

**NEW YORK CITY
BOARD OF CORRECTION**

December 9, 2004

MEMBERS PRESENT

Stanley Kreitman, Chair
John H. Banks III
Richard Nahman, O.S.A.
Jane Paley Price
Michael Regan
Hildy J. Simmons

An excused absence was noted for Vice Chair John R. Horan.

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DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Tom Antenen, Deputy Commissioner for Public Information
Leroy Grant, Bureau Chief, Inspectional Services and Compliance (ISCD)
Florence Hutner, Deputy Commissioner for Legal Matters
Judith LaPook, Chief of Staff
Mark Cranston, Deputy Warden, Executive Assistant to the Commissioner
Elizabeth Myers, Director, ISCD

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

George Axelrod, Director of Risk Management, Correctional Health Services (CHS)
Robert Berding, Director, Clinical Services, CHS
Donald Kern, M.D., Medical Director, CHS
Melanie Guinyard, Administrative Manager

OTHERS IN ATTENDANCE

John Boston, Project Director, Legal Aid Society's Prisoners' Rights Project (PRP)
Sara Goonan, Office of Management and Budget
Andrew Grossman, Deputy Director, Finance Division, City Council
Jeff Krupski, Mayor's Office of Operations
Trevor Parks, M.D., Medical Director, Prison Health Services
Carl Thelemaque, Legislative Financial Analyst, City Counsel
Dale Wilker, PRP

Chair Stanley Kreitman called the meeting to order at 1:05 p.m.

A motion to approve minutes from the November 16, 2004 Board meeting was approved unanimously. Chair Kreitman noted that Chief Grant was retiring and thanked him, on behalf of the Board, for his service.

Chair Kreitman raised the issue, discussed at the Board's November meeting, of the Board delegating authority to the Executive Director to act on behalf of the Board on routine matters that arise between public meetings. Chair Kreitman said a draft resolution, which had been distributed to all Members, included a proviso that all actions taken pursuant to the resolution would be reported at the next public Board meeting. A motion to adopt the resolution (attached) was made, seconded, and approved unanimously. Board Member Hildy Simmons requested clarification of the word "promptly" in the resolution. Board Member Jane Paley Price suggested, and all Members agreed, that Executive Director Richard Wolf will inform the Members by email on the day the action is taken.

Chair Kreitman turned to DOC's request for variances from *Minimum Standards* section 1-05 ("Overcrowding"). He said the Board has spent considerable time on the issue. He noted that he and Mr. Wolf had urged all the Members to visit the housing areas of the facilities for which variances are being sought. Chair Kreitman said that the Members who made site visits have "come up with their own feelings" and he asked DOC to withdraw for the time being its request for variances for the Vernon C. Bain Center (VCBC). Chair Kreitman described the VCBC request as "a much more complicated issue". DOC Commissioner Martin Horn noted that the Board could simply table the variance request. Chair Kreitman said he did not wish to do so. Commissioner Horn agreed to withdraw the VCBC variance request. Ms. Simmons suggested that it would be a good idea for the Board to inform the Department of a date by which the Members would inspect the VCBC housing areas. Chair Kreitman said that the issue for him is that "these beds seem pretty close together". He said that, standing inside the officers' control booth, it was "pretty hard to see" activity at the far end of the dormitory. Commissioner Horn asked why the issue was being discussed inasmuch as the request has been withdrawn. Ms. Simmons said she was not asking for the Chair's opinion, and noted that to be fair to the Department the Board should be clear about when it would be able to respond to the request. She said she assumed that from DOC's managerial point of view, this would be helpful. Ms. Paley Price said that Mr. Wolf makes transportation available to all Members. Chair Kreitman said transportation was available at any time. Ms. Simmons said the Board should be able to identify an "end point" for resolution. Member John Banks suggested that BOC inform DOC of a time table by the end of next week. Board Member Father Richard Nahman said he had reviewed the memorandum from Legal Aid and suggested that there be a discussion, at this meeting or in the future, about some of the points raised by John Boston. Father Nahman noted that Mr. Boston recommended that the Board not approve any of DOC's pending variance requests. Chair Kreitman reiterated that the VCBC request was not up for Board consideration, and that it could be put on the agenda "at the proper time". He added that DOC's requests had been distributed to "interested parties" including Legal Aid and the unions. Chair Kreitman requested that discussion be confined to the three pending requests, two on Rikers Island at one at the Bernard B. Kerik Center (BBKC). Ms. Paley Price said that she has visited the areas in

both Rikers Island jails and sees no reason why the variances should not be granted. Mr. Wolf said that one request is for the Otis Bantum Correctional Center (OBCC), where dormitories currently house 57 detainees at 60 square feet, under a longstanding continuing variance from the *Standards* capacity limit of 50 detainees to a multiple occupancy area. He said DOC's request is to add three additional beds to each dormitory's capacity. Mr. Wolf said that at the Eric M. Taylor Center (EMTC) DOC seeks to add two beds to dormitories that currently have capacities of 58 City-sentenced prisoners at 60 square feet. Ms. Simmons said these two requests seem very reasonable. Father Nahman said that two arguments from Legal Aid suggest a compromising of values. He said that the requests do not seem to be "the last resort" or "a desperate need", but rather that the requests are "economically convenient", given current budget constraints. He asked, from a "value system" perspective, why should the *Standards* be compromised? Father Nahman added that he was not convinced of the necessity of the pending requests. He said the *Standards* used to require 75 square feet, then went to 60 square feet, and now the Board is being asked to go to 50 square feet, akin to slave ships. He said that these are the questions he is considering. Ms. Simmons said that there are other places where she would be more worried about compromising appropriate Standards. She said the world is different from how it was when the *Standards* were passed many years ago. She noted that Mr. Boston raised some legitimate points, particularly about the barge--which will be the subject of further deliberations--but said that the Rikers requests were reasonable, prudent and safe, and is not a "slippery slope that leads us to slave ships." Ms. Paley Price said that if the Board approves the variances, it will have the opportunity over the next months to reopen the issue if the variances seem to be adversely affecting jail operations. Chair Kreitman said that DOC should keep the Board apprised of changes in violence, health issues or services. Board Member Michael Regan endorsed Ms. Paley Price's remarks, noting that the Board will monitor the effects of the variances. Mr. Wolf said he had spoken with Chief Grant and, consistent with BOC's past practice, indicated the reporting that the Board will expect from the Department as conditions to the variances. He added that DOC has an equivalent, or greater, interest in carefully monitoring the variances. A motion was made, seconded and approved by five of the six Members present. Father Nahman abstained.

Dale Wilker from the Prisoners' Rights Project asked if the Board would hear from interested parties. Chair Kreitman said that PRP's comments in its explicit and well-written letter, had been duly noted by all the Members. He asked whether any Member wished to hear further comment. Father Nahman said he always likes to give people the opportunity to talk. Chair Kreitman said that he agrees, but noted that this is the second meeting at which the variance requests have been considered. Member John Banks offered a motion to determine whether non-Members should make presentations. Chair Kreitman said it was a matter of consensus, and asked the Members if they would like outside comment. Mr. Banks said no, as did Mr. Regan, who noted that he had read the PRP letter carefully. There being no further support for a presentation by PRP, Chair Kreitman noted the Members' vote to approve, with one Member abstaining, variances for OBCC and EMTC.

Mr. Wolf said that the request for BBKC is to authorize DOC to add seventeen beds to the 43 beds in Dorm 8 North, for a total of 60 beds. He noted that Commissioner Horn has agreed that the variance would be conditioned upon 8 North continuing to house City-sentenced prisoners only. Mr. Wolf said that on each shift, approximately one-third of the prisoners are absent from 8 North because they are working. Ms. Simmons said she visited 8 North and had some concerns about volume, but felt comfortable with the assurance that at any time one-third

of the inmates would not be in the housing area. She said that the beds would be close together, but that there would be some flexibility in work assignments reducing the likelihood of a sleeping inmate having “someone else’s feet closer to their face than they might otherwise have had.” Mr. Wolf said that when BOC staff looked at the schematic drawing detailing where DOC planned to place the variance beds, we noted that four beds were adjacent to steps leading down from the raised platform dayroom area. He said that he informed Chief Grant that it would be a condition of the variance that it comply in all respects with Fire and Building Codes. Commissioner Horn said Mr. Wolf is talking about four beds, and Mr. Wolf agreed. Ms. Paley Price added that BBKC is modern, air-conditioned, has a comfortable layout, and is in Manhattan. She said most inmates are happy to be housed at BBKC. Ms. Paley Price concluded that she too is comfortable with the BBKC request. Chair Kreitman said that there is only minimal violence in BBKC, and agreed that the variance only would apply to City-sentenced workers. A motion was made, seconded and approved without opposition. Mr. Regan reiterated the importance of monitoring. Chair Kreitman said that if there is an increase in violence, the Board should cancel the variance immediately.

Chair Kreitman said he would like to form a small subcommittee to review the Minimum Standards. He said that he recently reread them, and concluded that the Standards seemed to be in “pretty good order”. He asked that Vice Chair John Horan and Ms. Paley Price work with BOC staff to begin a review, and to include DOC staff in an open process. Mr. Wolf said that Chapter 45 of the *City Charter*, known as the Administrative Procedure Act, governs the amendment process. He explained that once the subcommittee proposes revisions, the full Board must approve them for publication. He said that the *Charter* has notice requirements, that comments must be solicited and considered, that a public hearing must occur, and that thereafter the Board must vote to adopt final language, which must be published again. Mr. Wolf noted that the process takes months, adding that when the Mental Health Standards were promulgated in 1985, the process took approximately a year because the fiscal implications of what were an entirely new set of regulations had to be carefully considered by the Office of Management and Budget. He said that the review process would take less time because a regulatory structure already is in place. Ms. Simmons asked how long it would take for the subcommittee to develop some proposals for the Board’s consideration, and said that for Members who will not be on the subcommittee, it would be helpful to know when they might have some input. Chair Kreitman suggested that the subcommittee should meet and thereafter present a timetable to the full Board.

Father Nahman said that he voted in favor of the variance for BBKC because the dormitory housed sentenced prisoners, rather than detainees who are housed in the Rikers Island facilities. He said that reducing living space seems punitive, and this “could be allowed” with sentenced prisoners but not detainees.

Ms. Paley Price asked about violence in the jails. Noting that 22 days remain in the year, Commissioner Horn reported the following:

In 2003 there were 49 stabbing or slashing incidents and in 2004 there have been 32 (34 are projected for the year).

Last year there were 1131 uses of force; this year there have been 899 (957 are projected for the year). In 2003 there were 391 allegations of unreported force; this year there have been 310 (330 are projected).

Last year there were 430 assaults on staff; this year there have been 404 (projection is 430, the same as last year.).

Last year there were six suicides; in 2004 there have been three.

There have been three inmate homicides. Each is a “tragedy” and a “failure”, but when our system – with 110,000 admissions of some 60,000 individuals -- is compared with other systems, ours is “remarkably safe”.

Chair Kreitman asked if comparisons are made with other urban systems, such as Chicago, Los Angeles, and Cleveland. Commissioner Horn said that DOC had been visited by a grand jury from Cook County, which houses 11,000 inmates. He said their report was very complimentary and recommended that “Cook County should do what New York does.” He added that Fulton County (Atlanta) is being placed under a Federal Court monitor. Mr. Wolf noted that the favorable comparison of the City’s jails to other jurisdictions is due in no small measure to the Board and to its Minimum Standards.

Ms. Paley Price said it would be helpful for the Board to review the number of physical plant breakdowns in the past year – where they occurred, why, and where the biggest infrastructure problems are.

Chair Kreitman turned to correctional health issues. Robert Berding, Director, Clinical Services for the Health Department’s Bureau of Correctional Health Services, reported that the proposed new vendor contract has been presented to the Comptroller’s Office. Deputy Executive Director Cathy Potler asked if there are any substantive changes to the contract as compared to the one that ends on December 31, 2004. Mr. Berding said he cannot comment about the contract until it is concluded. Chair Kreitman asked about rapid HIV testing. Mr. Berding said the testing is continuing on a voluntary basis. Ms. Potler suggested that at the next Board meeting DOH make a presentation on rapid HIV testing, and present information on how many inmates have been tested, how many positives were identified, and what the plans are for future testing. Mr. Berding said he would provide the information before the next BOC meeting. Chair Kreitman asked if inmates receive flu vaccinations. Mr. Berding said inmates receive flu shots based upon need and who is most at risk. Ms. Simmons said it would be interesting to know what percentage of inmates received vaccinations. Commissioner Horn said that officers receive flu shots as would the general public; officers are not considered a special category who receive vaccinations because of the nature of their employment. Ms. Paley Price asked about officers who work in intake. Commissioner Horn said the Health Commissioner, Dr. Thomas Frieden, is attentive to the issue. He added that inmates and employees who fall into established priority groups receive vaccinations. Mr. Regan asked if the reason Mr. Berding could not discuss the contract was that it was awaiting registration. Mr. Banks said the Board disagrees with Mr. Berding’s position, and asked that he seek clarification and provide information to the Board.

A motion to renew existing variances was approved without opposition, and the meeting was adjourned at 1:45 p.m.