people and reasoned and
5 thoughtful approaches to these issues. But to me this is
6 about safety, this is about crimes that are not going to
7 be committed, and I look forward to voting in favor of
8 this.

9 MR. WOLF: We were about to vote on expanding
10 the notice on the amendment.

11 MR. REGAN: I don't know if we want to talk
12 about that separately.

13 MS. SIMMONS: Can we vote on the - there are
14 two amendments, if we could combine them for the purpose
15 of this. One is Rosemarie's terminology, I think if
16 that's acceptable, Paul, which is legally sufficient
17 notice, and the second is Milt's point that in the actual
18 wording, there's an "s" missing, and it should prisoners
19 not prisoner. So can we at least vote on those
20 amendments and then have a discussion, if there's other
21 comments, on the proposal? All in favor of those
22 amendments? There's a unanimous vote in favor of those
23 two amendments.

24 **RESOLVED, that two amendments to Proposal**
25 **34, to amend Subsection (h) is unanimously**

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approved.

MS. SIMMONS: Now the proposal. Yes, Stanley.

MR. KREITMAN: If I may just for my colleagues, let me read into the record a quote from Robert Johnson, the District Attorney of Bronx County, who has jurisdiction over Rikers Island. Section 1-10(h) would give the Department the authority to monitor and record inmate phone calls. It would promote safety within the OC facilities. It would also harmonize New York City Department of Correction practice with that of New York State, the federal government, and many other jurisdictions which currently allow such monitoring. The rule requires notice to prisoners and exempts telephone calls to investigative, regulatory bodies such as the Board of Correction itself, as well as calls to attorneys, clergies, and treating physicians.

MS. SIMMONS: Thank you. I'm mindful of time. I want to make sure we have (inaudible).

DR. ZORNBERG: I would like to compliment particularly the standards committee grappling with the difficult issue. We all acknowledge we're trying in the correctional system to maintain civil liberties, at the same enhance security. And I think this is a very important issue, and I hope if the proposal is approved,

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that in the operationalization, the Department of Correction will take some suggestions such as those entered by the Legal Aid Society Criminal Defense Division in terms of monitoring calls to victims, blocking calls when necessary. But I think we have been heading into a proposal that I think balances all of these important issues.

MR. ROVT: Where I need just explanation. To listen or to monitor prisoner telephone calls without obtaining a warrant. Who is the one who decides to listen?

MS. SIMMONS: That's where the Department --

MR. ROVT: Department, but who in the Department, one person, two persons -

MS. SIMMONS: Those are the procedures --

MR. ROVT: -- three persons --

MS. SIMMONS: Those are the procedures that we were just talking about. So, in other words, before this can be implemented, the Department will come back to us with their proposed procedures, and we will have, as Milt said, ample opportunity and considerable recourse if we're not happy with the proposals that they've come back with.

MR. ROVT: Okay.

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BOARD MEMBER: You just said before it can be implemented.

MS. SIMMONS: We can approve the standard, but before they actually put the standard, put something into practice, we will see their procedures.

MR. VALLONE: I'd like to see that language then.

MS. SIMMONS: That's implicit, as Milt said, that's implicit in our role, Paul, that's the point.

MR. VALLONE: But then it can't hurt to put it in.

MS. SIMMONS: Well --

MR. REGAN: We raised these issues in the committee, and while we'll wait for the Commissioner to promulgate these rules, they made it clear that this would be a very sober decision. It would required someone, either the Commissioner or one of his senior representatives to be involved in this.

MS. SIMMONS: We'll see --

MR. REGAN: I think the Department is well aware of how important a decision this is.

MS. SIMMONS: I presume, since there are representatives of the Department here, they're also taking note of our concerns and comments, and I believe

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that the proposals they will come back to us will reflect all of the wonderful comments that people have made. Can we take the vote on this?

MS. MALDONADO: No, I have another comment. I'm not sure whether we've covered all the privileges that need to be covered. Treating physicians, for example, would not necessarily include psychologists or mental health workers. Gwen, I wanted to check with you on that specific --

DR. ZORNBERG: Yes, I agree with you.

MS. MALDONADO: You agree with that.

MS. SIMMONS: Then we should - what would be the language? Dr. Zornberg, could you give us language that you think would be appropriate?

MR. WOLF: Into the microphone please.

DR. ZORNBERG: Treating physicians and clinicians.

MS. MALDONADO: And clinicians, okay.

MS. SIMMONS: Thank you.

MR. WOLF: Can I have a clarification just, Chairman, on - one of the limits we placed in correspondence is specifically not placed here in phone calls, and that's that there is a reasonable belief that this is necessary for public safety or facility order and

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security. Can I open for discussion if we should include that language or why it wasn't included?

MR. WILLIAMS: I had the same question because I noticed there was more specificity in some of the other ones. I think it reflects the fact, as I understand it, that under the telephone calls, the technology's ever changing, and so that was left more general, although it does not at all impede our right to review the procedures. Whereas with regard to the correspondence and the packages, I think they could be more clear, and so they were more specific, the standards were more specific.

In other words, what I'm saying is under the correspondence and packages, it could read the same way as the telephone calls. They didn't have to be as specific as they were, and we still have the right to review everything. In this case, the packages, the correspondence, those provisions are more specific, but, again, it doesn't change. We have the right to review those, and we have a right to review the telephone calls.
(cross-talk)

MR. KREITMAN: The technology is different, the technology changes --

MS. SIMMONS: Let me just clarify something

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2 else. The other point of this is that technology is
3 important here, but in correspondence or package it's
4 something physical that somebody can immediately make a
5 determination about. In order to implement a telephone
6 procedure, you need technology that allows for the
7 ongoing monitoring of all telephone calls, and then a
8 determination - it doesn't mean that every call is going
9 to be listened to much less listened to in real time.
10 But then having collected the information, you can then
11 determine which of those calls would be appropriately,
12 would fall within the procedures that will be developed.
13 So it's the physical process as well as the technology.
14 Father Nahman, and then I'd like to call the question.

15 FATHER NAHMAN: I agree with Paul. Just as we
16 did for the laundry, upon the implementation of proper
17 procedures, then the phone calls may be - and I would
18 like to put that in there stating - because as it is now,
19 while they may need it, they don't have to have it, and
20 we have no oversight.

21 MS. SIMMONS: Actually, we do have oversight.
22 I want to be really clear --

23 FATHER NAHMAN: We have oversight, but they can
24 be doing it and doing it --

25 MS. SIMMONS: No --

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FATHER NAHMAN: -- and we haven't got the infrastructure, what do we have in place to oversee that this is being done.

MS. SIMMONS: All right, so let's --

FATHER NAHMAN: I would like to have that provision, just as we did for the laundry --

MS. SIMMONS: Well, all right, so we have two further amendments. One, let me take them in order, the first is to add the term clinicians. We already did the legally sufficient and prisoners, so this is --

BOARD MEMBER: Treating physicians --

MS. SIMMONS: Treating physicians and clinicians. All in favor of adding clinicians? Okay, unanimous.

RESOLVED, that the amendment to add the word "clinicians" to Proposal 34, to amend Subsection (h) of Section 1-10 is unanimously approved.

MS. SIMMONS: Okay, now Father Nahman has proposed language that would say --

FATHER NAHMAN: That upon the implementation of proper procedures, telephone calls may be listened to or monitored.

MS. SIMMONS: All in favor of that amendment?

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Four. All opposed?

MR. VALLONE: And the only other one is if we were to add in the correspondence --

MS. SIMMONS: We're not at correspondence yet though, Paul, let's --

MR. VALLONE: That's not my point --

MS. SIMMONS: Can we finish the vote?

MR. VALLONE: No, this is the vote for telephone calls. It's to vote on proposal 34, giving us an example, if you allow me to finish, that the language in correspondence says "exists a reasonable belief that limitation is necessary to protect public safety or facility order and security." I would like that same sentence be added into Proposal 34 for privileged phone calls.

MS. SIMMONS: Okay, but that's a second separate amendment, Paul, that's all I'm saying. We have to finish the vote on Father Nahman's amendment first.

MR. VALLONE: I thought we just voted.

MS. SIMMONS: I just want to make sure --

BOARD MEMBER: We did.

(cross-talk)

MS. SIMMONS: All right, can we - let's start over again, one at a time here. All right, Father

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Nahman, could you repeat your amendment?

FATHER NAHMAN: Upon the implementation of proper procedures, prisoners' telephone calls may be listened to.

MS. SIMMONS: All in favor of the amendment, Father Nahman's amendment?

MR. WOLF: Three, four, five, six.

MS. SIMMONS: Okay, the amendment carries.

RESOLVED, that the amendment to add the language "upon the implementation of proper procedures" to Proposal 34, to amend Subsection (h) of Section 1-10 is approved (6 in favor, 3 opposed).

MS. SIMMONS: All right, now, Paul, you have another amendment.

MR. VALLONE: I thought we had finished that, I'm sorry.

MS. SIMMONS: Okay, now you have another amendment.

MR. VALLONE: It's just to add the language, so as to give you an example, what is stated there in 35, when there exists a "reasonable belief that the limitations necessary to protect public safety or facility order and security," I'd like that language to

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be included into Proposal 34.

MS. SIMMONS: So where would you want that included in Proposal 34?

MR. VALLONE: Right prior to - well, where it says listen or to monitor prisoner telephone calls without obtaining a warrant, where there exists a reasonable belief that a limitation is necessary to protect public safety or facility order. Or we can discuss it.

MS. MALDONADO: Yes, I'd like to make a comment on that. I think that the Department has made a showing that they need this power to protect the public safety, and I think that's, it's different from correspondence because that's a case by case determination. This is a general power to protect the public that they're requesting. So I don't think that we need to include that here. It's a different case. Correspondence is case by case.

MR. VALLONE: Whether it's redundant or not doesn't mean whether it should be correct or not. If it's corrected once, it should be corrected --

MS. SIMMONS: You proposed an amendment. Can we take a vote on the amendment. All in favor of the --

MR. REGAN: Can you read the proposal again?

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2 MR. VALLONE: Well, it's based on the existing
3 proposal 34 says supervision of telephone calls to
4 authorize upon notice to listen and monitor prisoner
5 telephone calls without obtaining a warrant. I want to
6 add right after, "where there exists a reasonable belief
7 that the limitation is necessary to protect public safety
8 or facility order and security," which is what we are
9 including in correspondence, and we're not giving any
10 other reason other than, well, we have the ability to do
11 it, so why put it in.

12 BOARD MEMBER: Rosemarie, can you just explain
13 -
14 (tape 3, side A)

15 MS. MALDONADO: I think they're
16 distinguishable. Looking at correspondence, you're
17 basically asking for that right where you believe there's
18 a reasonable belief. You do it on a case-by-case
19 determination. What the Department has presented to us
20 and what I've gathered from the testimony of the district
21 attorneys is they've already made a case that they need
22 this general power to protect the public safety. So I
23 think that's different.

24 MS. SIMMONS: Can we call for a vote? So all
25 in favor of the amendment, Paul Vallone's amendment? All

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opposed? 7 to 2, the amendment is defeated.

RESOLVED, that the amendment to add the language "where there exists a reasonable belief that the limitation is necessary to protect public safety or facility order and security" to Proposal 34, to amend Subsection (h) of Section 1-10 is rejected (7 against the language, 2 in favor of the language).

MS. SIMMONS: Can we now vote on the proposal as amended with all of the various additional language that was added?

MR. REGAN: Richard, are you comfortable with the amendments as they are or do we need to restate what they are?

MS. SIMMONS: Everybody's clear, we've added --

MR. WOLF: Between the tape and the notes that are being taken, I think we're okay.

MS. SIMMONS: All in favor of the amendment as proposed? One, two, three, four - eight. And opposed? One. The amendment carries, thank you very much.

RESOLVED, that Proposal 34, as amended to amend Subsection (h) of Section 1-10 is approved (8 in favor, 1 opposed).

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MS. SIMMONS: And now we move to Proposal 35. I'm also mindful of time, mindful of commitments that we have, but we only have ten more to go, folks, eleven more to go. Let's see if we can keep going.

MR. WOLF: We move now to Section 1-11 ("Correspondence"). Proposal 35 would amend Subsection (a), the policy, to authorize the Department to limit a prisoner's entitlement to correspond with any person, which is the way it is now, when there exists "a reasonable belief that the limitation is necessary to protect public safety or facility order and security." The proposal expressly provides that "correspondence criticizing the Department, a facility or its staff, or espousing unpopular ideas shall not constitute a threat to safety and security of the facility."

MS. SIMMONS: Any comments? Can we --

MR. VALLONE: Are we including notice once again? Do I see the wording notice? I thought that was going to be part of the proposal, that, once again, the prisoners would be given, the inmates would be given notice that their phone calls and correspondence may be listened into and read. This doesn't say anything about notice. I think we should at a minimum put the same language upon legislative correct notice. A simple sign

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or some type of - I don't even know if we're going to amend the guidelines that they're given, and maybe a sentence could be added there that their phone calls may be monitored and correspondence may be reviewed.

MR. WOLF: Well, I guess I just have a question. With respect to correspondence, there is this special requirement that there be reasonable belief. So that only kicks in when the piece of correspondence has been reviewed and whoever it is in the Department who is make the determination, which you'll learn from when you review the procedures, or actually it designated the warden --

MR. VALLONE: Well, it doesn't change the reasonable belief or anything or the ability to utilize it. It just tells the prisoners at the outset, and the inmates and detainees that it may be --

BOARD MEMBER: That if a reasonable belief is found, that somebody may look at their correspondence. I see what you're saying.

MR. VALLONE: That's what I'm saying.

BOARD MEMBER: That's what I'm saying.

MS. SIMMONS: So you're proposing language which says that inmates, everyone --

MR. VALLONE: Well, following if a reasonable

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belief is found, then the notice to provided or at some point the notice should be provided at the outset, somewhere.

MS. MALDONADO: Right. I don't think that we need notice after there's reasonable belief, maybe general notice to the population that this is going to occur.

MR. VALLONE: That's what I'd rather have a general notice.

MS. SIMMONS: It's general notice.

MS. MALDONADO: Okay.

MS. SIMMONS: So the amendment is to make sure that there is general notice. Okay, Father Nahman.

FATHER NAHMAN: I have problem with just the idea of reasonable belief. Whose reason, who's believing, who is the one that has the right to make that determination?

MR. VALLONE: Well, can we address that one after we, so we don't get convoluted? First, ask for the amendment upon general notice, and then we'll talk about the --

MS. SIMMONS: So can we vote on the amendment, call the question on general notice? All in favor of amending to reflect general notice? Opposed? It's

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carried unanimously.

RESOLVED, that the amendment to add the language "general notice" to Proposal 35 to amend Subsection (a) of Section 1-11 is unanimously approved.

MS. SIMMONS: Now, again, Father Nahman, what I would say in response to your comment is, as with many of these other things, the Department will come back to us with operational procedures that will explain how they are going to implement this, and it's, again, well within our purview as the Board to challenge, suggest, etc., etc. anything with want with regard to the procedures that would be promulgated. And that's where we would have the specific information with regard to how they propose to implement this and what definitions they would be purposing to use with regard to reasonable belief or any of those other things.

But to the extent that we really are not in a position to be overly proscriptive at this moment in time, we're going to rely on the proposals that come back and the discussion we'll have about those procedures.

FATHER NAHMAN: I'd like to be explicit so I would like to, again, put there upon implementation of appropriate procedures. Again, that we are requiring

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2 procedures, so that's without the expressing of the
3 requirement of procedures.

4 MS. SIMMONS: Can we call for - so there's a
5 second proposal here to amend it to say upon appropriate
6 procedures. All in favor of the amendment? Opposed?
7 All right, 7 to 2.

8 MR. WOLF: Pass.

9 **RESOLVED, that the amendment to add the**
10 **language "upon appropriate procedures" to**
11 **Proposal 35 to amend Subsection (a) of**
12 **Section 1-11 is approved (7 in favor, 2**
13 **opposed).**

14 MS. SIMMONS: Now can we vote on the proposal
15 as amended?

16 MS. MALDONADO: I have a question. I'm trying
17 to figure out how 35 and 36 and 38 interact and what the
18 consequences are for privileged communications. Because
19 I want to make sure that we should have a much higher
20 standard for privileged communications, and 38 does say
21 that a prisoner's mail may not be open except in the -
22 I'm sorry, I lost the section.

23 MS. SIMMONS: Court order.

24 MS. MALDONADO: Court order. And I want to
25 make sure that 38 applies across.

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MR. WOLF: Yes, in other words, there are separate sections for outgoing and incoming correspondence, and by making the corrections and the proposals that are here, we're making sure that it covers both.

MS. MALDONADO: Okay.

MR. WOLF: And in combination that's what's accomplished. If everything is approved, of course.

MS. MALDONADO: That's right.

MR. VALLONE: We need to just place that on the record. So we're going to include the same language that's --

MS. MALDONADO: It's here, 38 applies to all of these across the Board, so it covers privileged communications.

MR. REGAN: There are a number of us who are frustrated by this process, and I just want the record to reflect I join those because it would have been better to have the rules before we voted on this stuff. I'm looking at 36, for example, and I'm not offering to change - may I finish? But the point here, and some says the warden can do it, and some says we don't know who's going to do it. In the committee we talked about the Intelligence Chief should do it. It's we're a bit of a

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2 bumpy little patch here. We're all over the place. And
3 it would have been better to have the regulations before
4 we went through this stuff. That's all I'm implying.

5 MS. SIMMONS: Can we vote on the Proposal 35 as
6 amended by Father Nahman? We voted on the amendments, so
7 now we're voting on the proposal. All in favor?

8 MR. VALLONE: With all the amendments.

9 MS. SIMMONS: With the amendments as approved.

10 MR. VALLONE: It's more than just one, the
11 notice --

12 MS. SIMMONS: Well, no, that notice was on --

13 MR. VALLONE: Was on this.

14 MS. SIMMONS: Yeah, I'm sorry, yeah, I am
15 sorry, Paul. Yes, with all of the amendments that were
16 passed. I apologize. It's getting late in the day. All
17 in favor? Opposed? 8 to 1, in favor.

18 **RESOLVED, that Proposal 35, as amended, to**
19 **amend Subsection (a) of Section 1-11 is**
20 **approved (8 in favor, 1 opposed).**

21 MS. SIMMONS: Proposal 36, which relates to
22 outgoing correspondence.

23 MR. WOLF: Proposal 36 would amend Subjection
24 (c)(6), outgoing correspondence, and (e)(1), inspection
25 of incoming correspondence, to authorize the Department

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2 to read without a warrant a prisoner's non-privileged
3 outgoing or incoming correspondence upon a warden's
4 written order articulating a reasonable basis to believe
5 the correspondence threatens the safety or security of
6 the facility, another person, or the public. The
7 proposal requires the warden's order to state the
8 specific facts and reasons for the determination, and
9 written notice must be provided to the prisoner and to
10 the sender of the correspondence. It also requires that
11 DOC maintain written records, auditable records
12 presumably, of correspondence that's read.

13 And before we go any further, I need to tell you
14 about a technical correction that is required to clarify
15 that mail may be read only pursuant to either a lawful
16 search warrant or a warden's order, which was clearly the
17 intent of the Committee. And I now tell you that none of
18 the comments, and we received many, many, many comments,
19 and very careful review of this things failed to disclose
20 a glitch in the way it was proposed suggesting we
21 correct, and I did this in my October 25 memo to you
22 folks, which suggested a separating out of two distinct
23 circumstances.

24 As written, the new language identifies three
25 circumstances under which incoming, non-privileged mail

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2 may be read. The Committee intended though only two
3 circumstances - one, a search warrant, and, two, a
4 warden's written order. The third circumstance that's
5 presented, reading mail "in the presence of the intended
6 prisoner-recipient" undermines the Committee's intent.
7 Read literally this language means that the Department
8 could read any prisoner's mail for no reason, so long as
9 DOC reads the mail when the prisoner is present.
10 Furthermore, under this circumstance, DOC wouldn't be
11 required to maintain written records of the
12 correspondence read because DOC's proposed requirements
13 for written records pertain only to a warden's order to
14 read the mail.

15 And nobody caught this. The error can be
16 corrected, as I've shown you, and you should have that
17 before you, and if you don't, I have additional copies,
18 by redrafting the proposal to have separate subsections
19 for opening correspondence and for reading
20 correspondence. To do so will accurately reflect the
21 Committee's intent to regulate the reading of mail. It
22 will also eliminate the possibility that in the future a
23 different DOC administration might circumvent the Board's
24 requirement that a warden articulate a reasonable basis
25 for reading a prisoner's mail and instead read all

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letters when recipient-prisoners are present.

MS. SIMMONS: Can I --

MR. VALLONE: Are we also taking out that section (c) about in the presence? Is that what Richard was saying?

MR. WOLF: Yes, that's exactly, and redrafting it so that it does exactly what the Committee suggested.

MS. SIMMONS: So I would like to propose an amendment to reflect what Richard has just said.

MR. WOLF: To start there, and there are a couple of other things we have to add too.

MS. SIMMONS: Any other --

MR. VALLONE: Do we want to approve that amendment first?

MS. SIMMONS: All right, are we all in favor of that amendment? Can I take a vote on that amendment? It's a unanimous approval.

RESOLVED, that the amendments to Proposal 36 to amend Subsections (c)(6) and (e)(1) in Section 1-11 is unanimously approved.

MR. WOLF: Then there are a couple of other technical corrections that have to happen. Subsection (c), which regulates outgoing correspondence, should have the same time limit requirement as Subsection

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2 (e)(1)(a)(4), and that's just a matter of consistency,
3 and that's just completely not controversial, so there.

4 MS. SIMMONS: Do we need to vote on that too as
5 amendment? Can we have a vote on that as well? All in
6 favor? Rosemarie, are you with us? Unanimously
7 approved.

8 **RESOLVED, that the amendment to add the**
9 **same time limit requirement as found in**
10 **Subsection (3)(1)(a)(4) to Subsection (c)**
11 **in Section 1-11 is unanimously approved.**

12 MR. WOLF: And now to address the point that
13 Rosemarie mentioned before. Subjection (c) addresses
14 outgoing non-privileged correspondence but fails to
15 address privileged correspondence, legal mail and the
16 whole list of things. We should, therefore, add a
17 Subsection (c)(7) as follows, and, again, this is just
18 for consistence purposes. Outgoing privileged prisoner
19 correspondence shall not be opened or read except
20 pursuant to a lawful search warrant. And that's the same
21 notion that's going to be presented in number 38.

22 MS. SIMMONS: So can we get an approval on that
23 as well? All in favor?

24 MR. WOLF: Good, unanimous.

25 MS. SIMMONS: Unanimous.

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2 **RESOLVED, that the addition of Subsection**
3 **(c)(7) to Section 1-11 is unanimously**
4 **approved.**

5 MR. WOLF: And, finally, there is some
6 typographical errors in Subjection - this is the
7 sloppiest one by a wide margin, Subsection (e)(3) needs
8 to be corrected, and as corrected it should read,
9 "Incoming privileged correspondence shall not be opened
10 except in the presence of the recipient-prisoner or
11 pursuant to a lawful search warrant. Incoming privileged
12 correspondence shall not be read except pursuant to a
13 lawful search warrant." And delete the words "and in the
14 presence of the prisoner" because it defeats the whole
15 purpose of getting the warrant.

16 MS. SIMMONS: All in favor of that amendment as
17 well? Okay, great, unanimous.

18 **RESOLVED, that the amendment to Subsection**
19 **(e)(3) to Section 1-11 is unanimously**
20 **approved.**

21 MS. SIMMONS: Now as amended, we can have some
22 discussion on Proposal 36. If there's any other comment
23 that anybody wants to add, and I'm mindful that I know
24 some of are under severe time constraints, and I'm asking
25 that everyone give us about 15 more minutes to see how

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close we can get to the end of this laundry list.

FATHER NAHMAN: I'm uncomfortable giving the warden these powers. If a correspondence is suspect, then hand it over to another authority outside the prison for inspection if it's suspect or it's criminal or whatever it would be. I'm uncomfortable with giving the warden these powers.

MS. SIMMONS: All right, well, I appreciate your comment. I think that relates to other questions because someone has to decide what would be handed over and who would be handing it over, so somewhere along the line someone in the Department is still responsible. I'd like to call the question on this if we can, unless there's one other --

MR. VALLONE: Follow what we did on the other ones. Can we add some discussion or language as to what we did based upon - obviously there's going to be policy and procedures, not that we can dictate that, presented to us based on this. Do we want to have that same type like we did with the laundry and what we did before?

MS. SIMMONS: Upon approval, I mean upon submission of the --

MR. WOLF: Upon promulgation --
(cross-talk)

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MS. SIMMONS: Upon review of the implementation procedures.

MR. VALLONE: I'd like to amend --

MS. SIMMONS: So that's one more amendment.

Can we vote on that amendment? All in favor? Unanimous.

RESOLVED, that the addition of the language "upon review of the implementation procedures" to Proposal 36 is unanimously approved.

MS. SIMMONS: Can we now, with all of the various changes, can we vote on Proposal 36? All in favor of proposal 36? One, two, three, four - seven. All opposed? Two, okay. Great.

RESOLVED, that Proposal 36, as amended, to amend is approved (7 in favor, 2 opposed).

MS. SIMMONS: We're moving along to Proposal 37.

MR. WOLF: Proposal 37 would amend Subsection (d)(1) to increase from 24 to 48 hours the time by which the Department must deliver incoming correspondence to a prisoner.

MS. SIMMONS: Any questions or comments? And I call for the vote, all in favor of this proposal? One, two, three, four, five, six. Opposed? One, two --

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MR. VALLONE: Wait, hold on.

MS. SIMMONS: Father Nahman.

FATHER NAHMAN: I'm still trying to - so let me abstain.

MS. SIMMONS: Okay, one abstention. The proposal carries.

RESOLVED, that Proposal 37, as amended, to amend is approved (7 in favor, 1 opposed, 1 abstention).

MS. SIMMONS: Proposal 38.

MR. WOLF: This would amend Subsection (e) by adding language making explicit a requirement that incoming privileged prisoner mail shall not be read except pursuant to a court order and in the presence - no, that's not correct. And shall not be opened and inspected except in the prisoner's presence. In other words, if it's going to be read, that's pursuant to court order, if it's going to be opened and inspected only, you know, shook for contraband or whatever, that has to be, as is the case with other mail, in the presence of the prisoner.

BOARD MEMBER: So we have to amend that.

MR. WOLF: You want to be inspected? What is the previous language? I'm sorry, you're right, this is actually, forgive me, this is the typographical error we

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already covered. We don't need to vote on this, I'm sorry.

MS. SIMMONS: We don't have to vote on this. We have to vote on it?

MR. WOLF: No, no, let the record reflect that I erred and you already voted on this.

MS. SIMMONS: We already voted on this.

MR. WOLF: My mistake.

MS. SIMMONS: Thank you. Let the record reflect that Richard made one error.

(laughter)

MR. WOLF: And here comes the next one. Section 1-12 ("Packages"). Proposal 39 would amend Subsection (a), the policy, to authorize the Department to limit prisoners from receiving from or sending packages to a person when there's a reasonable belief that the limitation is necessary to protect public safety or maintain facility order and security.

MR. ROVT: If I could just 41 --

MS. SIMMONS: All three do relate to --

MR. ROVT: 39, 40, 41, yes.

MS. SIMMONS: You want to combine them all as one vote?

MR. ROVT: Yes, why not?

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MS. SIMMONS: Is anybody opposed to combining them as one vote?

(cross-talk)

MS. SIMMONS: Let's see if we can do them. Okay, all right, let's just try to go through them. So quickly. Proposal 40.

MR. VALLONE: We're doing them one by one?

MS. SIMMONS: 39, I'm sorry. I get ahead of myself. A discussion on 39? Can I call for the question? All in favor --

FATHER NAHMAN: I'm sorry. Again, the whole idea of reasonable, by whom, again? It's so general. There can be inconsistencies in one prison, one person sees it reasonable, another, another warden may think this is reasonable. Whose judgment and whose reasonability is it? I'm just very uncomfortable with that kind of indefiniteness.

MS. SIMMONS: Duly noted, and I hope that the Department also notes that so that when we receive their procedure, hopefully there'll be more comfort. Can I call for the vote? All in favor of Proposal 39? One, two, three, four, five, six, seven, eight. Opposed? One. Okay, it carries.

RESOLVED, that Proposal 39 is to amend

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Subsection (a) of Section 1-12
("Packages") is approved (8 in favor, 1
opposed).

MS. SIMMONS: Proposal 40.

MR. WOLF: Proposal 40 would amend Subsection
(b) to delete a requirement that the Department must
obtain written approval from the Board prior to imposing
reasonable restrictions on the number of packages a
prisoner may send or receive.

FATHER NAHMAN: What was the reason for this?

MS. SIMMONS: I believe the understanding was
that it gets us into the management of the Department
which is what we really are not, should not be doing, that
that was the reason for this. And we tried, as we went
through the standards, look for those things where we
should not be managing Departmental activities. Can I
call for the vote? All in favor? One, two, three, four,
five, six, seven. Opposed? Two. Okay, it carries.

RESOLVED, that Proposal 40, to amend
Subsection (b) of Section 1-12
("Packages") is approved (7 in favor, 2
opposed).

MS. SIMMONS: Okay, Proposal 41.

MR. WOLF: Proposal 41 would amend Subsection

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(d)(3), incoming packages, to delete a lapsed requirement that the Department must submit to BOC for approval within 60 days after the effective date of the standard a list of items that may be received in packages. And although this is very similar to the general housekeeping stuff we did at the beginning, because it's a specific requirement, it was set up as a separate proposal.

MS. SIMMONS: Can we have a vote on this? **All in favor? One, two, three, four, five, six, seven, eight - unanimous.**

MS. SIMMONS: Proposal 42.

MR. WOLF: Proposal 42 would amend Subsection (e)(3), inspection of incoming packages, to authorize the Department to read correspondence enclosed in incoming packages pursuant to either a court order or the warden's written order articulating a reasonable basis to believe that the correspondence threatens the safety or security of the facility, another person, or the public. And I would just note that this proposal is the same as the one you earlier addressed concerning correspondence, the difference here being that the correspondence is inside the package as opposed to an envelope that just comes by itself.

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MR. VALLONE: Did we have amendments to 36?
Should we not incorporate those here?

MR. WOLF: Sure.

MS. SIMMONS: Okay, can we --

MR. VALLONE: I would move to include the --

MS. SIMMONS: Okay, all in favor of Paul's amendment? Unanimous. All in favor in the proposal as amended? It's unanimous. Thank you. Very good, thank you, Paul.

RESOLVED, that the amendment to Proposal 42, to amend Subsection (d)(3) of Section 1-12 ("Packages") is unanimously approved.

RESOLVED, that Proposal 42, as amended, to amend Subsection (d)(3) of Section 1-12 ("Packages") is unanimously approved.

MS. SIMMONS: Proposal 43.

MR. WOLF: Proposal 43 takes us to Section 1-13 ("Publications"), and 43 would amend Subsection (a), the policy to authorize the Department to limit a prisoner's receiving publications "from any source when there's a reasonable belief that the limitation is necessary to protect public safety or maintain facility order and security.

MR. ROVT: 43, 44, 45, please read it

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2 carefully. Just before the colleagues didn't listen to
3 me, but everybody voted the same. So just for same type.
4 43, 44, 45 are related, again, everything to --

5 MS. SIMMONS: Well, they're two different
6 things, but I think we can get through them quickly. Can
7 we call for the vote on Proposal 43? All in favor? One -
8 wait.

9 (cross-talk)

10 FATHER NAHMAN: I'm sorry, let's go a little
11 slower, please.

12 MR. ROVT: Limit publication --

13 MS. SIMMONS: I'm calling for the vote on
14 Proposal 43 that Richard just read. I'm calling for the
15 vote. All in favor of Proposal 43?

16 FATHER NAHMAN: Without discussion?

17 MS. SIMMONS: Is there discussion?

18 MS. MALDONADO: I just needed another minute.

19 MS. SIMMONS: I'm sorry, I didn't see anybody
20 jump into a conversation, so I --

21 MS. MALDONADO: Right.

22 MS. SIMMONS: I'm sorry, I'm getting a little
23 bleary-eyed.

24 MR. VALLONE: I guess our hesitation is just on
25 that reasonable belief.

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MS. SIMMONS: Again, you know, I mean I appreciate everyone's concerns, and I think that's where our power as the Board to look at the Department's procedures and their implementation of this is where we have our clout.

MS. MALDONADO: No, I don't have problems with reasonable belief as a standard because it's a legal standard that's used all the time, the reasonable person in tort, etc., etc., but I'm just grappling with whether there should be a higher standard here.

MS. SIMMONS: Okay.

MS. MALDONADO: For publications. And I'm --

DR. ZORNBERG: I'm grappling with the same issue.

MS. MALDONADO: Yes. Whether there should be a higher standard.

FATHER NAHMAN: And the question I would have is in the citation of is the Allen v. Kaplan order of the court holding that a prison may not search newspaper clippings as unconstitutional. I just am not conversant enough with how does this apply or does it apply. And I just need to --

MR. WILLIAMS: Can I ask a question, Gwen and Rosemarie. Your concern with distinguishing between

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publications and let's say correspondence, I'm just curious? It's really the same thing, and they're just being specific about covering publications.

DR. ZORNBERG: No, because we're talking about newspapers, magazines, things in the public venue as opposed to correspondence which is much more targeted.

MR. WILLIAMS: Yeah, but suppose the public - I think this is a security issue. Suppose the publications are of the nature that would, I don't know, how to make a bomb, for instance, I mean that's far-fetched.

DR. ZORNBERG: Well, that would certainly, that's more of a clear cut --

MS. SIMMONS: You need your reasonable test --

DR. ZORNBERG: Yes, that would be reasonable or substantial test.

MS. SIMMONS: Would you be more comfortable with substantial than reasonable?

MR. VALLONE: It would be better.

DR. ZORNBERG: I think that there's --

MR. WOLF: By the way, excuse me, if I could just interrupt. The possibility of a publication explaining how to make a bomb is already in the standards, just so you know.

MS. SIMMONS: In the interest of the fact that

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2 we're getting close to the end here, would substantial,
3 would you be comfortable with substantial rather than
4 reasonable, Gwen, Rosemarie, Paul?

5 MR. VALLONE: Yes.

6 DR. ZORNBERG: I think so.

7 MS. SIMMONS: Can I have an amendment, then,
8 Rosemarie, your amendment would be to change the language
9 from reasonable to substantial. Call for a vote on the
10 amendment. All in favor of the amendment? All right, 8
11 to 1. And all in favor of the proposal, as amended? Are
12 you in favor of the proposal as amended? No, okay, so we
13 have one, two - 7 to 2, okay. Proposal --

14 MR. WOLF: It's actually 6 to 3. Were you
15 voting against? So it's 6 to 3.

16 MS. SIMMONS: 6 to 3, sorry. Okay, sorry, 6 to
17 3.

18 **RESOLVED, that the amendment to Proposal**
19 **43, to amend Subsection (a) of Section 1-**
20 **13 ("Publications") is approved (8 in**
21 **favor, 1 opposed).**

22 **RESOLVED, that Proposal 43, as amended, to**
23 **amend Subsection (a) of Section 1-13**
24 **("Publications") is approved (6 in favor,**
25 **3 opposed).**

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MS. SIMMONS: So now we're at Proposal 44.

MR. WOLF: Proposal 44 would amend Subsection (c)(1), incoming publications, to increase from 24 to 48 hours the time by which DOC must deliver the publication to a prisoner.

MS. SIMMONS: This conforms with what we just voted on before with regard to other things. All in favor? One, two, three, four, five, six, seven. Opposed? Oh, 3. 6-3, sorry. It carried 6-3.

RESOLVED, that Proposal 44, to amend Subsection (c)(1) of Section 1-13 ("Publications") is approved (6 in favor, 3 opposed).

MS. SIMMONS: Proposal 45.

MR. WOLF: Proposal 45 would amend Subsection (c)(3) to authorize the Department to censor or delay incoming publications containing "other material that may compromise the safety and security of the facility." So that would result in a revised Subsection (3) which would read, "Incoming publications shall not be censored or delayed unless they contain specific instructions on the manufacture or use of dangerous weapons or explosives, plans for escape, or other material that may compromise the safety and security of the institution." That's the

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full context.

MS. SIMMONS: Father Nahman.

FATHER NAHMAN: How do people know what the content of a publication is without first reading it or without first opening it? If it comes in an envelope. So I can't get my mind --

MR. ROVT: Because they got the specific information that something is in the envelope.

MS. SIMMONS: Again, the Departmental procedures are aware that is explained. Can we vote on this? All in favor? One, two, three, four, five, six, seven. Opposed? Two, carried 7 to 2.

RESOLVED, that Proposal 45, to amend Subsection (c)(3) of Section 1-13 ("Publications"), is approved (7 in favor, 2 opposed).

MS. SIMMONS: Okay, we're on Item 46.

MR. WOLF: Item 46 takes us to Section 1-15 ("Variances") --

MR. VALLONE: And this is our last --

MS. SIMMONS: I didn't say it was last because I didn't want anybody get overly --

MR. VALLONE: I'd appreciate if we don't rush this particular one. If we could spend a little time on

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this.

MR. WOLF: Proposal 46 would revise the variance process in some substantial ways as follows. First, it would amend Subsection (a), the policy, to provide for a new variance category, Correctional Best Practice. And, two, it would delete two categories of variances, Limited and Continuing Variances. The proposal has - shall I just discuss this a little bit?

MS. SIMMONS: This is your proposal.

MR. WOLF: The proposal has two main objectives - first, to simplify the variance process, and, two, to provide flexibility to authorize the Board to grant variances, to enable the Department to test in New York City sound correctional practices that have been proven to be effective in other jurisdictions. It would simplify the variance process by replacing continuing and limited variances with confusing requirements and time frames with a generic variance. A variance is defined as an exemption from compliance with the specified standard with a time limit of up to one year, but the Board can set obviously whatever time limit up to a year that it chooses to impose, and the Board would retain its authority to set conditions that DOC must follow during the variance period.

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2 The duration for an emergency variance would be
3 reduced back to its original five days on the theory that
4 if something, if an emergency condition, if a condition is
5 defined as an emergency and it goes beyond five days, the
6 Board is in a position to grant then a generic variance
7 thereafter, and it'll give the Board an opportunity to
8 review what's going on as to why the circumstances
9 prevailed for as long as it has and then to see what it
10 wants to do in terms of imposing additional conditions,
11 etc.

12 The flexibility stuff has to do with the best
13 practices variance or whatever term you might prefer, but
14 the idea is that this would be a new category of variance
15 that would be established to provide the Board with the
16 flexibility to authorize the Department to implement on a
17 trial basis a procedure or a program that doesn't comply
18 with the standard but which the Board believes is in the
19 best interests of the City's jails. And to obtain such a
20 variance, the Department would have to satisfy the Board
21 that, one, the procedure or the program has been
22 demonstrably effective in another jurisdiction and, two,
23 that it would be particularly appropriate and well suited
24 for implementation in the City's jails. And then if those
25 two hurdles are met, then and only then would the Board be

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in a position to say, okay, you can try this out for X amount of time and with the following conditions. So you would retain all that flexibility as you did it.

MS. SIMMONS: Are there any comments?

MR. VALLONE: This particular proposal is going to the very heart of where we are as a Board of Correction, and I urge us to really consider this, whether we need to - our oversight ability is really based on our ability to review these variances and approve them or disapprove them. No one has come, on our Board has said that we have problems with this system. If they ask for one, we approve it. If they don't want it, we won't approve it. To create this best practice variance, we're opening a window here that I don't even know if we'll be able to control once it's in place.

And that really troubles me as a Board that to allow this new variance to come into place, it's just confusing, and it's overly broad, and one of the few ways we're able to do this is with the limited - if we want to keep with the simplification, the first part of the proposal on the limited and the continuing, maybe we can discuss that, but I would be opposed to the best practice variance.

MS. SIMMONS: Paul, maybe others have comments,

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but in the interest of time and everything else, I actually think this simplifies things instead of making it more confusing, that one of the problems we've had all along is that we've been trying to help this Department manage by variance and that that's been a longstanding issue of considerable concern to several members, and that this clarifies that process.

With regard to the best practice option, we don't have to exercise it ever. So it doesn't confuse anything, it's all within our purview. It only exists if we chose to allow it to exist in the sense it gives us and future Boards, and it's 30 years since anybody's gone through this process. I can't anticipate who's going to do it over the next 25 or 30 years. But it seems to me that we know that correction practice changes, that technology changes, any number of things change, and I wouldn't want to tie the hands of those people who are going to replace us in years to come to not have the option of saying that somebody somewhere else has figured out a way to do this better than we've done it in New York, and we ought to learn from it, and perhaps try it. If we don't have --

MR. VALLONE: And how would that be denied --

MS. SIMMONS: But it's our --

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MR. VALLONE: How would that be denied under the original --

MS. SIMMONS: So all this says is give us the, you know, room to be able to do that should such an occasion arise. It may never arise, I don't know, but it gives us the opportunity for that, which I think is well within our purview and hopefully the direction that leads us to where we are really looking to continuously improve what goes on.

MR. WOLF: When I was asked to sort of put something together to address a number of concerns that some people had voiced at our meetings about the existing variance process, and what it had to do with was when an issue, particularly when a security issue arose, and the Department - this is years and years ago when the Department first came to the Board and said, you know what, the frequency of stabbing and slashing incidents in central punitive segregation is just going through the roof and we don't know what to do and we want to put people in, we want to put CPSU people in jumpsuits to see if that's going to help us reduce the number, you know, the ability to conceal weaponry. And the Board very much wanted to pass such a thing, and we looked through the variance process and couldn't find a very good way of

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doing it.

And what this, this language is an attempt because, excuse me, because of requirements in the existing language that say that essentially that the Department can't comply with the variance. Well, of course, you can comply - with the standard rather. You can comply with a requirement that people wear civilian clothing, it's not that you can't do that. It's that it didn't, you know, in their view it didn't make sense, and in the Board's view it was worth trying a different way to do it. So it was passed amid a fair amount of controversy, and the objective in presenting this was to simply present an option that would make it going forward easier, that's the flexibility part, for the Board, if it wanted to, when a unique situation arose, to be more creative than the more rigid existing provisions would allow it to be. And that's the only purpose of it.

MR. VALLONE: Well, we have no limitations also.

MS. SIMMONS: We set the limitations.

MR. VALLONE: No, once it's in effect --

MS. SIMMONS: No.

MR. VALLONE: -- we should limit it to 30 days

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MS. SIMMONS: It's well within the purview of what we have. We can set the time frame.

MR. VALLONE: Richard, just on another issue. Didn't we I think under former Chairman Stanley Kreitman authorize the Chairman and you to give emergency variances during emergencies?

MR. WOLF: No, that was a different, that's a completely different situation.

MR. VALLONE: We can do that.

MR. WOLF: It was not emergency, it was variance applications that arose between Board meetings because of the fact that you only meet once a month, that was the only reason for that.

MR. VALLONE: So it would not, if the Commissioner needs to do something, he could get what I'll refer to as an emergency variance from you two.

MR. WOLF: But, again, that doesn't go to, that goes to emergency variances, which are already in place, but it doesn't go to the question of something that, a circumstance or something that's needed that is not amenable to a variance at all.

MR. REGAN: Here's why I oppose this one, and I respect your judgment on this stuff, you know that. I oppose this one because there are some in the Department,

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2 and some on this Board I think, who very fairly believe
3 that there shouldn't be a Board of Correction, that the
4 State standards are good enough. And I kind of see this
5 as - maybe I'm wrong. I kind of see this as a threshold
6 issue of I don't agree with that in the spirit of how
7 people think about stuff, and I'm with Paul on it's a
8 slippery slope.

9 MS. SIMMONS: I guess what I would say here is
10 that we control the slope though. Everything that's
11 within here is really within our power to grant. So it's
12 really the Board that assumes the responsibility with
13 regard to this one. This is not subject to Departmental
14 procedures or anything else. This is our ability to grant
15 a variance and to determine for how long and for what
16 purpose. So I respect the comments that you've made, but
17 --

18 MR. REGAN: I don't see it that way.

19 MR. WILLIAMS: Mike, explain it how you see it
20 because I'm not sure I get the argument.

21 MR. REGAN: I'm not an attorney like you and
22 Rosemarie, but it's - this seems to be an attempt to take
23 the Board away from a discussion or an implementation of a
24 new initiative. I just don't see a need to - I don't see
25 a need to fix this.

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MS. SIMMONS: All right, can we call for the --

MR. WOLF: I just want to say one last thing. It's anything but an attempt to do that, and I would be, and for what it's worth, I'd be the last person to ever propose such a thing that would do that.

MR. REGAN: But I don't see it the same way as you.

MR. WOLF: No, I understand, but I just want to state clearly that it has nothing to do whatsoever with the intent behind this.

MS. SIMMONS: Stanley has to leave, so I really would like to see if we can get --

MR. VALLONE: Is there anything that we want to amend before we vote it down or vote it approved?

MS. SIMMONS: I'd like to see if we can --

FATHER NAHMAN: I'm sorry, could you just point out to me where the definition of best practice variance and those conditions are?

MR. WOLF: Sure.

FATHER NAHMAN: Sorry.

MR. WOLF: Sure, it's going to take a while. There are a bunch - because this is a complete proposed re-working of this thing. Let's see --

MS. SIMMONS: Can we register Stanley's vote on

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this?

(cross-talk)

MR. WOLF: There are three circumstances, well, it's the language Sub (4) on page 41. It's that circumstance when, and as it reads, compliance with a particular subdivision or section prevents implementation from a correctional best practice that achieves the goal of the subdivision or section, is appropriate for New York City correctional facilities, and is designed to improve safety, security, or prisoner access to services or programs.

MS. SIMMONS: That's the definition. Can I call for the vote on this?

BOARD MEMBER: Sure.

MS. SIMMONS: All in favor of this proposal? Okay. All opposed?

MR. WOLF: Two, four, five - it's defeated.

MS. SIMMONS: It's defeated.

RESOLVED, that Proposal 46, to amend Subsection (c)(3) of Section 1-15 ("Variances), is rejected.

MS. SIMMONS: Okay, we are done and adjourned. I want to thank everybody again for staying as long, for all their hard work, and the staff will have --

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BOARD MEMBER: We're going to get a revised
draft --

MS. SIMMONS: It's not a draft. It's not a
draft. But we will get a revised document, yes, you will
get a revised document before the December meeting. Thank
you very much.

FATHER NAHMAN: Thank you.

(off the record)

(Whereupon the meeting is closed.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the Public Hearing regarding Proposed Amendments of the New York City Board of Correction, was prepared using mechanical transcription equipment and is a true and accurate record of the proceedings.

Tape 1, sides A and B

Tape 2, sides A and B

Tape 3, sides A

Signature_____

CAROLE LUDWIG

Date: November 11, 2007