

**NEW YORK CITY
BOARD OF CORRECTION**

December 12, 2002

MEMBERS PRESENT

Stanley Kreitman, Chair
John R. Horan, Vice Chair
John H. Banks III
Louis A. Cruz
Richard M. Nahman, O.S.A.
Jane Paley Price
Michael J. Regan

An excused absences was noted for Member Fredrick J. Patrick.

DEPARTMENT OF CORRECTION

Gary Lanigan, First Deputy Commissioner
Leroy Grant, Bureau Chief, Inspectional Services & Compliance Division (ISCD)
Steven Conry, Bureau Chief, Security
Thomas Antenen, Deputy Commissioner
Linda LaGreca, Office of the General Counsel
Elizabeth Meyers, Director, ISCD

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Jr., Executive Director
Michael Tannenbaum, Chief Operating Officer
George Axelrod, Chief Risk/Quality Officer
Patrick Brown, M.D., Medical Director
Arthur Lynch, Mental Health Director
Robert Berger, Director, Service Delivery Assessment Unit
Eric Zimiles, Chief Financial Officer

OTHERS IN ATTENDANCE

Amy Anderson, NYU
Russ Buettner, *Daily News*
Jonathan Chasan, Legal Aid Society, Prisoners' Rights Project
Osvaldo Cruz, Analyst, Office of Management and Budget (OMB)
Gene Gallop, Suiyprvising Analyst, OMB
Andy Grossman, City Council, Finance Division
Sara Goonan, Analyst, OMB
Dan Janison, *Newsday*
Michele Kalafer, City Council, Legislative Policy Analyst
Trevor Parks, M.D., Medical Director, Prison Health Services
Becky Penney, Project Director, Prison Health Services
Jackie Riley, City Council, Finance Division
Richard Steier, *The Chief*
Russell Unger, City Council, Legislative Attorney

Chair Stanley Kreitman called the meeting to order at 1:00 p.m. A motion to adopt minutes from the Board's November 14, 2002 meeting passed without opposition.

Chair Kreitman asked DOC First Deputy Commissioner Gary Lanigan about the Department's plans in the event of a transit strike. Mr. Lanigan said that plans are in place for staff and inmates, including court transportation. He said that in cooperation with Correctional Health Services and Prison Health Services, DOC has established pick-up/drop-off sites throughout the five boroughs to Rikers Island. He said that court deliveries and state pickups should proceed as planned. Mr. Lanigan said that court proceedings could be affected by a transit strike, and this could affect DOC's inmate census. He said that if necessary, DOC could open the James A. Thomas Center (JATC). He added that DOC also has available two currently closed borough facilities.

Chair Kreitman praised DOC staff for its prompt responses to Board of Correction referrals of heat complaints from the jails.

Chair Kreitman asked for an update on DOC's budget. He noted that the Queens Detention Complex had been closed, and asked how DOC would reach its \$65 million target. Mr. Lanigan said that to avoid layoffs, the Queens House has been closed for several months. He said that 182 staff had been re-deployed to other facilities, thereby reducing overtime. Additionally, Mr. Lanigan said that 522 posts have been closed. A total of 756 posts have been eliminated throughout the jails, in consultation with the unions. He said DOC canceled a class of 355 new recruits and will continue attrition. He said that another class, scheduled for June, 2003, will be canceled, and that the first new class is now scheduled to enter the Training Academy in September, 2003. Mr. Lanigan said that DOC will not have to lay off staff. Chair Kreitman asked for an assurance that the reductions would not compromise safety and security. Mr. Lanigan said that it would not.

Chair Kreitman, noting DOC's accomplishments in reducing violence in the jails, next raised the issue of his concern that the Board is not receiving accurate or timely facts regarding incidents that have occurred recently in the jails. He said that he wanted to discuss several incidents for the purpose of preventing DOC from "getting on the wrong track". He said that the first incident was an attempted escape from the George Motchan Detention Center (GMDC), where an inmate sustained injuries that were inconsistent with the report from DOC's Central Operation Desk (C.O.D.).

Mr. Lanigan said that, before responding, he wanted to tell the Board that Commissioner William Fraser is retiring on December 31st. Mr. Lanigan praised Commissioner Fraser's performance in continuing the reductions in violence begun by his predecessor, Bernard Kerik. He said that overall use of force should be down 18% this year compared to last year. Mr. Lanigan said he was passing along Commissioner Fraser's "goodbyes and thank you's". Board Member Louis Cruz asked about violence reduction figures. Mr. Lanigan said that use of force would be down, and stabbings and slashings would be about the same as last year.

Regarding the attempted escape, Mr. Lanigan reported as follows:
on Tuesday, November 26 at 1830 hours, inmate Turner was given

permission to go to the law library. At 1847 hours, an officer saw an inmate near a metal shed. She ordered the inmate to stop, but he began climbing a fence. At 1850 hours, a series of alarms went off. By 1907 the inmate was found on the loading dock roof of the Rose M. Singer Center (RMSC). By 2105, he was recaptured and transferred to Elmhurst Hospital. The inmate sustained a lumbar spine fracture. On December 3, he was arrested and charged with first degree escape. He was subsequently "returned to the house" and currently is in 19 South. [NOTE: 19 South is a housing area in the Bellevue Hospital Prison Ward.]

Chair Kreitman said that the inmate alleged that he was beaten with batons and kicked in the back by Emergency Response staff. Chair Kreitman asked if this allegation is under investigation. Mr. Lanigan said that it is under investigation. He said that preliminary investigation does not indicate any staff wrongdoing. Mr. Lanigan said he had been told that there were no external bruises "that would indicate a baton or kicks to the back". He said that there is "indication" of a vertebrae fracture, but that "did not necessarily happen then, and is not necessarily inconsistent with a fall". Chair Kreitman said that DOC never reported his injuries until the inmate made his allegations. Mr. Lanigan said that he did not know when reports were delivered to the Board, and that he did not know when DOC received the reports. BOC Executive Director Richard Wolf said that the C.O.D. report on the attempted escape said that the inmate was "apprehended without incident", that the inmate complained of back pain and was sent to the hospital. Mr. Wolf said that we know from other records that the inmate was taken by stretcher from outside RMSC and brought into the facility. He said that the C.O.D. report failed to mention this, and never updated the inmate's injuries until the inmate alleged one week later that he had been subjected to an unreported use of force. Mr. Wolf said it was at this point that DOC first reported the inmate's lumbar spine fracture. He added that the issue was not when BOC "received" reports, but rather that the reporting by the Department was the issue. Mr. Cruz disputed Mr. Lanigan's assertion that he had been told there were no injuries other than the fracture. He said that he spoke with Bellevue's Medical Director, who told Mr. Cruz that there were sufficient bruises to suggest that the inmate had been "worked over". Mr. Lanigan suggested that Mr. Cruz give his information to the Inspector General, Michael Caruso. Mr. Cruz asked whether the facts and the injuries "speak for themselves". He asked Mr. Lanigan if he was saying that if Mr. Cruz had information about allegations of an assault that he should report it to the I.G. He noted that the Board is "oversight", not "operational". He said that it was his understanding that reporting should go through Mr. Lanigan's office. Mr. Cruz asked whether it was true that DOC's investigative unit reports directly to the First Deputy Commissioner, Mr. Lanigan. Mr. Lanigan said that it was true that the Deputy Commissioner for Investigations reports to the First Deputy. BOC Vice Chair John Horan said that the second C.O.D. report raised a question of how DOC classifies incidents. Chair Kreitman said that this was the reason he raised the issue. Mr. Horan questioned why when an inmate alleges that he was beaten with batons and kicked in the back, the allegation should be classified as a "B" incident. Mr. Lanigan said that if an inmate

alleges that he was beaten with batons and kicked in the back, the incident should not be classified as a "B" allegation. Mr. Lanigan said that he does not think that the report says that someone was kicked in the back and beaten. Chair Kreitman asked Mr. Wolf to "clarify". Mr. Wolf said that the C.O.D. report an allegation of use of force on 12/2, and at the time that the allegation and the lumbar spine fracture were reported, the allegation was classified as a "B" allegation. He said that on the next day, 12/3, the allegation was upgraded to an "A". Mr. Lanigan said that the severity of the injury is what determines the classification. He said that once it was determined that there was a fracture, it was appropriate to reclassify the allegation as an "A". Mr. Wolf said that the determination that there was a lumbar fracture did not occur only after the inmate alleged that unreported force had been used against him. In fact, Mr. Wolf said, the inmate went out on a stretcher, via EMS, to the hospital because of his complaints of back pain. He said that although he has not seen the medical records, he is quite certain that the diagnosis of a lumbar fracture was made by the 27th, and had to be known by the Department on November 27th or at the latest on November 28th. Mr. Wolf noted that the fracture was not reported as an update to the attempted escape report, and was only reported in response to the inmate's allegation of an unreported use of force. Mr. Wolf said that DOC categorized the allegation as a "B" allegation even as it reported that the injury was a lumbar spine fracture. Both Chair Kreitman and Vice Chair Horan said this was the issue. Chair Kreitman said he had raised the issue so that the Board would have confidence in DOC's statistics going forward.

Chair Kreitman next asked for discussion about an incident that occurred on December 7, in Quad B in which an inmate said he felt dizzy and that he had hit his head on a sink. Chair Kreitman said that this seemingly insignificant event led to a series of questions about reporting. He asked if Mr. Lanigan was familiar with the matter. Mr. Lanigan said that he believed this was an inmate fight. He said that the matter is under investigation. Chair Kreitman asked that the Board be informed of its outcome. He said that DOC's Directive requires that the Board be notified of a serious injury to an inmate within fifteen minutes. Mr. Wolf said that the inmate had several visible and apparent facial injuries when the inmate first was removed from the housing area. He said that facility reports suggest that a serious fight took place inside the housing area at about 7 p.m., at a time when there were several DOC uniformed staff members in the area, including a captain. Mr. Wolf said that the Board wondered why no staff person heard or saw the fight. He said that the housing area logbook has no entries about the incident, and only notes that the inmate left the area, reducing the count by one. He said that he raised this issue because DOC regulations require that staff record in the logbook all unusual occurrences during their tour. He said this enables investigators to learn what happened. Mr. Wolf said that perhaps DOC will reinforce with staff the requirement that all occurrences be recorded. Board Member Jane Paley Price said that stabbings and slashings are logged because they are violent incidents. She asked how DOC deals with an incident like this, "in which there is no implement, but there is clearly a serious injury". Mr. Lanigan said that there is a log entry made for a serious incident, and that is part of the investigation. Chief of Security Steven Conry said that in general, any incident of an unusual nature that occurs in a housing area, including an inmate-on-inmate fight, should be, and by

policy is required to be, documented in the "A" post logbook. He said that incidents "far less than a stabbing or a slashing" must be recorded, including a dangerous condition, a maintenance problem, or a fight.

Chair Kreitman raised a third incident that he said concerns reporting. He said it involves the use of a chemical agent on a naked woman who refused come out of her cell. He said the incident was videotaped, and it appears that the videotape is different from the report that was initially filed. He asked Mr. Lanigan if he was familiar with the incident. Mr. Lanigan said that the written reports as well as the tape are part of an ongoing investigation, and any discrepancies will be part of the investigation as well. Mr. Cruz said that he understood that, as is usual, BOC requested a copy of the videotape and that the request was refused. BOC Deputy Executive Director Cathy Potler said that she was permitted to go to DOC headquarters and view the videotape, but she added that the normal practice, whenever Board staff requests a copy of a videotape of a cell extraction, is for DOC to provide a copy. Mr. Cruz asked when this will be remedied. Mr. Lanigan said that the circumstances surrounding the incident, in which as the Chair indicated DOC was dealing with a naked female inmate with an extraction required, caused DOC to decide not to have copies of the tape made. He said this decision was reached to "protect her privacy as well as the City's liability". Mr. Wolf noted that there have been numerous other instances in which an inmate's "lack of clothing" has not been a reason for DOC to refuse to provide BOC with a copy of a tape. He added that now that BOC has received from Chief Grant copies of the incident documentation, BOC staff need to review the tape again. He said that no one has ever suggested that BOC Members or staff ever mishandled a tape provided by DOC. He noted that when DOC asked the Board for a variance from its personal hygiene standard regarding showers for CPSU inmates, DOC provided BOC with dozens, if not hundreds of use of force incidents on videotape. He said these incidents often involved naked people. Mr. Cruz said that DOC should not attempt to justify denying, as it did in the past, Board access to information. He said that DOC had attempted to prevent BOC from taking photographs at crime scenes inside the jails "pursuant to our duties under the City *Charter*", and that he did not want this "philosophy to rear its head again". Mr. Cruz said he is very concerned, because the nature of the reporting that DOC has done with respect to serious incidents "leaves a lot to be desired". He said that he is losing confidence in the Department's ability to properly report incidents. He said that he did not accept Mr. Lanigan's premise that DOC was acting to protect the inmate's privacy. Mr. Lanigan said that if the Board wished to go into executive session, he would have the tape brought over and shown to the Board. He added that if the BOC staff wishes to come to 60 Hudson Street or to Rikers Island, he will arrange for staff to view the videotape. Mr. Cruz said that no one has suggested that the tape should be shown in public. He said that he was asking DOC to comply with the Board's proper request. Mr. Lanigan asked that the Board discuss the matter "amongst yourselves". Mr. Cruz said that the Board had done so. Vice Chair Horan said that the Members agree that DOC should comply.

Mr. Cruz then made a motion, as follows: "That the Department should provide that tape immediately, if not sooner, to our staff". The motion was seconded by Vice

Chair Horan and Member John Banks III, and passed unanimously. Mr. Cruz told Mr. Lanigan that he had his answer, and Mr. Lanigan replied that he would take it under consideration. Mr. Cruz asked Mr. Lanigan under whose legal advice he was operating. Mr. Lanigan said that DOC has a General Counsel, that he will discuss the issue with her, and a decision will be made. Chair Kreitman said that he did not want this to become adversarial. He said that the issue is accurate reporting to the Board so that we can make intelligent decisions going forward, as is our responsibility. He added that he respected DOC's interest in protecting the inmate's privacy, but the Board has a "right to know". Mr. Banks asked about statutory requirements for DOC to turn over information to the Board upon request. Mr. Cruz responded that the authority is in the *Charter*, and that it authorizes complete access and the authority to copy anything at any time. Mr. Banks asked if there was a time frame for compliance. Vice Chair Horan said that there was no time frame, and that it has never been an issue. Mr. Lanigan said that the General Counsel may disagree with the interpretation just made by the Board Members, and he reiterated that DOC had made the information available to the Board by allowing BOC staff to come and view the videotape. He said DOC is not withholding anything, and that the question is whether multiple copies of the tape should be taken out of the Investigation Division and given to an oversight board or anyone else. He said that once that is done, "you're exposing the City to a certain amount of liability". Vice Chair Horan said that "it is not anyone else - it is our request". Mr. Wolf added that the Board is part of the City. Mr. Lanigan said that once there are two copies, "you lose control of who has how many copies". Mr. Lanigan said the issue is privacy. Mr. Cruz said his point is that Mr. Lanigan should not make it adversarial "by even attempting to justify withholding information duly and properly requested by anyone on this Board". Mr. Cruz said the *Charter* does not leave the Department any "wobble room". Mr. Wolf said that, inasmuch as the premise raised by the Chair in initiating the discussion is "accuracy in reporting", he said that it would be useful to focus on the C.O.D. report of the incident. Mr. Wolf noted that the report was entitled, "Use of a Chemical Agent". He said that the inmate has a lengthy history and is known to be an inmate who is difficult to manage. He noted that the incident occurred in RMSC's new MHAUII unit - the mental health assessment unit. Mr. Wolf said that C.O.D. reported that the extraction team assembled, the Captain dispersed the OC gas to the inmate's facial area, and then the handcuffs were applied, and the inmate was escorted out of the area, terminating the incident. Mr. Wolf said that the sequence is completely wrong, because the OC gas was not sprayed until the inmate had been escorted a considerable distance from the housing area. He added that the report failed to mention that the inmate was naked. He said that reading the report causes one to conclude that the incident was an uneventful cell extraction. Mr. Wolf concluded that the Board raised this incident in the context of the need for accurate reporting. Mr. Lanigan said that one purpose of the investigation is to look at the discrepancies. Noting that the incident involved an explosive, unpredictable inmate who was under the care of mental health staff, Ms. Potler requested that discussions occur between DOC staff and mental health providers to determine the best way to approach inmates in MHAUII when a cell must be searched. She suggested that in these circumstances, it might be preferable to remove the inmate from her cell, search the cell, and then return the inmate to her cell, rather than escorting her to the receiving room. Ms. Paley Price

said she did not know whether the physical space permits a thorough search of the cell with the inmate inside. Ms. Potler replied that the inmate would be outside of the cell, and noted that in this case the inmate had agreed to exit her cell and had been handcuffed before exiting the cell.

Chair Kreitman asked for an update on the investigation into the sexual assault that occurred on September 25th. He said that he was raising the issue because it had not been reported until five hours after the assault had occurred, and notification is supposed to occur within 15 minutes. Mr. Lanigan said that Mr. Kreitman was correct, that BOC did not receive notification until 5 hours and 33 minutes had elapsed, and that this had been revealed by DOC's investigation. Mr. Kreitman asked whether anyone had been arrested. Mr. Lanigan said that eight inmates were arrested and charges are pending. Ms. Potler asked about the staff. Chair Kreitman said that this was part of the investigation. Mr. Cruz said that he conducted his own investigation. He said that Board members were told at an executive session that the incident was alleged to have been of an unknown nature. Mr. Cruz questioned why the matter had been discussed in executive session, noting that the matters discussed should have been presented in open session, as they did not pertain to an ongoing investigation. Mr. Cruz said that the incident was known "immediately" to have been a sexual assault allegation. Mr. Lanigan disputed this assertion. Mr. Cruz referred to a copy of an AMKC log book entry. He said that the entry was entitled, "Allegation of sexual assault". He said that the log book entry indicates that the incident occurred at about 1 p.m., and that it was ongoing. Mr. Cruz said that the log book indicates that when the inmate was taken to the clinic, he reported that he had been sexually assaulted. Mr. Lanigan said that the allegation was not known until the inmate was taken to the clinic. Mr. Cruz said that he was distressed that the NYPD, with authority under the City *Charter* and the Public Authorities Law to be the sole investigator of serious crimes, was not notified until seven hours after the incident. He said that for those seven hours, DOC was investigating itself. He asked why, for the past three or four years, there have been continuing delays in notifying the Police Department when serious crimes are reported. He said this exposes DOC to criticism of potential "cover ups". Mr. Lanigan said that the investigation did reveal problems with reporting. Nonetheless, he said, the outcome was successful and eight arrests were made. He added that the DA had requested that the criminal investigation go forward before DOC moves to the "procedural part". Mr. Lanigan said that the officers involved are on modified duty. Mr. Cruz asked whether DOC has reason to believe that the alleged sexual assault was "winked at" by staff on duty. Mr. Lanigan said that this was being investigated, and he added that the DA had not informed the Department of any wrongdoing on the part of staff. Mr. Cruz asked whether modified duty included taking the officers' guns and shields. Bureau Chief Conry said that guns were taken, and the officers are not allowed to work inside active housing areas. Mr. Cruz asked whether when an inmate is charged with a sexual crime, he is segregated from general population. Bureau Chief Conry said that the vast majority of inmates charged with sexual crimes are housed in protective custody. Mr. Cruz said that in this case, the inmate had been brought to Rikers from a state prison because of a new charge, a notorious rape. Mr. Cruz asked if he was segregated in Quad 8 Upper. Bureau Chief Conry said he would have to find out whether Quad 8 Upper was special housing. He said that it might be administrative segregation, another form of special housing. Mr.

Cruz said that he was told 8 Upper was not special housing. Bureau Chief Conry said that most inmates in protective custody are placed there pursuant to requests from judges. He added that some alleged sexual predators exhibit other characteristics that make them inappropriate for protective custody housing, and that determinations should be made on a case-by-case basis.

Chair Kreitman asked CHS Executive Director Ernesto Marrero to report on Prison Health Services' (PHS) contract Performance Indicators (PIs). Mr. Marrero said that last quarter PHS met or substantially met 31 performance indicators and failed to meet 6. This quarter PHS met 30 PIs and 7 were not met. Of the 7 not met, 4 had 90% compliance or better. He said that mental health notations not appearing in the chart continue to improve, although it was not met. Chair Kreitman asked if Mr. Marrero was satisfied with progress that is being made by the vendor, and Mr. Marrero said that he was. Mr. Cruz said that there seems to be an ongoing issue with mental health documentation, and he noted that St. Barnabas taking its computerized records system "did not help at all". He asked when PHS will comply with the mental health PI. Mr. Marrero said that he did not know, but he has the option of doubling liquidated damages. He said that proper care might be provided, but if a data field box is not filled out on a form, the PI would not be met. He said that PHS is doing better each quarter. Mr. Marrero added that last year, CHS imposed almost \$500,000 in liquidated damages. He said that liquidated damages are a real concern to a company with a small profit margin. Ms. Potler asked why the radiology PI went from substantially met to not met. Mr. Marrero said that radiology is at 90% or 91%. He said that PHS dropped from approximately 94% last quarter. Ms. Potler asked what is not being done. Mr. Marrero said that the issue is charting radiology findings. He said that providers are reviewing radiology results, but do not always chart them. He added that this is an important issue for continuity of care.

Mr. Cruz suggested that mental health directors meet with DOC personnel to plan how to deal with psychotic inmates, particularly when the inmates already have been classified and housed in special areas. He said that there must be a better way to conduct searches of areas in which such inmates are housed. Mr. Marrero said that CHS' mental health director is examining the curriculum of mental health training given at the DOC Training Academy, and that CHS is considering establishing a special curriculum for officers assigned to mental observation areas. Mr. Marrero added that CHS works collaboratively with DOC, and he cited an example of a joint committee that was established to examine steps that could be taken to reduce the high number of violent incidents in AMKC that were attributable to inmates under the care of mental health services.

DOC's request for a renewal of existing variances was granted without opposition. Chair Kreitman adjourned the meeting at 2:06 p.m.