

**NEW YORK CITY
BOARD OF CORRECTION**

March 9, 2006

MEMBERS PRESENT

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

Excused absences were noted for Vice Chair Michael J. Regan and Member Alexander Rovt.

DEPARTMENT OF CORRECTION

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

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Louise Cohen, Acting Deputy Commissioner
Maria Gbur, M.D., Medical Director, Correctional Health Services (CHS)
Jason Hirshberger, M.D., Director, Mental Health, CHS
Farah Parvaez, M.D., Medical Director, Correctional Public Health Services
Robert Berding, Director, Clinical Services, CHS
George Axelrod, Director of Risk Management, CHS

OTHERS IN ATTENDANCE

Roslyn Brickman, M.D., Deputy Medical Director, Prison Health Services (PHS)
Don Doherty, Division Vice President, PHS
Andy Grossman, Deputy Director, City Council Finance Director
Jeff Krupski, Mayor's Office of Operations
Robert Moore, *Daily News*
Tatiana Ortiz, Office of Management and Budget
Russell Unger, Legislative Counsel, City Council
Dale Wilker, Legal Aid Society, Prisoners' Rights Project (PRP)
Milton Zelmeyer, PRP

Chair Hildy J. Simmons called the meeting to order at 9:30 a.m. A motion to approve the minutes from the February 9, 2006 meeting was approved without opposition.

Chair Simmons reported that the Board will conduct an inspection on Rikers Island on June 8, 2006, beginning in the morning. She noted that Health Commissioner Thomas Frieden, M.D. had been called away by the Mayor and could not attend today's meeting, so he will be rescheduled for the Board's April meeting.

Committee Chair Gwen Zornberg, M.D. presented the Health Committee's report. She said that the Committee met with DOHMH representatives Louise Cohen, Robert Berding, Dr. Maria Gbur and Dr. Jason Hirshberger and discussed the Performance Indicators (PIs). Dr. Zornberg said the Committee identified areas where there has been a persistent need to improve, including medical intake and HIV-related issues. She said that the Committee will meet with Ms. Cohen and experts to discuss HIV-related issues. Dr. Zornberg noted that another topic of discussion was inmate suicides occurring when inmates are brought from Rikers Island to court pens, with the Committee identifying the need for continuous communication between DOHMH and DOC, and between DOC staff on Rikers and DOC staff in the court pens. Chair Simmons thanked the Health Committee for its hard work, and expressed her appreciation to DOHMH Acting Deputy Commissioner Louise Cohen for her assistance and cooperation with the Health Committee. Executive Director Richard Wolf distributed to the Members copies of a letter he received the preceding evening (March 8, 2006) from Ms. Cohen, regarding DOHMH's preparations for implementation of the tuberculosis screening variance. Ms. Cohen then presented her report, as follows:

DOHMH is still preparing for implementation. Cross-matching between the City's tuberculosis registry and DOC's Inmate Information System (IIS) has begun. Policies and procedures have been finalized, and dissemination has begun. There will be in-service training, and DOHMH is hosting a Tuberculosis Grand Rounds on March 18th. This should be a good opportunity to discuss implementation.

The electronic intake system is starting to yield information that will be useful in looking at a variety of issues. For instance, approximately 56% of the intakes would receive TSTs (tuberculin skin tests) based on chronic disease histories, as per new protocols. An additional 15% would receive TSTs because of a previous positive skin test. Only 30% of the incoming population would be evaluated to determine whether they should receive TSTs. Some additional questions will be asked of new admission inmates, including "Have you ever been homeless or lived in a shelter?" The additional questions will help in making clinical decisions.

The Department is on track to begin implementation in April, and will monitor implementation closely and provide regular reports to the Board.

Chair Simmons asked for an update at the Board's next meeting on April 13th. She then asked for a report on the psychotropic medication prescribing practices variance. Ms. Cohen said DOHMH believes it is proceeding well, but the next report is not due until the end of March, so it will be presented at the April meeting. She added that no issues have been seen that would raise concerns. Board Member Father Richard Nahman reported that he finally had heard from Dr. Paul Farmer, head of Infectious Diseases and Social Medicine at Harvard, who is a leading expert on prison populations and TB. Father Nahman said that Dr. Farmer supported the TB variance proposal. Father Nahman added that historically, discussions at BOC meetings regarding health issues was "oppositional". He said there has been a dramatic change, and it is clear that we all are working together for the same goal. Chair Simmons thanked Father Nahman for his observation. Ms. Cohen said that when DOHMH representatives last met with the BOH Health Committee, it was suggested that the PIs regarding timeliness be broken out separately and DOHMH will do this.

Ms. Cohen next discussed the DOHMH preliminary budget, which includes an additional \$3.2 million to expand HIV, Chlamydia and Gonorrhea testing and treatment for the next fiscal year and in the out years. She said this money will enable increased rapid HIV testing, which is done voluntarily and confidentially. She said that having more people aware of their HIV status when they leave jail will benefit them, their families and the community. Ms. Cohen said that anyone who tests positive will receive the best possible care while they are incarcerated, and discharge planning will increase the focus on providing information about access to post-release care. She said the budget also contains funds to cover collective bargaining increases.

Chair Simmons asked Member Stanley Kreitman, chair of BOC's Minimum Standards Review Committee, to present a report. Mr. Kreitman reported that the Committee is reviewing provisions regarding visiting, telephone calls, packages, and access to media. He said he sent comments on DOC's proposals to the Department and asked for additional information, and noted that he believes the response letter was just signed by the Commissioner. Mr. Kreitman said the Committee would meet again soon to review DOC's responses, and that soon thereafter the Committee will present its recommendations to the Chair for dissemination to the full Board. Chair Simmons asked Mr. Kreitman and Mr. Wolf, when the Committee concludes its review, to prepare a document summarizing the recommendations and the thinking as to how the recommendations were arrived at. She said the goal would be to distribute the document to the full Board at the April meeting or shortly thereafter. Mr. Kreitman said there are many complex issues to address, and suggested that a special BOC meeting be devoted to addressing them. Chair Simmons said that it is very difficult to convene a meeting at a time when everyone is able to attend. She suggested instead that the staff, together with at least one committee Member, could brief the Members. She said that sessions could be scheduled at different times, so that Members who could not attend one session could attend another. She said that obviously proposals will have to be discussed as a full Board as well. Chair Simmons asked Mr. Wolf to describe the process, once the Board is in agreement on proposed changes. Mr. Wolf said that first the Board votes to approve the proposed changes for publication, which includes publishing in the *City Record* and

notifying by mail or email many people, among them the heads of all local Community Boards and each City Council Member. He said the provisions are set forth in the City's Administrative Procedure Act, which requires publication of a general statement describing what is being done and why, and also all of the proposed changes, indicating new language and deleted language. Mr. Wolf said the publication also must give notice of a public hearing, advising people who wish to submit written comments, of the due date. He said that the Board must hold a public hearing and thereafter consider the information it receives at the hearing and in written comments, and decide whether to change any of the proposed revisions. He added that the process need not begin again; the Board can make changes, and publish its final revisions with notice that after a statutory time period elapses the revisions take effect. Mr. Wolf said that the Board must send its proposed revisions to the Law Department, to the Mayor's office, and to the Commissioner for comment. He said the Law Department must conclude that the Board is not exceeding its authority, noting that in the late 1970s the Law Department concluded that the Board had exceeded its authority when it promulgated Minimum Standards provisions purporting to regulate correction officer overtime. Father Nahman, noting that the process had been a cooperative one between the Board and DOC, asked if the proposals will be presented as the Board's or joint proposals. Chair Simmons said they are the Board's proposals. She said that a goal should be for the Members to have reviewed all of the proposals by the May meeting and be in a position to vote at that time. She added that this may be difficult, but she hopes that the Board's proposal will be finalized and the legal process can begin before the summer is upon us.

Commissioner Horn presented a report on the *Ingles* settlement, as follows:

DOC has entered into an agreement in the *Ingles* case, subject to final approval by the Court at a hearing on March 31st. The agreement will settle a series of allegations that during the period between 1996 and 2002, DOC, its employees and administrators engaged in a pattern and practice of brutality. The good news is that the City has settled without conceding that this occurred. In fact, the City strenuously denies it. There were only 22 named plaintiffs, despite 60,000 people passing through the City's jails each year and a daily inmate population of 14,000 inmates. Some cases were not handled properly and where there was wrongdoing the officers involved were disciplined, but this did not rise to a pattern and practice. The settlement is a private settlement agreement rather than a consent decree. There is no court monitor, although there are continuing requirements that plaintiffs' counsel be provided with information demonstrating the City's compliance with the contract. The contract stipulates that DOC do things it already had begun to do, which are good correctional practice and DOC should be doing them anyway: for example, the installation of a substantial number of cameras, for which DOC will be spending a lot of capital funds over the next two to 2 ½ years. The locations were agreed upon jointly by DOC and plaintiffs' counsels. Cameras protect officers as well as inmates.

DOC also agreed to revise its use of force directive, which already was revised once during Commissioner Horn's tenure. DOC agreed it lacks sufficient clarity,

and information from Operations Orders and teletypes that represented DOC policy were not contained in the directive. For example, it long has been DOC policy that there is as continuum of force and an officer should use only the least amount of force necessary and proportionate to the threat. This will be stated in much clearer terms. When staff anticipate a use of force that is not an emergency, a video camera is to be used. This existing policy has been strengthened and clarified. The revised directive is better and more understandable and therefore more enforceable.

The lawsuit alleged that DOC failed to adequately investigate uses of force when they occurred. DOC's internal affairs investigators have not been adequately trained, and the settlement has become an opportunity to enhance training. An outside consultant, Robert Silbering's firm, Forensic Investigative Associates, will evaluate DOC's investigative operations, train staff, and train trainers, and write an investigations manual for DOC. DOC also will change the instructions for how facility-level investigations are conducted, and which matters are investigated at the facility level. Also, DOC entered into an agreement with the Chief Medical Examiner to obtain forensic consultation to determine whether the description of injuries is consistent with the level of reported force. In fiscal year 2005 there were 72 "A" uses of force, and 879 "B" uses of force. Officers rarely use force, so unless they receive continuing training, their defensive skills diminish. DOC therefore will increase use of force gym training and better ensure that officers completing in-service training know the techniques. DOC will centralize and consolidate its computerized use of force records, which will make it easier to obtain information about the frequency of involvement in uses of force by a particular officer or inmate, or at a particular location.

Overall, this is a good agreement for both the City and the inmates, and the heads of the uniformed unions agree. The agreement will end before the end of the Mayor's term, and it contains reporting requirements to demonstrate that the City has complied with its terms.

Commissioner Horn next reported that a captain and an officer had been charged in an October assault on inmate case, and another captain faces charges for allegedly sexually assaulting inmates. He said DOC takes these matters seriously, and DOC staff understand this. He said use of force is part of corrections, noting that using force is not inappropriate. The Commissioner said DOC has rules governing the use of force and staff is expected to follow them. Chair Simmons asked the Commissioner to keep the Board apprised of developments pursuant to the settlement. Commissioner Horn agreed, and then presented a report on DOC's preliminary budget, as follows:

DOC will appear before the City Council on March 15th to answer its budget questions. The FY07 operating budget calls for DOC to spend \$845,774,000, which is consistent with last year's adopted budget. The budget also provides some additional money for the balance of FY06 to cover overtime expenses. DOC's FY06 budget was for \$841 million, but DOC will spend approximately

\$886-887 million for the year. Most of the overtime was driven by staff attrition. The staffing level remains relatively constant: the uniform headcount for FY06 is 9,354; in FY 07 it will be 9,312. This slight reduction is hardly noticeable in an agency the size of DOC. Two officers will be taken from the EEO office. Positions associated with the *Ingles* settlement will help to drive the budget, and significant capital dollars will be spent on cameras and overtime to accomplish installation by three teams. DOC has requested \$2.2 million in overtime related to Hurricane Katrina, that will be reimbursed by the Federal government. Additional costs include \$24 million as a result of collective bargaining with the Correction Officers union, net of the offsets from productivity gains, and \$600,000 as a result of collective bargaining with the steamfitters and welders union. There are no programmatic changes in the new budget. Discharge planning contracts with Samaritan Village, Osborne, and the Women's Prison Association began under the FY06 budget. Funds from the City Council will continue to support an adolescent discharge planning project operated by Vera (\$900,000 in FY06) and the Fortune Society (\$288,000). Hopefully, these programs will prove their value and be drawn into the baseline budget in the future. This is a good news budget.

Father Nahman asked how the increase in the inmate population and the pending opening up of additional facilities will affect the budget. Commissioner Horn said that at the February BOC meeting, he expressed some concern about the population, but his concern has diminished. He said that the increased arrest rate has now dropped, and the percentage of arrests that result in people going to jail has diminished. The Commissioner said that one year ago, 25.1% of all NYPD arrests led to the jails, this year it is 24%. He noted that when dealing with 193,000 arrests, 1% is 1,000 inmates. He said that today's census is 13,824, adding that on February 27th the census was 14,002. He said that historically, the population peaks during the summer. Commissioner Horn reported that last year at this time, DOC was operating at 96.9% of capacity; on February 27th, the Department was at 96.7%. He said many wooden modulars must be closed pursuant to the *Benjamin* litigation, and Judge Baer signed an order on February 19th permanently closing some of them, with a total capacity of 731 beds. The Commissioner said he hopes to show the modulars to the Members when they inspect Rikers Island in June. He said the 10 Year Capital Plan calls for new capacity to replace mod beds. He said it is his hope that the Department will not need to build those beds on Rikers Island, and he will be coming to the Board to explain why it is good policy and would be better for the City to add capacity off-Island. Commissioner Horn said that for the City to have 12,000 to 14,000 inmates on the Island with a single bridge, in a flood zone, near the jet fuel tanks at LaGuardia and the chlorine stored in railroad cars at the sewage treatment plant on the other side of the bridge, all suggest that a better plan is needed. He said DOC moves 1,500 inmates a day in 50 buses to court houses – 20% of whom never see a judge because they are being transported to meet with their attorneys – and said it makes sense for jails to be close to court houses. He added that 12,000 of the City's 14,000 inmates are housed on Rikers, which is the burden solely of Community Board 1 in Queens.

Commissioner Horn said the Brooklyn House of Detention will reopen. He said DOC is working with the Department of Design and Construction and the Economic Development Corporation to renovate the site and, within allowable zoning, build vertically, and add retail shopping on the Atlantic Avenue corridor, along three sides of the building. He said BOC Chair Simmons suggested this years ago. He noted that an underground tunnel connects the jail to the court house, and if more on-trial inmates are housed there, DOC would be able to reduce the bus traffic flow through the community. Furthermore, he said, family members could more easily visit inmates in the Brooklyn House than on Rikers Island. He said he hopes a renovation project can move forward soon.

Commissioner Horn said that the City has entered into an agreement with the Related Companies for the Bronx Terminal Market redevelopment, which agreement includes giving up the old Bronx House of Detention for Men. He said that the City is on record that a replacement will be needed, and is hopeful that community leaders will realize that a jail need not be a bad neighbor. He said that even in the neighborhood just off Rikers Island in East Elmhurst, people are demolishing old homes and building new ones. Mr. Vallone asked if there is a time frame for the Brooklyn House project and for the Bronx. Commissioner Horn said dialogue has been ongoing in Brooklyn, where the City retains site control, and he hopes that the City soon obtains control of a site in the Bronx.

A motion to renew all existing variances was approved without opposition, as did a motion for executive session for the Board to discuss a personnel matter. The public meeting was adjourned at 10:28 a.m. The Board convened in executive session from 10:32 a.m. until 10:45 a.m.