

**NEW YORK CITY
BOARD OF CORRECTION**

March 12, 2009

MEMBERS PRESENT

Hildy J. Simmons, Chair
Michael Regan, Vice-Chair
Catherine M. Abate, Esq.
Stanley Kreitman
Rosemary Maldonado, Esq.
Alexander Rovt
Milton L. Williams, Jr., Esq.,

An excused absence was noted for Member Pamela S. Brier.

DEPARTMENT OF CORRECTION

Martin F. Horn, Commissioner
Carolyn Thomas, Chief of Department
Florence Hutner, Esq., General Counsel & Deputy Commissioner for Legal Matters
Stephen J. Morello, Deputy Commissioner for Public Information
Eric Berliner, Asst. Commissioner of Health and Forensic Services
Mark Cranston, Dep. Chief of Staff/Commanding Officer, Office of Policy &
Compliance (OPC)
Harry Ahl, Deputy Warden, OPC

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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

OTHERS IN ATTENDANCE

Harold Appel, Doctor's Council SEIU
William Hongach, Government Affairs Division, City Council
Tenisha Cummings, Prisoners' Rights Advocates, Fordham Law School
Elizabeth Joynes, Prisoners' Rights Advocates (PRA), Fordham Law School
James Marton, PRA
Timothy Rudd, Analyst, Office of Management and Budget (OMB)
Kerry Spitzer, Budget and Policy Analyst, Independent Budget Office (IBO)
Eisha Williams, Legislative Financial Analyst, Finance Division, City Council
Milton Zelermyer, Esq., Legal Aid Society, Prisoners Rights Project (PRP)

Chair Hildy Simmons called the meeting to order at 9:32 a.m. A motion to adopt minutes of the January, 2009 Board meeting was approved without opposition. Chair Simmons noted the absence of Member Pamela Brier, who she said was having surgery, and offered the Board's best wishes for a speedy recovery. Noting the presence of Paul Vallone in a seat other than at the Board table, she announced with regret and sadness that Mr. Vallone resigned his Board membership effective March 1st, and requested permission to address the Board. Mr. Vallone said that he resigned in order to campaign for a City Council seat, and that he hoped to work with Board Members in the future as a member of the Council, where he could advance mutual goals. He described Board membership as a privilege and a valuable learning experience. Board Members expressed sadness at his departure, commenting on their experiences working with Mr. Vallone, and thanking him for his service and enthusiasm.

Chair Simmons proposed, and all Members agreed, that future Board meetings will begin at 9:00 a.m. rather than 9:30.

Chair Simmons discussed a March 6th visit she made to the Robert N. Davoren Center (RNDC) with BOC Executive Director Richard Wolf. She reported on discussions with adolescent inmates and with specially-trained DOC staff in housing areas of the Institute for Inner Development (IID) program, which she described as "extraordinarily impressive." Chair Simmons said officers reported having a new outlook on their jobs and teenage inmates reported insights on their behavior and aspirations. She mentioned murals painted on dormitory walls by inmates depicting the new president, who clearly inspired them. Reminding Board Members that the purpose of changing to an alternate-month office meeting schedule was to enable members to visit jails more frequently, she urged them to visit IID program sites within the next few months and speak with staff and inmates.

Chair Simmons said the mini-libraries adjacent to the IID dorms contained primarily science fiction, especially Stephen King novels. She reported the warden's hope to establish reading groups for IID inmates for which he asked BOC's help in obtaining a large quantity of four books. DOHMC Deputy Commissioner Louise Cohen said her agency will help to obtain copies of a book about two Newark-born doctors. Members offered to look into sources for obtaining quantities of books for IID.

Noting that this month's BOC staff report involves footwear, Chair Simmons said the adolescents referred to black DOC-issued sneakers as "Obamas" and to orange sneakers as "Pradas." DOC Commissioner Martin Horn added that adult inmates usually call DOC-issued sneakers by the name of the sitting governor: early DOC-purchased sneakers were "Patakis" and current ones "Pattersons". He said that DOC-issued sneakers are not durable and need replacement after a few weeks. He showed the Members a sturdier sneaker which he said DOC will purchase at four dollars per pair. He said that the velcro on the new sneakers represents a "balancing act" between security concerns about inmates hiding contraband under the velcro, and DOC needing a sturdier shoe at a reasonable price. He added that DOC may use 100,000 pairs of such sneakers annually, issuing a new pair to each incoming inmate.

Board Vice Chair Michael Regan commended BOC staff on their February 19th report to the Board about DOC's process for replacing inmate shoes with DOC footwear. He noted that despite implementation problems, DOC's purpose of enhancing security by eliminating inmate fights and thefts involving expensive sneakers is valid. Commissioner Horn stated that, although there were incidents during the initial December footwear confiscation, the elimination of personal footwear contributes to safety by heightening the sense of order and reducing contraband previously secreted in the heels of incoming sneakers. He said that information provided by Board staff was helpful to the process.

Mr. Wolf described the February staff report and provided updated information. He said that the Board was not given an opportunity to review DOC policies and procedures before they were implemented on December 1st. Mr. Wolf said that when inmates read notices about the impending footwear exchange, they voiced concerns about whether their medically-prescribed footwear would be taken. He said BOC staff reported the concerns to both DOC and DOHMH officials. Nonetheless, he said exchange implementation problems abounded. He reported an example at the North Infirmary Command: on the day of the exchange, DOC staff asked clinic staff about confiscating shoes crafted for prosthetic legs. Mr. Wolf reported that NIC clinic staff contacted their PHS supervisors, who did not issue a decision for several days, during which time DOC confiscated the shoes, leaving those inmates unable to walk without extraordinary difficulty. He described other problems: inmates with foot deformities or gout or who used prescribed prosthetics.

Commissioner Horn distributed a December 2nd memo indicating that DOC did take steps in early December, when the footwear exchange began, to incorporate medical footwear issues into confiscation procedures. He acknowledged, however, that he did not calculate enough lead time to address medical concerns with PHS before distributing the memo, or for PHS to distribute and review the memo with medical staff. Mr. Wolf said that before confiscating footwear that an inmate claims is medically necessary, DOC intake staff now will seek a formal evaluation by clinic staff, who have been notified by DOHMH of their new responsibility. He noted that an as-yet unsigned draft DOC directive with revised procedures was not presented for comment by the Board until January 14th. Mr. Wolf reported that inmate complaints about footwear have decreased, except for those involving timely retrieval for trial appearances or after discharge from DOC custody. He said one problem that remains involves providing inmates with the proper sneaker size. He reported that Board staff observed some inmates wearing DOC-issued sneakers that were too large or too small, and other inmates were still wearing personal footwear because the jail ran out of DOC sneakers. Mr. Wolf reported that DOC lacked sufficient start-up supplies of sneakers in the most common sizes. Commissioner Horn said that Department-wide, the number of inmates filing footwear grievances has declined, and that many were referred to medical staff for resolution. He stated that clinic staff had denied nine requests and upheld 41.

Mr. Wolf continued presenting BOC staff research, as follows:

DOC encourages inmates to send property home to reduce the amount of storage space needed. DOC property storage sites were not designed to accommodate large quantities of footwear, and the Department had not significantly increased sites and staff to handle property before beginning the system-wide footwear confiscation. Prior to the footwear confiscation, if an inmate turned in property or property was confiscated during a search, it would be stored together with the property taken from the inmate during admission to the jail. However, some jails ran out of identifiable storage space and could not log footwear into computer databases. Footwear was not put inside an inmate's original property bag.

With Chief Carolyn Thomas, on March 12th BOC staff inspected sites in two jails that were the primary focus of the February staff report, AMKC and GRVC. Some new shelves had been installed and labeled, and many plastic bags holding inmates' confiscated footwear had been sorted by housing area, but remained in piles on floors and were not placed with inmates' other property. Property descriptions and locations still had not been entered into computer databases, and each jail has at least a two-month backlog. When seeking an inmate's footwear, staff must search by the housing area to which the inmate was assigned when the footwear was confiscated. This slows the retrieval process as is reflected in inmate complaints to BOC and to 311, many of which complained about the Otis Bantam Correctional Center (OBCC). Storage and retrieval is easier with inmates admitted to DOC custody after the initial December footwear confiscation because their footwear is taken at the same time as other personal property, and all property is stored together.

Board Member Catherine Abate asked what caused the problems documented by BOC staff. Commissioner Horn explained that the Department concentrated on security aspects of confiscating footwear rather than on the complexities of cataloguing and storing it. He said there were "very, very few incidents", given that footwear was taken from 14,000 inmates. He acknowledged that insufficient storage locations inhibited data input, which in turn led to delays in retrieving property when an inmate is discharged from DOC custody.

Mr. Wolf continued his report, as follows:

DOC now is making rapid progress, as usually is the case when it focuses on a problem. When Ms. Abate was Corrections Commissioner, BOC staff found almost 400 occupied RNDC cells without lights. DOC repaired all lighting over the weekend, before a scheduled Board tour.

The Board's findings underscore the importance of collaboration among DOC, DOHMH and the Board on planning for implementing changes to any Standard or other major policy. The Board included detailed language in the amendments to the clothing provisions requiring that DOC must establish and operate laundry and property storage and retrieval services before the Department may require detainees to wear facility-issued clothing. BOC and the Department have agreed

that the Board will inspect and evaluate all laundry and property storage and retrieval sites and procedures, before DOC initiates a system-wide clothing exchange. BOC staff already has been given a first draft of a clothing exchange directive.

Chair Simmons said she has asked Board Members Rosemarie Maldonado and Milton Williams to work on an *ad hoc* basis with BOC and DOC staffs to review draft procedures. She said that, at its next meeting, the Board will expect an updated report on footwear exchange, storage and retrieval systems. She then asked DOHMH representatives for a report. DOHMH Assistant Commissioner for Correctional Health Services (CHS) Dr. Jason Hershberger presented a report, as follows:

A stand-alone module of the electronic health record system (EHR) has been implemented at the Rose M. Singer Center (RMSC). The new Radiology Information System (RIS) enables a clinic doctor to view all new and archived X-rays and related reports from any system clinic without waiting for them to be located and physically retrieved. DOHMH is subcontracting with a private company to prepare and post radiology reports within 24-hours. Costs are competitive. Not only is the quality of digital X-rays good, but the images also are more useful than flat films because they can be manipulated: the viewer can invert images, zoom-in and highlight.

Deputy Commissioner Louise Cohen said that RIS, at the leading edge of community care, also is being used as a model for City tuberculosis clinics. Dr. Hershberger then demonstrated how RIS is integrated with the electronic health record. Ms. Abate expressed hope that the City can negotiate successfully with E-Clinical Works to reduce its prices for City purchases, noting that purchasers must subsequently acquire additional software. Commissioner Horn said the RIS is especially valuable to a large jail system where inmates are transferred between jails frequently, and where X-rays are taken and stored in a number of sites. Dr. Hershberger said that staff is continuing to perfect installation and operation of all EHR and RIS in RMSC so expansion to other jails can be implemented smoothly and quickly. Chair Simmons thanked DOHMH officials for keeping Board Members apprised of technological advances, and asked that they provide updates at future meetings.

Dr. Hershberger requested renewal of two Continuing Variances. He said the first relates to implementation of the electronic medical record system, and allows two records to be maintained for each inmate/patient – an electronic record and traditional paper for those records for which electronic modules have not yet been implemented. A motion to renew the variance for six months was adopted without opposition. Dr. Hershberger also asked for renewal of a variance authorizing providers to prescribe psychotropic medication for 28-day periods for stable inmates housed in General Population. A motion to renew the variance for six months was adopted without opposition.

Chair Simmons asked Commissioner Horn to report on DOC's budget. Commissioner Horn presented a report, as follows:

The Mayor's January Corrections budget was the first to exceed \$1 billion, even though the inmate census is lower than in years past. Higher costs are driven by rising costs of fuel, food, and union costs. The Mayor and budget officials have again been told that DOC cannot sustain cuts that would affect jail-based staff. For the City to spend less on jails, the average daily inmate census must be reduced significantly. City officials are including in the January budget funds for four programs designed to reduce jail population, savings that DOC itself cannot guarantee: (1) for the 75% of inmates whose bail is under \$5000, creation of a pre-trial supervision program to be operated by the NYC Probation Department, with Defense Bar and District Attorney agreement, whereby defendants are scored and the option given to judges to offer discharge to supervision by Probation Officers; (2) the Special Narcotics Prosecutor proposed an expedited-processing pilot program for a projected 100 detainees per day; (3) increased City funding to expand Queens bail-expediting program operated by Criminal Justice Agency for 100 defendants per day; and, (4) for all detainees after their 180.80 court appearance, the City negotiated with the defense bar expansion of teleconferencing for all court dates when a defendant's physical presence is unnecessary for routine matters, for a savings of \$1.2 million in DOC transportation staff costs.

City officials are seeking expedited case processing for incarcerated defendants in negotiations with prosecutors, the defense bar, and Court administrators. Although the City has no budgetary leverage with private attorneys, it does provide funding for most indigent defender groups and for District Attorneys. 98% of inmates are convicted by plea agreement, and there are lengthy delays between conviction and sentence, despite the Probation Department's record of providing pre-sentence investigation reports in eight days. A reduction in total adjournments to 10 days would return detainee length-of-stay (LOS) to the 1998 length of 25 days rather than the current 40+ days.

There are two proposals in the Mayor's budget about which DOC will come to the Board with variance requests similar to DOC's past requests for amendments to BOC Standards to have them comply with State Commission of Correction (SCOC) Standards. The two proposals, which would yield roughly \$8 million in savings, are for variances to offer recreation and visit services at the levels mandated by the SCOC. To obtain the savings, service changes must be implemented by July 1st, the beginning of the new fiscal year. With the exception of mental observation units, adolescent, and lock-down houses, DOC would reduce recreation from seven days to five days. On each day, 1 ½ hours would be offered instead of one hour, for a total of 7½ rather than 7 hours per week. The two days recreation would be eliminated might not be consecutive, and might be those weekdays when inmates now attend recreation in lower numbers because they attend court or visits in high numbers – Wednesday and Thursday, or Thursday and Friday.

Ms. Abate asked if violence might increase, either on the days when inmates are in the yard for longer sessions, or on days when recreation is not provided. Deputy Chief of Staff Mark Cranston responded that violence is rare at recreation, but that eliminating weekend recreation days might reduce violence, particularly in jails with High Classification inmates, because, with recreation staff already reduced on weekends, yard incidents are more likely to occur then.

As to visits, Commissioner Horn said that he wants to offer four days instead of five days per week but that inmates still would be able to receive the number of visits per week authorized by the Standards: three per week for detainees and two per week for City-sentenced prisoners. He said the ideal would be for DOC to eliminate visits on a heavy court day so those inmates would not miss visit access. Mr. Cranston said that, as an efficiency, DOC could eliminate Thursday visits, then offer visits on Wednesday, Friday, Saturday and Sunday. Responding to Ms. Abate's inquiry about exceptions to the proposed four-day schedule, Commissioner Horn said there always are exceptions, such as when counsel visits or emergencies occur during visit hours.

In response to comments from Mr. Regan that these matters were resolved during extensive meetings and hearings about DOC's requests for amendments to the Minimum Standards to conform them to SCOC Standards, Commissioner Horn responded that he is not proposing permanent rule changes but, instead, temporary changes to address the budget shortfall. He said, for this reason, DOC is proposing changes by waiver with the thought that, when the City's fiscal situation improves, DOC will revisit the need for the variances, and decide if the change actually worked out or not. Mr. Regan asked if, when variances rather than amendments are requested, BOC must consult with other entities in the fashion required during the last amendment process. Mr. Wolf responded that the Variance Standard requires BOC to consider the position of all interested parties on any request that is not routine – which he defined as a request that the Board formally authorized the Executive Director to approve, after consulting with a Member – and that, therefore, as soon as BOC receives the formal DOC variance requests, he will post it on the BOC website and, as in the past, forward it to all interested parties. Chair Simmons added that the Board must deliberate before July 1st if possible or consider other alternatives. Mr. Regan said that the Board's role is not to solve budget dilemmas, and that the Board deliberated extensively about the Commissioner's past requests to conform BOC Standards to SCOC Standards, and ruled early-on against changes involving recreation and visiting. Commissioner Horn said that the Board must be cognizant of budget matters and, if the Board votes against his requests, the Board must consider another source for the \$8 million cut DOC is required to make. Mr. Regan reiterated that it is not the Board's role to solve gaps in the Department's budget.

Mr. Cranston requested that the Board renew existing variances. A motion to do so was approved without opposition. Commissioner Horn requested a new limited variance from the Lock-In Standard for RNDC on April 13th and 15th, to lock inmates in for two extra hours while all staff receives special training on working with adolescent inmates. He said this process would expedite training sessions and reduce overtime. A motion was approved without opposition.

Commissioner Horn presented updated information on DOC's system for taping inmate telephone conversations. He said 100,000 phone numbers are registered as confidential, primarily attorney numbers. He reported that 2 million phone calls have been recorded, with copies of recordings requested as follows: 1900 subpoenas filed by assistant district attorneys, five requests from the New York Police Department, two requests from the United States District Court in New Jersey, and one request from U.S. Attorney's Office Southern District. He said that only 114 requests were made by DOC staff despite his pressing staff to make more use of taped information. Commissioner Horn said turn-around time on requests continues to be slow. He reminded the Board that it was the District Attorney's Offices that most strongly supported the amendment to permit taping phone calls and that the DAs say the tapes promote public safety.

Chair Simmons inquired about the status of jail construction in the Bronx and Brooklyn. Commissioner Horn said there are approximately 12,000 inmates now living on Rikers Island, and that this number could be as low as 8000, by removing 3000 inmates to new off-Island jails and 1000 through proposed court-related discharges. He restated DOC's revised plan to build a 1500-bed jail in the parking lot of the existing 800-bed Vernon C. Bain Center (VCBC), and said DOC is proceeding through the formal City land-use process. He said DOC already has presented conceptual plans to the Community Board, Borough President, and City Council Member, and hopes for a draft of a more concrete plan by summer, when the engineer now conducting the environmental assessment is expected to finish. The Commissioner said he hopes to hold a public scoping meeting in June, at which time the public can raise additional environmental concerns. He said the draft Environmental Impact Statement (EIS) would be the basis for consideration by the Community Board, Acting Borough President and local Council Member, the City Planning Commission, and full City Council.

Commissioner Horn said that DOC continues to have an average of 32 City-sentenced prisoners living and working in the Brooklyn Detention Complex and in the Brooklyn courts. He reported that renovations soon will begin in the central booking area of the Brooklyn Criminal Court at 120 Schermerhorn Street, which is connected to the jail by an underground tunnel. He reiterated his plan to have Brooklyn jail-based prisoners maintain the jail's intake area for use as a substitute pre-arraignment central booking area while renovations take place. The Commissioner said DOC plans to fully reoccupy the original jail, which contains 759 beds, but reported that a group of local residents still claim in Court that DOC should not use these beds or add more beds, and should do neither without going through the formal City land use process. He said DOC does not concede that opponents have a right to block DOC from using the original jail beds, or to force DOC, before using the original jail, to go through the formal land-use process on the grounds that the jail allegedly was closed since 2003. He said that it is DOC's position that the jail never closed and has been used continuously at the same site for fifty years. He explained that the term "closed" was used only because DOC stopped housing inmates there overnight in 2003, but noted DOC's continuous use of the building as a processing center for a variety of Court and police cases and for related DOC

activities such as community service. Mr. Regan stated that Board meeting minutes over time reflect the fact that DOC kept the Brooklyn jail open continuously.

Chair Simmons noted that the next public Board meeting will be in May. She reminded Board Members of their goal to use the time between meetings to become better acquainted with jail sites and procedures. She reiterated her hope that Members would spend time in IID housing areas in RNDC.

Ms. Abate asked Members to go into executive session to discuss a litigation matter.

Chair Simmons adjourned the meeting at 10:40 a.m. The Board convened in executive session from 10:45 until 11:05 a.m.