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DOC PRISONERS INADEQUATELY PROTECTED FROM COVID-19

At 11 AM, on Monday, March 23, 2020, a younger prisoner (approximately in his 30s) in Unit 4-2 of MCI-Norfolk complained of shortness of breath. His complaint was relayed to the medical department who deployed gowned and masked staff to evacuate the prisoner, BS, from the unit which was accomplished fairly efficiently. The prisoner had been living in a small 6ft by 12ft cell shared between BS and another prisoner. The cell contains a steel bunkbed, with BS using the lower bunk and his cellmate the upper bunk. Heat comes into the cell via a forced air system that actively circulates the air throughout the cell and the entire floor of 22 cells. Dust accumulates steadily, with daily deposits on surfaces, attesting to the airflow, even when vents are closed (the registers leak significantly).

Shortly after evacuating BS, all prisoners were told to return to their cells and the exterior of the doors and door handles were misted with dilute bleach solution by a team of officers and three prisoners. BS's cellmate was also evacuated soon after, and placed on the third floor of the Segregation unit in a single cell. He returns now after 72 hours, having been tested once with a nasal swab and regular vital signs. He has felt well throughout and he is told that his test was negative, although the unit remains on lockdown, pending final results for BS.

Since that initial intervention, all other 66 prisoners housed in unit 4-2 have been locked in the unit and have not been allowed to leave the building for any reason. Food and medication have been sent in, with medication administered by PPE protected staff. The unit correctional officers (three shifts per 24 hours) have not been so equipped even though, through their contact with the outside community, they are potential sources of infection to prisoners inside and to their families outside. Since the initial misting, no further cleaning efforts have been made. Several prisoners have made personal efforts to clean common areas and hallways, mostly using cleaning solutions that have been provided by the institution for routine use for several years. These consist of three solutions, two cleaning solutions containing some detergent, and one "disinfectant" solution apparently containing several compounds related to benzalkonium chloride. No special instructions for use were provided by staff. We have not been informed about the efficacy of this solution for controlling Covid-19. One spray bottle containing the disinfectant solution (benzalkonium chloride) is stationed in the chow hall for use in common area and on the phones. Again, no instructions were provided.

In addition to BS, the "index suspect patient" the 4-2 unit contains 67 other prisoners. It is the most densely populated unit in the prison with 40 double bunked prisoners, two per cell and 28 in singles. Prisoners were given no instructions about physical distancing and this was, in fact, made essentially

impossible because prisoners were repeatedly called down all at once to receive information and meals. Meals, which normally are served on open washable plastic trays, were modified and served in styrofoam clamshell trays, mostly packed by the main kitchen, and sometimes by the four "housemen" who normally serve meals. These housemen were given no special equipment for serving, using only the usual thin mesh "beard guards" and polyethylene disposable gloves.

No efforts were made to keep any prisoners from congregating in the chow hall for entertainment. Additionally, the 4 phones available for all prisoners are situated in the end of the chow hall, so that anyone needing to telephone needs to traverse the gauntlet of other prisoners. A spray bottle of the disinfectant solution was stationed near the phones. Most prisoners using the phone bring their own socks to sheathe the handsets or rags to wipe them.

No prisoner was given any protective equipment, mask, or supplemental cleaning materials (after 48 hours an additional "hotel-size" bar of soap was dispensed to each prisoner).

The unit consists of a chow hall and kitchen serving area on the first floor, which also houses the four housemen and the officer. The chow hall itself contains 16 tables (each $2\frac{1}{2} \times 3\frac{1}{2}$ ft) with 2 attached seats on each of the wide sides. When fully occupied, elbows touch for those sitting side by side, and each occupant faces the prisoner opposite at a distance of $2\frac{1}{2}$ feet. Tables are placed in close proximity with only inches between tables.

The second and third floors are divided into two tiers each, North and South, containing 22 cells per floor (10 doubles and 12 singles). The North side tiers on the second and third floor have toilets and sinks in each cell; the South side cells are "dry" and need to access a communal bathroom and shower (plus a slop sink) on that side. At count and during the night, each tier has a door that is locked, completely isolating that tier. The South side has access to the common bathroom during the night while the North side must use their own facilities. During the day, the tier doors are open most of the time (except for "count times" and emergencies). North side prisoners also must use the two showers available in the South side communal bathroom.

The communal bathrooms are cleaned each morning by a prisoner compensated for his efforts by receiving "good time" off his sentence. No special protective equipment or instruction was offered to these cleaners during the lockdown. It is important to note that no hand sanitizer was made available to prisoners except a single dispenser on the first floor directly outside the correctional officer's door. No additional cleaning materials were offered and the three cleaning solutions, in spray bottles, are removed from the tiers and moved to the locked basement during the daytime after cleaning is completed at 10 AM. On request, some officers will allow prisoners to retrieve spray bottles at other times. Also relevant is that bleach is tightly controlled in prison and is not available to prisoners. Similarly, no alcohol or even rubbing alcohol is permitted for prisoners.

It is important to note that prisoners in the 4-2 unit have essentially no means of individually protecting themselves from infection during the lockdown which has now exceeded 72 hours. Not only are conditions crowded, with small cells, tight stairways and limited communal areas, the forced hot air system

essentially assures that all are breathing the same air. Prisoners are continuously exposed to each other in their tiny cells. Cellmates, of course, cannot avoid each other. Communal bathrooms make self-protection difficult if not impossible. Herding prisoners into the chow hall to pick up their meals violates any possibility of physical distancing. The choice of some prisoners to congregate in communal areas to eat, play games, or talk increases the risks for all prisoners in the unit since no protective gear is offered to any prisoner. However, even without such activities, exposure to communal spaces and surfaces, inadequate and marginally effective cleaning efforts, and the forced hot air system and the tight quarters makes it unlikely that any efforts at self-quarantining or avoidance could be effective.

The 4-2 unit contains many at risk prisoners including one prisoner in his 80's, with diabetes and history of stroke several years ago, and a 79 year old prisoner with COPD. There are many additional prisoners at high risk. Many are in their 50's, 60's and 70's, with the usual mix of diabetes, hypertension, heart disease, liver disease with and without hepatitis C, and many other conditions. Some are cancer survivors after chemo and radiation treatments. Some prisoners are asthmatic. Of the 16 DOC institutions, MCI-Norfolk houses the oldest population in the DOC with Norfolk housing 1/3 of all DOC prisoners aged 60 and older. This is amply reflected in the 4-2 population.

We have been told today, March 26, that BS's cellmate tested negative and he has been returned to the unit this afternoon. BS is still out, and his final testing is apparently still pending. It appears likely that Unit 4-2 and the DOC may have dodged this bullet because so far no additional illness of note has been reported. However, there appears to be little doubt that were anyone in the unit positive for Covid-19, the entire unit would likely have been exposed and many infected. This includes many very vulnerable prisoners.

The absence of any effective countermeasures to prevent the spread inside the unit was and remains grossly negligent. Because of the ease of transmission documented for Covid-19, were BS positive, it is likely that at least one other, unidentified but already infected prisoner would have been left behind. Additionally, the lack of effective and persistent cleaning would likely have allowed virus on exposed surfaces to infect others even in BS's absence. With high risk and elderly prisoners, it is likely that a number of serious infections would have resulted, and not unlikely that some may have died. Further, even survivors may suffer persistent dysfunction, as it is well established that severe viral pneumonia, even without subsequent bacterial superinfection, is a frequent cause of permanent lung damage.

In short, the lack-a-daisical approach to protecting the prisoners in 4-2 constitutes negligence and deliberate indifference. This is especially true because of the extensive warnings issued at the national and state level about the need to provide far better avoidance measures than provided to prisoners in this case. Fortunately for these prisoners, it appears that this was a false alarm. But the next time may not be so benign, and it is the prisoners who will suffer the consequences. If the DOC cannot develop more effective measures to protect all, and especially vulnerable, high risk, prisoners, then expeditious release may, in fact, be necessary. Many of those at highest risk from Covid-19 are elderly and have very low risks of re-offending.

March 26, 2020 (6 PM)

Friday, March 27, 2020

Still locked in without ANY ability to stay safe if there is infection in 4-2. The DOC obviously still unsure if BS has corona virus infection and willing to sacrifice 67 prisoners to contain any infection. And, likely infect at least one or two guards, who would take the infection home--unless they are quarantining them in the prison? If BS has corona virus, then this is negligence, deliberate indifference, and even manslaughter. And, the scary thing is, they obviously still don't know the answer to that question.

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