



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Kelsey DeAvila – Jail Services Social Worker

BROOKLYN DEFENDER SERVICES

Written with Jared Chausow, Senior Policy Specialist

Presented before

The New York City Council Committee on Fire and Criminal Justice Services

Oversight Hearing on Progress in Closing Rikers Island

December 4, 2017

My name is Kelsey DeAvila; I am the Jail Services Social Worker at Brooklyn Defender Services. I would like to thank the Committee on Fire and Criminal Justice Services for convening this hearing on progress in closing the jails on Rikers Island. BDS provides comprehensive public defense services to more than 30,000 people each year, thousands of whom are incarcerated in the city jail system either while fighting their cases or upon conviction of a Misdemeanor and sentenced to a year or less. BDS' Jail Services Division provides supportive services and direct advocacy on behalf of our incarcerated clients. This testimony draws on the experiences of our clients and staff in the jails, as well as those of BDS' Executive Director, Lisa Schreibersdorf, who is serving on the Implementation Task Force's Working Group on Design.

In its nearly nine decades as a de facto penal colony, Rikers Island has been the site of countless atrocities. The staff brutality and abuse that are endemic to Rikers, with its infamous "deep-seated culture of violence," have taken or otherwise destroyed the lives of many New Yorkers. Medical and security staff neglect, for which the City has been forced to pay out massive sums in legal settlements, has likewise resulted in substantial sickness, injury, and death. Family members and other loved ones have forgone much-needed income, endured hours-long journeys, and even suffered sexual abuse and humiliation by security staff to visit people inside. The design of the facilities has blocked people—particularly those with mobility impairments or other disabilities—from accessing urgent medical treatment, education, and other programming, and allows for

beatings and other violence to occur without witnesses. In keeping with the Island's namesake, Richard Riker, who as a judge in the 19th Century was known for turning free Black people over to slave catchers, 88% of the total jail population are people of color.^{1,2} The net effect of the trauma and hardship of pre-trial detention on Rikers is a gross distortion of justice, as its distance from courts presents challenges for robust attorney-client relationships, and its daily violence, deprivations, and humiliations coerce even innocent defendants to plead guilty just to go home. Finally, Rikers Island has served to hide many of the greatest shames of our criminal legal system, isolated as it is farther from the heart of New York than its geographical distance and all but invisible to those who are not directly impacted. Its closure cannot come too soon.

Envisioning a More Just New York City

Closing Rikers presents our City with a tremendous opportunity to fundamentally transform its punishment paradigm. The current model for pre-trial detention, which is undoubtedly punitive even though it purports to mostly serve as a mere tool to ensure defendants return to court, creates and perpetuates violence. It very likely has a criminogenic effect in the communities most impacted by mass incarceration and criminalization.³ Better models facilitate healing and create meaningful accountability for those who have done wrong while allowing those who are presumed innocent to remain at liberty. In addition to doing its part to end most pre-trial detention, the City must:

- 1. Ensure that all borough-based jails are small, accelerate reductions in jail populations, and invest the operating cost savings to meet community needs.**
- 2. End the culture of violence and staff impunity in all City jails.**
- 3. Redesign borough-based facilities to promote socialization, education, and individual and collective health and well-being, including by abolishing solitary confinement.**
- 4. Preserve family and community bonds by encouraging contact visits.**
- 5. Reimagine any remaining pre-trial detention to make it as non-punitive and non-coercive as possible, and help to ensure that defendants have all necessary resources to participate in their own defense. This includes denying prosecutors access to recorded phone calls unless they have a judicial warrant and providing confidential meeting space for participatory defense meetings.**
- 6. End all revenue generation from incarcerated people.**

¹ Anna Mae Duane, The Shame of Rikers, Slate, July 13, 2017 at http://www.slate.com/articles/news_and_politics/history/2017/07/rikers_island_is_the_northern_equivalent_of_confederate_monuments_but_worse.html.

² Indep. Comm'n on New York City Criminal Justice & Incarceration Reform, A More Just New York City (2017), <https://static1.squarespace.com/static/577d72ee2e69cfa9dd2b7a5e/t/58e0d7c08419c29a7b1f2da8/1491130312339/Independent+Commission+Final+Report.pdf>.

³ Paul Heaton, Sandra Mayson & Megan Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention (Univ. of Pa. Law School 2016), <https://www.law.upenn.edu/live/files/5693-harriscountybail>.

The Paramount Goal of Decarceration & How to Achieve It

As I have testified to this committee before, in any conversation about our jails, it is crucial to first acknowledge the vast number of people on Rikers Island who simply should not be incarcerated in the first place. For example, many thousands of New Yorkers are needlessly detained each year because they are unable to immediately pay bail, resulting in short jail stays with devastating consequences. Individuals are separated from families and communities; risk loss of employment, benefits and housing; suffer interruptions in medical care; and endure chaotic and often violent stays in custody. Thousands more are detained for longer stretches because bail is set, either intentionally or neglectfully, in an amount and form their families could never afford. Broken Windows policing and the widely-discredited Drug War needlessly sweep masses of people into the criminal legal system; of the 268,775 arrests in New York in 2016, more than 122,000 stemmed from allegations relating to fare evasion, drugs, petit larceny (often baby food, laundry detergent and other essentials), trespass (often related to shelter-seeking), graffiti, or sex work. Taken together, felony drug sale and felony drug possession constitute the most common top arrest charges (1481) among the average daily population in City jails, despite ample evidence of the failure of drug prohibition.⁴ Meanwhile, high turnover in the jail population puts a strain on staff, housing and healthcare resources in the jails. In addition to mitigating harm to individuals, ending unnecessary arrests and discriminatory bail practices, adopting sentencing and discovery reform, and establishing a robust system for diverting people in need of treatment will contribute to reducing violence in the jails and easing other management challenges.

All parties in the criminal legal system, and a growing number of policymakers, readily acknowledge that many people are in jail for essentially political reasons. In the relatively rare event of a high-profile crime involving somebody with past criminal court involvement, some media outlets unfairly assign blame to a judge or prosecutor who, perhaps, could have had the individual responsible locked up, or locked up for longer. This is a patently absurd perspective on the use of our jails for incapacitation. More than a third (34.1%) of all people in City jails are detained for four or fewer days; more than three-quarters (76.2%) are discharged to the community without ever being sent to prison.⁵ Their time away likely only exacerbates any underlying behavioral issues. Our City and court actors should be at the vanguard of implementing humane and effective systems to address the root causes of any problematic behaviors that result in true threats to public safety, not running from negative media attention.

Decarceration while investing in healthy and empowered communities must remain the primary goal as we close Rikers and build our future.

The Culture of Violence in City Jails and the Lack of Accountability for Staff Misconduct

The fourth and most recent report from the *Nunez* Independent Monitor, filed October 10, 2017, details the same disturbing behavior routinely reported by our clients: Officers who “relish

⁴ NYC Dep't of Corr., NYC Department of Correction at a Glance (2017), https://www1.nyc.gov/assets/doc/downloads/pdf/DOC_At_a_Glance-9-14-17.pdf.

⁵ *ibid.*

confrontation,” stoke conflict between incarcerated people, and resort to violence as a first response.⁶ Despite the Department’s efforts to train staff in de-escalation techniques, staff reportedly utilize a one-size-fits-all approach to force, unleashing violence far out of proportion to what is necessary to contain a situation. Incidents of real or perceived non-compliance which are minor or already under control result in individuals being thrown to the ground or worse. For example, Ronald Spear, a 52 year-old medically frail man with a ‘fall risk’ bracelet, was killed by Correction Officer Brian Coll after one such dispute. Officer Coll kicked him in the head while other officers held him facedown on the floor. Defending himself against charges of orchestrating a cover-up of the killing, Officer Coll’s attorneys argued the cover-up was “instead a function of the culture firmly in place at Rikers Island.” BDS does not believe that culture absolves Officer Coll, and neither did the court that recently convicted him, but we do recognize it as an indictment of DOC.⁷

We emphasize that efforts to improve accountability should give special attention to supervisory staff in city jails. Supervisors play a fundamental role not only in dispensing official discipline, but also in setting the tone and atmosphere in the facilities they oversee. Unfortunately, the historical inadequacy or complete absence of accountability for misconduct in city jails have led many people with disturbing records of abuse into leadership roles. Captains and Deputy Wardens too often exhibit a troublesome lack of professionalism, do not meaningfully reprimand staff when appropriate, and in the worst cases, are themselves involved in meting out or covering up horrific brutality. The New York Times reported last week on one such case in 2016. A Captain was alleged to have punched a handcuffed teenager in the face, breaking his teeth as the young man pleaded with him to calm down, and then colluded with his subordinates to cover up the incident.⁸ Captain Arkhurst led an elite Emergency Response unit—a position which should demand a particularly high degree of restraint and professionalism given their charge to respond more effectively than line officers to volatile situations. Such incidents lay bare how a culture of impunity and violence is allowed to fester and endure.

At the facility level, supervisors routinely ignore evidence of collusion and decline to interview victims or witnesses of uses of force, opting instead to rubber-stamp the statements of officers they are tasked to oversee. Inquiries by the Department’s Investigation Division either fail to uncover staff misconduct or serve to justify it, rather than enforce accountability. As noted by the Nunez Monitor, 92% of such investigations between January and June 2017 found no staff wrong-doing, despite clear objective evidence of much higher rates of unjustified force. In the rare cases that investigations find staff misconduct, discipline is delayed and largely ineffectual, except in rare cases after certain high-profile incidents.

Beyond the most serious cases of brutality, stemming the tide of violence in city jails requires ending the myriad humiliations people in city jails endure on a daily basis. These structural and interpersonal cruelties contribute to an environment rife with tension. For example, most young people are limited to visits devoid of meaningful physical contact—separated by a wide table and plexiglass barrier. Ostensibly a security measure, the enforced separation of young people from

⁶ Steve J. Martin, et. al., Fourth Report of the Nunez Independent Monitor (2017).

⁷ Benjamin Weiser, Ex-Rikers Guard Is Sentenced to 30 Years in Fatal Beating of Inmate, N.Y. Times, September 13, 2017 at https://www.nytimes.com/2017/09/13/nyregion/rikers-brian-coll-ronald-spear-sentencing-brutality.html?_r=0

⁸ James C. McKinley, Jr., Correction Captain Charged With Beating Teenage Rikers Inmate, N.Y. Times, November 30, 2017 at <https://www.nytimes.com/2017/11/30/nyregion/rikers-island-arrest.html>

their mothers' loving touch breeds deep resentment. To make matters worse, conversations during visits are often dominated by the humiliating ordeal visitors endure to get through "security procedures" prior to seeing their loved ones.

Other everyday cruelties include officers tightening handcuffs to the point that hands lose their feeling, then twisting the wrists to cause shooting pain while uttering threats of further violence. At GMDC, young people describe an area in intake known as the "forget about me cells" where people are left and ignored for hours without food or water as a form of retaliation, punishment, or simple negligence. In solitary confinement and similar high-security units, people rely on officers for their most basic needs. When officers deprive people of toilet paper, food, showers, outdoor recreation and other necessities, people become desperate, and in their desperation may act out—thereby deepening the cycle of violence and isolation. People join gangs for survival and access to basic amenities. The list of daily humiliations is endless.

Jails with smaller populations that are better integrated into the community and more accessible to visitors and service providers would be better positioned to meaningfully reduce violence and improve staff accountability, but this change alone will not solve the problem. As a first step, it is paramount to address the ways staff practices fuel the broader culture of violence in city jails. So long as humiliation remains a celebrated tactic and gangs are manipulated to control or intimidate, violence will likely remain unabated in New York City jails.

DOC must ensure that staff who engage in substantiated uses of excessive force no longer work for the agency. Future reforms must emphasize a baseline of professionalism from supervisors who set the tone in the units they oversee. Swift, fair and meaningful accountability must be demanded from and dispensed by supervisors in the face of brutality, neglect, or simple unprofessionalism. Those who contribute to or ignore subtle and overt abuse by their subordinates should be promptly reassigned. Likewise, there needs to be a systemic response to staff neglect; it cannot be accepted as simply normal that our clients' acute health care needs are ignored. Human custody is a profound responsibility and staff accountability systems should reflect that.

Fostering Greater Socialization, Promoting Education, and Abolishing Solitary Confinement

Closing Rikers, transforming the punishment paradigm, and creating a more just New York City must include abolishing solitary confinement.

Solitary confinement is at the core of mass incarceration in the United States – and, in particular, New York. It is the center of the onion of our inhumane and ineffective punishment system. In a letter of support for the HALT Solitary Confinement Act, Dr. Bandy X. Lee, Assistant Clinical Professor of Psychiatry at Yale and an internationally-recognized expert on correctional psychology and the prevention of violence, wrote: "It has now become evident that the opposite of solitary confinement—that is proper socialization, interaction, and training—is what brings about the result we all desire."

In the wake of the attention to Kalief Browder's tragic death, the New York City Board of Correction (BOC) heeded the call of grassroots activists, attorneys for incarcerated people, and mental health professionals, and implemented new minimum standards to dramatically curtail the use of existing solitary confinement units in City jails and prohibit it altogether for young people.

However, these regulations explicitly allowed DOC to create new units for the indefinite isolation of the very people BOC sought to protect. BOC's new standards failed to bring about the fundamental transformation of the punishment paradigm that is necessary to make our jails more humane, and should serve as a lesson about the paramount importance of getting it right. In the redesign of the borough-based jails, all forms of solitary confinement should be abolished.

Opposition to Solitary Confinement – From the 19th Century to Today

Opposition to solitary confinement has grown in recent years to include President Obama, Pope Francis, and the United Nations General Assembly.^{9,10,11} U.S. Supreme Court Justice Anthony Kennedy invited a constitutional challenge to its widespread practice.¹² That said, scientific and legal understandings of the harm of solitary confinement are not new. In fact, judicial recognition that solitary confinement is inhumane and ineffective dates back at least to 1890, when the US Supreme Court found in *In Re Medley* that placement in solitary confinement caused extreme and long-term harm, writing that a “considerable number of the [people in solitary] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.”¹³

Racial Bias in Prison and Jail Discipline

Solitary confinement practices in New York reflect the systemic and interpersonal racism of our prisons and jails. *The New York Times* conducted an investigation last year and found Black people to be far more likely to be subject to solitary confinement in New York State prisons, which in turn exacerbates disparities in release determinations, as people in Special Housing Units (SHU) are far less likely to be granted parole.¹⁴ Research by the New York City Department of Health and Mental Hygiene further found that Black and Latinx people incarcerated on Rikers Island or in the City's borough-based jails were less likely than their white counterparts to receive appropriate mental health diagnoses and more likely to experience solitary confinement.¹⁵ Solitary confinement should be abolished in light of these racial disparities. Moreover, future reforms must be cognizant not to recreate these discriminatory trends. All people with behavioral challenges, regardless of

⁹ Barak Obama, *Why We Must Rethink Solitary Confinement*, *Wash. Post*, Jan. 25, 2016, available at https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html?utm_term=.b442ca5915e7.

¹⁰ Jean Casella, *Why We Must Rethink Solitary Confinement - Pope Francis Denounces Solitary Confinement, Calls for Prison Conditions that "Respect Human Dignity"*, SOLITARY WATCH, Jan. 25, 2016, available at <http://solitarywatch.com/2014/10/26/pope-francis-denounces-solitary-confinement-calls-for-prison-conditions-that-respect-human-dignity/>.

¹¹ The United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (The United Nations 2015) [hereinafter The Nelson Mandela Rules].

¹² *Davis v. Ayala*, 576 U.S. ____ (2015), available at https://www.supremecourt.gov/opinions/14pdf/13-1428_1a7d.pdf.

¹³ *In re Medley*, 134 U.S. 160, 168 (1890).

¹⁴ Michael Schwirtz, Michael Winerip, & Robert Gebeloff, *The Scourge of Racial Bias in New York State's Prisons*, N.Y. TIMES, Dec. 3, 2016, available at https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html?_r=0.

¹⁵ Fatos Kaba *et al.*, *Disparities in Mental Health Referral and Diagnosis in the New York City Jail Mental Health Service*, 105 AM. J. PUB. HEALTH 1911-1916 (2015) available at <http://ajph.aphapublications.org/doi/full/10.2105/AJPH.2015.302699>.

demographic factors, should be met with compassionate interventions that seek to address the root causes of behavior, and not subjected to overtly punitive sanctions.

Catastrophic Health Impacts of Solitary Confinement

In 1993, correctional psychiatry expert Dr. Stuart Grassian identified what has been called SHU Syndrome, which includes an array of symptoms. Physiological conditions brought on by solitary confinement include gastrointestinal and urinary issues, deterioration of eyesight, lethargy, chronic exhaustion, headaches and heart palpitations among others.¹⁶ Solitary is further shown to cause psychological trauma including severe depression, anxiety, insomnia, confusion, emotional deterioration, and fear of impending emotional breakdown.¹⁷ Studies have found that prolonged solitary confinement induces hallucinations and delusions, and bouts of irrational anger and diminished impulse control, leading to violent outbursts and invoking the very behavior it purports to manage.^{18,19}

A 2014 study revealed that **people subjected to solitary confinement in New York City jails were 6.9 times more likely to engage in acts of self-harm than those who were not.**²⁰ **The suicide rate in New York State’s SHU is nearly six times higher than that of the General Population (GP).**²¹ These tragic statistics confirm what mental health experts have long concluded, namely that solitary is “inherently pathogenic; [...] one of the most severe forms of punishment that can be inflicted on human beings short of killing them.”²² In fact, one man who has been held in solitary confinement at New York’s Elmira prison for approximately thirty years, William Blake, described his long-term isolation as a “sentence worse than death.”

As New York State Assembly Health Committee Chair Richard Gottfried has said in a press release by the Campaign for Alternatives to Isolated Confinement, “Solitary confinement has catastrophic long-term effects on physical and mental health. No responsible medical professional could stand for this, and New York State shouldn’t either.”

Violations of United Nations Rules, Professional Association Standards, and New York State Law

The United Nations Standard Minimum Rules for the Treatment of Prisoners, the “Mandela Rules,” expressly prohibit prolonged solitary confinement beyond 15 days as a form of torture or cruel, inhuman or degrading treatment. Nevertheless, our City jails hold people in solitary confinement beyond that limit, in some cases for many months in the Enhanced Supervision Housing Unit (ESHU) or other such units. (ESHU allows for graduated relief from sanctions, ultimately allowing

¹⁶ Sharon Shalev, A SOURCEBOOK ON SOLITARY CONFINEMENT (London: Manheim Centre for Criminology, London School of Economics, 2008), p. 15.

¹⁷ Craig Haney, *Mental health issues in long-term solitary and “Supermax” confinement*, 49 CRIME & DELINQUENCY 133-136 (2003).

¹⁸ *Id.*; see also Stuart Grassian, *Psychopathological effects of solitary confinement*, 140 AM. J. PSYCHIATRY 1452 (1983).

¹⁹ Haney, 2003, p. 133; Grassian, 1983 p. 1453; James Gilligan & Bandy Lee, *Report to the New York City Board of Correction*, p. 6, Available at <http://solitarywatch.com/wp-content/uploads/2013/11/Gilligan-Report.-Final.pdf>.

²⁰ Fatos Kaba *et al.*, *Solitary confinement and risk of self-harm among jail inmates*, 104 AM. J. PUBLIC HEALTH 445.

²¹ Statistics provided by NYS Department of Correction and Community Supervision.

²² Gilligan & Lee, *Report to the New York City Board of Correction*, p. 6.

for more time out of cell than standard definitions of solitary, although lockdowns and other incidents often leave people isolated day and night.)

Contrary to clear direction from the National Commission on Correctional Health,²³ healthcare staff in prisons and jails are generally complicit in subjecting people to the harms of solitary confinement. Even when they are not, healthcare staff have indicated to me that they have no ability to overrule security staff decisions about solitary placements, rendering their expert opinion generally ineffectual. Once someone is placed in solitary confinement, the problems of access to health care are exacerbated. Officers have even more control over access to sick call and emergency referrals, and securing escorts from high security units to appointments is increasingly difficult.

A Way Forward – The HALT Solitary Confinement Act

BDS supports the efforts of New York State legislators and our grassroots partners in the Campaign for Alternatives to Isolated Confinement to **enact the Humane Alternatives to Long Term (HALT) Solitary Confinement Act (S.4784-Parker/A.3080-Aubry)** and bring an end to the torture of solitary confinement in New York State. The Corrections Commissioner in Colorado, Rick Raemisch, has already successfully implemented solitary reforms that mirror HALT.²⁴ These reforms include: A hard limit of 15 consecutive days in solitary confinement, with most serving far less; the use of therapy to address seriously problematic behavior; and a dramatic reduction in the overall use of solitary. In 2011, 1,500 people in Colorado prisons, or 7% of the prison population, were held in solitary; the state’s prison commissioner now reports that number has dropped to 18 people, or far less than 1%. These reforms mark a new era of compliance with the UN’s Nelson Mandela Rules for the Treatment of Prisoners. It is urgently necessary that New York City and State follow suit.

There are many examples of alternatives to solitary confinement, in addition to Colorado’s, that New York City should seek to emulate. After visiting Halden, a maximum-security prison in Oslo, Norway with the Prison Law Office, Leann Bertsch, the Director of North Dakota’s Department of Corrections and Rehabilitation, implemented a series of reforms in her own system that dramatically reduced the use of solitary confinement.²⁵ Right here in New York State, the Merle Cooper Program at Clinton C.F., a popular therapeutic, community-intensive, long-term counseling series proved to be remarkably effective at improving behavior and at creating a sense of accountability before it was shut down in 2013.²⁶

In 2017 and beyond, it should be unthinkable that any new solitary confinement units would be created.

²³ See United States National Commission on Correctional Health Care (2016), Position Statement: Solitary Confinement (Isolation), [online] (available at: <http://www.ncchc.org/solitary-confinement> [accessed 25 October 2017]).

²⁴ Rick Raemisch, *Why we ended long term solitary confinement in Colorado*, N.Y. TIMES, Oct. 12, 2017, available at <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

²⁵ Dashka Slater, North Dakota’s Norway Experiment, Mother Jones, at <http://www.motherjones.com/crime-justice/2017/07/north-dakota-norway-prisons-experiment/>.

²⁶ Felicia Krieg, Prison Program to Be Eliminated, The Press-Republican, June 23, 2013.

Preserving Family and Community Bonds by Encouraging Contact Visits

Research compiled by the VERA Institute shows that jail visitation preserves critical “pro-social supports” that improve behavior and, for young people, school performance.²⁷ VERA also found that “Incarcerated men and women who maintain contact with supportive family members are more likely to succeed after their release. For example, people in prison “who had more contact with their families and who reported positive relationships overall are less likely to be re-incarcerated. Families can motivate formerly incarcerated relatives to seek or continue drug treatment or mental health care, and they most frequently provide housing for newly released family members.”²⁸ Research conducted by the Minnesota Department of Corrections further found that “Visiting can help offenders build support networks they will need after release...[P]ositive interactions with friends and family can lower recidivism.”²⁹

Our experience with clients in City jails affirms these findings. Beyond data and outcomes, visiting also provides immeasurable relief from the extreme stress of the jails. For our clients in solitary confinement, we are often the only people they see, other than occasional security staff, for days or weeks at a time. Others in General Population may get very few visits, even though they have family and friends who wish to support them. That should not be the case. However, the hardships of visiting at Rikers, in some cases coupled unnecessary and humiliating security restrictions, preclude many families and friends from being present during this difficult period. In fact, DOC has actively sought policies and implemented new practices to make visiting even more difficult.

The Department has repeatedly argued that visiting restrictions are necessary to improve the security of the facility. For example, at the City Council Oversight Hearing on Violence in City jails on October 25, 2017, when asked what tool the Department needed in order to curb violence, DOC’s Commissioner Cynthia Bran said DOC sought more authority and autonomy to restrict and limit visits. If the primary concern of the Department is reducing violence, the Department should be working to improve access for visitors, make family visits more child-friendly, and reform the arduous visiting procedures to which families are subjected. Making visits more difficult and limiting physical contact will discourage family members from visiting, causing further isolation and desperation among the incarcerated population, thereby fomenting further violence.

DOC has not presented a record to demonstrate that visitors are a significant source of contraband smuggling, but cited this purported concern when initiating its crackdown on visiting. To justify its request for a rule change to the BOC, the Department cited 29 individuals who were arrested with weapon contraband during the first 6 months of 2015. They also noted 24 weapons found in visiting rooms, although they do not define what constitutes a weapon. The Department stated that up to 1,500 people visit Rikers daily, though sadly that number has apparently declined by nearly a third in its most recent report.^{30,31} Starting with the Department’s data, if all the weapons referenced were

²⁷ Sandra Villalobos Agudelo, *The Impact of Family Visitation on Incarcerated Youth’s Behavior and School Performance* (2013) at <http://archive.vera.org/sites/default/files/resources/downloads/impact-of-family-visitation-on-incarcerated-youth-brief.pdf>

²⁸ Ryan Shanahan and Sandra Villalobos Agudelo, *The Family and Recidivism* (2012) at <http://archive.vera.org/files/the-family-and-recidivism.pdf>

²⁹ Minnesota Dep’t of Corr. visiting information website at <https://mn.gov/doc/family-visitor/visiting-information/>

³⁰ NYC Dep’t. of Corr. visiting information website at <http://www.nyc.gov/html/doc/html/visit-an-inmate/visit-schedule.shtml>

smuggled in on one day – that would mean approximately 1,447 people (or 96%) had nothing to do with smuggling contraband. To capture the full six-month period, the number of visits jumps to 270,000, meaning that 269,447 visits had nothing to do with contraband smuggling during that period. It was absurd to adopt rule changes impacting hundreds of thousands of visits due to alleged smuggling by .0001% of visitors.. What’s worse, by making visiting a degrading and arduous endeavor, the reduction in the number and frequency of visitors means that the benefits of regular family visits are forgone, to the detriment of overall safety.

The Department of Investigation has found that a large majority of contraband is smuggled into the jails by uniformed and civilian staff and has since directed its enforcement efforts accordingly. BOC has found that a majority of weapons in the jails are made from materials found in the jails and not from smuggled items—another reason to shut down these decrepit facilities.³² Either way, there is no justification for harsh limits on visiting.

Plans for redesigned facilities should prioritize comfortable and welcoming visiting spaces and efficient visiting processes. Equally important, DOC policies and culture must respect the dignity and time of all visitors—indeed, the Department as a whole and jail staff on a personal level should be appreciative of the positive contributions visitors make.

Mitigating Pre-Trial Detention’s Distortion of Justice

The Bureau of Justice Assistance, a division of the U.S. Department of Justice, has found that “[t]hose who are taken into [pre-trial] custody are more likely to accept a plea and are less likely to have their charges dropped.”³³ Indeed, there is ample research documenting that finding, and our experience at BDS affirms it. It should be obvious that anybody who has experienced even a day in Rikers, and who faces the prospect of weeks, months or years inside, is far more likely to accept a plea that involves an admission of guilt than somebody who is free until their trial, regardless of whether or not they are in fact guilty. Prosecutors consistently exploit this leverage. This appalling practice helps to explain why many of the so-called “frequent fliers” in Rikers have long criminal histories, some with dozens of misdemeanors. They get caught up in the dragnet of aggressive policing, often based on illegal searches, and, because they cannot afford bail, get thrown in jail until they plead guilty in exchange for an offer of time served. One of our clients was in arraignment on charge of drug possession when the prosecuting Assistant District Attorney stated on the record that if our client were out, he would have been offered a plea bargain of time served. Since he was still incarcerated, the ADA said, the offer was a six months sentence.

In another recent case, deficient health care and other endemic problems in DOC staff culture, temporarily derailed our client’s defense and put his life in jeopardy. An older man whom I was visiting at Rikers last month collapsed right in front of me after suffering from acute medical neglect. He has been diagnosed with kidney disease and had been on dialysis in the community,

³¹ NYC Dep’t of Corr., NYC Department of Correction at a Glance (2017), https://www1.nyc.gov/assets/doc/downloads/pdf/DOC_At_a_Glance-9-14-17.pdf.

³² New York City Department of Investigation, Commissioner Mark Peters, New York City Department of Investigation Report on Security Failures at City Department of Correction Facilities, November 2014. Available at http://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr26rikers_110614.pdf

³³ Lindsey Devers, Ph.D. , Plea and Charge Bargaining (U.S. Bureau of Justice Assistance 2011).

receiving treatment three times every week. However, once at Rikers, the treatment stopped. He had put in a sick call request and when that was ignored, we sent three referrals to DOC, the Board of Correction, and Health and Hospitals. He needed to be hospitalized. Instead, he was taken to Bellevue for dialysis at most once a week, and often far less frequently, and then returned to his jail cell. I met with him and he told me he wasn't feeling too well. Then he passed out and collapsed. I requested urgent medical care but the Correction Officer seemed unconcerned. When she ignored me, I called over additional officers, and they, too, shrugged it off, saying "he does this sometimes." I retrieved my phone and called the on-island administrator for Health & Hospitals myself, explained the situation, and demanded help for my client. Correction Officers then deemed me a disturbance and told me to leave. I said I would not leave until my client received medical attention, but they escorted me out. When I later followed up with DOC, I was told that he is "fine and back in his housing unit." We were able to verify that he was admitted to Elmhurst Hospital, but was returned to Rikers. DOC was then unable to produce him for his court appearance because his blood pressure was too high. Ensuring defendants appear in court is the only reason under New York State law that people may be detained pre-trial, but in this case, and others like it, his time in jail actually prevented his appearance and his ability to fight his case. I do not know what would have happened to this man if not for our advocacy, but quality care should not depend on us.

Pre-trial detention likely necessarily distorts justice, but the City could achieve worthwhile mitigations. The detention, itself—the separation from family, friends, work, and community—is punitive and there is no justification for further punishing people with systemic deprivation. Even a smaller, borough-based jail system must keep in mind the purpose of any limited detentions which do occur, namely to ensure court appearances. Rikers Island introduces myriad barriers to access to attorneys and courts which must not be recreated. Jails in distant corners of the boroughs will not alleviate the challenges attorneys, social workers and investigators face at present to meet with their clients. Similarly, distant jails requiring significant transportation are likely to be plagued with the same, often inexplicable issues that result in our clients not being produced for their court dates, thereby lengthening their incarceration. In any event, greater accountability and safety mechanisms in the realm of transportation are needed. We are troubled, for example, by recent repeated breakdowns of the elevators at Brooklyn House of Detention, which have caused some missed court appearances.

Moreover, any future system should address the many inefficiencies which currently limit attorney and court access. These include a lack of clarity and professionalism from jail staff toward attorneys who are unfamiliar with the complex and inconsistent regulations across jails, inadequate space to store personal belongings during visits, inadequate privacy and space in which to comfortably conduct visits, delays in having clients brought to the visiting room despite efforts to call ahead, among others.

In addition to visits, unfettered access to confidential telephone calls between clients and attorneys must be guaranteed. The present "PIN" system is plagued with limitations including but not limited to people being coerced to forfeit their phone credits, control of the phones by gangs with staff complicity, and having to choose between a call home and a call to one's lawyer.

Lastly, in the interest of justice, DOC must also withhold all call recordings from District Attorneys' offices unless prosecutors provide a judicial warrant. It is wrong that people in pre-trial detention, who are disproportionately low-income people of color, are subject to this additional, burdensome layer of surveillance that may prohibit them from communicating with loved ones or

participating in their own defense. The City should instead promote ‘Participatory Defense,’ an innovative community organizing model for people facing charges, their families, and communities to empower themselves and improve case outcomes. This could be done with attractive and confidential visiting spaces with welcoming staff cultures, though I am admittedly skeptical that DOC will ever meet those criteria.

End All Revenue Generation from Incarcerated People

According to budget documents, DOC expects to collect approximately \$20.5 million in annual revenue from jail commissary operations, vending machines and surcharges on incarcerated people’s telephone calls in 2018. This is unacceptable. The City should not derive funds from people whose liberty and ability to earn an income has been taken away, especially as nearly 80% of those in our jails are presumed innocent.

Exorbitant call rates in jail punish whole families and exacerbate inequality. Under President Obama, the Federal Communications Commission had drafted regulations to end price gouging for such calls, but under President Trump, this proposal was withdrawn. Under the existing contract with Securus Technologies, the city receives a \$5 million kickback every year. New York City should provide calls free of charge to incarcerated people and their loved ones, in line with Intro. 1634 (Johnson). This would help facilitate ongoing community bonds through the difficult period of incarceration. Additional revenue generated by markups on commissary items, as well as fees charged by J Pay and Western Union, as well as steep fines for minor infractions of jail rules should be prohibited, as well.

More Reasons to Close Rikers Soon: BDS Client Stories

There are no more important reasons to close Rikers as soon as possible than the shocking experiences of our clients.

Mr. F was a young man who suffering from paranoid schizophrenia. While incarcerated, Mr. F decompensated and began experiencing confrontations with custody staff, many of whom, lacking adequate training to de-escalate incidents involving individuals in his mental state, approached Mr. F aggressively. Mr. F received infractions during his incarceration and spent several months in the solitary unit for people with mental illness at the George R. Vierno Center (GVRC) on Rikers Island. This isolation caused Mr. F to decompensate further, losing the few privileges he came to earn in the unit and lengthening his stay in solitary. Eventually, Mr. F’s condition worsened and he was transferred into another isolation unit, which housed people with mental illness deemed violent—12 Main at GRVC. In this unit, Mr. F was isolated further and experienced worsening depression, anxiety, anger, lethargy, loss of appetite, frustration, hopelessness, insomnia, physical pain, and hallucinations associated with his schizophrenia. He reported to our staff a feeling of being trapped. In no small part due to his prolonged isolation, Mr. F decompensated so profoundly that he was eventually found unfit to proceed in his criminal case and had to be hospitalized in order for him to advance his case. This case begs the question, what is the purpose of pre-trial detention if not to ensure people make it to court? 12 Main was depopulated a few years ago after people isolated there smeared feces on the doors and walls of their cells and others lit cell fires.

In one recent case, **Mr. C** had two stents around his kidneys which were due to be removed after only two weeks. His arrest delayed the necessary operation and healthcare staff in the jail ordered an assessment before moving forward. Despite significant advocacy from our office, approximately five months went by without a response, and the specialty appointment to remove the stents had not been ordered. Eventually, the client developed an infection which had to be treated, further delaying the operation to remove the stents. Meanwhile, our client suffered a great deal of pain and when urinating, he became lightheaded. Over time, his appearance declined; his skin became pale, and he was eventually transferred to a hospital where he finally received treatment.

In another recent case, **Mr. R** had a diagnosed seizure disorder, which was not appropriately managed with medications. Despite written notification from medical staff outlining the specific medical dangers should he be placed alone in a cell, he spent numerous months in solitary confinement, over the repeated objections of healthcare staff. His isolation only exacerbated his medical condition, resulting in weekly seizures, one of which led to a broken tooth and shoulder injury. Our office advocated for his immediate transfer to a hospital or an open dorm. He was sent to Bellevue Hospital for a week of tests, but was ultimately sent back to Rikers to finish his time in solitary confinement.

Ms. R's story is a perfect example of how Rikers current policy on feminine hygiene products affects poor New Yorkers. Ms. R, a 24-year-old BDS client, spent nine months detained on Rikers. She asked her BDS social worker not to visit her while she was on her period because she was worried about leaking through her uniform and having to walk the halls of the jail with a bloodstain. Ms. R had to choose between the shame of leaking blood while on her period and meeting with her legal team. Ms. R comes from a low-income family and worked overtime in the jail to pay for her basic needs including deodorant, soap and sanitary napkins. She shared that she did not have enough sanitary napkins and she would try to wear the same napkin for as long as possible to ration the supply she was able to purchase from the Commissary because the free pads were of such low quality.

An officer flew into a rage during a verbal disagreement with our young client, **J**. Despite there being no physical threat to the officer or others, she took out her MK9 pepper spray. When our client fled, the officer unleashed the pepper spray as she chased him through the mess hall, dousing everyone else in the area. The excessive pepper spray triggered a severe asthma attack which left our client coughing up blood. He was taken to intake where he waited several hours before receiving medical care. The incident likely sent many bystanders to the clinic as well.

K, who was held at Rikers at age 19, reported being sexually assaulted by a male from his housing unit to 311 and DOC officers. He also filed an incident report. Investigators failed to take action and the sexual assaults continued for about a month before he told his BDS social worker. We immediately intervened, but by then he had become so desperate that he spat in an officer's face so that he would be immediately moved to another unit.

An officer engaged our client, **Mr. L**, in a verbal argument, ultimately threatening to place him in a unit housing rival gang members. Making good on this threat, our client was later moved to a cell in the jail's intake where he encountered approximately seven members of a rival gang. As planned, he was attacked and suffered two deep cuts on his face, requiring several stitches.

After filing unrelated complaints against correctional staff, **Mr. N** was repeatedly denied sick call as well as escorts to the clinic, and was documented as having “refused” care. As a result of being denied timely medical treatment for a cut, the client developed gangrene which nearly required amputation.

Mr. R was detained while facing serious charges and worried that other incarcerated people would hurt him. He asked to be placed in protective custody, but DOC did not honor the request. As he feared, he was assaulted and his jaw was broken. Still, he was not protected. Four months later, he was stabbed several times.

Mr. C has a seizure disorder and diabetes and was suffering from withdrawal when he was arrested. His attorney at BDS bought him a candy bar before his arraignment due to a concern about reduced insulin levels. At the prosecutor’s urging, the judge set bail beyond what Mr. C could afford, and he was taken into custody. We requested medical attention for him and followed up with DOC. Five days later, when he appeared in court again to testify, he was visibly much sicker and told his attorney he thought he would die. He said that he had been sleeping on the floor and only just got a bed. He had been using other incarcerated people’s insulin, and was truly afraid for his life. Fortunately, we were able to get him released.

We must now secure the release of every other person from Rikers Island as quickly as possible.

Thank you for your time and consideration of our comments. If you have any questions, please contact Jared Chausow, our Senior Policy Specialist, at 718-254-0700 ext. 382 or jchausow@bds.org.