

**NEW YORK CITY
BOARD OF CORRECTION**

June 14, 2001

MEMBERS PRESENT

Canute C. Bernard, M.D.
Stanley Kreitman
David Lenefsky
Barbara A. Margolis
Father Richard Nahman, O.S.A.
David A. Schulte

Excused absences were noted for Acting Chair John R. Horan and Board Member Louis A. Cruz.

DEPARTMENT OF CORRECTION

William Fraser, Commissioner
Gary Lanigan, First Deputy Commissioner
Robert Davoren, Chief of Department
Antonio Figueroa, Deputy Commissioner
Roger Jeffries, Deputy Commissioner
Sandra Lewis Smith, Deputy Commissioner
Elizabeth Loconsolo, General Counsel
Robert Dash, Bureau Chief, Security
William Hurley, Bureau Chief, Inspectional Services and Compliance Division (ISCD)
Roger Parris, Assistant Commissioner
Elizabeth Myers, ISCD
Captain Darryl Harrison

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Executive Director
Michael Tannenbaum, Chief Operating Officer
Patrick Brown, M.D., Medical Director
Arthur Lynch, Mental Health Director
George Axelrod, Chief Risk/Quality Officer
Deb Hall, Chief Financial Officer
John W. Russell, Assistant Chief Operating Officer
Robert Berger, Director, Service Delivery Assessment

OTHERS IN ATTENDANCE

Amy Avila, Office of the Public Advocate
A. Sasha Bardey, M.D., Director, Mental Health, Prison Health Services (PHS)
Jonathan Chasan, Prisoners' Rights Project, Legal Aid Society
Don Doherty, Vice-President, PHS
Regis Dorsch, Vice President, PHS
Andy Grossman, Assistant Director, Finance Division, City Council

Eva Hatzioannou, Intern, Finance Division, City Council
Andrew Krause, Mayor's Office
Len Levitt, *Newsday*
Eric Lipton, *New York Times*
Sara Manaugh, Intern, Prisoners' Rights Project, Legal Aid Society
Trevor Parks, M.D., Medical Director, PHS
Becky Pinney, Project Manager, PHS
Richard Steier, *The Chief*
Dale Wilker, Prisoners' Rights Project, Legal Aid Society

Board Member David A. Schulte called the meeting to order at 1:03 p.m., noting that Acting Chair John Horan was ill and asked him to preside. Minutes from the May, 2001 meeting were adopted unanimously. Mr. Schulte called for reports from the Members.

Board Member David Lenefsky noted that he had reviewed cigarette sales information from the Department of Correction, and was surprised that DOC sold 114,000 packs of cigarettes per month. He said that the City has had enough time to address labor negotiations, and added that the quantity of cigarettes sold raised the important issue of secondary smoke in the facilities. He added that he hoped the Department would look at the issue of smoking with a "fresh sense of urgency".

Mr. Schulte raised the issue of constructing a new Central Punitive Segregation Unit (CPSU). In particular, he mentioned DOC's plan to build "recreation rooms" instead of traditional outdoor recreation yards. Mr. Schulte expressed his doubts about recreation rooms with one window, and said that "the wheel already has been invented" by DOC, at the Manhattan Detention Complex (MDC). He said that Deputy Executive Director Cathy Potler had taken pictures of a recreation room at MDC into which flows sunlight and fresh air, solving the "problem that the proposed room doesn't solve". Mr. Schulte urged the Department to look again at the MDC model, noting that DOC may find it difficult to get approval for the proposed room, which does not meet the Standards." Mr. Schulte then passed around pictures, noting that the design prevented communication between recreating inmates and other inmates in nearby housing areas. He added that the architects' proposal that he had seen does not, in his opinion, provide sufficient access to sunlight and fresh air. Mr. Schulte said that the proposed design prevents direct access to sunlight because there is no opening "above". He added that the Department might have difficulty obtaining a variance from the Board.

DOC Commissioner William Fraser said that DOC had looked at some suggestions from the Board and concluded either that they were too expensive or raised security concerns, particularly with respect to a suggestion that the recreation rooms be sited at the end of the housing corridor. He said that an objective of CPSU is to limit contact between inmates and officers, and among inmates, as much as is possible. The Commissioner said that an important reason to attach recreation areas to the CPSU building is that at both OBCC and earlier at the James A. Thomas Center (JATC), CPSU inmates in the recreation yard could yell and communicate with hand signals to inmates in the housing areas. He said these communications facilitated "termination-on-sight" orders and stabbings and slashings. Commissioner Fraser said that he will look at the MDC model, but said that the Department "feels we are in compliance", noting that "we do have daylight and we do have a sufficient amount of air". He noted that "the issue of sunlight is there, but it [the design] does meet the State Commission of Correction Standards". He added that the exact design already is in operation in Syracuse. Commissioner Fraser said that although DOC will look at the MDC model, the design "has been completed" and ground-breaking is scheduled for the beginning of July. He said that to change design now "would be pretty awkward and expensive and would delay prohibitively" construction.

Executive Director Richard Wolf said that the Board had told the Department for many months that it wished to be informed as soon as plans were finalized. He said that as recently as a few weeks ago, the plans had not been finalized and therefore could not be shared with the Board. Commissioner Fraser countered that DOC had been telling BOC "for quite a while now

exactly what the design was". He said that DOC had gone to DDC to see whether BOC's suggestions - including alternating the locations on each floor of the recreation terraces and locating the areas on the corners of the building - could be incorporated into the design. The Commissioner added that he told the Board that DOC would change the design if doing so was not "cost prohibitive". Mr. Schulte mentioned an idea suggested by Carl Niles, the Board's Director of Field Operations, that the recreation space be located on the roof of the building. Commissioner Fraser said this would defeat DOC's goal of limiting the distance that CPSU inmates would need to be escorted to and from recreation. Mr. Wolf added that Mr. Niles had proposed installing a secure elevator in the space currently reserved for each floor's recreation area. CPSU inmates would be escorted the same distance from their cells to the elevator, and then transported to the roof where they could take recreation in individual recreation spaces. Commissioner Fraser said that elevators were "tremendously expensive", required frequent maintenance, and were unreliable.

Board Member Father Richard Nahman said that the Board has set Minimum Standards and is telling the Department that the current design does not meet the Standards. He said that if the building is constructed, it still will not meet the Standards. He said that the City would then face additional expenses to bring the facility into compliance. Commissioner Fraser said that the Board had not yet said that the design does not meet the Standards. Mr. Lenefsky said that DOC does not want the Board to take a vote, and that this is the purpose of the discussion. He then suggested that the discussion be continued in DOC's or BOC's office, where all can look carefully at the plans and see whether an accommodation can be reached. Mr. Schulte said that this must be done soon, as DOC has announced plans to begin construction at the beginning of July. Mr. Lenefsky suggested a meeting next week. Mr. Schulte, noting that he had been "a friend of the Department for the forty years I've been here", said that the proposed recreation area is a "shoe box room", with one open end. He said that the Board will have to decide whether this meets the Standard requirement of providing direct sunlight and fresh air. Mr. Schulte said that if the Board determines that the design does not meet the Standard, DOC will be in a "tough situation". Commissioner Fraser said that each space is larger - 10 feet wide, 22 feet long, and 10 feet high - than the individual recreation spaces available at the current CPSU (8 feet by 12 feet by 8 feet). Mr. Schulte agreed that further discussions should take place.

Mr. Schulte next raised the issue of a recent escape. He said that photographs taken by Mr. Niles revealed that the floor of the modular dormitory bathroom was "disintegrating", that this phenomenon is apparent in many such bathrooms, and that it raises the issue of the continued viability of all modulares. Mr. Schulte said he has observed many plywood floors that have been patched with more plywood. He said that the escapee apparently unscrewed a piece of plywood patch, dropped four feet to the ground, penetrated another piece of plywood and was outside. Mr. Schulte said that the escape suggested that putting inmates with high bail in areas of minimum security was inadvisable, and that the modulars' "time is up". He suggested that DOC take whatever steps are necessary to reopen the James A. Thomas Center (JATC), which contains cell housing and has been extensively renovated. Commissioner Fraser responded that DOC has a comprehensive modular replacement plan and that there is federal court involvement on the issue. He added that the inmate met the classification criteria for the housing area, and noted that the criteria had been approved by the federal court. The Commissioner said that a "red alert" continues on Rikers Island. He said that DOC had not yet classified the incident as an escape, and summarized the incident as follows:

At approximately 3:30 a.m., two Transportation Division officers who were returning prisoners to a facility saw someone running along inside a fence line. An officer followed the person over a barbed wire fence, and the second officer radioed a "red alert", which was immediately implemented. Island Security patrol vehicles surrounded the area. The inmate climbed over a fence back inside the area around Mod 5, after which the pursuing officer lost sight of the inmate. Hundreds of officers are participating in the search. Canine units from both DOC and the Police Department are involved. The Rikers Island bridge was closed and harbor patrols are in place.

Commissioner Fraser said DOC feels the inmate may be hiding somewhere on Rikers Island. He added that DOC's Investigation Division, the Inspector General, and the NYPD all are investigating in case the inmate has gotten off of the Island. Commissioner Fraser apologized to the City, and said that when the inmate is back in custody, the situation will be thoroughly evaluated and steps will be taken to prevent a recurrence. He added that JATC is unavailable, as it is undergoing major renovations to the day rooms and showers, and pantry areas must be added for "in-house feeding". Mr. Lenefsky asked if issues had arisen regarding the performance of uniformed staff. Commissioner Fraser said that one officer has been disciplined so far.

Mr. Schulte raised the issue of an inmate at the Adolescent Reception and Detention Center (ARDC) who was seriously injured when, during a lock-out period, he entered his cell and was followed by four other inmates, who assaulted him. Mr. Schulte asked what can be done to prohibit inmates from entering another inmate's cell during lock-out. Commissioner Fraser said that no one is allowed in another's cell at any time. He said that individual lock-out options are not feasible because the process would take too long. He said that the victim is in Bellevue Hospital in stable condition, and four inmates were arrested after having been identified by the "A" officer who was conducting the option.

Mr. Wolf reported that a death that occurred two days ago at the Anna M. Kross Center (AMKC) was ruled a homicide by the Medical Examiner. The Commissioner said that the Medical Examiner said that the inmate died from internal bleeding from a laceration to the spleen, and had an enlarged liver with cirrhosis. Board Member Stanley Kreitman asked about the circumstances surrounding the assault. The Commissioner said the matter is under investigation, but reported the following:

On June 11th the decedent was involved in a fight with another inmate outside the clinic, in AMKC's main corridor. Officers broker up the fight without using force. Injury reports were written. The inmate was taken to the clinic, but refused treatment. No sign of injury was visible. Later that day, in his cell, the inmate fell over and two inmates called staff who brought the inmate back to the clinic. He then was taken to the hospital where he died.

Board Member Dr. Canute C. Bernard noted that patients who suffer blunt trauma injuries must receive medical attention promptly. Deputy Executive Director Cathy Potler said that DOC records indicate that the fight occurred at 10 a.m. on June 11th, and that at 4:35 a.m. the following morning, medical staff were called to the housing area. She said that records indicate the inmate arrived at the clinic at 5 a.m., but that EMS was not called until 5:45 a.m. She asked why there

was a 45 minute delay before EMS was called, especially inasmuch as the inmate's blood pressure was very low. Correctional Health Services (CHS) Executive Director Ernesto Marrero said that CHS had not yet reviewed the chart in its Mortality and Morbidity Review process, but was currently being reviewed by the medical directors of Prison Health Services (PHS) and CHS.

Mr. Schulte reported that an officer's gun accidentally discharged on a bus transporting prisoners to court. He said that when the officer was disciplined by the Deputy Warden for Transportation, this led to a "most unusual" and dangerous chain of events. Mr. Schulte said that there was reportedly a "union reaction" against the Deputy Warden, and that vandalism occurred apparently as retaliation against the Deputy Warden "following the letter of the law". He asked for a report from DOC on the situation. Commissioner Fraser disagreed with Mr. Schulte's characterization that the Deputy Warden was "following the letter of the law". The Commissioner acknowledged that there was some vandalism, which he characterized as minor, and said that each union was accusing the other. He said that when it learned of the vandalism, DOC notified the Department of Investigation, and DOC's investigators were out at night, walking the yards where the buses are parked. He said that cameras were installed in the bus yards, and the matter was addressed at roll call at each facility. Mr. Schulte asked if Deputy Warden Skinner was disciplined for insisting that the officer whose gun discharged be disciplined. Commissioner Fraser said he was unaware of any discipline. Mr. Lenefsky asked about the discharge of the gun. Commissioner Fraser said the discharge was accidental and that the officer was disciplined. He said that the officer should have loaded his weapon at the sandbox in front of the facility, as is procedure, rather than on the bus. Mr. Kreitman noted that that aspect of the situation had not been reported.

Mr. Schulte said that another incident occurred, in which two captains allegedly had an argument inside a facility, and one allegedly pulled his gun on the other. Mr. Schulte asked how this could be possible, if everyone is supposed to deposit guns at the entrance to the facility. Commissioner Fraser said that the captain did not enter the "inside" of the facility; he went to the security office where there are no inmates. The Commissioner said that there was no "argument", and that "there was no gun purposely pointed at anybody". He added that the Brooklyn District Attorney's Office is investigating a possible menacing charge, which the Commissioner does not believe will be sustained. He said that the captain was moved to another facility and his firearm was taken from him. Thereafter, when additional evidence was developed, the captain was placed on "modified duty" and the District Attorney was asked to investigate. The Commissioner said that the captain was suspended for two weeks (five days with pay, as required by law). He added that the captain has been restored to full duty, although with firearm restrictions. Mr. Lenefsky asked whether the captain should have had a gun in the security office. Commissioner Fraser said that guns are stored in the security office, and added that it had not been determined whether the gun was loaded. He said that "normally you don't take your gun into that area", but that the captain was going to retrieve a holster for the firearm.

Mr. Lenefsky asked Mr. Marrero for a report on personnel changes and delivery of correctional health services in the last month. Mr. Marrero reported that the previous PHS program director resigned and has been replaced by Becky Pinney. He said that Ms. Penney has been involved with the PHS contract from the beginning, participated in the contract negotiations regarding staffing, and trained some of the providers. He added that she served at one point as deputy program director. Dr. Trevor Parks, formerly PHS's deputy medical director, has been

promoted to medical director. Noting reports of continuing problems, Mr. Lenefsky asked about PHS's ability to provide access to off-Island specialty clinics. Mr. Marrero said that protocols have been written to ensure that procedures are standardized at all buildings, and to promote communications among buildings, so that inmates who are transferred are not "lost". Mr. Lenefsky asked if there have been personnel problems with specialty clinic schedulers. Mr. Marrero said that there have been some problems that have been addressed by PHS, but that problems and related assessments are not unique to specialty clinic schedulers. Mr. Wolf asked for a description of the remaining specialty clinic access problems. Mr. Marrero said that the problems are not "substantively driven", noting that there are more clinics on-Island than in the past, and that clinic times for neurology and physical therapy have been increased. He said that the Performance Indicators changed the way access is measured, and access actually has improved - the problem is with the process of scheduling itself, and this varies among facilities. Mr. Marrero said that this is why procedures are being standardized. Mr. Wolf asked whether there was a correlation between the problems and personnel turnover, and asked what is being done to reduce PHS staff turnover. Mr. Marrero said that PHS's new management is scrutinizing staff more closely than in the past. Mr. Lenefsky asked about the Performance Indicators (PIs). Mr. Marrero said that a report on 34 of the 40 PIs will be available in a few days, noting that five PIs are reviewed annually and one was not reviewable. He said that although the performance levels for many PIs exceed 90%, there nonetheless will be failures. He added that in some areas, PHS's performance is better in the first quarter of its contract than was the previous vendor after three years. Mr. Marrero said that chart reviews and in-clinic monitoring occur every week, and allow for prompt remediation of problems that are identified. Mr. Lenefsky said that Ms. Potler submitted some questions to Mr. Marrero. Mr. Marrero said that, but for one question regarding specialty clinic numbers, CHS has been prepared to answer the questions but did not want to do so "piecemeal". He said he could provide written answers to five of the six questions later today.

Mr. Lenefsky again expressed confidence in Mr. Marrero, but observed that he was becoming increasingly concerned that the delivery of services is not where it should be after six months with a new vendor. He said that the Board will be looking even more closely at service delivery because the data is not as "hopeful" as it should be. Mr. Marrero said that he welcomes the Board's assistance in monitoring service delivery. He said that he is confident the Board will be satisfied that the new vendor is being monitored more closely than any vendor has been before. Mr. Marrero said that elements of the PHS contract are designed to improve service delivery, and cited requirements for mandated medical posts and fines for failure to staff them. He said that this has resulted in fewer doctors being moved from building to building, as was the case under the previous vendor, and that this requirement improves continuity of care. Mr. Marrero said that PHS is highly motivated to be successful in its contractual relationship with the City and that in meetings with PHS's corporate leadership, Mr. Marrero was assured that PHS is committed to being responsive to any concerns and criticisms regarding service delivery. Mr. Kreitman asked whether Mr. Marrero was convinced that after six months, PHS is living up to aspects of the contract. Mr. Marrero said that PHS is not doing so, but he is very pleased with PHS's responsiveness to CHS's concerns, especially as contrasted to the previous vendor.

Ms. Potler said that a 19 year-old inmate committed suicide at the Brooklyn House of Detention on May 22nd. She said this was the first suicide of 2001, and asked for report.

Commissioner Fraser said that he understood that the decedent, who had no previous history of mental illness and was charged with robbery, made some calls to his family to seek bail money. The Commissioner said that, upon hearing that his family could not provide the needed bail money, the inmate returned to his cell and hanged himself with a shoelace. He said that the preliminary investigation indicated that both uniformed and medical staff responded promptly and appropriately. Mr. Marrero said that this information was consistent with what CHS knew, but added that the Mortality and Morbidity Review was scheduled in two weeks. Mr. Wolf said the Board would follow up at its July meeting.

Mr. Kreitman asked how many deaths there had been in the facilities, aside from suicides, and how the total compared with last year and the year before. Mr. Marrero said he would provide the information in writing to the Board. He said that when he last looked at the data, in May, that this year's total was similar to last year's total. Commissioner Fraser said that from January 1st through June 10th there had been twenty deaths, as opposed to sixteen for the same period last year. Mr. Marrero said that some deaths that occur at long-term facilities such as Goldwater are not preventable.

The Board voted unanimously to renew all existing variances. The meeting was adjourned at 1:55 p.m.