

NEW YORK CITY
BOARD OF CORRECTION

January 16, 2003

MEMBERS PRESENT

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

Excused absences was noted for Members John H. Banks III and Fredrick J. Patrick.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Gary Lanigan, First Deputy Commissioner
Leroy Grant, Bureau Chief, Inspectional Services & Compliance Division (ISCD)
Steven Conry, Bureau Chief, Security
Thomas Antenen, Deputy Commissioner
Florence Hutner, General Counsel
Judith LaPook, Chief of Staff
Elizabeth Meyers, Director, ISCD

HEALTH & HOSPITALS CORPORATION - CORRECTIONAL HEALTH SERVICES

Ernesto Marrero, Jr., Executive Director
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*
Dale Wilker, Legal Aid Society, Prisoners' Rights Project
Sara Goonan, Analyst, Office of Management and Budget (OMB)
Dan Janison, *Newsday*
Michele Kalafer, City Council, Legislative Policy Analyst
Tara Martin, Director, Legislative Affairs for Council Member Yvette Clarke
Trevor Parks, M.D., Medical Director, Prison Health Services
Jackie Riley, City Council, Finance Division
Russell Unger, City Council, Legislative Attorney

Chair Stanley Kreitman called the meeting to order at 1:10 p.m. A motion to adopt minutes from the Board's December 12, 2002 meeting passed without opposition.

Chair Kreitman welcomed new DOC Commissioner Martin Horn, and wished him well. Chair Kreitman asked about plans to merge the Departments of Correction and Probation. Commissioner Horn said that there is no "grand plan" yet, but said that a merger would present opportunities. He said the most obvious would involve information about the population, because inmates and probationers are the same people at different points in their interaction with the criminal justice system. Commissioner Horn said that economies of operation can be achieved. He noted that technology will allow for data to be protected or integrated, as appropriate. He cited as examples the value to DOC of an offender's violation-of-probation report that is stored on-line, the ability of DOC, when it transfers an inmate to State custody, to forward to the State the pre-sentence investigation report on the offender, and the value to Probation of knowing about a probationer's jail disciplinary record. Commissioner Horn said that economies could be realized with fleet management and maintenance, in that Probation's vehicles could be serviced by DOC's larger operation. He said applicant investigations units could be consolidated. The Commissioner said that the merger will manifest itself most directly in administrative areas, such as personnel, accounting, and purchasing. He said that he met with the unions of both agencies, and assured them that their unique roles are not in jeopardy - probation officers will not work in the jails and correction officers will not work on the streets. Commissioner Horn noted that probationers could perform community service that assists DOC, such as painting and cleaning the Bronx Detention Complex. He reported that DOC's counsel, the Law Department, and counsel for the Office of Labor Relations are examining whether statutory changes are needed to enable the merger to go forward.

Chair Kreitman asked Commissioner Horn to introduce new members of his staff. The Commissioner introduced Judith LaPook, former counsel to the BOC, who is chief of staff at Probation, and is heading up the merger process. He also introduced Florence Hutner, DOC's new General Counsel, who had held that position at Probation after working for twelve years in the Law Department. Commissioner Horn reported that at the Law Department, Ms. Hutner represented the City in the *Benjamin* case. He added that she will remain as Counsel to both agencies.

Chair Kreitman asked Commissioner Horn how he will deal with the additional 3% budget reduction that DOC must absorb. Commissioner Horn said that DOC's proposals were submitted to OMB on Monday and have not yet been accepted, so he said it would be inappropriate to provide details. He did note that the reductions will not seriously compromise staff or public safety, or inmate welfare. He said that some of the savings involve recalculating the dollar savings associated with earlier reductions. Commissioner Horn noted that there will be some consolidation of some smaller commands, and he said that he does not think the reductions will require staff layoffs. He said that if future reductions seem likely to compromise safety, he will "sound the alarm".

Chair Kreitman asked about DOC's plan to ban smoking in the jails. Commissioner Horn said that on January 2, 2003 the Mayor signed into law a City Council bill that requires the ban. He said that attorneys examined the law, and on Monday he met with leaders of the three

uniformed unions and solicited their input. Commissioner Horn described earlier discussions regarding a ban as "discretionary", and added that in his view the Council's bill covers interior places of employment, irrespective of whether the public is allowed inside or not. He said that if the attorneys agree, then the law is clear, and smoking will be prohibited in the jails. He said that planning for the ban will be complicated, and he added that the thorniest issues will be labor relations issues. The Commissioner noted that some officers want a smoke-free environment, and others wish to smoke. He said that allowing officers to go outside for "smoke breaks" has cost and operational implications that will have to be worked out through collective bargaining. He said that DOC is working with Correctional Health Services (CHS) and the Department of Health and Mental Health (DOH/MH) to develop a plan to assist both inmates and staff in stopping smoking. Commissioner Horn said that the law takes effect on April 2, and he asserted that DOC will be in compliance with the law. DOC Deputy Commissioner Roger Parris is working with DOH/MH personnel on a comprehensive plan. Commissioner Horn said that in reviewing experiences of other jurisdictions that have banned smoking, DOC will be able to manage any adverse reactions that might occur. BOC Executive Director Richard Wolf said that the history of this issue is that the Board arranged with DOC to ban smoking in treatment areas of the jails, including infirmaries and clinics, in 1993. He noted that in February 1996, then DOC Deputy Commissioner for Programs and current BOC Member Fredrick Patrick presented DOC's plan to phase in a smoking ban in three months. Mr. Wolf said that the City did not assert to the Board that the issue preventing the ban from going forward was a legal issue until the end of 2000. He said that the issue for many years was presented as one that was a labor relations issue, and that there is a long history of involvement by the City's Office of Labor Relations (OLR). Commissioner Horn agreed, and said that he has met with OLR Commissioner Hanley and his staff who are very involved in the process. BOC Member Michael Regan said that the legislation requires an exemption for people who are undergoing counseling, and he suggested that this might present challenges to the process.

Chair Kreitman asked Commissioner Horn to comment on the *Handberry* case. Commissioner Horn said that the case involves rights to educational services. He said that the "primary onus" falls upon the City's Board of Education, and that DOC's responsibility is to ensure that inmates are brought on time to areas where educational services are provided. Ms. Hutner said that the City argued to the Second Circuit Court of Appeals that because certain administrative remedies had not been exhausted under the Prison Litigation Reform Act (PLRA) that Judge Motley's rulings in the case should be voided. She said that procedurally, the Second Circuit voided a September 2002 ruling and held oral argument Tuesday on whether the City's PLRA argument was valid. She added that a decision soon on whether Judge Motley's rulings will stand. Board Member Louis Cruz said that as a litigator, he finds "late affirmative defenses rather interesting". He asked why the PLRA issue was not raised earlier. Ms. Hutner replied that she did not know. Commissioner Horn said that the Law Department represents the City in *Handberry*, and suggested that the question be asked of it. Ms. Hutner said that she was not at all involved in the litigation strategy of the case.

Chair Kreitman called for reports from BOC Members. Mr. Cruz raised the issue of a "policy change" at DOC to find ways to limit BOC's access to documents, in ways that could have the potential to make it impossible for BOC to fulfill its *Charter* mandate. He said that at the last BOC meeting, a motion was unanimously passed directing DOC to provide a videotape

to the Board. Mr. Cruz said the issue is not the videotape *per se*, but rather the "big picture". Mr. Cruz said that since the motion was passed, it has been disregarded by DOC. He said that DOC's former General Counsel sent a letter with a "general theme" that was most disturbing: that DOC "reserves the right, on a case-by-case basis", to determine whether BOC will receive reports, documents, etc. Mr. Cruz said this suggests an unnecessary adversarial process in the very near future. He said BOC will not allow DOC to create barriers to BOC's ability to investigate DOC's performance. He added that Commissioner Horn has no responsibility for DOC's having taken this position, but urged him to resolve the matter expeditiously, as it will be in the interests of both DOC and BOC to do so.

Chair Kreitman announced that DOC would now make a presentation about DOC incident reporting practices. Commissioner Horn introduced DOC's Chief of Security Steven Conry who reported as follows:

When an incident occurs in a housing area, corridor, or other common area in a facility, supervisors learn about it in one of two ways: either a supervisor is called to the scene or an alarm is pushed by an officer, and a "probe" team of responding officers goes to the area. The team calls the tour commander (TC) via radio or telephone and tells the TC what is happening. Sometimes it is immediately clear that the circumstance is an "unusual incident" as defined by Directive 5000; sometimes this is not immediately apparent, and further investigation is required. An example is when inmates are fighting. It may not be immediately known whether it is an inmate-inmate fight or a stabbing or slashing. Once notified, it is the responsibility of the TC to supervise an investigation and make a determination. Most of the time, this involves getting information from the clinic.

Inmates and staff involved in an incident are brought to the clinic for treatment. Upon receiving medical information it may be possible to determine whether an incident is reportable. When a determination is made that an incident is reportable, the time limits set forth in Directive 5000 begin. A stabbing or slashing must be called in by the TC to the Central Operations Desk (C.O.D.) within fifteen minutes of the determination. C.O.D. is DOC's 24-hour "nerve center", and it takes down all of the information available from the TC, including the inmate's name, number, the location and nature of the incident. Sometimes two or even three incidents may be called in from different facilities simultaneously, and this may slow the process. The C.O.D. personnel record the information on an intake sheet and then activate a paging machine that informs from 50 to 60 people (for a "small" incident) on the "executive list", including Mr. Kreitman, Mr. Wolf, Ms. Potler, and Mr. Niles. Before the paging process begins, the Department's Duty Office (O.D.) is contacted. The O.D. is a Chief who serves for one week at a time. Thus, from the time the TC calls in an incident, 20-30 minutes may go by before C.O.D. sends out the page notifications. If the incident is an attempted

escape, well over 100 people are notified.

After the pages go out, C.O.D. enters the information into a data base, from the 24-Hour Reports are published and distributed each day. Any updates to an incident are added to the data base until 0600 hours of the next morning, after which there are no more updates to the incident. The result is that the 24-Hour Report contains preliminary information available at the time of the call-in, and updates until 6 a.m. the following morning.

Future updates and corrections appear on the formal investigations that must be completed within ten business days of the incident. The original information on the 24-Hour Report does not get updated unless the new information changes the categorization of the incident. If a Class "B" incident occurs at 11 p.m., and overnight the inmate goes to a hospital or UrgiCare, and after 6 a.m. the following morning x-rays disclose a fracture, C.O.D. will put out an update/upgrade of the incident - from a "B" to an "A". The upgrade "certainly will show up on the 24-Hour Report".

Mr. Wolf asked if this means that if a change in category occurs after 6 a.m. the following morning, that a new page is sent out informing recipients of the change in category, from a "B" to an "A"? Chief Conry said that it "absolutely" does mean that. He added that the paging system is not perfect. Sometimes it reports that pages have been transmitted when they have not been transmitted. Mr. Wolf asked whether, regardless of the effectiveness of the paging system, the upgrade in category will appear on the published 24-Hour Report. Chief Conry said that it would, adding that this is very important to the Department, because it relies on the reports for statistical reasons. He said it was his office that checked each incident to be sure that "a 'B' is a 'B' and an 'A' is an 'A'". Chief Conry then continued with his report:

The tour commander conducts an investigation and submits it to the deputy warden for security who reviews it for completeness and accuracy. If the deputy concurs with the tour commander's findings, the report goes to the warden, who reviews and signs-off. If the warden does not concur with the findings, the report can be sent back for further investigation or the warden can refer the matter to the Department of Investigation (DOI) or DOC's Investigation Division (ID). The report is submitted to the Chief of Security's Office within 10 business days. A copy is made for and delivered to the Board, which will receive it within 10 business days or so, if the matter was investigated "in-house" by the facility. If DOI or a District Attorney conducts an investigation, the facility submits its package, noting that the matter is being investigated elsewhere.

Mr. Cruz asked about the role of the New York Police Department, noting that it is the only entity authorized by statute to conduct a criminal investigation. Mr. Cruz asked whether DOC is itself investigating serious allegations of criminal activity before notifying the NYPD. He cited

the example of an allegation of a serious sexual assault approximately one month ago, in which the NYPD was not notified for six or seven hours. Chief Conry said that whenever an incident of "great magnitude" occurs, the ID is called in. He said that ID will take over the crime scene, and as soon as the ID determines that a crime has or may have taken place, ID will notify the NYPD. Chief Conry added that in emergencies, such as an inmate disturbance, he would himself invite NYPD into the facility to "co-manage" the situation. Chief Conry said that in the incident to which Mr. Cruz referred, the inmates were indicted and "there was no problem". Mr. Cruz asked if the Investigation Division was a full-time operation, and Chief Conry said staff were on-duty 24 hours per day, every day. Mr. Cruz said that there should be no delays in notifying the NYPD regarding allegations of rape or sexual assault. He said a prompt NYPD investigation is crucial to safeguard evidence and the crime scene. He noted that NYPD has specially-trained crime scene investigators. Chief Conry said that all DOC investigators and tour commanders are taught proper crime scene procedures and protocols. He said that ID promptly calls the NYPD. Chief Conry then continued his report:

The investigative package that is sent to the Board includes information on inmate disciplinary action or arrests, staff disciplinary action, and any recommendations to avoid similar incidents in the future. This is true of both unusual incident packages and all uses of force.

Within fifteen minutes of the tour commander deciding that one of the following events has occurred, the facility must notify the Central Operations Desk: escape or attempted escape, erroneous discharge, inmate disturbance, death of or serious injury to inmate, stabbing, slashing or shooting, death of or serious injury to staff (on or off duty) or visitors or volunteers, fires, sexual abuse or assault, discovery of dangerous articles, use of chemical agents other than hand-held streamers, employee strike or job action, display of firearm, loss or theft of firearm, shield or identification card, off-duty arrest, arrest of employee or volunteer, and any other incident seriously affecting operations.

Within one hour, the facility must notify C.O.D. when it is determined that one of the following events has occurred: attempted suicide not resulting in serious injury, inmate arrest, criminal act on DOC property, substantial damage to or loss of DOC property, food illness, and failure to house inmates within required time-frames.

Finally, employee conduct detrimental to the best interest of the Department may be called in by the end of the tour.

Chair Kreitman thanked Chief Conry for his report. Ms. Potler asked what happens when the deputy warden does not agree with the tour commander's findings. Chief Conry said that the tour commander will be called in and the matter will be reviewed. He said that oftentimes, the deputy warden asks how the tour commander can draw a particular conclusion given the amount and quality of available evidence. He said that the deputy may direct the tour commander to conduct additional investigative steps. Chief Conry said that when the reviewers of an investigation disagree, the matter often is referred to the ID. Mr. Cruz asked whether situations

arise in which the conduct of DOC employees is questioned because it may have contributed to or facilitated an inmate-to-inmate incident. He said that in such situations it is even more compelling that DOC notify the NYPD's Operations Division. Chief Conry said that Executive Order 16 requires that matters be reported directly - not through the chain of command - to the Inspector General. Mr. Cruz said he was not talking about reporting the "possibility" that DOC staff has a problem. Mr. Cruz said that the IG is "administrative", and that he is referring to criminal acts. Mr. Wolf asked about reporting attempted suicides. He said that DOC does not determine whether an act of self-harm is a suicide attempt. Instead, he said, DOC refers the matter to the health provider for a determination. Mr. Wolf said that this often leads to a lengthy delay, and noted that this means that DOC must call C.O.D. within an hour of learning of the health provider's determination that an act was indeed an attempted suicide. Chief Conry said that this was correct, but added that those that are "obvious" attempts are called in within an hour.

Mr. Wolf asked about an incident in which an officer claimed injury while breaking up an inmate-inmate fight. He said that the page indicated that this was a "non-reportable" incident, and added that it was subsequently changed to "reportable". Mr. Wolf asked whether senior facility personnel receive ongoing training in how and when to report incidents. Chief Conry said that every newly-promoted captain and tour commander receives training. He said that in the incident to which Mr. Wolf referred, the problem was a miscommunication between the facility and C.O.D. Mr. Wolf said that there has been a 78% increase in uses of force during the first fifteen days of January as compared to last year. He asked whether DOC has determined what accounts for the increase. Chief Conry said that DOC's assessment is that there is no obvious causal connection. He said that the rate is almost exactly the rate that DOC has experienced for the last six months.

Board Member Jane Paley Price asked Chief Conry to make a distinction between calling in a probe team and calling in the Emergency Services Unit (ESU). Chief Conry reported as follows:

There is a very significant difference. Whenever an employee sets off his/her personal body alarm, a probe team - consisting of one captain and two officers in protective gear - responds to the area of the alarm. The probe team's responsibility is to determine what is going on in the housing area. The "A" officer, inside the protected officers' station, should be able to report on what is happening. During this time, the control room calls the area to find out what is happening, and informs the probe team via radio. Response teams assemble. The tour commander decides whether to send one or more response teams to the area. If the incident is large enough so that the tour commander exhausts available response team personnel, the tour commander may call C.O.D. and ask for assistance from E.S.U. If E.S.U.'s response is inadequate to resolve the problem, DOC will mobilize additional personnel from other facilities and home.

Ms. Paley Price asked whether the calling of E.S.U. is part of the reporting process, and whether it changes the category of the incident. Chief Conry said that the call for a rapid response team from E.S.U. would be mentioned in the C.O.D. Report because of E.S.U.'s direct involvement in the incident. Ms. Paley Price asked whether Chief Conry's office receives a report of how often

E.S.U. is called upon each month. Mr. Wolf said that the involvement of E.S.U. is known because the incident is reportable *per se*, and as such all participants, including E.S.U. must be mentioned. Chief Conry said that E.S.U. is called upon to respond to incidents very infrequently, but E.S.U. personnel often participate in facility searches during which they are sometimes involved in uses of force. Mr. Cruz asked at what point NYPD is called as asked for help by DOC. Chief Conry said that during a disturbance, NYPD Operations is informed. He said that NYPD will assist in traffic control near 19th Avenue, and will help to facilitate the arrival and departure of Emergency Medical Services vehicles. He noted that NYPD is notified whenever DOC activates its Emergency Mobilization Plan pursuant to directive.

Ms. Potler reported on a suicide that occurred on Tuesday, January 14th, as follows:

At approximately 3:15 p.m., a 48-year-old inmate was found hanging in the Contagious Disease Unit (CDU) at the West Facility. The inmate entered the system on December 6, 2002, and was transferred to the CDU on December 31st, where he remained until his death. On the day before the suicide, he was placed on suicide watch by a mental health worker. The Board has not received all documentation relating to this case, although we have received copies of logbooks. Both Ms. Potler and Mr. Wolf responded to the scene, arriving at approximately 5:30 p.m. Ms./Potler took several photographs.

There are 14 CDU cells inside each Sprung building. The CDUs are isolating environments, with an anteroom separating the corridor from the cell. This arrangement is needed to facilitate six air exchanges per hour. Contact between staff and inmates is infrequent, and oftentimes inmates remain in their CDU cells 23-24 hours each day, coming out only for medical or mental health providers.

In 1997, there was a suicide in another CDU cell. At that time we spoke with senior DOC staff who agreed that the decedent waited until just after the officer's regular tour to hang himself. The Board recommended that DOC staff make irregular and more frequent tours, not just every thirty minutes on the hour and half-hour. DOC responded that it would continue to make regular tours. Unfortunately, in this case as well as the 1997 case, the logbooks reflect that tours were made regularly on the half-hour and the hour.

Ms. Potler suggested to the Members that they might wish to urge DOC to require irregular and more frequent tours of CDU areas.

Chair Kreitman asked about the possible use of cameras. Commissioner Horn said video cameras could be installed in cells occupied by inmates who have been identified as being at risk to commit suicide. The Commissioner said that suicides can occur quickly, and in this case the data suggest that the inmate was seen alive fifteen minutes before he was discovered hanging. He noted that cameras could include motion detectors, sounding an audible alarm when the inmate leaves his bed. Ms. Potler said that there were two inmates in the area who were on suicide watch; one's cell was directly across from the nurses' station, the decedent's was at the

end of the hallway. Commissioner Horn added that there was another issue, that when the lights are off in the cell, the external windows prevent one from seeing into the cell. He said that this would negate the beneficial impact of housing an at-risk inmate in a cell across from the nurses' station. Mr. Wolf said that the lights are on during the day. The Commissioner said that the inmate had bed sheets, underwear, pajamas and a hospital gown. He said that last year there were two suicides, and he challenged any other corrections department in the country to do better. He concluded by noting that DOC will look at design flaws in the cells.

Ms. Paley Price said she was concerned about the language of Directive 5000R. She said that the definition of a "reportable incident" leaves out a great deal. She said it omits broken bones and flesh wounds requiring multiple sutures, and other serious injuries. She said that because these are not reportable, the Board does not have as accurate a statistic as it might. Noting that she is gratified that "life-threatening" incidents have been reduced, Ms. Paley Price said that it would nonetheless be helpful to have more information. Commissioner Horn said that DOC reports serious injuries from uses of force and assaults on staff, but it does not report when one inmate assaults another. He said he shares Ms. Paley Price's concern, and will be addressing it.

Chair Kreitman asked CHS Executive Director Ernesto Marrero to comment on the settlement of the *Brad H.* case. Mr. Marrero said that implementation of the settlement will occur in approximately 100 to 120 days. He said that the settlement is an attempt to capture in a consent order that which the City already is doing and working towards. He said that little will change at CHS, noting that discharge planning staff was hired a couple of years ago, and that discharge planning has been taking place. He said that coordination with other agencies will be required, and there will be enhancements to the current program. Mr. Marrero said that the settlement will require that mentally-ill inmates receive transportation at discharge from Rikers to community programs. He said that this probably will be handled by the Department of Health and Mental Hygiene. Mr. Marrero said that a monitoring structure will be established, and performance levels will be established by the monitors against which they will measure performance.

Regarding the health vendor's contract Performance Indicators, Mr. Marrero said that CHS almost has completed its review of the fourth quarter of 2002. He said that CHS's report should be issued on or about February 14th. He said that preliminary indications are that performance may have "stabilized", that is, that six or seven PIs continue to be unmet. He added that PI failures can result in \$5000 fines, and continuing failures can result in a doubling of fine amounts. Chair Kreitman asked why there is not continuing improvement. Mr. Marrero said that it depends on the PI, noting that if there is a universe of eight patients, if one is missed the performance is unsatisfactory. He said that regarding laboratories, performed by subcontractors, communication delays can result in failures. Mr. Cruz said that prompt laboratory results can adversely affect contagious diseases, and make it necessary to quarantine large groups of inmates.

DOC Chief of Compliance Leroy Grant requested that the Board renew all existing variances. This was approved without opposition. Chair Kreitman adjourned the meeting at 2:25 p.m.