

**NEW YORK CITY
BOARD OF CORRECTION**

May 10, 2007

MEMBERS PRESENT

Hildy J. Simmons, Chair
Michael J. Regan, Vice Chair
Stanley Kreitman
Richard Nahman, O.S.A.
Alexander Rovt
Paul A. Vallone, Esq.
Milton L. Williams, Jr., Esq.
Gwen Zornberg, M.D.

An excused absence was noted for Member Rosemarie Maldonado, Esq.

DEPARTMENT OF CORRECTION

Carolyn Thomas, Chief of Department
John J. Antonelli, Senior Deputy Commissioner
Stephen Morello, Deputy Commissioner for Public Information
Florence Hutner, General Counsel
Mark Cranston, Deputy Chief of Staff
Ron Greenberg, Director, Office of Policy and Compliance (OPC)
Harry Ahl, Deputy Warden
Angel Villalona, Deputy Warden

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Louise Cohen, Deputy Commissioner
Jason Hershberger, M.D., Assistant Commissioner, Correctional Health Services (CHS)
George Axelrod, Director of Risk Management, CHS
Vivian Toan, Counsel, Health Care Access Initiative

OTHERS IN ATTENDANCE

Harold Appel, M.D., Contract Administrator, Doctors Council
Gabriel Arkles, Esq., Sylvia Rivera Law Project
Robert Calandra, Esq., Committee on Fire & Criminal Justice Services, City Council
Barry Campbell, Fortune Society
Jonathan Chasan, Esq., Legal Aid Society, Prisoners' Rights Project (PRP)
Gilbert Corti, Fortune Society
Maddy deLone, Executive Director, Innocence Project
Chris Faherty, *New York Sun*
Roslynn Glicksman, M.D., Deputy Medical Director, Prison Health Services
Edwin Gutierrez, Fortune Society
Adrienne Holder, Esq., Attorney-in-Charge, Civil Practice, Legal Aid Society
William Hongach, Legislative Policy Analyst, Gov't. Division, City Council
DeAvery Irons, Project Associate, Juvenile Justice Project, Correctional Association

Leticia James, Member, City Council
Martha Kashickey, Public Education Associate, Innocence Project
Miguel Martinez, Chair, Committee on Fire & Criminal Justice Services, City Council
Shannon McCue, Budget Analyst, Office of Management and Budget
Trevor Parks, M.D., Medical Director, PHS Medical, P.C.
Graham Rayman, *Newsday*
Dale Wilker, Esq., PRP
Eisha Williams, Legislative Financial Analyst, Finance Division, City Council
Milton Zelermyer, Esq., PRP

Chair Hildy Simmons called the meeting to order at 9:30a.m. A motion to approve minutes of the March 8, 2007 Board of Correction meeting was approved without opposition.

Chair Simmons presented a report, as follows:

Mindful of much of the discussion heard at last month's public hearing, internal Board discussions over the last several weeks, and the number of people present at this morning's meeting to hear this conversation, the Chair will present a proposal to her Board colleagues, which reflects some of the comments she has received from other Board Members and comments submitted to the Board, as follows:

First, the comment period should be extended for an additional month. The comment period already has been substantially longer than required by public law, but in light of the fact that a variety of people seem to have something to say, the comment period should be extended through the end of June, which is five additional weeks.

Second, at the June 14th meeting, the Board should invite representatives of organizations that testified at the hearing to come and speak more directly to the Board about some of those comments. We cannot invite everyone, so Board Members should submit to Executive Director Richard Wolf and to the Chair names of organizations that you feel would be important to have around this table to have a conversation at the June meeting. The conversation should be to substantively discuss the comments and suggestions that they have with regard to proposals for amending the Standards, not the practice by which the Board is addressing the Standards. This will give us an opportunity to have the conversation more in dialogue rather than in public hearing testimony. It is suggested that, depending on the number of representatives who accept the Board's invitation, the Members be prepared to extend the June meeting for at least another hour or hour and a half, meeting until 11:30 or 12. This will enable the Board to hear from those representatives whose comments have sparked interest in Members' minds.

Third, we will ask the staff to summarize all the written comments the Board has received, relating the comments to each proposal. This will take the staff some time. If we have the conversation in June, the staff should have part of the summer – until July at least – to complete the summary. The Board's July meeting will be at Rikers, which will give Board Members, if they haven't had a chance to do so, to revisit certain situations, circumstances and locations that may relate to some of the Standards and some of the comments. Department representatives will provide whatever accommodation we need to spend as much of that day on Rikers as we need. By the end of July, we will have the report from the staff summarizing all of the comments. Everyone can take August and September to review all of the materials, including the comments that staff have been diligently sending to us. At the Board's October meeting, we will have a

full, formal discussion reviewing the Standards that we have put forward and having the vote on whether to change them, modify them, or whatever else we would propose to do.

I hope these suggestions reflect most of the comments that all of you have shared with me over the last several weeks. This seems to be a reasonable way to proceed that hopefully would make sure that there was no question that the Board is trying to be as serious and deliberative as possible in this process.

Member Stanley Kreitman, chair of the Minimum Standards Review Committee, said that the public hearing was conducted in a wonderful way. He said he learned a lot, and noted that all speakers were given ample opportunity. He said the Board has received dozens of comments and he has read them carefully. Mr. Kreitman said he agrees with the Chair that the time to comment should be extended to give everyone an opportunity to air their views. He said he has changed his mind on some of the issues, based on some of the comments. He said the Committee spent considerable time and effort, worked very diligently, and had a lot of contentious meetings with the Department. Mr. Kreitman said he personally resents one of the speakers who accused the Board of being "lapdogs" for the Commissioner. He said this hardens his stance, noting that there is no need for name-calling. He added that the Board has proceeded in an honest and forthright manner. He said there should be no name-calling at the June meeting. Chair Simmons said it is her hope that there will be a substantive discussion about the Standards. She said if people want to complain about the process, they should have a separate conversation. Member Alexander Rovt said that unfortunately he did not attend the public hearing, but he read Professor Mushlin's speech. Mr. Rovt said that he draws on his background in Europe, coming from countries that used to be communist. He noted that Mr. Mushlin's letter accuses the Board of just working with the Department, and said that of course the Board is here to work and consult with the professionals in the Department. Mr. Rovt said the Board also will talk and listen to the public, but they must treat us with respect. He said he supports Chair Simmons' proposals. Member Paul Vallone thanked Chair Simmons for taking the time to review the Members' comments and points of view. He said he heartily endorses the Chair's proposals. He asked what the process would be if any of the current proposals are amended or if new proposals are added, and whether the Board would need to have another public hearing. Chair Simmons said that, as was always the intention, the Board may make changes to the published proposals during this process without another public hearing, so long as the new language does not materially change what already has been published. She said that substantive change altering the whole meaning would require new publication and a new hearing. She added that new proposals – suggestions for Standards that were not included in this group – would have to be written and be subject to the same process of publication, a comment period, and a public hearing. Chair Simmons said the Board may receive suggestions for Standards it has not considered. She said that Mr. Wolf circulated to the Members a memo, prepared at her and Mr. Kreitman's request, that spoke to some of the issues that were presented at the hearing, that relate to things that actually are covered in other places in City or federal law. She said that while proponents spoke at the hearing of possible Standards relating to these issues, any Standard the Board might create would be redundant to an existing law. She said that, for example, the Americans

With Disabilities Act applies broadly, so DOC is required to comply with it. She said DOC does not necessarily need individual standards speaking to disability rights for inmates. Chair Simmons suggested that the Board deal with the proposals that have been published, and vote on them, moving them forward as the Board chooses. She said the entire process should not be delayed on the prospect that there may be some new proposals as well. She said that new issues may well require a great deal more inquiry on the part of the Board, which should have sufficient time to do so, just as it did with the current proposals. Chair Simmons said there is nothing to stop the Board from proposing additional standards six months from now, then publishing and having a comment period and public hearing. Mr. Vallone said that the Board is in the process, so it might be advantageous, and easier, if something comes up to include it now rather than attempting this again six months from now. Vice Chair Michael Regan said new proposals would require publication and public input. Mr. Vallone said the Board does not yet know. Mr. Wolf said that when the Board votes on what it intends to adopt, the City Administrative Procedure Act (CAPA) requires that final proposals be submitted to the Law Department, which reviews them for final approval. He said that after review, the Law Department could tell the Board it needs to republish. Member Gwen Zornberg, M.D., thanked Mr. Kreitman and the Standards Review Committee for their Herculean efforts, which were undertaken with the best of intentions. She said the Board acknowledges the unwieldy democratic process and thanked Chair Simmons for responding to the Members and extending the deliberative process. Board Member Richard Nahman, O.S.A., noting that he was pleased that the Chair heard the comments of the Members and proposed to open up the process, made the following remarks:

Most of the testimonies received by the Board fault the process as incomplete. Because every meeting was below quorum, no one but the Committee had the opportunity to collectively share our wisdom. We now have the opportunity to do so. As has been pointed out so many times, the only dialogue we have had is with the Department. The other input was monologues or written testimony. We haven't sought input from other sources. For example, several years ago the Board decided to obtain *pro bono* legal services, but we've never used them. We haven't engaged in substantive research with experts in penology to determine what are the current practices. We have failed to consider new issues, either drawn from cases that have been brought before us, for example, discharge planning or education programs, or consent decrees that pointed out issues that need to be addressed. New issues were presented at the public hearing, such as the rights of children of inmates or the needs of the transgendered. The Board has not researched new technologies that are available to address issues that are before the Board for consideration. What are the technologies that are available to monitor inmate telephone conversations? The Board has not researched procedural and operational issues concerning laundry and uniforms. We heard from Fordham Law School that some inmates are forced to do their laundry in the nude, or wrapped in sheets.

What the Board does profoundly and seriously affects the lives of so many correctional staff and inmates. Echoing what the Chair said, the Board should demonstrate its strength and the depth of its courage, integrity and ability to listen

by extending the process for a reasonable amount of time, to obtain all the information and consider or reconsider what has been proposed, and resubmit suggested changes to the Minimum Standards for a more comprehensive process. The Board should make use of the *pro bono* legal services that have been offered, to research and advise the Board on new areas and best practices for inclusion in the Standards, and to offer us objective advice as to how best to address the concerns that have been expressed to the Board.

Chair Simmons thanked Father Nahman. Mr. Vallone thanked Father Nahman for eloquently expressing what several Members have been trying to say. Mr. Vallone asked whether prior to the June 14th meeting, Mr. Wolf and Deputy Executive Director Cathy Potler could meet with some of the participants and prepare a memo so the Members could anticipate what would be presented at the June meeting. Chair Simmons said that all Members should participate in what happens going forward. She urged all Members to make suggestions as to who should come to the June meeting. She noted that some organizations had formed a coalition and perhaps one or two coalition representatives could participate. Chair Simmons reiterated that the June meeting will not be another public hearing, but rather a conversation. She again asked all Members to submit names of potential participants, and said a letter inviting them would be sent. She reminded everyone that participants will be invited to discuss present substantive comments about the proposals. Chair Simmons said she was unaware of the Board hearing complaints similar to that mentioned by Father Nahman, and noted that she was not challenging the veracity of the comment. She said that when people feel rules have been violated or procedures not followed, there is a different forum – a grievance process for the inmates. She said she wants the June conversation to be about the Standards, adding that the Standards are not the day-to-day management of every issue in the Department – the Standards set broad policy. Father Nahman said issues must be investigated because if true, that would influence how he considered the laundry and uniform standards that have been proposed, and DOC's ability to provide what it says it will provide. Chair Simmons said the Field Operations Unit can provide some information on the issues. She suggested that the Board get the facts before it assumes any particular set of circumstances. A motion to approve the Chair's proposal was made, seconded, and approved by all Members except Father Nahman, who abstained, explaining that he needs more time to process the Chair's complex proposal.

Chair Simmons asked that by the close of business on May 17th, Members suggest representatives of organizations to join the June 14th meeting. She added that the agenda for the June meeting will be the conversation. Father Nahman asked who will make the final decision as to who will be invited to the June meeting. Chair Simmons said she expects there will be overlap in suggestions, and the Board should wait and see who is suggested. She said her goal is not to preclude anyone and to accommodate as many as possible, but she does not think the Board needs more than one representative from a coalition or organization. She said representatives should be prepared to speak on behalf of their members, and she again asked organizations to send one representative who can speak on organization's issues. Chair Simmons said she would be happy to circulate a master list of those who are suggested, so there is an open process. She added that Members could copy all other Members with their suggestions. Vice Chair Michael

Regan said the June meeting will be an open meeting. Chair Simmons agreed. The Chair recognized Milton Zelermyer, from the Legal Aid Society's Prisoners' Rights Project (PRP). Mr. Zelermyer asked the Board to consider PRP's request that the June meeting and the October meetings be conducted in a larger space to accommodate people who wish to attend. Chair Simmons said that at the moment the Board does not have alternative space, and the Board will not return to public hearing space. She said if the staff can find larger space within this building, we will try to do that. She said space limitations are exactly why each organization should send one representative rather than many. Father Nahman asked that the Board direct BOC staff to investigate getting a larger meeting space. Chair Simmons said the staff will do so.

Chair Simmons recognized Council Member Miguel Martinez, Chair of the Council's Committee on Fire and Criminal Justice. Council Member Martinez thanked the Board for extending the comment period. He said that currently, there are reforms taking place in various City agencies and the procedures of those changes are crucial. He said that the Buildings Department had open dialogues between the agency and experts in the field, which were critical for the important changes that were adopted. He said this also is true for the Fire Department, where changes in procedures and the City's Fire Code. He said the same is true here, noting that having one public hearing and a year and a half of dialogue with the Department of Correction is not equitable. Council Member Martinez said there should be more input from experts. He said that having one public hearing at which many people were unable to speak due to time and space constraints is not a good sign. He said the Board is not under a deadline from either a State or City mandate for changes, and this gives the Board the leverage to open up the process. He said that if the Board is going to have an additional meeting with groups that already have testified, this will be an opportunity to have dialogue with experts and advocates. Council Member Martinez said he is very concerned about the changes that have been proposed. He said that at a time when the Council has passed legislation to ensure that every individual who seeks services from the City has translation services, we're sending a message to the Department that we are limiting translation services to inmates. He said that monitoring inmates' communications is a very delicate issue, and he asked the Board to reconsider the issue. He said that more public comments are needed. Chair Simmons thanked Council Member Martinez for his comments. She said that everyone who came to the public hearing and wished to testify did so. She said no one was turned away, and the record should not suggest that this was the case. Chair Simmons said that there seems to be considerable confusion about the proposal regarding language. She said it never was anyone's intention to eliminate translation services, and the only intent of the Board was to recognize that thirty years after the standard was written, there are more languages represented among the inmate population and to specify one language to the exclusion of all others did not seem to be a responsible thing to do. She said it is clear that the wording was misinterpreted, and we heard that from the comments and feel badly about that. She said it never was the intention of the Board to limit translation services for any inmate at any time for any reason. Chair Simmons said the Board has received more than forty written comments, which are particularly helpful because they provide documents to refer to. She said that if, at the end of the process, the Board determines it needs more time, then the Board will take more time. She said that during the year and one half that the process has been going on, the Board has listened to a variety of people, and this is

still part of the process. Mr. Regan said that Council Member Martinez' points were well-taken and the Board needs to look for a larger space. He said that if the Board feels the need to extend the process further, that is something we will consider. He added that he looks forward to meeting with Council Member Martinez and to hear other concerns he may have.

The Chair recognized Maddy deLone, Executive Director of the Innocence Project. Ms. deLone said she does not speak for the Coalition to Raise the Standards in New York City Jails, but is part of it. Ms. deLone said she probably does speak for the Coalition when she says expresses her appreciation for the Board's decision to extend the process. She said that some of the members find the one-sided process of written communication very difficult. She said she hopes that in the Board's discussions in June, it will have a "back-and-forth" with community members, acknowledging the range of abilities and communication comfort levels among them, and taking sufficient time to hear from those people who are most directly affected by the Standards.

Chair Simmons called for a report from the Health Committee. Dr. Zornberg expressed her regrets, noting that she had every intention of being at the public hearing, but extreme weather conditions interfered with her travel. She said there had been a Health Committee meeting, and Mr. Rovt was a key member of the discussions. She said the Committee discussed its concerns about working with DOC and DOHMH to protect the inmates in close custody. Dr. Zornberg said that the Committee discussed ways to improve the process, in light of constant changes in the system and in the face of fiscal belt tightening. Mr. Vallone said the Committee was in agreement that the procedures when an inmate is placed in close custody would be reviewed. Dr. Zornberg said the Committee contacted DOHMH on this subject, and asked that its representatives address the issue. DOHMH Assistant Commissioner Jason Hershberger, M.D., said that the issue of close custody has to do with managing the health risks associated with segregation. He said it is the opinion of DOHMH that segregation of any type – punitive or protective – carries with it some inherent health risks, particularly of self-injury or suicide. He said that DOC has chosen a model of protective custody that requires segregation and DOHMH has looked in the Standards and its own policies as to how to best mitigate the risks. Dr. Hershberger said that any inmate going into protective segregation is evaluated for placement by a mental health professional. He said that the professional may order a suicide watch or another option. He added that all inmates in segregation are evaluated to determine whether they will require ongoing mental health support. Dr. Hershberger said that even inmates who do not require ongoing mental health support are seen by a clinician on daily rounds, and if the clinician observes signs of deterioration or decompensation, the inmate is referred to mental health. He said these procedures help to mitigate the risks of segregation, but do not interfere with the urgency of placing inmates in such a setting for their own protection. Father Nahman said that the comments suggest that segregation itself is detrimental to mental health. He asked for the difference in experience for someone in punitive segregation versus someone in protective segregation. Chair Simmons said DOC should answer the question. Senior Deputy Commissioner John Antonelli said that the majority of inmates in close custody are there voluntarily, and welcome the protection. Chair Simmons asked how many inmates are in protective segregation. Mr. Antonelli said 28, and 25 or 26 are voluntary. Deputy Chief of Staff

Mark Cranston said it is not 23-hour lockdown, because inmates are allowed out of their cells to go to the dayroom. He said they go to recreation and showers, and are let out of their cells as much as is possible. He added that punitive segregation is 23-hour lockdown. Mr. Regan said there is a big difference between punitive segregation and close custody. Mr. Vallone asked if a medical or mental evaluation before someone is going to be placed voluntarily into protective segregation. Dr. Hershberger said yes. He said DOHMH presumptively evaluates all inmates who are relatively new to the system – four or five days. Mr. Vallone asked for the time frame from the time an inmate is admitted to protective segregation to the time an evaluation is done to determine whether the placement should continue. Deputy Warden Cranston said that if an inmate is in voluntary placement and changes his mind and wishes to be returned to general population, an immediate review is conducted. He said for involuntary placements, a review is conducted every 28 days. Mr. Vallone asked what happens when a decision is made that the inmate no longer can manage in segregation. Dr. Hershberger said that if the inmate is in danger of self-harm, they may be placed on suicide watch where an officer watches the inmate continuously, one-on-one, 24-hours per day. He said if that is not enough to provide safety, the inmate is transferred to a hospital setting. Dr. Zornberg said that in the high-risk category, whether or not an inmate has known mental health history, the inmate is evaluated by mental health. She said the Committee will continue to examine this process.

Chair Simmons suggested that when the Board visits Rikers Island in July, some Members should make a point of seeing the facilities that have been created. She said she saw them a couple of weeks ago. She added that if someone wishes to go before July, they should speak with Mark Cranston to make arrangements.

Mr. Antonelli said that at the last Board meeting, Commissioner Horn reported on the Borough Capacity Plan. Mr. Antonelli said the RFEI (Request for Expressions of Interest) for the Brooklyn Detention Complex was issued this week. He said the City has been enjoined by Federal Bankruptcy Court from proceeding with the ULURP for Oak Point. He said ULURP must be completed before the City may acquire property by purchase or condemnation. Father Nahman asked about the Prison Rape Elimination Act activities mentioned by DOC several months ago. Deputy Warden Cranston said DOC has been informed that the second round of surveys are about to begin at two Rikers island facilities. He said no findings have been issued yet, and promised to keep the Board posted.

Kennith Armstead, the Board's Director of Field Operations, reported that training is ongoing, and has included two sessions at the DOC Training Academy on jail operations and discharge planning, site visits to two State prisons – Taconic and Sing Sing. He said staff received transgender issues training, training in the Inmate Information System, computer skills training, and a consultant made some observations about the Unit. He added that a new field representative has been hired.

A motion to renew existing variances was approved without opposition. Chair Simmons asked the Members to remain for a brief executive session to discuss personnel matters. Father Nahman said he had made the observation that the Board had been

offered *pro bono* legal services to assist with the Standards revision process. He said he would like the Board to direct BOC staff to pursue that and bring back information. Father Nahman's motion was seconded. Chair Simmons said she did not know who was offering *pro bono* services. Mr. Wolf said it was the Paul Weiss law firm. Chair Simmons asked Mr. Wolf to speak with the firm and determine what they are prepared to offer and report back to the Board. A motion to adjourn was made, seconded, and approved without opposition.

The public meeting adjourned at 10:25 a.m. The Board convened in executive session until 10:40 a.m.