July 19, 2007

To: Hildy Simmons, Chair
Richard Wolfe, Executive Director by email at rtwolf@boc.nyc gov.
New York City Board of Correction

Martin Horn, Commissioner
New York City Department of Correction

Members of the New York City Council

Concerned Citizens of New York

From: Barbara E. Dunkel, Esq.

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Former Associate Commissioner for Planning, Research & Information Systems of the New York City Department of Correction
Former Counsel to the New York City Board of Correction

Re: **PROPOSED AMENDMENTS TO THE MINIMUM STANDARDS FOR NEW YORK CITY CORRECTIONAL FACILITIES**

I am responding to the proposed changes to the New York City Board of Correction Minimum Standards developed in the seventies and eighties but directly derived from our Bill of Rights and the New York State and United States Constitution. The operation of a humane and efficient correction system is one of the most difficult jobs in the world. It needs the support and cooperation of an informed citizenry as well as professional expertise. History has shown that the job of detaining others is done best operating with strict guidelines and vigorous oversight by the public, on whose behalf it is conducted. A more detailed summary of my background is included at conclusion of this document.

Summary:

1. **The Department of Correction does not provide a justification for many of its proposals to dilute Minimum Standards other than administrative convenience and a vague and unsubstantiated assertion of "heightened security concerns."** The law provides ample opportunity to restrict the rights of specific inmates where cause can be shown; a blanket ability to deny the rights of detainees is not warranted without a significant showing of need or emergency. While the nation and the City may have heightened security concerns, it is not at all clear how these concerns affect the operation of a local jail system housing sentenced prisoners up to one year and persons awaiting trial for a myriad of offenses and a Federal Detention Facility down the block. Included in these concerns are changes to
   Section 1-08 ("Access to Courts and Legal Services")
   Section 1-10 ("Telephone Calls")
   Section 1-11 ("Correspondence")
   Section 1-12 ("Packages")
   Section 1-13 ("Publications")

2. **Many of the proposed changes follow the current and alarming national trend of blurring the time-honored sacred boundary between detainees, presumed under law**

to be innocent of any crime, and prisoners convicted of a crime. The law provides for procedures to permit crossing this line in cases where facts can show demonstrate necessity and appropriateness without diminishing constitutional protections for the whole. Included in these concerns are changes to the following:

Section § [1-04] 1-03 Personal Hygiene. Personal Hygiene – g). clothing
Section 1-08 ("Access to Courts and Legal Services")
Section 1-10 ("Telephone Calls")
Section 1-11 ("Correspondence")
Section 1-12 ("Packages")
Section 1-13 ("Publications")

3. **Many of the changes suggested are a diminishment or dilution of a Minimum Standard for the convenience of DOC or to decrease expense without proper consideration of the impact on prisoners and staff.**. Reduction of expense and increased administrative convenience are proper motives if they do not have an undue impact on the established rights of prisoners or the safety of staff. This impulse has resulted in proposed Minimum standards that leave enforcement to the discretion of the Department. It DOC has discretion to act, it is no longer a Minimum Standards but merely a recommendation, and for the inmate, a hope and a dream.. Such a change would result in the end of Minimum Standards and a profound loss for the system. From the inmate's point of view, this change converts rights and guarantees that preserve personal dignity to hopes and dreams that cannot be realized without the consent of the keeper. Attica, Abu Gharib, and a host of other examples, near and far, have amply demonstrated the difficulty of running a detention system well without enforceable rules. Included in these concerns are changes to the following:

§ 1-01 **Non-discriminatory Treatment.**
  c. Hispanic prisoners and staff
  d. Different languages

§ 1-02 **Classification of Prisoners.**
§[1-06] 1-05 Lock-in.
§ [1-05] 1-04 Overcrowding

The broad discretion and "hands-off" stance by the Board reflected in many of these proposals is troubling. It creates a framework in which changes or experiments that must raise concerns here might be readily acceptable if it were clear that the Board will forcefully exercise its oversight powers. For example, within a rigorous framework,, the Department's request to delay contact visiting for 24 hours after admission or to substitute "best practices" policies in seeking a Variance in lieu of compliance with a Minimum Standard could be prudent, even forward- looking proposals. Without real oversight, these variances are an opening to the destruction of Minimum Standards. Wide departmental discretion in the wisest and best of hands may be a boon, but no administration or manager lives forever. It is the Board's responsibility to preserve Minimum Standards for the wide range of administrations and mangers who will succeed the present.

Cumulative Effect of Proposed Changes:

Taken alone, each of the proposed changes to the Minimum Standards does not seem that alarming, but the cumulative effect of them is to make a significant change in the terms and conditions of confinement, especially for inmates in special housing. This recitation also highlights the critical need for a strong Board of Correction willing to exercise its oversight powers over DOC. The Board's cooperation is essential; undue deference is counter-productive.

The changes decrease individual space for all prisoners in group housing units from 60 sq. feet to 50 and increases numbers in dormitory units for detainees from 50 to 60.

Detainees can no longer wear their own clothes in jail or on visits. Personal clothing in permitted in court appearances..

All prisoners lose their privacy in receipt of phone calls, packages, correspondence at the discretion of DOC, without due process. Only notice is required..

General population inmates may lose some access to the Law Library.

Inmates in special housing areas lose the right to shower, shave, and participate in activities at the discretion of DOC.

Non-English speaking inmates will no longer have staff present in their units or in programs to translate for them. DOC has discretion to provide these services in a way yet to be defined with other than line staff.

Newly admitted inmates will not have contact visits until classification is complete – a minimum of 24 hours.

Nineteen and twenty year old inmates will be housed in the adult population rather than in the adolescent units.

Detainees, who are presumed innocent, and sentenced inmates can be housed together in punitive segregation, close custody (administrative segregation), medical and mental heath units, the nursery and be allowed to commingle with each other in education, religious or other communal function as determined by DOC. This change is a departure from the strict separation of detainees and sentenced inmates formally observed to preserve the safety and security of detainees.

Inmates in special housing as described above, can be confined for 23 hours a day, and restricted in participation in activities including the right to shower and shave, as punishment. Such discretion to exact punishment blurs the line between lawful confinement and unusual punishment.

DOC may substitute "best practices experiments" for one year in lieu of compliance with Minimum Standards with approval of the Board.

The scope of the impact on inmates and staff by these changes is signnificant. It can be assumed that these additional discretionary powers will have an impact on the atmosphere in the jail and the penitentiary, and change the staff-inmate dynamic. If adopted, management must work hard to mitigate the effect of these increased powers on the perception of the proper relationship between staff and inmates.

The New York City Department of Correction, despite it many problems and the huge demands placed upon it, has held a leadership position in enlightened correction policy and management. **This position was in large part due to the existence of the Board of Correction and the independent citizen oversight it provides**. The adoption of Minimum Standards for Confinement and the later standards for Mental Health Care set it apart from most American systems. These standards were hard won. Therefore, **it is particularly dismaying to have DOC and the Board point to less well-managed jail systems around the country to justify changes**. Los Angeles and many California jails in particular are no example for New York City corrections. Denial of contact visits, separation of staff and inmates (staff observes inmates from a distance), use of food slots and many other unenlightened practices have made it a brutal system that New York has never wanted to emulate. The standards for New York City facilities should be set by New Yorkers, not the lowest common denominator. Low aims guarantee poor results.

There can be no doubt that standards are most needed when the Department is stressed by overpopulation, bad management or inadequate political and fiscal support. Luckily, we are not now in that position. However, a good manager operating under optimal conditions may not see the necessity

for standards, but history shows that a system cannot function well over time or in a crisis without them. They are the safety valve that prevents an Attica and preserves our belief that the Constitution is a document that applies to all citizens.

Sadly, the American criminal justice system and corrections, which must manage the result of decisions taken elsewhere, were well-regarded in the eighties. Our system has suffered a decline in world esteem due to several factors: an over-reliance on incarceration, especially to address problems of addiction and mental illness; use of the death penalty, no longer considered an appropriate punishment in most of the civilized world; and an erosion of the rights of detainees and prisoners. With the help of the United Nations and Non-Government Organizations, many countries in Africa, Asia and South America with a history of jail and prison injustices and horrors, are working hard to improve the quality of their correctional facilities. They are actively engaged in a process of developing recommended practices and then ensuring that those recommendations become law or have the force of law.

The proper relationship between the Board of Correction and the Department of Correction requires the Board to take a longer view than may be optimal for a particular administration or the Department of Correction. The Board's job is to safeguard system gains that have been made over many administrations while allowing the Department the latitude it requires to operate the facilities safely, for both inmates and officers, as well as to make improvements to the administration of justice for the safety, general and fiscal welfare of the larger society. It would be shameful for New York City, a world leader in corrections even in a time of fiscal difficulties, would now, in a period of prosperity, take a big step backward by converting standards into options to be implemented, or not, as the Department sees fit.

History of and Proposed Changes in Minimum Standards

The Board of Correction Minimum Standards were established on the principle that the protections of the law and the Constitution are not discarded when a person charged with a crime (a detainee) is held in a facility pending disposition of charges. The concepts of non-discrimination, equal protection and equal opportunity are articulated below .

(a) Policy.

Prisoners <u>shall not</u> be subject to discriminatory treatment based upon race, religion, <u>nationality,</u> sex, sexual orientation, age or <u>political belief.</u> The term "prisoner" means any person in the custody of the New York City Department of Correction ("the Department"). "Detainee" means any prisoner awaiting disposition of a criminal charge. "Sentenced prisoner" means any prisoner serving a sentence of up to one year in Department custody.

(b) Equal protection.

(1) Prisoners shall be afforded equal opportunity in all decisions including, but not limited to, work and housing assignments, <u>classification, and discipline.</u>

(2) Prisoners shall be afforded equal protection and equal opportunity in being considered for any available programs including, but not limited to educational, religious, vocational, recreational, or temporary release.

(3) Each [institution] facility shall provide programs, cultural activities and foods suitable for those racial and ethnic groups with significant representation in the prisoner population, including Black and Hispanic prisoners.

(4) Nothing contained in this Section shall prevent the Department from [utilizing] using rational criteria for a particular program or opportunity.

The Minimum Standards also made clear that in order to carry out the basic principles above, each prisoner should understand and participate in the process. Therefore translation services were required for Hispanic prisoners who comprised the majority of the non-English speaking population when the standards were developed. Subsequent standards provide for translation services for other languages.

The following standard is proposed to be deleted, to be replaced by a Minimum Standard which grants the Department more discretion in the manner and timing of providing translation services to inmates..

(c) ***Hispanic prisoners and staff.***
(1) [Each institution shall have a sufficient number of employees and volunteers fluent in the Spanish language to assist Hispanic prisoners in understanding, and participating, in the various institutional programs and activities, including use of the law library and parole applications.]

(d) ***Different languages.***
(1) Prisoners shall be permitted to communicate with other prisoners and with persons outside the [institution] facility by mail, telephone, or in person, in any language, and may read and receive written materials in any language.
(2) Provisions shall be made by the Department to assist in assuring prompt access to translation services for non-English speaking prisoners.
(3) Procedures shall be employed to ensure that non-English speaking prisoners understand all written and oral communications from facility staff members, including, but not limited to orientation procedures, health services procedures, facility rules and disciplinary proceedings.

The Board and Department assert that the objectives reflected in (c)(1) would be met by the addition of a new paragraph, (d)(3), which requires that "(p)rocedures must be employed to ensure that non-English speaking prisoners understand all written and oral communications from facility staff members…"

"Timing is everything" -- especially when one is incarcerated. It is a very different thing to understand what is going on as it happens than to have it explained later. A lack of inmate understanding of rights and legal and operational procedures is a significant source of fear and anger within the system. DOC appears to be working at cross purposes by asking for this change. It prefers that it not be held to a specific standard of providing bilingual staff, but instead of cutting back, the Department should seize the opportunity to gain ground by providing better translation services. We live in an increasingly multi-cultural world and our school system and the corrections system reflect that development first. Instead of diluting the standard, the Department should be encouraged to "staff up" to meet the ever-increasing demand for staff with multi-lingual skills in the system. The Department has relied on the mantra of "increased security needs" to restrict inmate rights. It should be applied here to increase the Department's capacity to understand who is in the system and manage them better. One can seek to monitor calls and mail for security purposes, but if no one understands the language, how does that improve security? Strengthening the standard would be the better option to ensure focus and funding to meet this important need.

§ 1-02 **Classification of Prisoners.**

Each facility is charged with providing the least restrictive form of incarceration to each prisoner as determined by a process of classification as articulated below. Classification is the basic and most important tool of population management and the framework for the process is delineated below in its proposed version,

The Board asserts that "*the proposed amendment to paragraph (b)(1) authorizes the housing of sentenced and detention prisoners together in punitive segregation, medical housing areas, mental health centers and mental observation cell housing areas, close custody housing areas, and nursery.*

The proposed amendments to paragraphs (b)(2) and (3) reflect a change in New York State Correction Law, which defines adolescent prisoners as ages 16 through 18 years old. Adolescent prisoners must continue to be housed separately from adults, ages 19 years and over

The standard describes when commingling usually prohibited is allowed:
(b) *Categories.*
(1) **Prisoners serving sentence shall be housed separate and apart from prisoners awaiting trial or examination, except when housed in:**
(i) **punitive segregation;**
(ii) medical housing areas;
(iii) mental health centers and mental observation cell housing areas;
(iv) close custody housing areas; and
(v) nursery.
(2) Within [these two] the categories above, the following groupings shall be housed separate and apart:
(i) male adults, ages **[21] 19** and over;
(ii) male minors, ages 16 to [20] 18 inclusive;
(iii) female adults, ages **[21] 19** and over;
(iv) female minors, ages 16 to [20] 18 inclusive.
(c) *Civil prisoners.*

(d) *Limited commingling.*
Nothing contained in this Section shall prevent prisoners in different categories or groupings from being in the same area for a specific purpose, including, but not limited to, entertainment, classes, contact visits or medical necessity.

Many systems have attempted to collapse the barriers to housing detainees and sentenced inmates together where conditions of confinement require special housing:, medical and mental health facilities and here, punitive and administrative (close custody) segregation to maximize use of housing areas that are expensive to build and operate. In theory it makes sense. In practice is has proven to be a challenge and many facilities have gone back to observing strict classification categories. The practice requires careful management by the DOC and strict monitoring by the Board to work well.

Housing nineteen year olds with adults is now permitted but I doubt it is wise. The older definition was more respectful of the development of young people.

(e) S*ecurity [Classification] classification.*
The classification system as described below does not pose an issue. It is the application of the classification standard as it pertains to changes in other basic Minimum Standards that is problematic.

(1) The Department shall [design] use a system of classification to group prisoners according to the minimum degree of surveillance and security required.
(2) The system of classification shall meet the following requirements:
(i) It shall be in writing and shall specify the basic objectives, the classification categories, the variables and criteria used, the procedures used and the specific consequences to the prisoner of placement in each category.
(ii) It shall include at least two classification categories.
(iii) It shall provide for an initial classification upon entrance into the corrections system. Such classification shall take into account only relevant factual information about the prisoner, capable of verification.

(iv) <u>It shall provide for involvement of the prisoner at every stage with adequate</u> due process.
(v) Prisoners placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other prisoners.
(vi) It shall provide mechanisms for review of prisoners placed in the most restrictive security status at intervals not to exceed four weeks for detainees and eight weeks for sentenced prisoners.

§[1-06] 1-05 Lock-in.
(a) *Policy.*
The time spent by prisoners confined to their cells should be kept to a minimum and required only when necessary for the safety and security of the [institution] facility. <u>The provisions of this section are inapplicable to prisoners confined in punitive segregation or close custody, or prisoners confined for medical reasons in the contagious disease units</u>.

The Board "*approves the proposal to amend subdivision (a) to exclude from the optional lock-out provisions prisoners who are confined for medical reasons in contagious disease units (CDU's), and prisoners confined in punitive segregation and close custody. The proposal acknowledges that prisoners in punitive segregation and close custody are confined to their cells most of the time (except for some programs and services, including recreation, visits, and clinic as deemed necessary by correctional health providers during cell rounds)*".

This change should be read in light of the classification standard cited above and repeated here:
v) Prisoners placed in the most restrictive security status shall only be denied those rights, privileges and opportunities that are directly related to their status and which cannot be provided to them at a different time or place than provided to other prisoners.

The proposed changes to Personal Hygiene Standards are also applicable to this issue.

The Board asserts that *". These would authorize DOC to provide less than daily access to showers and shaves to inmates in punitive segregation who engage in misconduct on the way to, from, or at the shower area, and would convert longstanding variances into permanent amendments. The purpose in each case is to enable DOC to hold prisoners confined in punitive segregation responsible for misconduct.*

1. § [1-04] 1-03 **Personal Hygiene.**
(a) *Policy.*
Each [institution] facility shall provide for and maintain reasonable standards of prisoner personal hygiene.
(b) *Showers.*
(1) Showers with hot and cold water shall be made available to all prisoners daily. Consistent with [institutional] facility health requirements, prisoners may be required to shower periodically. The shower area shall be cleaned at least once each week.
(2) **Notwithstanding paragraph (1) of this subdivision, prisoners confined in punitive segregation may be denied daily access to showers, except for court**

appearances, for infraction convictions for misconduct on the way to, from or during a shower, as follows: for a first offense, access to showers may be reduced to five days per week for two consecutive weeks; for subsequent convictions during the same punitive segregation confinement, as follows: for a second conviction, access to showers may be reduced to three days per week for up to three consecutive weeks; for a third conviction, to three days per week for up to four consecutive weeks; and for a fourth conviction, to three days per week for the duration of the current punitive segregation confinement.
(c) *Shaving.*
(1) All prisoners shall be permitted to shave daily. Hot water sufficient to enable prisoners to shave shall be provided. Upon request, necessary shaving items shall be provided at Department expense and shall be maintained in a safe and sanitary condition.
(2) [Hot water sufficient to enable prisoners to shave with care and comfort shall be provided.] **Notwithstanding paragraph (1) of this subdivision, prisoners confined in punitive segregation may be denied access to daily shaves, except for court appearances, for infraction convictions for misconduct on the way to, from or during a shower, according to the schedule in paragraph (2) of subdivision (b).**

Taken separately and together, these provisions join the alarming trend to use isolation and denial of basic opportunities for good hygiene to deal with prisoners in punitive segregation and protective custody. It follows from the Federal system's effort to create very high security or "Maxi-Maxi" facilities. These units isolate inmates and limit contact with other inmates or staff and opportunities for other activities including recreation, religion, law library and the like.

These conditions of confinement often "harden" the incarceration experience through furnishings, limited activities. food slots, and the like. **Many articles and studies have illuminated the increase in disorientation, dysfunction and mental illness that accompanies this kind of confinement, and are ultimately counterproductive in achieving compliance and maintaining good heath**.. They are more consonant with prisoner- of -war camps with prisoners who are confined for 23 hours a day in a prison uniform, few or no personal possessions, no meaningful human contact, unshaven and dirty. Largely a federal creation for terrorists and mob members, local facilities rarely have any real need for this kind of incarceration but often add it in new construction. Such housing serves as a threat to inmates and is an easier way to handle a difficult administrative problem. It is also inhumane.

A facility that houses detainees and persons sentenced to less than a year should not have much of a need for this kind of housing when the City provides other options.. Any use of this housing should be highly regulated and monitored.

(g). **Clothing**

. **The proposals to amend subdivisions (g) and (h) authorizing DOC to require all prisoners, including detainees, to wear institutional clothing, except for trial court appearances with the justification that Los Angeles, Chicago, Philadelphia and Houston do so. A bad practice by another jurisdiction is not an adequate justification for change.**

Minimum Standard in effect:
[(4)] (iii) [Prisoners] Detainees shall be permitted to wear all items of clothing that are generally acceptable in public and that do not constitute a threat to the

safety of [an institution. Women shall be permitted to wear pants and
slacks. Women and men shall be permitted to wear short pants and short sleeve
shirts during the warm weather months] a facility.
Proposed Standard:
h)(2), the **Department may require all prisoners to wear facility clothing**, except
that for trial, prisoners may wear clothing items described in paragraph (3) of this
subdivision. [Such clothing] Facility clothing shall be provided, laundered and
repaired at Department expense.

The law regards a detainee as a person distinct from a sentenced inmate. **The principle of least restrictive incarceration applied in the case of inmate clothing. The Department proposes to eliminate the following standard and replace it with a standard that mandates institutional clothing without any showing of necessity. This change is part of an alarming trend to treat persons who are detained, as if they were convicted criminals. Our system's strength is that is requires proof, not presumption, in criminal matters. No rights should be abridges without a significant showing of need. Here we have only convenience and the assertion that New York City should function no better than more poorly run systems throughout the county**. If the lowest common denominator is the system's aim, it is sure to achieve it.

§ [1-05] 1-04 Overcrowding

B. Two related proposed amendments enabling DOC to increase the number of detainees it confines in dormitories.
1. Paragraph (c)(2) reduces the required square footage per prisoner in sleeping areas of dormitories ("multiple occupancy areas") from 60 to 50 square feet again with the justification that other jurisdictions are worse: (Los Angeles and Chicago provide 50 square feet per prisoner; Houston, 40 square feet; Phoenix and Philadelphia, 35 square feet).
2.Paragraph (c)(5) authorizes DOC to confine as many as 60 detainees in dormitories to allow DOC to house in a dormitory as many detainees as sentenced prisoners.

These changes are justified by DOC's record of significant reductions in reported stabbing and slashing incidents in the City's jails and the belief that the confinement of ten additional detainees in a dormitory would not adversely affect safety and security.

(a) ***Policy.*** Prisoners shall not be housed in cells, rooms or dormitories unless adequate
space and furnishings are provided.

(c) ***Multiple occupancy.***
(2) Multiple-occupancy areas shall provide a minimum of [60] 50 square feet of floor space per person in the sleeping area.
(3) A multiple occupancy area shall provide a minimum of one operable toilet and
shower for every 8 prisoners and one operable sink for every [10] 12 prisoners.
Toilets shall be accessible for use without staff assistance 24 hours per day**.**
(5) A multiple occupancy area shall house no more than[:] 60 prisoners.
[(i) 50 Detainees
(ii) 60 Sentenced Prisoners. Section 1-05 (c)(5)(ii) shall be applicable to all
multi-occupancy areas opened after July 1, 1985.]

The Department seeks and the Board approves a diminishment of space standards from 60 to 50 square feet for dormitory housing. It also seeks to increase the number of detainees that may be housed in a dorm to the standard of sentenced inmates. Group housing has its uses, but in most cases, single cell

housing is considered preferable and must be used with care. **It is generally accepted that dormitory housing is more difficult to supervise given the lack of boundaries between inmates. Overcrowding is accepted as a major cause of inmate violence and unrest because of the reduction of personal space and lack of ability to protect oneself and one's property. Neither the Board nor the Department makes any statement of necessity or emergency to justify this change in standard.** They simply assert DOC's record of significant reductions in reported stabbing and slashing incidents in the City's jails, and a belief that the confinement of ten additional detainees in a dormitory would not adversely affect safety and security.

The reduction of injury and discord in any facility is not due to simply one thing. It is a combination of adequate space, light, air and access to proper hygiene and bathroom facilities, windows, proper classification, good officer training, appropriate staffing patterns, good supervision and management practices and access to contraband.. The size and quality of the space in which one is housed is a " 24-7" constant and is extremely important to one's sense of well being. One need only look at the history of litigation in New York City and throughout the world to assert that a reduction in space will have no effect on the inmates who live there and the officers who supervise them.

1. Section 1-08 ("Access to Courts and Legal Services")
It is proposed that paragraph (f)(2) be amended to authorize DOC to operate law libraries during hours when general population prisoners are locked-in their housing areas, and to count those hours as part of the total number of hours that the law libraries must be open. Currently, DOC must operate libraries in large jails for 10 hours (and in smaller jails for 8 hours) "during lock-out hours." The Board believes that authorizing DOC to operate law libraries during times when prisoners are locked-in is likely to increase access to law libraries for prisoners from special housing areas, because these prisoners can be escorted to the law library more safely when there are no other prisoners in the corridors. Furthermore, the Board believes that all general population prisoners could be accommodated during the eight hours the law library would be operated during their lock-out periods.

This proposal, if properly monitored could improve services, but without adequate monitoring and evaluation, it will simply result in a decrease in access to the Law Library for general population inmates.

2. Section 1-10 ("Telephone Calls")
.A proposed amendment to subdivision (h) would authorize the Department, upon notice to prisoners, to listen to and monitor prisoner telephone calls, except for telephone calls to the Board of Correction, Inspector General, other monitoring and investigative bodies, treating physicians, attorneys and clergy with the justification that some jurisdictions do so.

Despite the universally recognized principle that detainees retain their First Amendment rights, the Board asserts that prisoners have no expectation of privacy during confinement, the Board accepted the right to listening to and/or monitoring prisoner telephone calls upon notice upon an apparently self-evident heightened security concern. However, no evidence is submitted to show why the City jail system now has an increased security need.

3. Section 1-11 ("Correspondence")
The Board proposed amending Section 1-11 limiting correspondence in three important respects.
a) would allow prisoners to correspond with anyone ***"except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security."*** Again, the Board believes that heightened security concerns justify the proposed amendment.

b) proposed amendments to paragraphs (c)(6) and (e)(1) would authorize DOC to read prisoner non-privileged correspondence pursuant to a court order ***or warden's written order articulating a reasonable belief that the correspondence threatens the safety or security of the facility, another person, or the public.***

Again, this privacy intrusion is justified by the fact that some systems do this and. that the usual course, relying on obtaining court orders could cause undue delays, and interfere with DOC's ability to act quickly and decisively when dealing with imminent security threats.

c. A proposed amendment to paragraph (d)(1) to increase from 24 to 48 hours the time by which incoming correspondence must be delivered to prisoners to enable DOC to conduct more thorough physical inspections of incoming correspondence.

4. Section 1-12 ("Packages")
A proposed amendment to subdivision (a) restricts prisoners to receive packages "***except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security,*** " and authorize DOC to read prisoner non-privileged correspondence enclosed in incoming packages pursuant to a court order or ***warden's written order articulating a reasonable belief that the correspondence threatens the safety or security of the facility, another person, or the public,*** again justified by "heightened security concerns.".

5. Section 1-13 ("Publications")
A proposed amendment to subdivision (a) would allow prisoners to receive packages from any source ***"except when there is reasonable belief that limitation is necessary to protect public safety or maintain facility order and security,"*** and paragraph (c)(3) would authorize DOC to censor or delay delivery of a publication if it contains "***material that may compromise the safety and security of the facility."*** Again, this change is justified by " heightened security concerns."

There is no real evidence for the need to restrict inmate rights at the discretion of DOC without providing due process. The law provided good options.

6. Section 1-15 ("Variances")

The Board proposes amendments to § 1-15 to simplify the process by which DOC could seek variances for non-compliance with provisions of the Standards by creating one procedure for applying for a variance and the creation of new "best practice " variance in addition to the existing emergency variance. The Board would retain the ability to impose conditions on the variances it grants. The proposed amendment also would authorize the Board to set the duration of each variance on a case-by-case basis, with a maximum duration not to exceed one year.

The Board may grant a variance allowing DOC to implement, on a trial basis for a specified period of time, a procedure or program that does not comply with a Standard but which is identified as a correctional "best practice" – one that the Board determines may be particularly appropriate for implementation in City jails. This would allow DOC to "pilot" new procedures and programs that do not comply with a Standard, and would apply to those situations where compliance is possible, but the Board wishes to give DOC the flexibility to test, in City jails, a procedure or practice that demonstrably has improved jails in other jurisdictions.

The variance procedure as it existed was an artifact of incremental experiences with variances and the simplification is welcome. Variances are necessary to address emergency situations and to experiment to improve practices or to adapt to existing conditions. However, they become

counter-productive if the Board allows variances when real change is desirable and possible. Sometimes improvements were not made because variances were granted. If the Board provides rigorous oversight, the variance procedures described here are workable and welcome. If not, the Department may opt for a "best practices" variance whenever it does not wish to go through the arduous or costly process of compliance.

(d) ***Initial visit.***
(1) Each detainee shall be entitled to receive a non-contact visit within 24 hours of his or her admission to the facility.
(2) If a visiting period scheduled pursuant to §[1-10] 1-09 (c)(1) is not available within 24 hours after a detainee's admission, arrangements shall be made to ensure that the initial visit required by this subdivision is **made available.**

A change in the standard to hold-off contact visits for 24 hours has a legitimate rationale. Proper classification is basic to a safe and secure incarceration, and it takes time. Nevertheless, the period immediately after admission is a delicate one, especially with adolescents, and the risk of suicide is greater. Managers must take care in setting up the rules and regulations to assure that the standard is strictly complied with as written, and time periods are observed and contact visits resumed on schedule..

Professional Background of Barbara E. Dunkel:
After graduation from New York University School of Law and admission to the bar, I began working in corrections with the Vera Institute of Justice as a member, then Director of the Corrections Planning Project, moving to the New York City Office of the Deputy Mayor for Criminal Justice to work on planning the sale of Riker's Island to the state and a network of city detention centers. As a part of my employment, I visited and/or studied many jail and prison systems in the state of New York, the United States, Europe and Asia and had the opportunity to compare the New York City system to others.

My work with the Department began in a period of turmoil due to a number of issues including the closing of the Manhattan House of Detention by the Federal Courts for unconstitutional conditions, overcrowding throughout the system as a result of the City's fiscal crisis, a drug epidemic, slow case processing, and antiquated housing and management systems. It was my responsibility to supervise the interior renovation of "The Tombs" to meet constitutional standards for reopening and address the management and information systems problems that made planning and staff and population management difficult. My tenure with the Department ended with the reopening of Manhattan House of Detention and the creation of a new computer system to manage the system. After a year with the New York City Police Foundation, I joined the Board of Correction as Counsel where my duties including developing and enforcing minimum standards and running the grievance system. After my tenure in New York City, I headed the Westchester County Commission on Corrections Overcrowding and served on other commissions which resulted in the construction of a new jail and penitentiary in Westchester.