

**NEW YORK CITY
BOARD OF CORRECTION**

May 20, 2004

MEMBERS PRESENT

Stanley Kreitman, Chair
John R. Horan, Vice Chair
Louis A. Cruz
Jane Paley Price
Raul Russi
Hildy J. Simmons

Excused absences were noted for Members John H. Banks III, Richard Nahman, O.S.A., and Michael Regan.

DEPARTMENT OF CORRECTION

Martin Horn, Commissioner
Leroy Grant, Bureau Chief, Inspectional Services & Compliance Division (ISCD)
Tom Antenen, Deputy Commissioner for Public Information
Judith LaPook, Special Counsel
Elizabeth Myers, Director, ISCD

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

James Capozziello, Deputy Commissioner, Bureau of Correctional Health Services (BCHS)
Ben Okonta, M.D., Acting Medical Director
Farah Parvez, M.D., Medical Director, Correctional Public Health Services
George Axelrod, Director of Risk Management, BCHS

OTHERS IN ATTENDANCE

Amy Anderson, NYU
Osvaldo Cruz, Office of Management and Budget
Jeff Krupski, Mayor's Office of Operations
Dr. Trevor Parks, Medical Director, Prison Health Services
Becky Pinney, Project Director, PHS
Russell Unger, Legislative Counsel, City Council
Paul von Zielbauer, *New York Times*

Chair Stanley Kreitman called the meeting to order at 1 p.m. A motion to approve minutes of the May meeting was approved without opposition.

Chair Kreitman said that there has been a recent increase in the number of pager reports of facility problems on Rikers Island, including water main breaks and loss of heat and hot water. He invited DOC Commissioner Martin Horn to discuss the Department's plans to upgrade the physical structures. Commissioner Horn reported the following:

Rikers Island was originally less than half its current size. It has been expanded by landfill and is unstable. There are more structures than it can support. There was no master plan for the permanent buildings or for the wooden modulars, Sprungs and trailers. During the 1980s, off-shoots of the water system were constructed to accommodate facility additions and temporary structures. Pipes crisscross so that the weight of one bears upon another. In some cases, the weight of buildings bears down upon pipes. These factors, when combined with unstable soil structure, result in "settling", which leads to cracked pipes.

Construction of facilities (such as the Adolescent Reception and Detention Center) twenty and thirty years ago was poor. There is no excuse for inoperable windows, and cracking and crumbling foundations in a facility that is thirty years-old.

The infrastructure suffers from similar problems. Shifting ground causes hair-line cracks and fissures in the pipes to expand and eventually sections of pipe are blown-out. For example, two weeks ago a 12-inch line gave out from the weight of an eight-inch line that bore down upon it. The break was directly below a perimeter fence, so it affected perimeter electronic security. Repair required shutting off water to 5,000 inmates.

Experienced maintenance staff report that when one leak is repaired, hydraulic pressure is forced elsewhere. This affects the small cracks up and down the line and causes further breaks.

Last Friday, a Con Ed feeder line from Queens had to be shut down. The haphazard nature of the Island's infrastructure expansion means that four or five feeder lines could provide electricity to one facility. Thus, a problem with one feeder line might affect electricity in parts of one or more facilities.

There are ventilation problems in the shower areas, which results in corrosion and mildew. Household quality tiles were used instead of industrial-strength tiles in bathroom and shower areas create persistent problems. The areas are clean, but look terrible.

The leak two weeks ago was repaired in twelve hours. Had the

Department been unable to promptly repair it, DOC would have faced the prospect of having to relocate 5,000 inmates. The City should never be in this position. Part of the problem is that to achieve economies in tight budget times, DOC closed its smaller, inefficient facilities - the Bronx, Queens and Brooklyn Houses of Detention.

The City jail system is totally dependent on Rikers Island, with a single bridge and a single water line.

DOC is working with the Department of Design and Construction (DDC) to examine these issues. It would be cost prohibitive to totally replace the water lines, and it would be an enormous undertaking. The City needs to reevaluate its reliance on Rikers Island. DOC is frequently asked at hearings about its plans for the Brooklyn Detention Center. Brooklyn people believe DOC should "give up" the facility and "convert it to high-rise condos". People in the Bronx are interested in acquiring the Bronx House and converting it to part of the Bronx Terminal Market.

The City should not give up these facilities. The inmate population is volatile and the facilities might be needed. Although the population has declined from 21,000 to 14,000, "it could just as easily go up again". These facilities are being renovated. As soon as renovations are completed, DOC can comply with requirements to close wooden modulars and other temporary structures on Rikers Island.

Long-term, DOC and DDC are exploring a variety of options. Generally, DOC and the Board of Correction need to take cognizance of the downside risk of remaining totally reliant on Rikers Island. An analysis is being developed for the Mayor's Office. After the Mayor has been briefed on these issues, Commissioner Horn will share DOC's recommendations with the Board.

Chair Kreitman said that 63% of the City's inmates are housed on Rikers Island, which contains 89% of DOC's beds. Commissioner Horn said that people in the Bronx would like the barge removed, which would add 800 beds to Rikers Island. He said that the 5000-bed replacement project calls for all new beds to be constructed on Rikers Island. He added that AMKC is too large to manage. Commissioner Horn said that two off-Island facilities (Bronx and Queens) have only 400 beds each, and Brooklyn has 800 beds. He said the City must find ways to reduce its reliance on Rikers Island, while also replacing aging, poorly-designed facilities with more efficient ones. He said there is already \$1 billion in the capital budget to replace 5000 beds, and the issue is what is the plan to replace them. Board Member Jane Paley Price asked if there were expansion capabilities in the borough facilities. Commissioner Horn said there were not. Executive Director Richard Wolf noted that the City attempted to sell Rikers Island to the State and use the money to build jails adjacent to courthouses, but the attempt failed. In November 1983, following the release of 613 inmates because the City could not comply with Federal Court orders to reduce overcrowding, then-Mayor Koch announced plans to construct more than 2800

modular beds on Rikers. He said that the Board's testimony endorsed the proposal, conditioned upon the City constructing more beds in the boroughs. Mr. Wolf observed that Commissioner Horn's comments "had a familiar ring". Commissioner Horn said that when a plan is developed, DOC will need support from the Council. He said it will be important for the Board to support the plan and to urge the Council to support it. Board Member Louis A. Cruz said that he has heard from Council members that they receive complaints from constituents that "everything is concentrated on Rikers". He said he did not think the Council was the issue.

Chair Kreitman asked for an update on the March 30th suicide of inmate Kevin Mitchell. Commissioner Horn said the investigation is continuing and that he has no new information. Mr. Kreitman asked about Mr. Cruz' request for a cost analysis for retrofitting all of the air vents in cells. Commissioner Horn said the cost would be \$5.2 million. He said DOC has retrofitted 451, primarily in mental health and new admission areas. Mr. Cruz said he asked for the information two months ago, and asked if there was any special difficulty in obtaining the information. Commissioner Horn said there was not.

Commissioner Horn said he had discussed with Mr. Wolf plans to invite the Board to spend a day on Rikers Island looking at the physical plant issues discussed earlier. Chair Kreitman suggested that the June meeting could be held on Rikers Island. He asked Mr. Wolf to work out the logistics with the Department.

Mr. Cruz said that between meetings the Board ruled on an emergency variance request. He asked whether the variance had served its purpose. Commissioner Horn said the Board granted a limited variance, and "everything helps". He said most inmates are very cooperative, but occasionally a single inmate by himself can disrupt life for all the other inmates, and for staff in an institution. He said it is helpful to have tools to reward good behavior, and sometimes the deprivation of services serves that purpose. Mr. Cruz said that a particular inmate caused injuries to staff and necessary force was used to restrain him. He asked how many rearrests were generated. Commissioner Horn said DOC's policy is that every assault on an officer results in an arrest. He added that this inmate has been rearrested, but that these rearrests keep him in the City's jails longer. He said that the best thing would be to get him into the State system. The Commissioner said that DOC works with the DA's office to expedite processing the cases of assaultive inmates. Board Member Raul Russi said he was troubled that the administration had to go through the variance process for one inmate. He said perhaps the Board should allow DOC some leeway in individual cases, whereby DOC would report to the Board that in a particular case DOC has decided to follow this particular waiver because the inmate is very troublesome. Mr. Russi said this procedure would allow DOC to move forward without having to wait for him to respond to a variance request for an individual inmate. He said the Board should develop a policy with DOC to be able to contract, for single incidents, special rules that waive access to some services, so that DOC does not find itself waiting for BOC approval. He said the Board could review DOC's actions at a later date, and modify what DOC is doing. Mr. Russi said creating a "box" in which DOC could operate would remove none of the Board's authority, but would allow DOC to take immediate action with respect to troublesome inmates. Vice Chair John R. Horan spoke "in defense of what we do now". He said the Board gets such a request only rarely. He said that the variance rules protect the Standards, and the rules are not arduous. He said that the process is worthwhile when there are extreme cases, because otherwise the

Board would be releasing the administration to operate with no Standards supervision at all. Mr. Horan said he did not believe that the balance we have achieved is something we should throw away because of occasional extreme situations. He said he would resist any effort to “roll it back”. Mr. Cruz said that the Board should not give “carte blanche” to DOC, and noted that DOC already has considerable leeway in emergency situations. Board Member Hildy Simmons said it was not her impression that this was what was being suggested. She said that this inmate was involved in a number of incidents, and that while the Members were responding to a variance request, additional officers could have been injured and sent to the hospital. She said that where, in the wisdom of the Department, there is an inmate who is an outlier, DOC should be able to take immediate steps until the Board has an opportunity to reflect on it, or stop it, if appropriate. Mr. Horan said the problem is it is impossible to define. Ms. Simmons said the question is whether there are some parameters that could be established. Ms. Paley Price said that the Board would be responsible if there were a terrible incident resulting from an inmate “who clearly has a history of disruption and danger”. She said that DOC should therefore have latitude until the Board can convene. She added that DOC would not have a “blank check”, but that an inmate with such a history “should be controlled in the manner you think appropriate”. Mr. Wolf said that the Standards currently allow DOC to declare an emergency and to not comply with a Standards provision for 24 hours. Commissioner Horn said he thought this only applied to things like a water main break, and not to individual inmates. Mr. Wolf said the emergency provisions might be a good starting point to develop a mechanism, if a majority of the Board wished to establish one. Mr. Russi said that when DOC needs to act “to protect life and limb”, waiting several days for a response from BOC creates “exposure”. He said there could be an agreed-upon solution with a limited scope, whereby DOC could waive access to some services until BOC could review what DOC was doing. He said DOC authorization to move forward in an individual case could only come from a very high level in DOC. Chair Kreitman said this is an important issue, and asked Mr. Wolf to work with DOC to develop language for the Board to consider. Mr. Cruz said that the valid concerns of Mr. Russi are adequately provided for by the emergency variance provisions. He said the provisions require written notification and allow BOC to conduct an independent analysis of the reasonableness of continuing. He said that as a former detective, he learned the wisdom and value of oversight. Mr. Wolf said that the process was expedited: the request was received on a Monday, requested additional information that was received by Tuesday, mid- morning, and by mid-day Wednesday he had contacted a majority of the Members and sent a letter to DOC announcing the Board’s decision.

Chair Kreitman turned the discussion to correctional health issues. He asked for a report on rapid HIV testing. Department of Health and Mental Hygiene Deputy Commissioner James Capozziello reported that the testing is progressing well, and has been implemented in every facility except the Bernard B. Kerik Center (BBKC). He said providers need to do a better job “selling the test” to inmates, because although the test has been well received, more inmates should be taking advantage of the opportunity to be tested. Dr. Farah Parvez, Medical Director, Correctional Public Health Services, reported the following:

Rapid HIV testing was introduced on March 3rd at the Vernon C. Bain and Rose M. Singer Centers, and thereafter at all other facilities except BBKC, where testing will be offered beginning next week. The facilities had more than 5,200 admissions and performed 1,555 tests (32%). 41% of the tests were administered at intake, and the balance were tested by HIV counselors who followed longstanding procedures. Twenty-nine, or 1.8%

of those tested, were positive. Historically, testing has yielded a 3% to 3.5% positivity rate. This suggests that inmates who are being tested are "well but just generally worried about their condition", and the test reassures them about their status. However, better outreach is required to reach those inmates who will test positive but are not being tested. Currently the test is being offered to everyone at intake. However, on the 12 a.m.-8 a.m. tour, mental health staff is not available so the test is not administered immediately, because DOHMH policy requires that mental health staff be available to assist inmates when they learn their HIV status.

Mr. Wolf asked if this was affecting the number of inmates who get tested and whether thought was being given to rescheduling mental health staff to be present on the 12 a.m.-8 a.m. tour. Becky Pinney, Project Director for Prison Health Services (PHS), said that inmates who enter the facility on the midnight tour who agree to be tested are brought back to the clinic for testing on the day shift. She added that PHS hired two additional counselors in an effort to increase the number of inmates who agree to be tested. Dr. Parvez said that there are plans to work more closely with the KEEP program, many of whose participants have histories of IV drug use and would therefore be at higher risk for HIV. She said that the KEEP counselors will educate participants and encourage them to be tested. She reported that DOHMH developed an HIV video which it hopes soon will be shown at clinic waiting areas. Mr. Capozziello said that confirmatory tests were 100% positive on the 29 inmates whose rapid, preliminary test result was positive. He said that the testing logistics were successful, but the number of inmates who have accepted testing needs improvement. Dr. Parvez said that 10 of the 29 inmates had been discharged from the system before their confirmatory tests results were available. She said that without the rapid test, these inmates would have been discharged without knowing their status. Mr. Cruz asked whether there is follow-up with the discharged inmates to be certain that they receive information about their status. Dr. Parvez said that when blood is drawn for the confirmatory test, the inmate is given their specimen number, and a list of HHC clinics and DOHMH Sexually Transmitted Disease clinics throughout the City where the inmate can go to get the results. Dr. Parvez said that all preliminary positive results are referred to the MEDSPAN unit for followup. Ms. Potler asked Dr. Parvez to explain how the confirmatory test result enables former inmates to access services in the community. Dr. Parvez said that if an inmate's rapid test preliminary result is positive, he/she is given a letter on DOHMH stationary which, when presented to a community provider, enables the former inmate to receive a confirmatory test. She added that DOHMH's Transitional Health Care Coordination Unit will be working with district health offices to promote better continuity of care.

Chair Kreitman asked whether the correctional health care vendor bidding process had been completed. Mr. Capozziello said DOHMH will be issuing a "recommendation of award" letter within a week to ten days.

Mr. Cruz said that when, as a detective, he encountered an emotionally disturbed person, the person would be taken to a psychiatric ward. He said that shortly after being seen and receiving medication, the person invariably was calmed. He asked why DOC staff had to suffer repeated acts of aggression from the inmate whose situation prompted the earlier discussion. Mr. Cruz asked why the inmate had not been treated with medication. Mr. Capozziello said the use of medications is a "very thorny issues, especially if the inmate does not wish to be medicated". He said the jails are not mental health institutions and cannot involuntarily medicate anyone. He

added that if an inmate declines medication and providers believe the inmate poses a danger to himself or to others, the only recourse is to transport the inmate to Bellevue. Commissioner Horn said DOC would not have brought the case to BOC if there was a mental health issue. He said some inmates "are just bad and behavioral problems." Ms. Potler said BOC staff brought the matter to Mr. Capozziello's office, and the inmate was evaluated. Mr. Capozziello said we must be very careful to avoid using the mental health system for behavioral control. He said one only needs to think of the Gulag system and how it misused mental hygiene.

A motion to renew existing variances was approved without opposition. The meeting was adjourned at 1:55 p.m.