

**NEW YORK CITY
BOARD OF CORRECTION**

October 10, 2002

MEMBERS PRESENT

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

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

DEPARTMENT OF CORRECTION

William J. Fraser, Commissioner
Gary Lanigan, First Deputy Commissioner
Steven Conry, Bureau Chief, Security
Leroy Grant, Bureau Chief, Inspectional Services & Compliance Division (ISCD)
Thomas Antenen, Deputy Commissioner
Roger Parris, Deputy Commissioner
Elizabeth Loconsolo, General Counsel
Elizabeth Myers, 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

OTHERS IN ATTENDANCE

Chastity Engersol, NYU
Becky Pinney, Project Director, Prison Health Services
Trevor Parks, M.D., Medical Director, Prison Health Services
Jacqueline Riley, Finance Division, City Council
Dale Wilker, Prisoners' Rights Project, Legal Aid Society

Chair Stanley Kreitman called the meeting to order at 1:05 p.m. A motion to adopt minutes from the Board's September 12, 2002 meeting passed without opposition.

Chair Kreitman, noting that the jails are at 98.3% of capacity, asked DOC Commissioner William Fraser whether the Department was headed for an overcrowding problem and, if so, what DOC will do to avert one. Commissioner Fraser said that the census is 14,700, a "seasonal" increase. He noted that "Operation Spotlight", the persistent misdemeanor program initiated by the Mayor, has not had a major impact on the census thus far. He said that the program could result in a census of 15,000, which DOC feels it can manage. Commissioner Fraser said that being at 98.3% of capacity is a function of bed consolidation and represents good management, because it allows DOC to close housing areas and reassign officers, thereby reducing overtime costs. First Deputy Commissioner Gary Lanigan said that if the population were to increase by 300, DOC would reopen the south tower of the Kerik Complex (BBKC) in Manhattan. He added that DOC has adequate excess capacity. Chair Kreitman asked whether the NYPD notifies DOC when it begins a narcotics initiative. Commissioner Fraser said that DOC has worked cooperatively with NYPD in the past. He noted that the City's Criminal Justice Coordinator acts as liaison among agencies to ensure coordination. Member Jane Paley Price asked the Commissioner what he meant by a "seasonal increase". He said that the number of arrests fluctuates at different times during the year, and the inmate population increases or decreases in response to arrest activity. Board Member Father Richard Nahman asked whether the current population increase was affecting DOC's budget. Commissioner Fraser said that the budget was not affected, because DOC's budget took into account "the highs and the lows".

Chair Kreitman asked the Commissioner to discuss the *Benjamin v. Fraser* decision, of which he was critical. He invited DOC's General Counsel Elizabeth Loconsolo to respond as well, and asked whether DOC would appeal the decision. Noting that yesterday there was a report of someone grabbing an officer's gun and discharging it in a court room, Chair Kreitman asked whether the report illustrated the issues involved in the case. Commissioner Fraser said that the report is somewhat related to the issue, although not directly. He said that the case involved inmates being put in "Red ID" status. The Commissioner added that this status is given to any inmate who, while in jail, has been found, after a due process hearing, to be a weapons carrier or a "stabber or slasher". He noted that, as part of DOC's violence reduction initiative, these inmates are restrained with rear handcuffing, particularly when they travel outside of a facility, such as to court. Commissioner Fraser said that the special restraint procedures have reduced stabbing and slashing incidents and assaults on staff. He said that DOC believes that the decision is a very dangerous one: it requires that the restraints be removed for at least ten minutes every two hours. The Commissioner gave an example:

Inmates may be in court for four hours. Uniformed staffing in the courts is very low. If twenty inmates are in a court area, and if the inmates do not want to be restrained, staff will be confronting an "anticipated use of force". If each of twenty inmates must be taken out of restraints twice, that equals forty "moves" - interactions that can result in violent situations in which people will be hurt.

The Commissioner said that he doesn't understand the decision, particularly when the

Department is attempting to reduce staff interactions with inmates - especially those who have been proven to be violent - in an effort to reduce violence. He said that the same situation applies in the jails. The Commissioner said that DOC "dropped the ball" with respect to medical chart reviews of inmates who were going into red ID status, but the problem was remedied before the parties went into Court. He said that the decision puts medical staff and other inmates at risk, because instead of just reviewing the medical chart, the inmate must be brought to the medical provider to determine whether red ID status is contraindicated. Commissioner Fraser said that this will overload clinic congregate waiting areas with violent inmates, who will meet other prisoners, and have additional contacts with correction officers and medical personnel. He said that he hopes Judge Baer will rethink his decision, because this is a safety and security issue. He noted that the decision requires that each red-ID-status inmate's restraints must be removed for at least ten minutes, and more if an inmate so requests and it is "reasonable" to do so. The Commissioner said that no inmate will say, "Put me back in the handcuffs," so the issue will become what is "reasonable" and who decides - DOC, court monitors, or the Judge. He said that DOC and the Law Department are looking at all options. Chair Kreitman asked BOC Executive Director Richard Wolf to distribute the decision to the Members so the Board could decide whether it wished to take a position on the matter. Commissioner Fraser said that the argument against prolonged periods of enhanced restraints is that they are injurious to the restrained inmate. He said that he was unaware of any situation in which an inmate was severely injured as a result of being restrained for several hours. He said that attorneys for inmates have reported that their shoulders were numb, but this will happen to anyone who sleeps on their arm at night, and the numbness disappears when blood flows to the arm. He said this may not be a serious enough injury to be a constitutional violation. Commissioner Fraser said that if someone is severely asthmatic, a medical provider may determine that red ID restraints are contraindicated. He said that there was no showing in Court of serious injuries to a significant number of prisoners, especially given the number of prisoners who have been transported in this manner. The Commissioner said that "irreparable harm" will be done not to red-ID inmates, but to staff who must subdue them, and to other inmates who will be injured if red-ID inmates are not in restraints. Father Nahman said that he was in sympathy with the Commissioner's comments, and asked whether the Board could be of assistance to DOC in this matter. The Commissioner said that he would get back to the Board once a determination is made as to how DOC will proceed. Ms. Paley Price said that she assumed the medical providers were raising concerns as well. Commissioner Fraser said that the medical providers are concerned with the health of the inmates, but that he is sure they are concerned about dealing face-to-face with red-ID inmates more often than is necessary.

Chair Kreitman mentioned that in September, there was a sexual assault on an inmate. He asked the Commissioner to report publicly to the Board as much information as he could. Chair Kreitman added that if some of the information had security implications, the Board would have a brief executive session at the end of the public meeting. The Commissioner said that the matter is under active investigation by the District Attorney's office. He asked to present the information in executive session. Chair Kreitman agreed, as did the other Members present.

Ms. Paley Price asked whether there had been any other violent incidents in the last month. Commissioner Fraser said there was a slashing this morning at the George Motchan

Detention Center, involving three Bloods inmates in the homosexual housing unit. He added that the perpetrators have been identified, but the investigation continues to determine whether the incident was a "hit" from outside the jail. Commissioner Fraser said that overall, violence is down and the rate of "A" uses of force is down 12%.

Chair Kreitman asked Correctional Health Services Executive Director Ernesto Marrero to discuss the health vendor. Mr. Marrero said that he continues to be satisfied with its performance. Chair Kreitman asked if Mr. Marrero could provide information on hospital runs. Mr. Marrero said that the information is available from DOC. He noted that DOC and CHS have a joint committee to reviews hospital runs at the facility level. Noting that hospital runs are expensive, Chair Kreitman asked Mr. Marrero to bring the statistics to a future meeting, and Mr. Marrero agreed.

Bureau Chief Leroy Grant requested that the Board renew all existing variances. A motion to that effect was adopted by all Members present. Chair Kreitman adjourned the public meeting at 1:25.

The Board convened in executive session with members of the Department until 1:35 p.m.