

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

Jointly with

COMMITTEE ON FIRE AND
CRIMINAL JUSTICE SERVICES

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January 17, 2017
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HELD AT: Council Chambers - City Hall

B E F O R E: Elizabeth S. Crowley
Chairperson

Vanessa L. Gibson
Chairperson

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A P P E A R A N C E S (CONTINUED)

Joseph Ponte
Department of Corrections Commissioner

Darcel Clark
Bronx District Attorney

Jeff Thamkittikasem
Department of Corrections Chief of Staff

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Thomas Farrell
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Peter Jones
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A P P E A R A N C E S (CONTINUED)

Sergio De La Pava
New York County Defenders

Rachel Foran
Brooklyn Community Bail Fund

Joshua Norkin
Legal Aid Society

2 CHAIRPERSON CROWLEY: Good morning. My
3 name's Elizabeth Crowley, and I'm the Chair of the
4 Fire and Criminal Justice Services Committee. This
5 is a joint Oversight hearing with the Committee on
6 Public Safety chaired by Council Member Vanessa
7 Gibson. At today's hearing we will examine the
8 prosecution of violent incidents in our City's jails.
9 The Fire and Criminal Justice Services Committee will
10 also be hearing Proposal Introductory Bill 1373A. I
11 want to begin by giving some opening remarks about
12 our joint oversight hearing, and I will reserve my
13 remarks about Intro 1378A for our second panel.
14 Despite the best intentions of our City's Department
15 of Corrections, violence continues to plague our city
16 jails. According to the Mayor's Management Report,
17 inmate on inmate violence has increased substantially
18 each of the past four years, and inmate on staff
19 violence has increased for at least four straight
20 years before finally slowing down slightly in the
21 most recent fiscal year. Whether it's between
22 inmates or between staff and inmates, violence in our
23 city jails is not acceptable. One should be safer in
24 our jails, and it's certainly not acceptable for
25 someone to be stabbed or slashed on Rikers Island.

2 It's no more acceptable for someone to be slashed or
3 stabbed on Rikers Island than on our city streets,
4 and we should expect as robust of an investigation
5 and prosecution of violence in jails as we do for any
6 other acts of violence. That is why I was disturbed
7 to learn in 2015 that former Bronx District Attorney
8 Robert Johnson had a serious backlog of cases coming
9 from Rikers Island and that there was no-- and that
10 there was a public rift between the then District
11 Attorney and the Department of Corrections about who
12 was responsible for this backlog and an overall lack
13 of meaningful prosecution of cases from Rikers
14 Island. It is unacceptable that correction officers
15 who work hard every day in one of the most difficult
16 and demanding jobs in our city could be attacked
17 while doing their job, yet their case would not be
18 prosecuted in the same way as if they were attacked
19 on their way home from work, and it is equally unfair
20 to the inmates who are more often the victims of this
21 violence, most of whom are pre-trial detainees who
22 have not been convicted of anything, that these
23 crimes and the crime victims don't have the same
24 rights as others. I'm also interested in the due
25 process as those accused while on Rikers Island

2 should have access to legal counsel. Rikers Island
3 already has a culture of violence as described by the
4 United States Department of Justice, and a lack of
5 meaningful prosecution of violence can only add to
6 this culture. I have bene very pleased to hear about
7 the progress that the new Bronx District Attorney
8 Darcel Clark has made on this issue. From tripling
9 her staff who work on jail violence issues to opening
10 a new facility on Rikers Island, and even a
11 preliminary glance at the number of inmates arrested
12 as reported in the Mayor's Management Report
13 indicates that progress is already being made. I'm
14 very interested to learn more from DA Clark about her
15 efforts thus far and what her plans are for the
16 future. I'm also interested in learning more about
17 the Department of Corrections and what it has done to
18 ensure that the investigation's gathering of evidence
19 and processing of arrests are occurring efficiently
20 and judiciously, because we've learned that it's only
21 with the close cooperation of both the Department of
22 Correction and the District Attorney that violence
23 can be meaningfully prosecuted in our city jails. I
24 thank the staff for helping put this hearing
25 together, and I thank all the Council Members who are

2 here in attendance, and I will name them before I
3 recognize my Co-chair, Council Member Vanessa Gibson.
4 Here today on the Committee of Fire and Criminal
5 Justice, Council Member Rory Lancman, and then I will
6 let my Co-chair recognize the members of her
7 committee.

8 CHAIRPERSON GIBSON: Thank you very
9 much, Chair Crowley. Good morning to each and every
10 one of you. Welcome to City Hall to our chambers. I
11 am Council Member Vanessa Gibson of the 16th District
12 in the Bronx, proud to chair the Committee on Public
13 Safety. I want to thank my fellow colleague and Co-
14 Chair, Council Member Elizabeth Crowley for joining
15 me to chair this important hearing this morning
16 that's entitled, "Prosecuting Violence in our City's
17 Jails." I'd also like to thank my colleagues and
18 members of the Public Safety Committee who are here
19 this morning. As many of you know, over the past
20 several years there's been an increase in violence in
21 our City's jails. In 2016, there were 11,240
22 incidents of fights and assault infractions reported
23 in our jails. Just recently, in the summer of last
24 year, there were several high-profile assaults by
25 inmates on guards, and this fall an inmate was

2 slashed in his face by other detainees. As New
3 Yorkers we all have a responsibility to keep everyone
4 safe, and that not only means preserving safety on
5 our city streets, but certainly protecting our most
6 vulnerable and often unseen residents such as those
7 that are behind bars, and we also want to protect the
8 civilian staff and all of the corrections officers
9 that do work each and every day to provide safety and
10 security and provide public safety. Part of keeping
11 our inmates and officers safe is holding everyone
12 accountable and those who perpetuate the violence and
13 the cycle of violence in our city's jails. Almost
14 all of the cases that involve inmates are
15 investigated by the Department of Corrections staff.
16 Arrests of inmates have increased dramatically from
17 795 arrests in 2015 to 1,538 arrests in 2016. While
18 the Department of Corrections investigates each case,
19 the ultimate responsibility to prosecute individuals
20 on Rikers Island is with our Bronx District Attorney.
21 In 2015 there were numerous reports that then the
22 District Attorney Robert Johnson was facing
23 challenges with keeping up with all of the cases
24 coming from Rikers Island. Not only did the cases
25 increase the backlog of the cases in the borough, but

2 there were also challenges with coordinating the
3 prosecution with the Department of Corrections staff
4 as well as access to the jails to investigate cases
5 for prosecution. In response to these issues and
6 other challenges, our new Bronx District Attorney
7 just completing her first year in office, the
8 Honorable Darcel Clark, created the Rikers Island
9 Prosecution Bureau. This new bureau created in
10 September of 2016 is staffed with investigators,
11 administrators and assistant District Attorneys
12 located on the island with the mission of making
13 Rikers Island a safer place by ensuring faster and
14 efficient prosecutions of crimes committed by inmates
15 and visitors to the jail. Not only will the bureau
16 arrest individuals that committed crimes on the
17 island, but they are proactively working to dismantle
18 criminal networks that are working throughout Rikers
19 Island and collaborating with the special
20 investigations and public integrity departments of
21 the District Attorney's office. Although this unit
22 has only been up and running for just a few short
23 months, I am certainly interested this morning in
24 today's hearing in learning about the first few
25 months of operation and how individuals who commit

2 crimes on the island are held accountable. In
3 addition, we'd also like to hear from the Department
4 of Corrections staff and the steps they're taking to
5 decrease violence and crime internally so that we can
6 keep working on both guard's and inmate's safety in
7 our city's jails. I know we have a lot to get to
8 today, and I want to thank the Commissioner and our
9 Bronx District Attorney for being here for my county
10 of the Bronx. I want to thank you both for all the
11 work you do. Certainly, it's not easy, but you have
12 partners here at the City Council who are working
13 very closely with you hand-in-hand. I too want to
14 thank the staff of the Public Safety Committee, our
15 Senior Legislative Counsel, Deepa Ambekar [sp?], our
16 Legislative Counsel, Beth Golub [sp?], our
17 Legislative Policy Analyst, Casey Addison, and our
18 Senior Legislative Financial Analyst, Steve Riester
19 [sp?], and I'd also like to recognize that we've been
20 joined by members of the Public Safety Committee, our
21 Minority Leader, Council Member Steve Matteo, Council
22 Member Rory Lancman, Vincent Gentile, and James
23 Vacca. Thank you once again for everyone being here,
24 and I look forward to a fruitful and productive
25 discussion on today's hearing and a very important

2 topic. And now I'll turn this back over to my
3 colleague and Co-chair, Chair Crowley. Thank you.

4 CHAIRPERSON CROWLEY: Thank you, Co-chair
5 Gibson. So, today we have our first panel to
6 testify, Commissioner of Department of Corrections,
7 as well as the Bronx District Attorney. I understand
8 that the DOC Commissioner has to leave early. So, is
9 it true that you just have about 15 more minutes
10 here? So, I think that it makes sense to forgo your
11 opening statement and let-- we'll just go into
12 questions. Right? Unless, you know, you would like
13 to do it quickly? I would like an opportunity to ask
14 you questions directly before you leave. Could you
15 summarize it in less than five minutes? I mean,
16 because anyone could have read your testimony. It's
17 the questions that we want answers. If you could try
18 to best summarize your testimony, and then when we do
19 ask you questions to you both, you Commissioner and
20 to the District Attorney. Can you just raise your
21 right hand and affirm to tell the truth, the whole
22 truth and nothing but the truth in your testimony
23 before the Council and before this committee and
24 answer any questions honestly?

25 COMMISSIONER PONTE: I do.

2 CHAIRPERSON CROWLEY: Thank you.

3 COMMISSIONER PONTE: So now for the time,
4 essence of time I'd be more than happy to answer your
5 questions. We do have testimony we'll submit. So, I
6 apologize for the fact I have an appointment.

7 CHAIRPERSON CROWLEY: Understood
8 Commissioner. So, I'll get right into questions.
9 How does the Department of Corrections decide which
10 cases to refer to prosecution, and before that
11 happens, are your inmates who are about to get
12 prosecuted, do they understand their right to
13 counsel?

14 COMMISSIONER PONTE: So, as in any arrest
15 that occurs on island, our officers make the arrest
16 in cooperation with the District Attorney's office.
17 So, it's usually a dialogue, a discussion as the case
18 evolves as to how to proceed if there's an arrest,
19 does it need more evidence; all those discussions
20 happen now with the bureau on island. The typical
21 arrest protocols in place, meaning that at the time
22 of the arrest the inmate is informed of his or her
23 right to counsel.

24

25

2 CHAIRPERSON CROWLEY: Every time there's
3 a use of force, is that when the DOC decides to
4 investigate?

5 COMMISSIONER PONTE: So, all incidents,
6 be it forced or other types of incidents in the jail
7 are investigated at different levels depending on the
8 type of incident. It may be a facility
9 investigation. Many investigations are handled by
10 our Internal Affairs or ID Unit depending on the
11 level of severity.

12 CHAIRPERSON CROWLEY: So, you do some
13 type of review, and then at what point do you contact
14 the District Attorney's Office?

15 COMMISSIONER PONTE: If we believe it's a
16 crime we'll typically-- and now with the attorney,
17 with the DA Bureau on island, they're typically
18 involved early on in the cases, and there've been
19 phone calls or inquiring, depend-- you know, the-- we
20 do what's called a COD which is generally talks about
21 incidents and reports those on the-- on our iPad,
22 Blackberries or devices. So, the DA typically would
23 be aware of an event. They may step in early
24 depending on the severity of the event. Anything
25 that's criminal in nature will be investigated by

2 either our ID or our CIB staff in conjunction with
3 the Bureau Chief.

4 CHAIRPERSON CROWLEY: So, let's say there
5 was a situation where violence breaks out and an
6 inmate is slashed. How soon does the District
7 Attorney's office get involved in your investigation?

8 COMMISSIONER PONTE: It could be
9 immediate. I'll let the DA talk-- speak to that, but
10 it could be immediate. It could be at the point of
11 the event.

12 CHAIRPERSON CROWLEY: But now you have the
13 ability because the DA's office has offices on Rikers
14 Island to get-- and this is different from before.

15 COMMISSIONER PONTE: Right.

16 CHAIRPERSON CROWLEY: To get involved
17 right away.

18 COMMISSIONER PONTE: They may show right
19 up at the crime scene. They may actually go into the
20 jail at the event.

21 CHAIRPERSON CROWLEY: Okay. And at what
22 point do you notify the defense's counsel?

23 COMMISSIONER PONTE: So, we not-- we
24 advise the inmate of his right to counsel. I'm not
25 sure on our need to notify his current counsel.

2 CHAIRPERSON CROWLEY: Okay, because we've
3 heard from the Bronx Defenders, they say that they're
4 never informed when the Department of Corrections
5 questions one of their clients, and that some process
6 needs to be put in place to make sure that the
7 defendant who is getting pros-- who is about to be
8 prosecuted again, understand that they have the right
9 to counsel.

10 COMMISSIONER PONTE: And many people may
11 be in, you know, question as a result of an event and
12 no be the perpetrator. So, we may, you know, as part
13 of any investigation talk to many inmates who may not
14 be arrested in this case.

15 CHAIRPERSON CROWLEY: But do they
16 understand that what they're saying could be used
17 against them?

18 COMMISSIONER PONTE: If they're a
19 suspect, they would be advised of their rights, yes.

20 CHAIRPERSON CROWLEY: Now, are you
21 working-- the DOC is working closely with the
22 District Attorney's Office to dismantle criminal
23 networks? You have the wherewithal?

24 COMMISSIONER PONTE: I think as we
25 develop better intel, looking at the criminal

2 networks that occur inside and outside of our jails,
3 much of either drug trade or weapons. We work very
4 closely with the DA's office to-- obviously, when you
5 say dismantle, you don't close-- it's not-- we don't
6 close everything. We'll obviously take an event,
7 press charges, and there'll be other networks that
8 are created behind those. So, it's a continuous
9 effort to stop criminal behavior inside our jails.

10 CHAIRPERSON CROWLEY: When an incident
11 happens, how much do you work together to investigate
12 it to prevent a similar type of situation to happen
13 again? Do you have a procedure in place where you
14 can then sit down with Correction Officers? And in
15 the real world you're supposed to have a greater
16 control on what happens, because that's the job of
17 the Department of Corrections. However, it seems
18 that one is less safe behind bars. So, what are you
19 doing to really understand why so much inmate on
20 inmate violence is continuing to happen? Through
21 these types of investigations are you able to then
22 work with your officers to say, "Well, next time to
23 avoid a situation like this from happening again
24 we're going to do this differently."

2 COMMISSIONER PONTE: Now that we have
3 camera coverage at all of our facilities on Rikers
4 Island, all of our housing areas, many of those
5 events are reviewed real time with us there. After
6 any investigation those events are reviewed at a very
7 high level, and feedback is given to the facility on
8 how to improve both safety and staff performance.

9 CHAIRPERSON CROWLEY: In the past, the
10 Department of Corrections has been criticized about
11 not getting inmates to court appearances in a timely
12 manner. Now I imagine that has changed. Is that now
13 the case that they're showing up for these types of
14 prosecutions?

15 COMMISSIONER PONTE: We're doing much
16 better. We were just recognized by the courts on our
17 on-time performance over the last couple months.

18 CHAIRPERSON CROWLEY: And of the
19 prosecutions that are happening, there are
20 prosecutions happening on the island, or is it just
21 the investigation? Has anyone come before the judge
22 on the island?

23 COMMISSIONER PONTE: I'll leave that to
24 the DA to respond to.

2 CHAIRPERSON CROWLEY: Do you believe that
3 this new partnership is helping to reduce overall
4 violence?

5 COMMISSIONER PONTE: I believe the final
6 outcome will be to reduce overall violence, yes.

7 CHAIRPERSON CROWLEY: So, you believe that
8 now more people are getting arrested that probably
9 weren't arrested in the past?

10 COMMISSIONER PONTE: I believe that
11 incurring in bigger numbers, yes.

12 CHAIRPERSON CROWLEY: So, why isn't this
13 helping to reduce the violence?

14 COMMISSIONER PONTE: I think the best
15 outcome would be consecutive sentencing for these
16 acts. We're still not there yet. I think as those
17 inmates who now pay additional years on their
18 sentence based on violence inside of our jails that
19 will have a dramatic impact.

20 CHAIRPERSON CROWLEY: Are there numbers
21 of how many people have been prosecuted? That's
22 really the DA's, I think.

23 COMMISSIONER PONTE: Right.

24 CHAIRPERSON CROWLEY: I'm going to
25 recognize the Co-chair for her questions.

2 CHAIRPERSON GIBSON: Thank you very much,
3 Commissioner, and I know our time is short. So,
4 certainly after today's hearing, I mean, there will
5 be much more conversation about this topic which I
6 think is very important. I'm going to ask two very
7 quick questions. In my opening I talked about the
8 increase in arrest form 795 in 2015 to about 1,538 in
9 2016, and I'm looking through your testimony and I
10 see the efforts that have been made to reduce
11 violence. So could you just describe for us where
12 the increases are coming from? Is it more violence,
13 increased population? Is there more contraband? Can
14 you give us a sense of the increase in numbers, what
15 that's attributed to?

16 COMMISSIONER PONTE: So, there's a number
17 of factors we could look at, both from-- you know,
18 one of the good things is that we've hired a lot of
19 new staff. One of the things we know with new staff,
20 it takes time for them to be seasoned and perform at
21 a certain level. So that's one of the issues. You
22 know, the retirement bill in the Department of
23 Corrections is a 20-year retirement. So, we have a
24 lot of experience walking out the door. In the
25 agency 20 years ago there was a hiring-- the City had

2 a hiring freeze, which obviously now we're in the
3 retirement height that we-- a number of staff who
4 could leave in fairly large numbers, which hurts our
5 experience level in our jails. Those are factors.
6 The gang issues in our jails is so problematic for
7 us, and while the inmates are smaller in number,
8 they're-- obviously, their charges are much more
9 serious. So more violent in nature inmates coming
10 into our jails.

11 CHAIRPERSON GIBSON: Okay. And when you
12 talked in your testimony about the 14-point
13 Antiviolence Reform Agenda you talked about de-
14 escalation and crisis intervention training. Can you
15 give us a sense of where we are with that, and does
16 that apply to both uniformed and civilian staff,
17 meaning the medical staff?

18 COMMISSIONER PONTE: It applies to all.
19 As we've had great success in our MO Mental Health
20 Units, it's a teamwork between mental health staff
21 and our uniformed staff. De-escalation is something
22 we train all of our staff in coming new out of the
23 Academy. It not-- while it's good and it's
24 effective, it's not the answer. It's not the total
25

2 answer. So, it's something we've had great success
3 in our mental health units.

4 CHAIRPERSON GIBSON: And with the training
5 and the curriculum, do you get feedback from both
6 uniform and civilian staff on is it successful? Do
7 they feel it's helpful for them to further do their
8 jobs? I know many times in the past, and if you talk
9 to anyone who's a CO these days, they will tell you
10 that they're not social workers. But we recognize
11 the increased level of mental illness that many of
12 our individuals are facing every day. So what has
13 been the feedback from the staff on the curriculum
14 that they're being trained?

15 COMMISSIONER PONTE: It's been extremely
16 possible. Staff have used it. It's been successful.
17 It's reduced our incidents in our mental health units
18 substantially over time. The fact that the offices
19 and the clinicians talk as a team now. It's been very
20 effective, less violence.

21 CHAIRPERSON GIBSON: Okay, thank you.
22 Chair Crowley?

23 CHAIRPERSON CROWLEY: Commissioner, what
24 is enhanced supervised housing?
25

2 COMMISSIONER PONTE: We created that
3 about two years ago. It is a higher staff to inmate
4 ratio is half day out of the cell rather than the 14-
5 hour out of cell time. So it's a heightened
6 supervision unit.

7 CHAIRPERSON CROWLEY: Why would one be in
8 enhanced supervised housing versus general
9 population?

10 COMMISSIONER PONTE: Generally violence
11 within the jails.

12 CHAIRPERSON CROWLEY: So, they're-- this
13 is some form of punitive segregation?

14 COMMISSIONER PONTE: It's some form of
15 separation and increased supervision, not punitive
16 segregation.

17 CHAIRPERSON CROWLEY: When someone goes
18 into punitive segregation there's a due process that
19 happens internally, correct?

20 COMMISSIONER PONTE: That's correct.

21 CHAIRPERSON CROWLEY: How about with your
22 enhanced supervised housing?

23 COMMISSIONER PONTE: There's a due
24 process for that also.

2 CHAIRPERSON CROWLEY: There is. So then
3 what is the process? Why is somebody in enhanced
4 supervised versus punitive segregation, and how is it
5 really different if from what I understand from what
6 BOC Board Member Hamill had said that the people who
7 are in the enhanced supervised housing are in
8 restraints whenever they're not in their cell. At
9 least with punitive segregation when you're outside
10 of your cell you're not in restraints. Is that
11 correct?

12 COMMISSIONER PONTE: So, punitive
13 segregation is a sanction given to inmates based on
14 conduct within the jail. It's a sentence of anywhere
15 from one to, in the most violent offenses, 60 days,
16 and then you release on that status. Enhanced
17 supervision housing is a-- it's just what it states,
18 increased supervision of inmates who are showing a
19 propensity for violence in our jails.

20 CHAIRPERSON CROWLEY: Do they have to
21 infract in order to get into that?

22 COMMISSIONER PONTE: You would have had
23 to create to commit an event. That probably would
24 have landed you in punitive seg, and then eventually

2 into enhanced supervision housing depending on your
3 history and the violence that you've created.

4 CHAIRPERSON CROWLEY: Is anyone with a
5 mental health diagnosis in this enhanced supervised
6 housing?

7 COMMISSIONER PONTE: Seriously mentally
8 ill generally are not in those housing units.

9 CHAIRPERSON CROWLEY: But if you have a
10 mental health diagnosis, you can be in those
11 restraints.

12 COMMISSIONER PONTE: That's a possibility
13 because there's degrees of mental illness.

14 CHAIRPERSON CROWLEY: So, this is a-- the
15 people in enhanced supervised housing would have
16 ordinarily been in punitive segregation. Is that
17 what you're saying? You're trying to decrease the
18 amount?

19 COMMISSIONER PONTE: More than likely
20 they would have gone through punitive seg. It is an
21 increased supervision after that. So, somebody in 60
22 days after serving in punitive seg doesn't all of the
23 sudden become less violent. So it's a way to
24 increase inmate and staff safety to enhanced
25 supervision after--

2 CHAIRPERSON CROWLEY: [interposing] And
3 it's allowed within the rules of the Board of
4 Correction?

5 COMMISSIONER PONTE: Yes, it was created
6 in the rules of the Board of Corrections.

7 CHAIRPERSON CROWLEY: And did they know
8 that the inmate would be restrained anytime they were
9 not in the cell?

10 COMMISSIONER PONTE: So, an ESH Level I,
11 it's a new system we created in October of last year
12 in order to reduce the violence in some of our more
13 problematic areas. Those inmates are in restraints
14 while they're at a restraint desk in Level I, because
15 of safety concerns for staff and other inmates. They
16 typically are very violent. They have either slashed
17 or seriously assaulted others. That's why they're in
18 that status. They have the ability to progress
19 through those statuses, to be out of restraints in
20 Level II and then more out-of-cell time in Level III.

21 CHAIRPERSON CROWLEY: At any time during
22 the day, are they outside of their cell without the
23 restraints?

24 COMMISSIONER PONTE: If they're in rack
25 and showers, yes they are.

2 CHAIRPERSON CROWLEY: Do they have an
3 hour of recreation without the--

4 COMMISSIONER PONTE: [interposing] They
5 have an hour recreation, that's correct.

6 CHAIRPERSON CROWLEY: And then you could
7 assure the committee here that anybody in enhanced
8 supervised housing would ordinarily be in punitive
9 segregation, but you're trying to reduce the numbers
10 that you have in punitive segregation.

11 COMMISSIONER PONTE: No, I think it's
12 more along how do you safely manage somebody over a
13 long period of time. I mean, somebody slashing
14 somebody, you know, after 30 days or 60 days in
15 punitive seg, where you going to put them after? So,
16 this is where we place inmates after they may have
17 served a punitive segregation sentence so they can be
18 safely managed prior to their return to population.

19 CHAIRPERSON CROWLEY: And the board
20 internally that you have in the Department of
21 Corrections that gives the amount of time oen would
22 be either in punitive segregation or in enhanced
23 supervised housing. Who makes up-- who makes those
24 decisions in terms of length time? What type of due
25 process internally is there?

2 COMMISSIONER PONTE: So, it's in the
3 rule. It was created-- ESH was created by a rule of
4 the BOC, so that's where the hours of cell time come
5 from, which is seven hours--

6 CHAIRPERSON CROWLEY: [interposing] But
7 when one is sentenced to these restrictive housing
8 areas, don't they come before a panel?

9 COMMISSIONER PONTE: Yes. So, and
10 inmate--

11 CHAIRPERSON CROWLEY: [interposing] So,
12 who makes up the panel?

13 COMMISSIONER PONTE: An inmate who goes
14 into ESH gets due process prior to being placed.

15 CHAIRPERSON CROWLEY: And who's on the
16 panel?

17 COMMISSIONER PONTE: Just the Adjudication
18 Captain, somebody who normally hears punitive seg,
19 but also hear inmates for placement in ESH.

20 CHAIRPERSON CROWLEY: Okay, I--
21 Commissioner, I understand you have to go.

22 COMMISSIONER PONTE: Yes.

23 CHAIRPERSON CROWLEY: So, somebody from
24 the department is here to answer questions?

25 COMMISSIONER PONTE: Yes.

2 CHAIRPERSON CROWLEY: Okay. So, we'll
3 have to-- you know, I appreciate you coming here.
4 I'm a little-- I'm disappointed that you're not going
5 to stay for the entire hearing, but we hope that Jeff
6 will understand-- your Chief of Staff will be able to
7 answer questions.

8 COMMISSIONER PONTE: Thank you.

9 CHAIRPERSON CROWLEY: [off mic comments].
10 Okay, now if you could raise your right hand? Do you
11 affirm to tell the truth, the whole truth and nothing
12 but the truth in your testimony before this committee
13 and to respond honestly to Council Members'
14 questions?

15 JEFF THAMKITTIKASEM: I do.

16 CHAIRPERSON CROWLEY: And you can
17 identify yourself for the record.

18 JEFF THAMKITTIKASEM: Jeff
19 Thamkittikasem, Chief of Staff at the Department of
20 Corrections.

21 CHAIRPERSON CROWLEY: Now, I think in
22 interest of the hearing it's best to hear the opening
23 statement if the Bronx District Attorney is-- I
24 imagine that the DOC doesn't really have-- think it's
25 appropriate.

2 JEFF THAMKITTIKASEM: Happy to read, or--

3 CHAIRPERSON CROWLEY: [interposing] I'd
4 rather-- it's more about the prosecutions today, so I
5 rather we go straight to the District Attorney, and
6 if the District Attorney Darcel Clark could do an
7 opening statement that would be good. Thank you.
8 Welcome.

9 DARCEL CLARK: You need me to swear in?

10 CHAIRPERSON CROWLEY: Yes. Sorry, I
11 don't make the rules.

12 DARCEL CLARK: It's okay.

13 CHAIRPERSON CROWLEY: Do you affirm to
14 tell the whole truth and nothing but the truth in
15 your testimony and in answering the questions of this
16 committee?

17 DARCEL CLARK: Yes, I do.

18 CHAIRPERSON CROWLEY: Thank you.

19 DARCEL CLARK: Good morning, Chairwoman
20 Gibson and members of the Public Safety Committee and
21 good morning to you, Chairwoman Crowley and members
22 of the Fire and Criminal Justices Services Committee.
23 Is this on? Okay. It is my honor to appear before
24 you today. I want to first explain that as the Bronx
25 District Attorney I have jurisdiction over all

2 offenses committed on Rikers Island, even though the
3 bridge to the island runs from Queens, I have legal
4 jurisdiction over any offense committed at any of the
5 facilities on that piece of land. I was here nearly
6 10 months ago, that was in March 2016, asking for
7 your help in providing funding that would allow me to
8 transform Rikers Island, which is my toughest
9 neighborhood, to a facility where people are treated
10 humanely and can work or visit without fear. In that
11 same month I created the Rikers Island Prosecution
12 Bureau. In that same month I created the Rikers
13 Island Prosecution Bureau and the Public Integrity
14 Bureau which work together to prosecute crimes at
15 Rikers. The Rikers Island Prosecution Bureau focuses
16 on crimes by inmates and visitors while the Public
17 Integrity Bureau has official misconduct as its
18 focus. You came through for me, and for that, I
19 thank you so very much. The City provided the
20 necessary funds to open a satellite office to house
21 the bureau on Rikers Island and it officially opened
22 its doors almost four months ago. I promised to jump
23 start reforms, and I believe we have made progress in
24 the few months that we have been there working side
25 by side on the front lines with the Department of

2 Corrections we can measure success in numbers, the
3 number of arrests, the number of convictions of
4 brutal attackers and contraband smugglers, and the
5 number of years behind bars that offenders served.
6 The Rikers Island Prosecution and the Public
7 Integrity Bureau now have a combined total of 27
8 Assistant District Attorneys and 10 support staff
9 members, and I am currently in the process of hiring
10 more personnel for both bureaus. The two bureaus
11 work seamlessly with each other and with the
12 Department of Corrections and Department of
13 Investigation. The Rikers Island Prosecution Bureau
14 is currently handling over 100 pending indictments
15 and 81 felony investigations involving inmates and
16 visitors. Last year, my office prosecuted almost
17 1,100 cases of crimes committed on Rikers Island.
18 Approximately 300 of those cases were felonies and
19 700 were misdemeanors. Those charged included
20 inmates, their family and friends, as well as
21 correction officers and staff who actively
22 participated in the smuggling of contraband into the
23 jails. And of that number, we have disclosed of more
24 than half with convictions. Since the creation of
25 the Public Integrity Bureau in March 2016, we have

2 convicted 17 correction officers at Rikers Island on
3 charges of promoting prison contraband, assault,
4 offering false instruments for filing, falsifying
5 business records, and official misconduct. I have
6 focused my officer's efforts on creating better
7 communication with DOC and other prosecutors' offices
8 about the defendants who commit violent offenses on
9 Rikers Island. We are trying to work on global
10 dispositions of pending felony matter matters, or to
11 get those defendants' cases tried expeditiously so
12 that we can get them off the island as soon as
13 possible. Now, look, we can always prosecute
14 violence that has occurred, but I would suspect that
15 it would better and wouldn't it better to prevent
16 violence from happening in the first place, and I
17 assure you that the answer is, "Yes, of course it
18 is." So, let's talk about ways that we can reduce
19 violence on Rikers Island. You and I have both seen
20 the grisly reports of crimes that happened on Rikers
21 Island. It was just two weeks ago that an inmate was
22 slashed on the bus on the way back to a Rikers jail,
23 and news reports showed a long gash marring his face.
24 So why do these things continue to happen? Let me
25 tell you what I've learned. I want you to look at

2 this two-dollar roll of black electric tape. Simple
3 rolls of tape like this can help inmates smuggle
4 scalpels and other dangerous instruments that have
5 maimed and in some cases nearly killed inmates,
6 correction officers and DOC staff. How does this
7 happen? Well, when a scalpel is completely wrapped
8 in black electrical tape, it will bypass the metal
9 detectors at the entrance of the Rikers jail. How
10 much does a scalpel cost? Well, 100 scalpels can be
11 bought online for less than 10 dollars, 100 for 10
12 dollars on most of the sites, and if you're lucky,
13 you could even get a hundred for about five dollars
14 on EBay. In the jail, one scalpel is worth 50
15 dollars each. A scalpel is contraband, and what
16 contraband is is any item that is not permitted in a
17 jail. A scalpel is contraband because it can be used
18 as a weapon and is inherently dangerous. In
19 addition, objects like tobacco are an invaluable
20 commodity behind bars and therefore is also
21 contraband. Marijuana is contraband, as are all
22 other illegal drugs. Trafficking in contraband leads
23 to violence at Rikers. For example, in a recent
24 investigation into a tobacco smuggling ring, DLC
25 investigative staff intercepted packages of tobacco

2 and marijuana. When the inmate dealer and his
3 cohorts didn't get the packages, they assumed that
4 they were stolen. The inmates were heard on
5 surveillance plotting to brutally attack other
6 inmates over this theft. Fortunately, arrests were
7 made before the tobacco could fuel such violence.
8 Unfortunately, this is only one of many examples of
9 how contraband is a catalyst for violence. It is a
10 very clear and present danger for both staff and
11 inmates. Small amounts of tobacco and marijuana can
12 rake in thousands of dollars on Rikers Island. We
13 know that contraband is a leading trigger of violence
14 because we've seen it time and time again, but there
15 is state of the art technology that if available to
16 DOC would detect weapons and contraband. More than
17 half of the contraband smuggled into Rikers is
18 brought in by secreting it in body cavities. I
19 support Commissioner Ponte's recommendation on this
20 technology, TSA-style body scanners, the cell sense
21 [sic] plus portable scanners, and the ionizing
22 radiation body scanners, along with the enabling
23 legislation that would help them be able to use those
24 idolizing [sic] body scanners. I have described
25 significant re-- I have dedicated significant

2 resources of my office to prosecuting the violence on
3 Rikers Island, but as much as we are committed to
4 working hard on prosecuting cases of contraband and
5 the devastating results that they produce,
6 investigators simply cannot uncover smuggled items
7 into the facilities without the proper technology at
8 their disposal. The other leading factor in violence
9 is gangs. It is well-known that gangs turn to
10 violence to retaliate against members suspected of
11 cooperating with law enforcement. It is also not
12 merely a coincidence that the targeted efforts
13 against gangs by District Attorneys of this city and
14 NYPD have further caused beat-downs and slashing's
15 behind bars. Moreover, large take-downs of specific
16 gangs had led to larger concentration of gangs held
17 on Rikers Island. Once again, the response to this
18 is brutality as larger gangs want to assert their
19 dominance while on Rikers Island. And Rikers is the
20 hub of a criminal network that has tentacles because
21 it goes beyond the walls of the jails and reaches
22 throughout the City. The Rikers Island Bureau
23 assisted my Gangs Bureau to make a case against the
24 leader of the Bloodhound Brims who allegedly was
25 ordering shootings and stabbings of rivals from his

2 cell at Rikers. A major deterrent to such violence
3 is consecutive sentencing for crimes committed in
4 correctional facilities. Indeed, consecutive
5 sentencing is what my office seeks to achieve in
6 making recommendations to judges as sentencing
7 proceedings for violent inmates. When individuals
8 commit crime in custody, my ADA's are instructed to
9 recommend consecutive sentences. What that means is
10 that the defendant will begin to serve his prison
11 term for the crime he committed on Rikers Island only
12 after he has completely served his term for the crime
13 that placed him in Rikers Island in the first place.
14 It is, of course, the judge who has the final say
15 whether to impose such a consecutive sentence, but
16 our Rikers Island Prosecution Bureau is having
17 positive results in this area through preparation and
18 zealous advocacy. We need to show inmates who commit
19 these devastating assaults that there will be real
20 consequences and that they will come at a steep
21 price, and that is longer jail sentences. For
22 example, a defendant who slashed an inmate at Rikers
23 received four years for it, and the judge made it
24 consecutive, too. That is on top of the prison term
25 that he got for his underlying case. We consider

2 that a success, because swift and certain consecutive
3 sentences for violence committed in DOC facility
4 should deter violence and not encourage it. Finally,
5 the question is this, where do we go from here?
6 There are impediments to making Rikers safer that are
7 inherent in the very nature of what a jail is
8 required to do, to provide care, custody and control
9 of those accused of crimes. When an assault occurs
10 in the jails, many times we face obstacles to
11 prosecution. DOC staff need to secure the
12 perpetrators and clean up the areas in order to
13 resume normal operations before DOC investigators
14 arrive. That, of course, is the nature of running
15 that sort of facility. Rikers cannot stop being a
16 jail, and we cannot stop being prosecutors who have a
17 need to preserve a crime scene. There is a natural
18 tension there. The use of video surveillance and
19 defendants' statements have significantly assisted my
20 officer's efforts to hold violent inmates
21 accountable. We continue to explore technology that
22 is being used by other law enforcement that allow for
23 the quick gathering of data and the essential
24 preservation of the crime scene. My office has
25 arranged for the NYPD to provide training to a

2 greater number of DOC investigative staff as well as
3 Rikers Bureau, Detectives, Investigators, and DOI
4 personnel. We will find a means through with the
5 Department of Corrections can become certified in
6 evidence collection in the same way as NYPD. We also
7 believe DOC investigators should receive training
8 similar to that of detectives in NYPD and Fire
9 Marshalls in the Fire Department. We would also like
10 to have DOC obtain 3D evidence scanners to
11 memorialize crime scenes accurately and swiftly. As
12 to the courts, with the assistance of the Honorable
13 George Grasso [sp?], the New York City Criminal Court
14 Citywide Administrative Judge for Arraignments, we
15 successfully cleared a backlog of over 100 Rikers
16 cases that had been pending arraignment for long
17 periods of time. More importantly, through better
18 communication and coordination with DOC and the
19 courts, my office should never be placed in the
20 position of having that sort of backlog again. I
21 believe my office and its new practices and
22 procedures have had a positive impact on Rikers
23 Island. However, challenges remain. As I said at
24 the outset, Rikers is my toughest neighborhood. I
25 knew when I started that there would be no quick fix,

2 but we are making progress more quickly than I
3 thought. We have begun to make some in-roads in just
4 four months, and now we're identifying what we need
5 to do to go further to make things safer. My office
6 is committed to being a strong partner with DOC in
7 the efforts to reform Rikers Island. I intend to use
8 our presence there to ensure that crimes are
9 investigated and prosecuted more quickly, and I am
10 confident that we are moving in the right direction.
11 Thank you very much for your continued support.

12 CHAIRPERSON GIBSON: Thank you very much,
13 DA Clark. That was an extensive and very
14 comprehensive analysis of your work with this unit in
15 just four short months. I want to commend you and
16 certainly thank you for the work you've done, your
17 advocacy, making sure that you got the sufficient
18 funding and the adopted budget was very crucial to
19 moving forward. I was there at the opening and I was
20 happy to see the level of staff that's already been
21 dedicated. So, I just want to get into a couple of
22 questions, and first, let me acknowledge the members
23 who have joined us. We have Council Members Julissa
24 Ferreras Copeland, Council Member Jumaane Williams,
25 Council Member Mathieu Eugene, Council Member Rafael

2 Espinal, Council Member Chaim Deutsch, Council Member
3 Ritchie Torres, and Council Member Fernando Cabrera
4 have joined us. Thank you very much, colleagues.

5 So, first I want to begin with the staffing. You
6 indicated the prosecution unit and the Public
7 Integrity Bureau. You have 27 ADA's and 10 support
8 staff. Can you give us an analysis? Are there more
9 staff in the Prosecution Unit or more Public
10 Integrity Unit? Because they have two different
11 functions, right?

12 DARCEL CLARK: Well, presently they have
13 about an even amount.

14 CHAIRPERSON GIBSON: Okay.

15 DARCEL CLARK: But we need more, and
16 thankfully, for the funding that we received from the
17 City, I am still in the process of hiring more
18 Assistant DA's as well as support and administrative
19 staff to assist us in that effort.

20 CHAIRPERSON GIBSON: Okay. So, just for
21 clarification, the new Rikers Island Prosecution
22 Bureau focuses only on cases in which the inmate or a
23 visitor is a defendant, but not when a correction
24 officer is the defendant.

25 DARCEL CLARK: That's correct.

2 CHAIRPERSON GIBSON: Okay.

3 DARCEL CLARK: Rikers Island deals with
4 inmates and visitors. Public Integrity deals with
5 DOC staff and officers.

6 CHAIRPERSON GIBSON: Okay, great. If an
7 offense occurs in the jail, who investigates the
8 offense first? Can you give us a step-by-step on
9 what process takes place when an offence occurs on
10 the jail? Does DOC begin the investigation, because
11 in your testimony you talked a lot about different
12 measures you'd like to incorporate with staffing, and
13 including NYPD Investigators where DOC officials are
14 essentially trained the same as in NYPD
15 Investigators?

16 DARCEL CLARK: Right. When something
17 happens on the island, it's the Department of
18 Corrections that initiates the investigation, at
19 least as far as the Rikers Island Prosecution Bureau
20 is concerned. With the Public Integrity piece it can
21 be DOC as well as the Department of Investigation. It
22 also has a jurisdiction over investigations of Public
23 Integrity. So, it would be DOC. If there's an
24 incident it depends on what the incident is.

2 Everything is on a case-by-case basis, but DOC is on
3 the ground first.

4 CHAIRPERSON GIBSON: Okay. And speaking
5 of cases, you mentioned that your bureau is handling
6 100 pending indictments and 81 pending felony
7 investigations involving inmates and visitors.

8 DARCEL CLARK: Yes.

9 CHAIRPERSON GIBSON: Are these cases that
10 you inherited or is this just since the unit was
11 created four months ago?

12 DARCEL CLARK: It's a combination. Some
13 of them are-- you know, before the bureau got on-
14 island, we still were having cases--

15 CHAIRPERSON GIBSON: [interposing] Right.

16 DARCEL CLARK: brought in. I was still
17 prosecuting them. So, it's a combination of both.

18 CHAIRPERSON GIBSON: Okay, so the cases
19 you inherited plus current cases, you know, obviously
20 this unit is to streamline the process much better so
21 that you have ADA's that are only focused on these
22 types of cases, correct?

23 DARCEL CLARK: Right, yes.

24 CHAIRPERSON GIBSON: Okay. And also let
25 me ask some of the-- so you said that you are in the

2 process of hiring additional staff for both the
3 prosecution unit and Public Integrity, right?

4 DARCEL CLARK: I'm in the process of
5 hiring Assistant DA's for my entire office. As you
6 know, we changed office to vertical prosecution.
7 What the type of-- because we're on-island, there's a
8 lot more cases that we're investigating right away,
9 so I really need more assistance in Rikers Island
10 immediately, and I'm interviewing every day.

11 CHAIRPERSON GIBSON: Okay, well I'm glad
12 you put that out there for the public. So, I'm sure
13 that--

14 DARCEL CLARK: [interposing] Yes, go to my
15 website--

16 CHAIRPERSON GIBSON: there will be many--

17 DARCEL CLARK: [interposing] BronxDA.gov.

18 CHAIRPERSON GIBSON: interested parties
19 that will be coming to you. Wanted to ask, you work
20 day-to-day with DOC officials and investigative
21 staff. What is the relationship you have as well with
22 the correctional staff? So, the union that
23 represents correction officers, what's the
24 relationship and how are you guys working together?

2 DARCEL CLARK: I think we're working well
3 with the Corrections Unions as well. I know that the
4 President of COBA is here, Elias Husamudeen and we
5 speak on a regular basis, and I think that we've
6 developed a pretty good working relationship,
7 professional. We don't always agree, but we agree to
8 disagree, but we keep the lines of communication
9 open. So, we have a very good relationship with
10 them.

11 CHAIRPERSON GIBSON: Okay. One of the
12 challenges that we talked about months ago before the
13 unit was created was the transportation and getting
14 inmates from Rikers Island to the Bronx to go into
15 court. I know that there is another stakeholder
16 that's involved the Office of Court Administration
17 and with it being a new year, is there still current
18 conversations and will it be a priority to work with
19 the state to find out ways in which we can get a
20 physical courthouse on the island? Is that still a
21 plan of yours?

22 DARCEL CLARK: Yes, and I think we have
23 an agreement in principle with the Office of Court
24 Administration. I had a meeting last week with the
25 Chief Administrative Judge of the state, Larry Marks,

2 and we agree in principle, and it is going to be a
3 priority this year, because I think it would be a
4 tremendous help to have a courthouse right there on
5 Rikers Island. It's just the logistics that I think
6 that has to be worked out. I know that the courts,
7 one of their-- one of the asks of the court is that
8 they want a real bricks and mortar building to be the
9 courthouse because of the fact that, you know, it's
10 inmates, it has to be open to the public. So, a
11 trailer would not be sufficient. So, you know, we're
12 looking into those matters for this year. It's a
13 priority.

14 CHAIRPERSON GIBSON: And if that happens--
15 - when it happens, let me speak it into existence,
16 when it happens would there be administrative
17 proceedings or would there be trials that would
18 actually take place on the island?

19 DARCEL CLARK: I think to roll it out
20 first we have to see what we can do, baby steps. I
21 think the first thing that needs to happen is to have
22 the arraignments done there.

23 CHAIRPERSON GIBSON: Okay.

24 DARCEL CLARK: That way, I mean, with--
25 and that's what created the backlog in the first

2 place is that there were cases that needed to be
3 investigated. Let's say they were even prosecuted
4 and complaints were drawn up, but it's difficult to
5 getting those inmates to 161st Street to the courts.
6 The problem is that you can't mix inmates who are
7 pre-trial detainees with newly arrested people with
8 NYPD arrests. So, therefore, it was only a limited
9 amount of inmates that can go to be arraigned on
10 161st Street. That problem is eliminated if you do
11 it right at Rikers Island. They don't have to travel
12 all the way to 161st Street. They don't have to worry
13 about being mixed with NYPD new arrests; it'll be
14 done right on island.

15 CHAIRPERSON GIBSON: Okay. I wanted to
16 ask a question. You talked a lot in your testimony
17 about technology, and I know there is a plan. I don't
18 know where we are with, you know, the TSA-style body
19 scanners. In your example, obviously, the
20 inexpensive electrical tape and the level contraband
21 that's obviously brought onto the island is extremely
22 disturbing, easily accessible, and just not, you
23 know, having the latest and up-to-date technology. I
24 wanted to ask with the 14-point plan the DOC has
25 outlined on reducing violence and identifying those

2 gangs and crews and the different operations, how
3 often is your office involved and how much, you know,
4 up to speed are you kept in terms of working with DOC
5 to identify, and really for your unit to understand
6 those crews and those operations, almost like the old
7 NYPD Gang Unit and how we identify the crew
8 operations, are you kept up to speed in the latest in
9 the gang world?

10 DARCEL CLARK: Absolutely. We work hand-
11 in-hand with DOC's gang intel. They provide intel
12 for us. We give them information that we find out
13 form out on the street. I have a gang major case unit
14 in my office that deals with those members who are
15 out on the street. So when we have these big take-
16 downs, we know which gangs they are because we took
17 them down. That in turn, that information is turned
18 over DOC to know you got a whole influx of this gang
19 or this set or this crew coming into Rikers Island.
20 So, they do the work that they do as far as their
21 intel as well. We keep each other informed all the
22 time.

23 JEFF THAMKITTIKASEM: To add to that,
24 exactly that, with the Rikers bureau on island we
25 also have the ability to kind of update things on a

2 very day-to-day basis as opposed to just doing an
3 analysis on growing gang trends and reporting them
4 out every week or every month, it's a daily operation
5 between our two organizations that people are aware
6 of where they are, not just in terms of the broader
7 gangs, but also in what facilities and what
8 populations those gang members might be concentrated.

9 CHAIRPERSON GIBSON: Okay. So, I know
10 today's topic is obviously city jails, right, but you
11 know, most of the conversation is around Rikers
12 Island. Can you give me an idea, probably from DOC,
13 the majority of the violence in our city's jails
14 comes from Rikers Island, is that safe to say?

15 JEFF THAMKITTIKASEM: Well, just based on
16 population in terms of proportion, we've got, you
17 know, over 7,000 on Rikers Island directly out of the
18 9,500 average daily population. So, just by
19 proportion that's true.

20 CHAIRPERSON GIBSON: How is it determined
21 whether you go to Rikers Island or one of the city
22 jails in another borough?

23 JEFF THAMKITTIKASEM: It depends a lot on
24 just categorization and the classification of the
25 inmate. Several of our borough facilities we try to

2 focus on short-stayers, people who are going to be
3 released in a short time, so they're closer to the
4 community. We also have special population kind of
5 areas within each of those boroughs. A lot of it
6 obviously is on the island where we have a lot more
7 resources where we have places for the severely
8 mentally ill, those who are higher offenders and more
9 security concerns because we have the resources on
10 island to deal with that population. So, we try to
11 separate based on that.

12 CHAIRPERSON GIBSON: Okay. In that same
13 conversation, the number of inmates that are known to
14 be involved in gangs and the activity on the street
15 continues on the island, is that also a factor where
16 DOC will say we have a known gang that's in the same
17 unit on Rikers, but because of that we're going to
18 separate those inmates and put them in another
19 location.

20 JEFF THAMKITTIKASEM: That's right,
21 Council Member. What we've tried to do over the last
22 two years is build a new classification system that
23 actually allows us to better capture gang
24 memberships, sets within gang memberships and house
25 them accordingly so that we can balance between

2 different gangs so that, you know, an entire gang
3 doesn't run an entire unit on their own and that we
4 kind of create better separation. Certainly, we've
5 tried to work closer with both the NYPD and the DA's
6 office to increase our intelligence so we really
7 understand not just kind of leaders, but also members
8 of gangs which, you know, gets to kind of getting
9 intelligence from the streets and really
10 incorporating to what we do in our jails.

11 CHAIRPERSON GIBSON: And I think one of
12 the challenges that we continue to confront is the
13 messaging and what we send as a message. The
14 repetitive offenders that, you know, unfortunately
15 are in Rikers, you know, in the first place, but
16 don't believe their consequences, you know-- that
17 there will be consequences for their actions, and so
18 they engage in the repetitive violence on the island,
19 and you know, everyone's in jeopardy, the staff, the
20 CO's. I mean, what is the message that we have to
21 continue to say and not only just say it, but we have
22 to show it in our actions and in the work we do, and
23 you know, DA Clark, you talked about that, because
24 there's too many repeat offenders. And even the--
25 you know, those that are on Rikers Island that are

2 just there to do their time and go home, they're in
3 danger too. So, you know, and it's something that,
4 you know, we think about all the time, because you
5 know, these perpetrators that are there that just
6 want to impose violence on someone else is a major
7 problem, and these are the numbers we have to stop.
8 Like, it's unacceptable to me.

9 DARCEL CLARK: Well, I agree with you and
10 I think that's why consecutive sentencing is the
11 answer. These inmates think that they can just--
12 they could act at free will because whatever they do
13 on Rikers is going to be a freebie as a result of the
14 underlying case that they have. So, let's say for
15 example we have an inmate that's in Rikers in the
16 first place because he committed a crime in Brooklyn.
17 So he's in Rikers and on bail. He can, you know,
18 slash an inmate, slash a correction officer, and
19 we've heard statements like this from inmates saying
20 that it doesn't matter, I'm going to get concurrent
21 time anyway. So that one becomes free, and if they
22 get sentenced on the underlying case, then the Rikers
23 case doesn't mean a thing. They get it for free. If
24 they know as they commit those offenses on Rikers
25 that it's mandatory consecutive, they'll stop, and we

2 need to get that message out to them that it's no
3 longer a freebie, but it's consecutive. We need laws
4 to say that it's consecutive, and as a former judge,
5 I would hate to have any discretion taken away from,
6 but if we really want to get rid of the violence, the
7 judges can't have the discretion to make it
8 concurrent. It needs to be consecutive.

9 CHAIRPERSON GIBSON: Okay. And my final
10 question before I turn it back over to my chair and
11 other colleagues that have questions, in the City and
12 you know, let me focus on Bronx County, in the past
13 year we've had several major take-down cases that
14 involved heavy drug trafficking, major crime and
15 violence, and many of those cases obviously, you
16 know, came from Rikers Island but were a part of a
17 larger take down that involved DOC, NYPD, the DA's
18 office, but also our federal prosecutors. So, to
19 what extent do they work with you? Because there's
20 a lot of ongoing work that we don't see, and I know,
21 you know, we hear about once it happens, but we know
22 that there are more to come. So what's the
23 relationship that both DOC and the DA's office have
24 with our federal prosecutors?

2 DARCEL CLARK: Well, I could speak with
3 the DA's office. We work well with the southern
4 district. They have, you know, different laws and
5 different requirements to bring the cases that they
6 bring, the Rico [sic] cases and things of that
7 nature. So what they have are new case as well as
8 old cases. Some of their defendants can be sitting
9 in Rikers Island on a case that I am prosecuting, but
10 the federal authorities have the ability to, you
11 know, supersede my charges and make their charges
12 part of their federal investigation. So sometimes
13 those inmates are taken out of Rikers and put into
14 federal custody. Other times they sit in the city
15 jails. It depends on the case.

16 CHAIRPERSON GIBSON: Okay.

17 JEFF THAMKITTIKASEM: On the DOC side,
18 just we also kind of dedicate resources to kind of
19 partnering up with different organizations. There's
20 a joint command center for high-def [sic] with the
21 federal agencies involved in several prosecutions.
22 So we sit at that area and we also continue to keep
23 the lines open whenever NYPD initiates things with
24 federal help.

2 CHAIRPERSON GIBSON: Okay. Thank you very
3 much. I'll turn it over Chair Crowley.

4 CHAIRPERSON CROWLEY: Thank you, Chair
5 Gibson. I want to ask about the jail-based arrests.
6 The numbers have gone up significantly, looking at
7 the fiscal years 14, 15, 16. Fiscal Year 16, which
8 ended in June, there was 1,538. However, District
9 Attorney, when you said the number of open cases, it
10 seemed like there was on-- there was 101 indictments,
11 81 felonies. Where are we with all the other
12 arrests? Like, do you have a way that we could look
13 at these fiscal years and see where the inmate is in
14 the judicial process?

15 DARCEL CLARK: I'm not sure I understand
16 your question.

17 CHAIRPERSON CROWLEY: Right now-- I think
18 I heard you correctly. I might not have. When my
19 Co-chair asked about the open cases that are being
20 worked on Rikers Island right now, there was a number
21 of 101 indictments, 81 felony prosecutions under way.
22 So, if you could tell me how many open cases your
23 office is working with on Rikers Island.

24 DARCEL CLARK: I just told you the
25 figures for the felonies that are open. Those are

2 the current indictments that we have filed right now.
3 There's also pending investigations which haven't led
4 to an arrest yet. We're still investigating, and
5 perhaps an arrest will come about and perhaps not.
6 We have to investigate--

7 CHAIRPERSON GIBSON: [interposing] Right.

8 DARCEL CLARK: the case. There's also a
9 number of misdemeanors as well that are pending, and
10 after, you know, some of the investigations there may
11 not be any criminal charges that lie, but we still
12 have to investigate them. The exact numbers I don't
13 have with me. I could get that for you, but I could
14 tell you we are actively involved in indicting
15 inmates every day, visitors who come in smuggling
16 things. These are happening as well as the ongoing
17 investigations which I can't necessarily speak to
18 specifically because we're investigating, but you
19 know, it's an ongoing process.

20 CHAIRPERSON CROWLEY: So, your office can
21 get us the numbers. I believe that we should now
22 request more information in the Mayor's Management
23 Report when we look at the number of arrests to
24 understand better how many were felonies versus
25 misdemeanors, but where we are in the process of the

2 case being adjudicated. Your office would be able to
3 get us those numbers.

4 DARCEL CLARK: so you mean if the case is
5 pending, you want to know how long it's been pending,
6 what is--

7 CHAIRPERSON CROWLEY: [interposing] Yeah.

8 DARCEL CLARK: what has holding up the
9 disposition of that case?

10 CHAIRPERSON CROWLEY: Right, and what the
11 end result was to measure whether anyone is getting
12 sentenced to consecutive time.

13 DARCEL CLARK: We can get you that. We
14 could-- one of the-- I think one of the things that
15 hinders that type of information-- we could get it
16 for you, but what you have to realize is that I'm
17 dealing with inmates who have cases that are pending
18 all over the city. So, it's not just the Bronx
19 cases. I'm in charge of those crimes that they
20 commit on Rikers, but unfortunately what drives the
21 train a lot is the underlying case that got them on
22 Rikers in the first place. So, a lot of times, and
23 you can hear this from the defense attorney, if a
24 person has a case pending in Brooklyn, they're trying
25 to get that Brooklyn case adjudicated first before

2 they talk about a Rikers Island case. So that's what
3 delays the total disposition. That's why I said that
4 we work for global disposition. I'm working with the
5 other four District Attorneys so that we can make
6 these Rikers inmates, especially the ones that are
7 committing the violence, we make them a priority. We
8 work together with the underlying case as well as the
9 Rikers case to try to get a global disposition, and
10 if not, get the judges to make it a priority to push
11 those cases up so they could be tried right away so
12 we could get those individuals out of Rikers Island
13 that are causing the violence.

14 CHAIRPERSON CROWLEY: What is preventing
15 your office from doing that? If I understand
16 correctly, there could be a way in the near future
17 that somebody who is getting arraigned for an arrest
18 that happened on Rikers Island will go before the
19 judge that heard the first case that put that inmate
20 on the island.

21 DARCEL CLARK: Well, there's no law
22 presently that does that. I mean,--

23 CHAIRPERSON CROWLEY: [interposing] But
24 there's no law that prevents us from making sure that
25 would happen and we could do that.

2 DARCEL CLARK: Well, there's no
3 jurisdiction. Whatever happens in Rikers is the
4 Bronx's jurisdiction. What you're talking about, and
5 I mean--

6 CHAIRPERSON CROWLEY: [interposing]
7 Alright, okay. I got it.

8 DARCEL CLARK: I've talked about this and
9 I've heard people talk about it. If a person-- I
10 keep using Brooklyn, but it could be Queens or any
11 other borough. If a person has an underlying case in
12 Queens and that inmate causes violence in Rikers
13 Island, then maybe perhaps the Queens DA's office
14 should have jurisdiction to prosecute that case.
15 That would give the DA more leverage.

16 CHAIRPERSON CROWLEY: No, no, no, I
17 understand.

18 DARCEL CLARK: [inaudible]

19 CHAIRPERSON CROWLEY: I understand, but
20 do you have the support of your colleagues who are in
21 the various other boroughs offices, those District
22 Attorneys? If a plan was put in place and we were to
23 ask the state to allow the jurisdiction to change,
24 your office would still do the prosecutions, or you
25 would need other prosecutors coming on the island for

2 wherever their original crime occurred, is that
3 right? Because if you have to go before the judge
4 that is based in Queens Criminal Court versus Staten
5 Island, you'll need a prosecutor from that borough as
6 well, is that right?

7 DARCEL CLARK: Yeah, because they have
8 the jurisdic-- they have the jurisdiction to
9 prosecute their own cases.

10 CHAIRPERSON CROWLEY: The first case.

11 DARCEL CLARK: The first case, right. I
12 have the second case, which is the Rikers case.

13 CHAIRPERSON CROWLEY: So, the only way to
14 get a judge, the same judge, is to allow the other
15 boroughs on the island?

16 DARCEL CLARK: I mean, perhaps, but
17 you're talking about-- I mean, a court on Rikers
18 Island is not going to be capable, is not going to be
19 like a real courthouse where there's a jury box where
20 you could try it and evverting else.

21 CHAIRPERSON CROWLEY: Right. I mean, I
22 could see there being video indictments, you know,
23 where you don't have to leave the island if you build
24 a system where you have District Attorney from the
25 five boroughs there that you could be able to have

2 the District Attorneys, ADA's working there and then
3 being before a judge in a type of video setting. It
4 seems like the only way to answer this problem is to
5 get sentences that are consecutive, and we're not
6 getting there because we're not getting in front of
7 the judges who-- they're the decision-making body.

8 DARCEL CLARK: Right, but it's usually
9 two different judges. It's the judge--

10 CHAIRPERSON CROWLEY: [interposing] Right,
11 right, right.

12 DARCEL CLARK: that has the underlying
13 case and the judge in the Bronx that's handling the
14 Rikers case.

15 CHAIRPERSON CROWLEY: But your office is
16 mostly just doing the investigations that are
17 happening. Your office is not able to go before a
18 judge on Rikers Island.

19 DARCEL CLARK: There's no judge on Rikers
20 Island.

21 CHAIRPERSON CROWLEY: Right. So,
22 alright, I understand that. Do you think there could
23 be a way to be a video type of set up so that the
24 inmate doesn't have to leave the island?

2 DARCEL CLARK: We have video conferencing
3 now within the jails and in the courthouses. It's
4 just that the law doesn't allow arraignments by video
5 or any video conferencing that has to be done has to
6 have the consent of the defense or the defendant. If
7 you're not getting that kind of consent, then it
8 can't happen. The technology is there. It would be
9 great, but it's just not happening.

10 CHAIRPERSON CROWLEY: Well, I mean, it
11 doesn't seem to be helping the number of arrests
12 increasing, doesn't seem to be helping with the
13 inmate on inmate violence, and the end goal is to
14 reduce the violence and make the jail safer. And in
15 order for an inmate to think twice about getting
16 involved in a situation, they would need to be
17 seriously prosecuted, and now there's just too many
18 hurdles put in place for the vast majority of the
19 inmates, because they'd have to have really committed
20 a crime first in the borough of the Bronx in order to
21 have the same judge for the crime they commit on
22 Rikers Island.

23 DARCEL CLARK: Well, yeah, that's way--
24 it's on the Bronx DA that has the jurisdiction.
25 Unless that changes, that's--

2 CHAIRPERSON CROWLEY: [interposing] Yeah,
3 no, I understand.

4 DARCEL CLARK: the way that it is.

5 CHAIRPERSON CROWLEY: But-- right. I know
6 we have our colleagues here who have questions. Is
7 there a list? I would like to recognize Council
8 Member Gentile for questions.

9 COUNCIL MEMBER GENTILE: Thank you and
10 thank you, District Attorney, and DOC for being here.
11 Just following up on the 100 pending indictments, and
12 to be clear because I think we went back and forth,
13 you do not have a grand jury impaneled on Rikers,
14 correct?

15 DARCEL CLARK: Have a what? A grand
16 jury?

17 COUNCIL MEMBER GENTILE: Grand jury
18 impaneled.

19 DARCEL CLARK: No, the grand jury is in
20 the Bronx.

21 COUNCIL MEMBER GENTILE: Okay. So, if a
22 defendant at Rikers wanted to testify and waive their
23 immunity, they have to be transported.

24 DARCEL CLARK: Absolutely, yes.

25

2 COUNCIL MEMBER GENTILE: Does that happen
3 often?

4 DARCEL CLARK: Well, yeah. If they have
5 a pending case, they have a right to testify. 1950
6 allows that. So, we have to transport them there in
7 order for them to testify. How many of them actually
8 go into the grand jury, it's not many, but some of
9 them do exercise that right because they have the
10 right.

11 COUNCIL MEMBER GENTILE: Right, okay.
12 Would it be better for you if you had a grand jury
13 one or two days a week on the island?

14 DARCEL CLARK: Anything would help, but I
15 don't know-- I mean, it's hard enough getting those
16 grand juries in the Bronx.

17 COUNCIL MEMBER GENTILE: To show up,
18 right?

19 DARCEL CLARK: Something about those jury
20 subpoenas that people don't like. I mean, anything
21 would help. I think the bottom line is this, that
22 the crimes were happening before they weren't even
23 being charged for them. Now, they're being charged
24 for them, okay. So those are consequences that they
25 know about, to put a-- to make it more stringent,

2 they need to understand that there are consequences
3 for collecting cases, Rikers cases, and that means
4 consecutive time. We need the consecutive sentencing
5 for it to really mean something, and we need to
6 communicate that to the inmates, say, "Look, it's no
7 longer a freebie." You know, because some of them
8 will sit there, they could be even convicted and
9 ready to go upstate, and they'll commit acts so they
10 can stay downstate by slashing and cutting and
11 splashing and doing all kinds of things so that new
12 charges could be brought and then have to still stay
13 down here until those cases are disposed of. We need
14 to get them out of Rikers as soon as possible.

15 COUNCIL MEMBER GENTILE: So, that's--
16 when you say in your testimony "global dispositions
17 of pending felony matters," that's what you're
18 talking about, packaging a plea on all cases whether
19 it's a Brooklyn case, a Queens case and a Rikers
20 case--

21 DARCEL CLARK: [interposing] Right.

22 COUNCIL MEMBER GENTILE: to combine all
23 the cases together, you have a global, as you call
24 it, a global disposition--

25 DARCEL CLARK: [interposing] Yes.

2 COUNCIL MEMBER GENTILE: on the felonies
3 so that they could be then transferred to an upstate
4 facility.

5 DARCEL CLARK: Absolutely, yes.

6 COUNCIL MEMBER GENTILE: Okay, that's
7 what you're talking about.

8 DARCEL CLARK: That's what I mean, except
9 that right now, that has to happen in two places. In
10 the Bronx the plea has to be taken on the Rikers case
11 and the other jurisdiction, the other, the felony,
12 the underlying felony, the plea has to be taken in
13 that particular borough.

14 COUNCIL MEMBER GENTILE: Then if that's
15 before two different judges, who imposes the
16 sentence?

17 DARCEL CLARK: Well, there you go, that's
18 the whole thing. It's like I would love to get rid
19 of the Rikers case first, because what happens is
20 that those other counties back up my cases because
21 they don't want to take a plea on the Rikers one
22 first. They want to dispose of the one, the case
23 that got them there in the first place. However long
24 it takes for them to get rid of that case either by
25 trial or by a plea, I have to wait for that. So

2 that's why it's important that the DA's work
3 together. We sit, take a list, these are the top
4 crime-drivers in Rikers. Where are their cases
5 pending? Sit down, talk to each other, and say,
6 "What are you offering?" Speak with the defense bar
7 as well. We don't keep them out of it because a
8 global disposition means all parties, the judges, the
9 defense attorneys, the DA's, everyone involved, and
10 see if we can come to a, you know, a understanding
11 where there's a disposition on a plea, and then we
12 get the person out of Rikers as soon as possible.

13 COUNCIL MEMBER GENTILE: So, is that a
14 hope or is it actually happening? Are you sitting
15 with the other DA's, and--

16 DARCEL CLARK: [interposing] We have
17 started. No, yeah, we have started, absolutely.

18 COUNCIL MEMBER GENTILE: And you're
19 talking about those types of dispositions.

20 DARCEL CLARK: Yes.

21 COUNCIL MEMBER GENTILE: Okay.

22 DARCEL CLARK: Yes.

23 COUNCIL MEMBER GENTILE: Has this been
24 successful yet?

2 DARCEL CLARK: We're trying, but you
3 know, again, it's so many factors, the judges, you
4 know, how many judges are there to actually try the
5 cases. Some people don't want to take a plea because
6 you know, they never-- they don't have trial capacity
7 anyway. I could just wait. We'll wait them out.
8 Wait out the cases, drag it along. The witnesses
9 forget. People disappear, things like that happen.
10 With Rikers cases where it's inmate on inmate, one
11 inmate might be there for a certain amount of time
12 and next thing you know they're released on bail or
13 they get acquitted or they go upstate and no longer
14 do you have access to the witnesses. So it's a
15 waiting game.

16 COUNCIL MEMBER GENTILE: I see. So,--

17 DARCEL CLARK: [interposing] And delays
18 are, you know, delays are not good for the people.

19 COUNCIL MEMBER GENTILE: Yeah, so it's a
20 multi-tasking problem that you face.

21 DARCEL CLARK: Yes.

22 COUNCIL MEMBER GENTILE: Is the word
23 though getting out to the inmate population about
24 consecutive sentences versus the concurrent
25 sentences?

2 DARCEL CLARK: Well, we're hoping-- I
3 mean, do we have a concentrated, like, marketing
4 strategy to get the word out? We haven't done that
5 yet. Maybe that's something that we need to do, but
6 I know that those inmates know that I'm prosecuting
7 now. They're catching new cases when they didn't get
8 them before. But again, it's the waiting game:
9 "Alright, I'll just wait until I finish my other
10 case, and then we'll deal with Rikers." So, by the
11 end, they've been in so long that the judges say,
12 well, you know, to the DA, "Look, just offer him this
13 and run it concurrent with the other one and we can
14 get him out of Rikers." That seems encouraging, but
15 then the message doesn't get to the inmate, because
16 that's what they know. "We'll just wait it out.
17 I'll get it all wrapped in one. It'll be concurrent,
18 and I could leave." That's why they continue to
19 wreak havoc. You know, they need to know that it's
20 consecutive.

21 COUNCIL MEMBER GENTILE: Because as you
22 call it a freebie.

23 DARCEL CLARK: It's a freebie.

24 COUNCIL MEMBER GENTILE: Right. That's--
25 yeah.

2 DARCEL CLARK: And it's a danger to the
3 correction officers and staff, because that's exactly
4 what they say to them when they commit these crimes
5 right in front of them or to them: "Don't matter.
6 It's going to be concurrent anyway."

7 COUNCIL MEMBER GENTILE: Uh-hm.

8 DARCEL CLARK: That's a safety problem.

9 COUNCIL MEMBER GENTILE: Right.

10 DARCEL CLARK: so, consecutive
11 sentencing, to me, is the answer, and we could-- you
12 know, we could put up signs just like we put signs
13 everywhere else in the Department of Corrections
14 about, you know, the phone calls, you know, whatever,
15 contraband. Anything we warn them about, they need
16 to know. You know, they know right now there's a new
17 sheriff in town because I'm prosecuting them now.

18 COUNCIL MEMBER GENTILE: They--

19 DARCEL CLARK: [interposing] They weren't
20 getting that before.

21 COUNCIL MEMBER GENTILE: They're getting
22 the--

23 DARCEL CLARK: [interposing] But the
24 sentencing needs to go hand in hand.
25

2 COUNCIL MEMBER GENTILE: I see. I see.
3 That's good. You've made a good case for how
4 contraband as you say is a catalyst for violence in
5 the jails. And you advocated along with DOC for the
6 type of technology that you need to combat that kind
7 of contraband coming in, but DOC already has those
8 scanners, right? DOC already has those body
9 scanners.

10 JEFF THAMKITTIKASEM: Yeah, I can speak
11 to that, that we have several body scanners, but
12 because of a limitation in the state legislation, we
13 aren't allowed to use them. So, we are certainly
14 actively producing and appreciate all of the support
15 the Council can give us to kind of change that
16 legislation so we can use that technology.

17 COUNCIL MEMBER GENTILE: So you were
18 banned from using those scanners because of health
19 law? What--

20 JEFF THAMKITTIKASEM: [interposing] Health
21 Law basically requires that any of the use of that
22 machine is by a registered kind of radiologist for
23 medical purposes.

24 COUNCIL MEMBER GENTILE: So, are the
25 scanners that you have the ones that, Madam DA you

2 mentioned, the TSA-style body scanners, the Cellsense
3 Plus, are those the scanners you have?

4 JEFF THAMKITTIKASEM: So, the TSA-type
5 scanners, the body scanners that we have, we have
6 several of those, about seven I believe basically in
7 storage, and as soon as we get the approval to use
8 them, we will use them, but we have them. We just
9 can't use them.

10 DARCEL CLARK: You have other--

11 JEFF THAMKITTIKASEM: [interposing] We
12 have other technology. We certainly are not
13 stopping. As the DA said, we've been working with
14 them, with NYPD constantly exploring other technology
15 that would allow us to identify better-- to better
16 identify contraband movement, but for some of the
17 very small non-metallic scalpels wrapped in the black
18 electrical tape, those are not found by either the
19 magnometers [sic] or by even the Cellsense which are
20 portable things for larger metal devices. So they
21 can find a cell phone, but they can't find a scalpel
22 blade.

23 DARCEL CLARK: So they need the TSA-style
24 type with the--

2 JEFF THAMKITTIKASEM: [interposing] With
3 the ionization.

4 DARCEL CLARK: With the ionization--

5 CHAIRPERSON CROWLEY: [interposing]
6 Council Member, I'm just going to interrupt for a
7 second.

8 DARCEL CLARK: to find those things that
9 are secreted.

10 CHAIRPERSON CROWLEY: Right.

11 DARCEL CLARK: Because that's how a lot of
12 it is getting in unfortunately.

13 JEFF THAMKITTIKASEM: In the cavities,
14 they can't go in.

15 CHAIRPERSON CROWLEY: I agree. Now, I'm
16 going to interrupt for a second, because I think it's
17 unfair to this committee and to the city. On more
18 than one occasion, the Department of Correction has
19 stood with either the Mayor or the Department of
20 Investigation and said, "We are now going to change
21 the process and use these scanners." You had a press
22 release that went out at the end of August, beginning
23 of September saying that.

24 JEFF THAMKITTIKASEM: Yeah, that's not
25 the same one, Chair. Sorry. So, there's a

2 clarification. There are previous TSA-style body
3 scanners that emit low-level of ionization, and
4 they're very good at detecting materials particularly
5 in body cavities, to put it out there. There are
6 other new technologies that the TSA is using now for
7 the purposes of identifying, you know, larger pieces
8 of contraband. They use them in the airports now
9 where I think you've all seen them where you stand
10 inside a receptacle, you raise your hand and then
11 they kind of whirl around to kind of detect if
12 there's any image [sic]. Those are the technology
13 that we have actually moved forward purchasing.
14 They're in manufacturing now. We're hoping for
15 delivery. But the body scanners that everyone's
16 talking here about in terms of really identifying
17 that smaller contraband, the scalpel blades and those
18 in cavity, that's the technology we do own. We
19 cannot use it, and we're hoping to kind of figure out
20 ways we can use it.

21 DARCEL CLARK: And I attached the
22 legislation from the Assembly where which is enabling
23 legislation that would help override the state law
24 and make an exception so that DOC can use those
25 ionizing body scanning types.

2 COUNCIL MEMBER GENTILE: Now, that
3 legislation I looked at, it's a 2015 bill.

4 DARCEL CLARK: Yeah.

5 COUNCIL MEMBER GENTILE: Is there a new--
6 is there a new bill in this new session?

7 DARCEL CLARK: We hope so.

8 COUNCIL MEMBER GENTILE: Okay.

9 DARCEL CLARK: That's what we're going to
10 be pushing for. That's part of our legislative
11 agenda. I know it's part of DOC's.

12 JEFF THAMKITTIKASEM: We'll keep working
13 with them. Obviously we want to meet whatever kind
14 of concerns they have, but we'll certainly negotiate
15 on the language to make sure any concerns they have
16 we address, but it gives us the fundamental ability
17 to use it to detect for these contraband and weapons.

18 DARCEL CLARK: But they have them there.
19 How many did you say you have?

20 JEFF THAMKITTIKASEM: Seven.

21 DARCEL CLARK: Seven of them there
22 already? How long have they been sitting there?

23 JEFF THAMKITTIKASEM: For a while now.

24 COUNCIL MEMBER GENTILE: And so TSA has
25 that type of medical assistance?

2 JEFF THAMKITTIKASEM: So the federal--
3 so, as an irony, the federal government is allowed to
4 use these. In the actual federal facility in
5 Manhattan they're allowed to use these, but we are
6 not within the city jails because of a state
7 regulation.

8 COUNCIL MEMBER GENTILE: Okay, so the
9 federal government--

10 JEFF THAMKITTIKASEM: [interposing] Yes,
11 is allowed.

12 COUNCIL MEMBER GENTILE: Is allowed to do
13 so, okay. Sounds very strange, but anyway. You
14 mentioned, DA, about preserving crime scenes and the
15 difficulty that presents at Rikers, and you-- has DOC
16 increased the video surveillance as a way of helping
17 the evidence preservation?

18 DARCEL CLARK: The video surveillance is
19 there and it's very helpful, but at the same time you
20 need the physical layout to keep everyone out of the
21 crime scene so that the evidence can be collected.
22 The video will show what happened, and hopefully in
23 real-time like a "war room" where we could watch
24 what's happening as it's happening to know, oh, you
25 could see the inmate put the particular contraband,

2 you know, under the bed or under the windowsill,
3 something like that. So, the video will show that if
4 we did that in real-time. Somebody's watching it,
5 and those who are responding tell them, "Look under
6 the windowsill, that's where they put the
7 contraband," that would help, but at the same time,
8 the forces are this: DOC has to maintain order. So
9 when something happens and things are, you know,
10 chaotic, they have to freeze the place. The most
11 important thing is to secure the inmates, clear the
12 area so that they can get back to work. Well, that
13 works against--

14 COUNCIL MEMBER GENTILE: [interposing]

15 Evidence.

16 DARCEL CLARK: DOC and DA's Office

17 collecting the evidence that we need. So there's
18 technology that can help with some of those things as
19 well.

20 COUNCIL MEMBER GENTILE: You--

21 DARCEL CLARK: [interposing] These

22 scanners that will scan the whole room, make a 3D
23 model of the area so that, you know, we'll know
24 exactly what it looks like. It preserves it so we
25 know exactly where everything is. But you know, at

2 the same time we need the boots on the ground, the
3 technology, the video all happening at once.

4 JEFF THAMKITTIKASEM: Council Member, if
5 you don't mind, the department also set up its own
6 evidence collection section to kind of work with the
7 DA on this, and I think the DA is exactly right.
8 There's a tension on trying to make sure that we can
9 end any type of lock-down in a certain area to kind
10 of resume operations so other inmates aren't impacted
11 by an incident, but we are working with them trying
12 to collect kind of recommendations. While we have
13 improved some technology and certainly have dedicated
14 staff to kind of joint training with the Bronx DA,
15 we're always looking for more. So we're trying to
16 work together to kind of basically break past that
17 tension.

18 COUNCIL MEMBER GENTILE: So, are you
19 training your staff to do evidence collection at the
20 same time that they're trying to quell a situation?

21 JEFF THAMKITTIKASEM: So, we-- basically
22 dedicated staff. So when they're in there they're
23 focused on the evidence collection as opposed to the
24 facility focused on kind of maintaining order and
25 separating out kind of inmates from other inmates.

2 CHAIRPERSON CROWLEY: Council Member, if
3 you could wrap up.

4 COUNCIL MEMBER GENTILE: Yes, okay. I
5 appreciate that. You have a lot of challenges here
6 and you're doing a great job. Thank you very much.
7 I appreciate it. Thank you, Madam Chair.

8 CHAIRPERSON CROWLEY: Council Member
9 Deutsch?

10 COUNCIL MEMBER DEUTSCH: Thank you, good
11 morning. My first question is, first of all you
12 mentioned that Rikers Island is under the
13 jurisdiction of the Bronx, right?

14 DARCEL CLARK: Yes.

15 COUNCIL MEMBER DEUTSCH: Is this-- when
16 crimes occur in Rikers Island, does this get included
17 in part of NYPD crime stats?

18 DARCEL CLARK: I'm not sure of the answer
19 to that. I'd have to get back to you on it. I'm not
20 sure.

21 COUNCIL MEMBER DEUTSCH: Do you have an
22 independent crime stat for Rikers Island? We're
23 talking about so many crimes that are occurring on
24 Rikers Island. So do you have anything that's
25

2 independent that-- of any type of crime stats
3 occurring throughout the year in Rikers Island?

4 JEFF THAMKITTIKASEM: The DOC certainly
5 collects data on kind of everything from use of
6 force, inmate fights and other crimes. In terms of
7 investigations and arrests, that's information we
8 kind of jointly shared with the Bronx DA, and they
9 have more on the actual arrest and kind of
10 dispositions of those.

11 COUNCIL MEMBER DEUTSCH: Oh--

12 DARCEL CLARK: [interposing] We can get
13 the numbers--

14 JEFF THAMKITTIKASEM: [interposing] Yeah.

15 DARCEL CLARK: that we have.

16 COUNCIL MEMBER DEUTSCH: So, in-- first
17 of all, if you do have crime stats, is that made
18 public?

19 DARCEL CLARK: I don't know.

20 COUNCIL MEMBER DEUTSCH: So, in the NYPD--

21 -

22 JEFF THAMKITTIKASEM: [interposing] The
23 violence indicators are certainly made public--

24 COUNCIL MEMBER DEUTSCH: In the New York
25 City Department--

2 JEFF THAMKITTIKASEM: I'm not sure exactly
3 which one--

4 COUNCIL MEMBER DEUTSCH: [interposing] you
5 have every month actually they print out the crime
6 stats, and then they also have CompStat. They have
7 TrafficStat. Do you have like RikersStat where you
8 actually speak to the correction officers to see what
9 better tools they need to have more accountability?
10 It's that, you know, we're coming to a hearing here
11 discussing the crimes happening in Rikers Island and
12 then we keep on saying consecutive sentencing, but by
13 the time you get the consecutive sentencing, people
14 are already injured. So we need to do more
15 prevention. We need to take more preventive measures
16 by understanding what tools are needed, and I think
17 by publicizing the crime stats, letting this city,
18 letting the world know how many crimes are happening
19 in Rikers Island, then this could get exposed of how
20 many crimes are happening, how many people are
21 getting injured, how many inmates are getting
22 injured, how many officers are getting injured and
23 are not coming home at night and end up in a
24 hospital, how many crimes are being reported within
25 Rikers Island. I know like in CUNY colleges now,

2 which I had meetings in my district, and any crimes
3 happening in CUNY should be reported to 911 as well.
4 So, if something happens in Rikers and does not get
5 reported to 911, it's not part of the numbers. It's
6 not part of the accountability of what is happening
7 within Rikers Island. So, consecutive sentencing is
8 very nice to scare, a scare tactic. To say if you're
9 going to commit a crime, then you're going to be
10 sentenced. There's a new sheriff in town, but we
11 need to have accountability. We need to understand
12 what better tools the offices in Rikers Island need,
13 and these are people that have families that need to
14 get home to the families. They're in danger even as
15 we can see. Even when they're not at work they're
16 targets, as we've seen the last few months. So we
17 need to have these stats publicized. We need to have
18 stats. We need to hold accountability. We need to
19 make sure these offices are safe. So these are some
20 of the ideas that I have that I wanted to bring out
21 at today's hearing, and again, we should not wait
22 'til a hearing to discuss this. This should be
23 something that if it's-- we have to speak to the
24 state. We need to speak to the City for more

2 resources. Let us hear from the officers by having
3 RikerStat.

4 DARCEL CLARK: Thank you for that
5 comment. If we don't have that, I think it was
6 something that, you're correct, that we should look
7 into, and we'll talk about that.

8 JEFF THAMKITTIKASEM: And we have
9 certainly an internal process called "Teams" that is
10 basically a version of the DOC kind of CompStat
11 process to kind of publicize data. We use it
12 proactively to try to identify ways in which we
13 should focus on different facilities, different
14 crimes, different gang affiliations, but actually the
15 recommendations are all taken very seriously. Thank
16 you very much.

17 COUNCIL MEMBER DEUTSCH: Are those
18 numbers part of what we have here?

19 JEFF THAMKITTIKASEM: So, there are both-
20 - in the Mayor's monthly reports, Management Reports,
21 there are data. In CompStat I was told that there
22 are some DOC data in the CompStat data as well, and
23 we obviously provide that, whatever requested, as
24 well. So, there are different avenues by which to
25 publicize some of that data.

2 COUNCIL MEMBER DEUTSCH: Thank you.

3 CHAIRPERSON CROWLEY: Council Member
4 Lancman for questions?

5 COUNCIL MEMBER LANCMAN: Good morning.

6 DARCEL CLARK: Good morning.

7 JEFF THAMKITTIKASEM: Morning.

8 COUNCIL MEMBER LANCMAN: I just want to
9 ask you why you're so-- you seem so committed to the
10 idea of global dispositions because it seems as if
11 waiting for the underlying case to get resolved and
12 your case, the underlying case all to get resolved in
13 the same time and wrapped up in a bow, would, from
14 the testimony that I'm hearing as well as just
15 intuitively, make it more difficult for you to
16 resolve the cases quicker and also make it more
17 difficult to get those consecutive sentences or
18 different sentences that are as I think you correctly
19 identified, the key to really giving some teeth to
20 this effort. Why can't you just prosecute your case
21 at your paced based on the evidence you have which is
22 probably in many of these circumstances a lot less
23 complicated and difficult to bring to a state of
24 readiness, and then let the other underlying case do
25 its thing at its pace. Why tie yourself to that?

2 DARCEL CLARK: Councilman Lancman, that's
3 from your mouth to God's ears, okay? I do that every
4 day. This Rikers Island Prosecution Bureau is
5 working very hard. We're indicting the cases. We're
6 getting the discovery out. We're answering ready for
7 trial. We're ready for trial, but there's another
8 side to it. There's the defense side, and when you
9 get a defense attorney knowing the Rikers case is
10 more recent, the other case is older, always the
11 concentration is on dealing with the older cases
12 first. That's one thing that we have to deal with.
13 I'm answering ready. I will try the case. I don't
14 need to wait for Brooklyn, or Queens, Manhattan or
15 Staten Island or anybody else. When I'm ready, I'm
16 ready. Give me a judge. I got my assistants here.
17 We're ready to go. Can't get it done.

18 COUNCIL MEMBER LANCMAN: And is the
19 reason that the courts will not say to the defense
20 counsel, "You've got your other case. This case is
21 ready. I'm putting it on for trial." Is it a
22 fundamentally an unwillingness on the part of the
23 courts to accept the fact that you're ready to try
24 the case, that's right?

2 DARCEL CLARK: I don't know if it's a
3 fundamental unwillingness, but you need a judge to be
4 able to try it. So even though I'm ready to go and
5 the defense may ask for an adjournment, you need to
6 have a judge that's ready to try it. We have a
7 shortage of the judges as well.

8 COUNCIL MEMBER LANCMAN: So, I do want to
9 drill down on that, because you know, my other hat
10 other than being a member of these two, being Courts
11 and Legal Services.

12 DARCEL CLARK: Of course.

13 COUNCIL MEMBER LANCMAN: And is it a
14 matter of just a shortage of judges or is it a matter
15 of getting the Bronx judge to push the defense
16 counsel to say, "No, we're not waiting for what
17 Brooklyn or Queens does. There's a live case before
18 us. It's ready. It's getting tried next week, next
19 month."

20 DARCEL CLARK: Yeah, I mean,
21 unwillingness, I don't know, but it's just not
22 happening. If there's a judge that's ready to--
23 look, I sat there 13 of my 16 years as a judge. You
24 don't know how many times I said let's do the Rikers
25 case first. I don't care what's happening in the

2 other counties, but you have to have a judge that is
3 willing to do that. And you have to have the
4 capability of trying the case when it's actually
5 ready, but there's a culture in the courts
6 unfortunately sometimes that the older case goes
7 first.

8 COUNCIL MEMBER LANCMAN: Okay, I--

9 DARCEL CLARK: [interposing] But it's not
10 the right thing, and I'm not for that. I will try
11 the case. You give me a court, you know, you give me
12 a judge that's really willing to try it, I have
13 assistants that'll be ready to try it.

14 COUNCIL MEMBER LANCMAN: Okay, so that's
15 something that we can work toward on our end as well.
16 Thank you.

17 DARCEL CLARK: Thank you. Thank you.

18 CHAIRPERSON CROWLEY: I have one last
19 question. I'm not sure if my Co-chair has. So,
20 District Attorney, do you believe that process is
21 much better now for gathering evidence? You have any
22 complaints about how the DOC is gathering this
23 evidence that you need for your prosecutions, and is
24 there stuff that they could do that will help to
25 improve the process?

2 DARCEL CLARK: Well, I think it's much
3 better than it was because the fact that they have
4 created the Evidence Collection Unit which wasn't
5 there before. So that's in and of itself is an
6 improvement. They need the technology to really be
7 able to, you know, actually solidify a real, you
8 know, effective type of evidence collection process.
9 And you know, we're looking to all the technologies
10 that's there that can assist them in being able to do
11 it. Because remember, that evidence collection, we
12 not only need it to be collected, but that's the
13 evidence that I'm going to use at the trials. So, it
14 has to be, you know, a process where, you know,
15 there's no taint on the way that the evidence is
16 collected. You know, there has to be procedures and
17 policies that are there that make sure that there's
18 integrity in the collection of the evidence.

19 CHAIRPERSON CROWLEY: Council Member
20 Williams?

21 COUNCIL MEMBER WILLIAMS: Thank you very
22 much. Thank you, DA, and thank you, Corrections, for
23 being here as well. I appreciate your testimony. I
24 just want to start because I know that just the
25 country itself puts itself out there as a beacon, but

2 it's always troubling to me what happens with
3 violence in this country. It doesn't happen in many
4 other places that we align ourselves with,
5 particularly gun violence. The country is about five
6 percent of the world's population, about 25 percent
7 of the prison population. So, for one in four people
8 who are in prison in the world in this country, we
9 have a view of prison that I think doesn't help us
10 rehabilitate anyone. That always troubles me. There
11 are humane prisons across the country that people
12 look at where the violence doesn't happen the same
13 way, and I think it's just our view of violence, our
14 view of prison helps that move along. So, the more
15 we make it-- people don't want to think of humane--
16 humanity when we thinking of prison. So, the more we
17 take that away, the more we crush and push down, and
18 the more people are going to push back. That is a
19 truism. What also is true is that we have the
20 violence in prison, a danger to the other prisoners
21 and obviously a danger to officers, correction
22 officers who are there and we don't want their-- them
23 harmed as well. So, I'm-- my questions are just in
24 that context. I think the more we keep trying to do
25 the same thing over and over, it doesn't work, and

2 people are hurt, but we're stuck in a quagmire
3 because this has been going on for so long it's hard
4 to push a button to make it stop and start over
5 again. But I do want to just for a second be in a
6 dream world. What would a prison look like to you if
7 we can just start all over again today?

8 JEFF THAMKITTIKASEM: So, just one of the
9 things that we had been trying to push for, sir, is
10 to change that culture, to move it towards a more
11 humane kind of area where a one-size-fits-all does
12 not apply, that we focus a lot more on kind of the
13 programming, the training to the officers, the
14 engagement of the officers to empower them to kind of
15 do their jobs, but also to give them a safe space
16 while also providing to anybody in our custody and
17 care kind of the necessary programming tools and kind
18 of just disposition to really understand exactly what
19 they're going through and what they can prepare for
20 once they leave. Obviously, while we focus on this
21 we have dedicated a lot of resources to kind of
22 training our officers in different tools so they
23 understand kind of the changing population in our
24 jails. We have a rising mentally ill population. We
25 have a rising gang population. So, both on just a

2 lot more treatment and coordination with H&H and
3 health and mental health physicians has been helpful;
4 the hiring of kind of both partnerships with the
5 Department of Education as well as other agencies to
6 ensure job skills or trained inmates, and then
7 directly connected outside, but also again, focusing
8 on the officers and giving them the tools that they
9 need both to kind of deal with kind of a majority of
10 the population that don't provide, as you said, a lot
11 of the violence and separating and really being able
12 to identify those that remain problematic and giving
13 kind of the proper separation so they don't kind of,
14 you know, unduly influence the rest of the population
15 with kind of whatever issues are coming from the
16 streets, whether it's gang kind of tensions or just
17 kind of some of the networks that the DA was talking
18 about in terms of contraband.

19 CHAIRPERSON CROWLEY: We were just
20 informed that we have to be out of here by 1:00 p.m.,
21 so we'll give you a little bit more time, but we have
22 to move the hearing along.

23 COUNCIL MEMBER WILLIAMS: Alright. Would
24 have been good to know so I can--

2 CHAIRPERSON CROWLEY: [interposing] Yeah,
3 you can wrap it up.

4 COUNCIL MEMBER WILLIAMS: So, I have
5 another question. So I want to just sum up. I just
6 want to know what stops us from flipping the switch
7 now. I know that in general the population has a
8 difficult time accepting that you don't have to be as
9 harshly punitive to exact, whatever you're trying to
10 exact. We have to change our mind frame. Our mind
11 frame of crime and punishment is one of the main
12 problems, I think, in trying to deal with this. So,
13 I'd like to know what's the problem with-- I believe
14 Rikers should be closed. That's another
15 conversation. I'm not asking that now. I'm asking
16 what's stopping us from doing it more humanely, and
17 my second question that I was going to get to is,
18 people who are close to the ground have told me that
19 some of the violence spiked actually when they
20 started separating the street crews, because at least
21 when they were intermingled there was some kind of
22 balance, but when we separated them there was more
23 from each side that would increase because when
24 they're separated, you have to become a member of
25 that particular street crew, and that may have

2 increased some of the violence, and I wanted to know
3 if you had heard anything.

4 JEFF THAMKITTIKASEM: sure. I mean, two
5 separate points. On the first one, I don't think
6 anything's stopping us, and I don't think that we're
7 actually trying to prevent it. I think actually what
8 we've done over the last two or three years is to
9 focus primarily on actually moving forward the path
10 of creating more humane and safe jails. We've
11 certainly had early indicators that the trends are
12 moving in the way that we want them to, in kind of
13 units where we have restarted, literally taking
14 people out of entire units, retrained the officers,
15 provided new programing, provided new technology to
16 allow for kind of a more quieted environment, and
17 then putting inmates back in. We've had reductions
18 in violence up to 70 percent on the uses of force, 90
19 percent on kind of serious assaults on staff. So,
20 those are efforts that we are implementing now. We
21 have hired dramatically program counselors and we've
22 kind of ended the practice of punitive segregation
23 for 16 to 21-year-olds, and certainly created a
24 larger model of progressive discipline that allows
25 people to kind of be addressed-- I mean, basically be

2 disciplined for the action they took. Not to, again,
3 impose one final sanction for anybody regardless of
4 what they did. So, first of all, I agree with you,
5 and I think the department agrees with you and so
6 does the Administration, that we shouldn't be waiting
7 and we haven't been waiting. We've been moving
8 forward. Secondly, on your ground truth. I think
9 there are tensions about what we do with our gang
10 affiliations. When I say separation, I don't
11 necessarily mean separate and isolate within one
12 housing area all of gang members for one-- sorry, one
13 different gang affiliation. What I meant is just to
14 try to isolate the small population that is gang
15 related or have a particular propensity for violence
16 and moving away from the general population. Once
17 they are in that we do try very hard to balance
18 different organizations so that there isn't that kind
19 of ownership by one gang which, you know, promotes a
20 lot--

21 COUNCIL MEMBER WILLIAMS: [interposing]

22 Thank you. I know I'm out of time, but thank you. I
23 try to-- I generally try not to use the word gang. I
24 know you have to--

2 JEFF THAMKITTIKASEM: [interposing] I
3 know, I'm sorry.

4 COUNCIL MEMBER WILLIAMS: because people
5 use "gang."

6 JEFF THAMKITTIKASEM: It's the
7 classification [sic].

8 COUNCIL MEMBER WILLIAMS: They take away
9 the humanity of the person, so I just try not to do
10 that. But thank you to the Chairs. Thank you for
11 being here. My hope is that we can continue with us,
12 and the more we can make people realize that doing
13 this in a humane way is not soft on crime, I think
14 the better off we'll be. Thank you.

15 CHAIRPERSON GIBSON: Thank you very much,
16 Council Member Williams. I also want to acknowledge
17 we were joined by Council Member Paul Vallone. I
18 just had one final question. I know we have others
19 who are here to testify today. The conversation that
20 we are having around 16 and 17-year-olds and the
21 criminal prosecution of 16 and 17-year-olds. Is
22 there an update that you guys could provide? I know
23 DOC has been working on a number of proposals, I will
24 say, absent of state legislation. Can you give us a
25

2 sense of what we're currently doing with 16 and 17-
3 year-olds, and if there are any proposed changes?

4 JEFF THAMKITTIKASEM: I think as you know,
5 Council Member, what we've done certainly is try to
6 focus attention on the adolescents. We have provided
7 more schooling. We've separated them into their own
8 facility and treated them different, to give you the
9 short answer. In terms of the forward progress, we
10 had provided funding for design studies of facilities
11 that could be dedicated to the adolescents off-island
12 so that we could treat them appropriately and also
13 create space for them to hopefully divert and make
14 sure they don't even end up in the actual cells of a
15 jail. So, those talks are ongoing. The funding was
16 put in, and I know that the planning people are
17 currently designed-- working to figure out what the
18 best design is. I don't have an update more than
19 that.

20 CHAIRPERSON GIBSON: Okay. So, you said
21 that there have been sites identified off the island?

22 JEFF THAMKITTIKASEM: Yes.

23 CHAIRPERSON GIBSON: Okay. I think--

24 JEFF THAMKITTIKASEM: [interposing] And
25 they're working through--

2 CHAIRPERSON GIBSON: I have an idea of
3 where they are.

4 JEFF THAMKITTIKASEM: Well, I think that
5 they're working on the design. They've looked at
6 former ACS sites at Horizon.

7 CHAIRPERSON GIBSON: That are
8 underutilized, right?

9 JEFF THAMKITTIKASEM: Yeah. So,
10 underutilized, and basically what a redesign would be
11 to kind of take care of an adolescent population
12 while still providing them all the education and
13 programming we've tried to implement here at DOC on
14 the island.

15 CHAIRPERSON GIBSON: Okay. So, I guess my
16 final statement before I close is, identifying all of
17 the challenges, the investments, the millions and
18 millions of dollars that we've poured into both the
19 DA's office and DOC that we will continue to pour in,
20 violence is increasing in terms of on Rikers Island,
21 right? Because we're arresting more individuals.
22 So, is it safe to say that violence is increasing on
23 Rikers Island or that's not true?

24 JEFF THAMKITTIKASEM: I wouldn't go there.
25 I actually think that what the Bronx DA has been

2 touting has been very favorable. We're trying to
3 work on prevention. The more they can arrest and
4 actually take critical action right away after an
5 incident, the more it helps us to be able to kind of
6 articulate that there are repercussions to their
7 actions. Furthermore, as a department we've been
8 focused on a lot of broad changes, and actually are
9 early indicators, you know, just for the calendar
10 year of 16 compared to calendar year of 15. We've
11 seen dramatic decreases in several areas where any
12 real violence that resulted in serious injury,
13 whether that's uses of force, inmate fights or
14 assaults on staff, all of those has declined year
15 over year from 15 to 16. So, while we have a long
16 way to go, and I would never want to tell this
17 council that, you know, our job is done, there have
18 been a lot of decreases in those serious incidences
19 that resulted in any kind of harm or injury.

20 CHAIRPERSON GIBSON: Okay. In the
21 serious incidents, did you include stabbings and
22 slashings as well?

23 JEFF THAMKITTIKASEM: So, stabbings and
24 slashings, let me be very clear, are up. They are
25 up, and one of the big issues, and we've been pushing

2 for, kind of the body scanners and change in state
3 legislations to be able to find the weapons, that we
4 can't-- we just cannot find right now because we
5 don't have the technology to do so.

6 CHAIRPERSON GIBSON: Okay. And I guess
7 that's probably the alarming part, and you know, I
8 really hope that we will all be aggressive this year
9 to see if we can get, you know, state law changed.
10 The relationships we have, we cannot continue to
11 allow the propensity of violence and contraband that
12 are getting onto the island because we lack the
13 technology. We're the greatest city in this country.
14 We have to do better. So, I guess, you know, moving
15 into this year for us in the Council, we hope that
16 you will give us your suggestion and your input on
17 ways that we can support you, ways that we can
18 continue to reduce violence in many of the categories
19 you've described. The slashings and the stabbings,
20 we have got to deal with that. I mean, the pictures
21 and the images that I've seen and the people is
22 disturbing, and we know that most of the staff on
23 Rikers Island just like the inmate population are
24 people of color, and so that's really disturbing for
25 me, and most of, you know, civilian and uniform staff

2 are women. So, we have to protect everyone there.

3 We have to protect everyone on the island, and I

4 know, you know, we have a commitment and we say it,

5 but we have to make sure that it happens. The voices

6 and everyone that sits in Albany with a title,

7 everyone has to realize what's happening. These are

8 our family members and our friends and colleagues,

9 and you know, we have to give them the assurance and

10 the confidence that we're protecting them. For those

11 of us that represent districts like mine where my

12 residents want these bad apples off of the streets,

13 someone has to take care of them, and when they get

14 to the island they're sometimes even more dangerous,

15 and so I get that. It's a very sensitive

16 conversation, and trust me, like you I struggle with

17 it. I talk to the NYPD. I talk to DOC staff. I

18 talk to the everyday, you know, resident that

19 sometimes does not want to come forward, because if

20 they come forward they're fearful of their life.

21 They're fearful of retaliation. Their status is in

22 jeopardy. So these are all the things that, you

23 know, we have to give them assurance, and it cannot

24 just be lip service. It has to be real service. So,

25 I thank you for the work you're doing, and certainly

2 we will continue to have further conversations on
3 this issue. Thank you to the Commissioner and to
4 you, Jeff, and to our DA. Thank you DA Clark for the
5 work you're doing. I hope you continue to hire more
6 staff, and obviously there's a need for it, but thank
7 you for your work to you and your team. We appreciate
8 you being here.

9 JEFF THAMKITTIKASEM: Thank you.

10 DARCEL CLARK: Thank you.

11 CHAIRPERSON CROWLEY: I too am grateful
12 for the District Attorney being here today and for
13 your extensive testimony, for the work that you're
14 doing on Rikers Island and altogether and in your
15 work as the Bronx District Attorney. as for the
16 Department of Corrections, I don't think from the
17 numbers I'm looking at, which you're-- if you're
18 there, you're more likely to get stabbed or slashed
19 at an increase of nearly 20 percent. That's serious.
20 Inmate fights are up from 4,971 to over 6,000,
21 increase of greater than 20 percent. So, while it
22 appears that uniformed staff are not getting injured
23 as much as they were, it's still far too high, and
24 we're now going to transition into hearing from the
25 correction officers and wardens who actually are

2 working there. I do appreciate Jeff, you being here
3 on behalf-- Chief of Staff on behalf of the
4 Commissioner, and this conversation certainly is not
5 over.

6 JEFF THAMKITTIKASEM: Great.

7 DARCEL CLARK: Thank you.

8 JEFF THAMKITTIKASEM: Thank you.

9 CHAIRPERSON CROWLEY: Now, before we move
10 to part B where we hear Council Member Lancman's
11 intro 1373A, we're going to hear from the Correction
12 Officers Union, and we have Elias Husamudeen who is
13 the President. We have Mr. Thomas Farrell, who is
14 the legislative Chairman, and then from the Assistant
15 Deputy Warden's Association we have Faisal Zouhbi. I
16 probably said that wrong, so I apologize in advance.
17 And also, we did receive the testimony of the
18 Correction Officers-- we have your written testimony,
19 so in the interest of time we hope that you could be
20 brief, and open up after summarizing your testimony
21 for questions. We also have the Department of
22 Corrections Commissioner's testimony that is part of
23 the record. So, Mr. Husamudeen, when you are ready,
24 if you could please begin your testimony, and again,
25 if you could summarize the written testimony in the

2 interest of time as we have to be out of this room
3 within an hour.

4 ELIAS HUSAMUDEEN: Thank you. Good
5 morning, Chairwoman Crowley, Chairwoman Gibson and
6 members of the Oversight Committee. My name is Elias
7 Husamudeen, and I'm the President of the Correction
8 Officers' Association, the second largest law
9 enforcement union in the City of New York. Our
10 members, as you know, provide care, custody and
11 control of 8,000 inmates daily in over 60,000 inmates
12 just last year alone. We are here today to discuss
13 the topic of prosecuting jail violence. Before I
14 begin with my testimony, I would like to express my
15 gratitude to the Mayor and the Office of Labor
16 Relations for negotiating with our union and
17 incorporating contract, the provision for a Rikers
18 Island Arrest Unit Bureau, something that we've been
19 fighting for for years. That's overseen by the Bronx
20 District Attorney Darcel Clark. We also thank Bronx
21 District Attorney Darcel Clark for committing vital
22 resources to the rearrests and prosecution of inmates
23 and visitors who commit crime on Rikers Island. We
24 also appreciate the Department of Corrections' new
25 commitment to taking seriously the rearrests of

2 inmates who assault correction officers. Last, but
3 not least, we appreciate your Oversight Committee and
4 the committee members for always keeping correction
5 officers in the forefront. I want to admonish our
6 city's criminal justice system which has a backlog of
7 over 800 inmates who have yet to be arrested for
8 their crimes committed against staff and other
9 inmates on Rikers Island. There should also be no
10 delay in prosecuting these inmates, and I am here
11 today to call on your committee to immediately look
12 into what is holding up this process. The public has
13 a right to know and the union has a right to know.
14 The public also has a right to know about the facts
15 concerning the ramification of major policy changes
16 that Commissioner Ponte, the mayor, members of the
17 City Council and the Board of Corrections have hailed
18 all in the name of progress reform. If progress
19 forms the basis of the term "progressive," then it
20 would seem that reform measures supported by this
21 council and the mayor would be generating positive
22 outcomes following the elimination of punitive
23 segregations for inmates 21 years old and under last
24 October. For a while, on the one hand this may-- and
25 certain Council Members and members of the Board of

2 Corrections want to brag about reform, the violence
3 continues to rise. In fact, by the Department's own
4 account there was an 18 percent rise in the number of
5 inmate-on-inmate slashings last year over the
6 previous year. There are three distinct indicators
7 of jail violence that the Mayor's Office, the City
8 Council and the Corrections Commissioner and the
9 Board of Corrections have not been able to bring
10 down. One of those categories is serious injury to
11 inmates, which is inmate-on-inmate violence. The
12 second one is the inmate-on-inmate stabbings. The
13 third one is on the inmate-on-inmate slashing, and
14 now we have a new category which is the slashing and
15 stabbing of correction officers, because prior to
16 three years ago we didn't have that category. In the
17 last three years under this Administration, three of
18 the four categories continued to increase. The reason
19 why they have not been able to reduce the numbers in
20 these categories is because of the insane policy of
21 eliminating punitive segregation for 16 to 21-year-
22 olds, which existed three years ago and because they
23 do not understand the culture of jail and
24 specifically Rikers Island. Hailing reform to reduce
25 jail violence while the reality only demonstrates the

2 complete opposite that jail violence continues to
3 soar is nothing short of a systemic hypocrisy. To be
4 blunt, Mayor's Office is guilty of hypocrisy.

5 Certain members of this council are guilty of
6 hypocrisy as is the Board of Corrections and the
7 Corrections Commissioner who are entrusted to
8 prosecute crime. For example, just a couple of weeks
9 ago 35 individuals were arrested in Brooklyn for
10 violent crimes, weapon possession, drug possession
11 and gang violence. Everyone from the police to the
12 District Attorney determined that these 35
13 individuals were too violent and have too much
14 potential for violence to remain on the streets of
15 New York. As a result, they were given high bails or
16 remanded in the same cases. So all of the criminal
17 justice policy makers have decided that to protect
18 the general public from these violent predators and
19 put them on Rikers Island in the custody of who else,
20 New York City Correction Officers. According to
21 Assistant Police Chief James Essing [sp?], these are
22 notorious gang members who have terrorized Brooklyn
23 for years. That's what gangs usually do with guns,
24 violence and drugs. Sixteen of them have been
25 involved in shooting incidents, 17 have been arrested

2 for weapon possession, and 25 have been arrested for
3 robberies. At the same time, these same policy
4 makers, City Hall, City Council, the Mayor, these
5 same policy makers have stripped correction officers
6 of all the critical tools necessary to maintain
7 safety and security within the confines of the City
8 Jail. These reform-minded law makers such as
9 Councilman Jumaane and whoever else that just came
10 here to make an appearance and leave, these same law
11 makers make-- these reform-minded law makers place
12 these violent predators in our custody and then
13 accuse us of making them more violent once they're
14 incarcerated. They have declared these individuals
15 to be too violent to remain free on our streets, but
16 yet they are apparently not violent enough to
17 segregate inside the jails from other inmates in
18 general population. This hypocrisy from law makers
19 and policy makers will no longer be tolerated by the
20 Correction Officers' Benevolent Association. As
21 we've conveyed to the constituents of Council Member
22 Danny Dromm in Council District 25 last week, you
23 will not and cannot continue to demonize and
24 scapegoat correction officers for the policy failures
25 of those who have been elected to keep the city safe.

2 Unlike the police, the District Attorney, the judges,
3 the court officers, and even the Commissioner and all
4 of you sitting here, we have to live with these
5 violent predators not just for a few hours, not for a
6 few minutes, but for literally 24 hours a day, seven
7 days a week, 365 days a year. For us this is not just
8 some theoretic progressive exercise. This, ladies
9 and gentleman, is life and death. Kalif Brower [sp?]
10 was arrested and jailed for allegedly stealing a
11 backpack that was never found. He remained on Rikers
12 for more than three years. He was by all accounts
13 the victim of a failed criminal justice system. He
14 was given-- I'm just about done. He was given a very
15 high bail and inadequate legal representation. He
16 eventually was released from Rikers Island, and two
17 years later tragically killed himself. Correction
18 officers, as has become the norm, are the scapegoat
19 and the demonized for his death, and that did not
20 even occur while he was in our custody. Neither the
21 judges, the District Attorney, the public defender,
22 nor the Department of Mental Health are responsible
23 in any way shape or form for this man's tragic spiral
24 to death, only the correction officers. This again,
25 ladies and gentleman, is the worst form of hypocrisy.

2 The Governor of the State of New York hails the close
3 of over a dozen state prisons and pushes to pass
4 legislation to try to stop trying 16 and 17-year-olds
5 as adult, but yet, the state's criminal justice
6 system fails to remove inmates after they are
7 sentenced for 25 years to life for murder, like the
8 inmate who cut his mother's head off, and instead are
9 left on Rikers Island and end up assaulting
10 correction officers and other inmates. This union
11 has taken many steps to meet with the Mayor and his
12 staff, including Elizabeth Glazer, the Director of
13 Criminal Justice Services, and recommended many
14 proposals to reduce jail violence and make our
15 facilities safer. We have met with the District
16 Attorneys and requested processes for the DA's to
17 expedite cases such as inmate John Doe who faces
18 charges in a Brooklyn case from 2011-- he's still on
19 Rikers Island-- a 2011 gun case in addition to the
20 numerous assault cases that he's accumulated against
21 correction officers and other inmates. Inmate John
22 Doe and other inmates like him know full well that
23 they will continue to be hold at Rikers instead of
24 being sent to a state facility because the Brooklyn
25 DA is not going to try a case as explained to you by

2 the Bronx DA until the Bronx DA tries the Rikers
3 Island cases. The inmates routinely commit
4 infractions at Rikers for this very reason. They
5 play the game, and unfortunately all too often they
6 are winning. These committees must find a way to put
7 an end to this immediately. We are here today solely
8 to not-- we aren't here today solely to point out
9 hypocrisy. We're here to propose solutions that we
10 sincerely hope will be adopted and incorporated into
11 the prosecution of jail violence. Recently, again,
12 Governor Cuomo has proposed eliminating the
13 prosecution of 16 and 17-year-old juveniles that are
14 tried as adults. We couldn't agree more. New York
15 is one of the two states that still tries 16 and 17-
16 year-olds as adults, and if this Administration is
17 desirous of leading the nation in reform, then why
18 not lead the nation in rolling back this policy and
19 keep the adolescents off of Rikers Island completely.
20 Secondly, in a recent report of New York
21 Comptroller's Office it was revealed that we spend
22 132,000 dollars on each incarcerated inmate. We
23 spend more than 300 million to incarcerate the
24 adolescents alone. Why isn't the city's upcoming
25 budget focused on community youth programs to offer

2 troubled adolescents and those at risk with punitive
3 alternatives to life behind bars? Third, because of
4 the judges in this city-- because the judges in this
5 city seem more intent on political activism than on
6 law and order, we need to ensure that the most
7 dangerous criminals who repeat their crimes in jail
8 face minimum sentencing with consecutive sentences
9 imposed on the worst of the worst. We're not talking
10 about petty misdemeanors and larceny and minor drug
11 offenses. We're talking about gang members, rapists
12 and murderers who prey on our officers and the other
13 inmates. Fourth, the Department has needlessly spent
14 over 275 million dollars on overtime, an unbudgeted
15 post that has needlessly jeopardized our members'
16 safety and wasted valuable resources. Put this money
17 towards ending the backlog of the 800-plus inmates
18 waiting for their cases to be prosecuted. Fifth,
19 recently iPads have been given to the new recruits of
20 the Correction Academy. Let's provide all officers
21 with smartphones and iPads and the necessary
22 technology to detect weapons and monitor gang
23 behavior and fight jail crime the way it should be
24 fought in the year 2017. Sixth, provide every single
25 correction officer with individual gas masks, the

2 same way stab-resistant vests are allocated. I'm
3 just about finished, ma'am. Finally, and certainly
4 not least of all, we need to change the way we talk
5 about the use-of-force incident. Last year, some
6 97,000 people in New York City were arrested by the
7 NYPD, and of those arrests 60,000 of them were placed
8 in our custody of correction officers. Most of the
9 jail reform debate references 8,000 inmates and
10 factors in use of force incident within the smaller
11 figure which is misleading. When the use-of-force
12 rate of 538 per 1,000 inmates is calculated using
13 60,000 figure, it is obvious that correction officers
14 have performed exceptionally well in maintaining
15 care, custody and control of the DOC facilities.
16 Around the country and as close as New Jersey,
17 correction officers are murdered every day in the
18 line of duty at the hands of inmates. That hasn't
19 happened here in over 40 years, but the ill-advised
20 policy changes that have been recently implemented by
21 the Mayor, the City Council, their Oversight
22 Committees, the Board of Correction, and the
23 Correction Commissioner makes that risk all the more
24 greater, and as correction officers, ma'am, we feel
25 it every freaking day; we feel it.

2 CHAIRPERSON CROWLEY: Understood. Thank
3 you.

4 ELIAS HUSAMUDEEN: If you are going to
5 impose radical reform, then that reform must be
6 anchored by a secure system that put law and order
7 ahead of politics with no exception. Correction
8 officers must not continue to be demonized when these
9 reforms fail. We are not shrinking from our
10 responsibility. We are asking for the shared
11 accountability among all the stakeholders in our
12 criminal justice system, and let this hearing serve
13 as our notice that we will continue to hold everyone
14 from this point forward accountable to ensure justice
15 is served behind bars just as it is on the street.
16 I'm happy to answer your--

17 CHAIRPERSON CROWLEY: [interposing] Thank
18 you, Mr. Husamudeen. And anyone else on the panel
19 looking to testify or just here to answer questions?
20 Oh, you have--

21 FAISAL ZOUHBI: [interposing] My name is
22 Faisal Zouhbi. I'm the President of Assistant Deputy
23 Wardens' Association. Good afternoon to the Council,
24 Chairs Gibson and Crowley, Lancman and members of
25 both committees. Madam Chairpersons, as I said

2 before, I'm the President of the Assistant Deputy
3 Wardens' Association. I represent-- this union
4 represents Assistant Deputy Wardens, Deputy Warden
5 and Deputy Wardens in Command also known as Warden
6 Level I and Warden Level II. Our responsibility and
7 pay is equivalent to that of NYPD Lieutenants,
8 Captains and Deputy Inspectors. I'm thankful for
9 this opportunity to testify on this important issue
10 of jail violence and its effect on custodial staff
11 and inmate population that we're entrusted to manage
12 and protect. For all accounts the jail violence has
13 increased and is at an all-time high during this
14 DOC's Administration and leadership, both in assaults
15 on inmates with weapons and the increased viciousness
16 of the assaults on our uniformed staff members. It
17 has been an ongoing problem of our department,
18 inability to deal with the increasing number of
19 inmates committing disciplinary infractions who are
20 not being segregated from the general population.
21 These inmates then continue to commit further violent
22 acts when they should have been locked down within
23 punitive segregation. I know that the Mayor and
24 Commissioner and Department of Corrections has
25 eliminated from the segregation for 16 to 21-years-

2 old, but we encompass various age groups. The
3 violence in our city jail continues to escalate as a
4 direct result of a weakened internal disciplinary
5 process for inmates in which there are no
6 consequences following violent crimes. With the
7 reduction of the use of punitive segregation, inmates
8 have no respect for authority within our jails. This
9 has created a situation where many uniformed staff
10 feel intimidated and threaten to go to work. This
11 leaves the criminal justice system where too long
12 inmates who commit violent acts in the jail have
13 their sentences combined only to have been given a
14 concurrent sentence when clearly the law called for
15 consecutive sentences. I thank honorable Darcel
16 Clark for the efforts that she's doing prosecuting
17 these inmates and also her District Attorney team who
18 recommend to these judges to give consecutive
19 sentences. That's one of the tools that we can use
20 to stop violence on Rikers Island, and I would
21 greatly appreciate the support of the Council and
22 facilitating a law to ensure that these consecutive
23 sentences are commuted. There's no doubt in my mind
24 that violent episodes were reduced by initiating
25 prompt sentencing guidelines in intelligent and

2 judicious administration of justice. We're not
3 saying like, you know, President Husamudeen said,
4 that people who commit minor infractions like quality
5 of life infractions to be thrown away in our justice
6 system. I understand what Jumaane Williams was
7 talking about in regard to the personal feelings out
8 there in regards to closing Rikers Island, but the
9 fact of the matter is, even if you close Rikers
10 Island and you put them in satellite locations, it's
11 not going to stop the problems of jail. It's not
12 going to stop the problems of what's going on in
13 these communities with failed resource and poor
14 education, and also turning a blind eye on the things
15 that cause crime in these communities. I'm a product
16 of these communities. I know what went on in my
17 community growing up. I know that if you turn a blind
18 eye to drug usage and you decriminalize certain acts
19 of drug use, it's only going to lead to further
20 deterioration of that community. Those are things
21 that of course the City Council and the law makers
22 hopefully in the future will address, but we're going
23 to get back to what we deal with on Rikers Island.
24 As Darcel Clark said, that these inmates are using a
25 two-dollar roll of black electrical tape. The

2 sophistication that the inmates is using to smuggle
3 these titanium scalpels is to wrap it and to secrete
4 it. I believe that DOC's does need better and more
5 sophisticated detectors to combat this trend. The
6 support of giving them these TSA-type body scanners
7 would greatly help to increase the likelihood of
8 identifying as contraband and hopefully the
9 successful prosecution of these individuals that
10 commit these crimes. But on top of that, the
11 internal processes on how we deal with these violent
12 criminals needs to change as well. And so it goes
13 hand in hand.

14 CHAIRPERSON CROWLEY: Understood. I'm
15 sorry, we have to cut your testimony short.

16 FAISAL ZOUHBI: Sure.

17 CHAIRPERSON CROWLEY: But I thank both
18 the unions for being here today. I'm going to ask
19 just a few questions and I think some of my
20 colleagues. So, if what you had planned to say
21 wasn't said yet, maybe it'll be said in the answers
22 or in a very brief statement at the end. A question
23 about crime. It seems violence according to the DOC,
24 they keep saying it's going down, but you're saying
25 something quite different. What is the case there?

2 You know, fewer of your officers have been seriously
3 assaulted according to the Department of Corrections,
4 but still seems like a lot of the officers are
5 getting assaulted. Can you speak to the department
6 putting out that type of impression, and is it
7 accurate? Are the jails safer today than they were a
8 year ago?

9 FAISAL ZOUHBI: I believe because of what
10 I said before, the weakened internal process, that
11 the inmates are emboldened to commit these vicious
12 attacks. The reality of it is is that they play the
13 game of when they commit these acts of not being
14 prosecuted and staying on Rikers Island to only get a
15 concurrent sentence, it furthers the case that they
16 can just commit these acts and get away with it.
17 That's number one. The reduction of punitive
18 segregation and the disciplinary process has been
19 reduced to a point where it's almost nil. It has no
20 effect on their behavior, and that plays another part
21 in the rise and increase in violence towards other
22 inmates and our custodial staff.

23 CHAIRPERSON CROWLEY: Is the jail safer
24 today or not? Just a quick answer to that.

25 FAISAL ZOUHBI: I'm sorry.

2 ELIAS HUSAMUDEEN: Part-- this is the
3 deal. They submit these different statistics to you,
4 to the City Council, to the Mayor's Monthly, whatever
5 this report is, and then they sit in your face and
6 tell you that it's going down, but they told you on
7 paper that it's actually an 18 percent increase.
8 These are their numbers. So as far as who's zooming
9 [sic] who, I'm not quite sure, but at the end of the
10 day-- District Attorney Clark said a lot of things.
11 She actually gets it, and the problem is the
12 Commissioner doesn't, and the Mayor don't seem to get
13 it, and certain members of this, you know, of the
14 City Council don't seem to get it. We can't-- the
15 example that I use, you cannot arrest 35 gang members
16 and tell us that they are terrorizing Brooklyn, but
17 we're going to put them in the jail and as they
18 terrorize the jail, there's nothing that you can do.
19 It's impossible to come at us with that type of
20 mentality. You can't, again, as I continue to say,
21 it's like taking the gun from a New York City Police
22 Officer and saying, "Go in and fight crime." So,
23 there we have the same issue. You want to take
24 punitive seg. You want to take the measures that
25 have worked. If you look at it, three years ago the

2 numbers were actually going down. Three years later
3 under this Administration the numbers are not going
4 down, and for whatever reason don't seem to be able--
5 they don't seem to be able to do anything to make it
6 go down, and it's because they again are out of touch
7 with the culture of Rikers Island and with the
8 culture of running a jail.

9 FAISAL ZOUHBI: And just to try to
10 answer, Chair Madam Crowley, your answer, if you
11 asked an average correction officers do they feel
12 safe going to work, there would be a resounding no.

13 CHAIRPERSON CROWLEY: Understood. Now, I
14 thought I heard one of you testify about a delay in
15 arraignments. Is that still happening? Do you feel
16 that the inmates who are committing the crimes are
17 getting prosecuted or arraigned?

18 ELISA HUSAMUDEEN: Well, I testified that
19 they have a backlog, and the problem with the backlog
20 is not-- it's a problem of the department actually
21 making the arrest. For whatever reason, the
22 department don't seem to take-- when an inmate spits
23 in your face or throws urine and feces in your face
24 and in your mouth, those arrests seem to be put on
25 the backburner. For whatever reason they don't seem

2 to think that those type of assault rises to the
3 level where these people should be immediately
4 arrested. So, as correction officers, when these
5 things happen to us-- and we know that there's a
6 large population of inmates who have AIDS, Hepatitis,
7 HIV, and a lot of different things. SO they spit in
8 our face. They spit in our mouth. They spit in our
9 eyes. They throw urine and feces in our face, and
10 they're not arrested immediately. Yes, the ones who
11 cut, the ones who stab, the ones who slash, yes,
12 those arrests are done immediately, but then the ones
13 who throw urine and feces, which is an assault, those
14 ones are not-- those arrests are not taken as serious
15 by the agency, and the DA can only do something when
16 the case is actually brought to them.

17 CHAIRPERSON CROWLEY: I imagine that
18 affects your morale.

19 ELISA HUSAMUDEEN: It absolutely affects
20 morale, and--

21 CHAIRPERSON CROWLEY: Just identify your
22 name for the record if you don't mind.

23 THOMAS FARRELL: Thomas Farrell,
24 Legislative Chairman. Not to be disrespectful, but a
25 lot of time this committee and these hearings we go

2 to, it reduces morale. It's almost an exercise in
3 futility. We've come here going on nine years and we
4 keep talking about the same thing, and nothing's
5 really being done. Can you guys take sanctions
6 against the department? We talk about numbers,
7 reporting numbers, reporting numbers, reporting
8 numbers, but what happens? The numbers are changed.
9 The numbers are fudged. The numbers are moved. We
10 go from Category A to Category B. Are we ordering
11 food or are we reporting numbers? Nothing is being
12 done. If we want to make some changes here, exactly
13 what DA Clark said, we need to get mandatory
14 sentencing, in my opinion, and we need to have
15 consecutive sentencing? There's a bill up right now
16 in the Senate. It's going to be introduced in the
17 Assembly to make it a "hate crime" to assault a
18 police officer, a firefighter, an EMT, and a
19 correction officers. Maybe then it'll stop. Maybe
20 handcuffing the judges and maybe sending these
21 inmates a message that you're not going to assault
22 us, but the Council needs to take steps to do it.

23 CHAIRPERSON CROWLEY: Understand.

24 THOMAS FARRELL: You really need to force
25 a hand.

2 CHAIRPERSON CROWLEY: But it is state
3 law, and so we will take a look at the bill you just
4 mentioned and look into doing a resolution in
5 support. So, I understand why you're critical. I'd
6 be critical of the department. We have been able to
7 get more officers which is important, but we still
8 need a better training facility. We need to make
9 sure that we truly are prosecuting because it seems
10 that state law is preventing us from making sure that
11 the same judge who could really give the consecutive
12 sentence is really not able to hear the case, and
13 time is of consideration as well, and these delays
14 certainly don't help. But this committee is
15 certainly focused on improving, certainly the levels
16 and statistics that we see are troubling and they
17 have been, and they're getting worse and I agree with
18 your testimony. So, I'm going to conclude. I do
19 appreciate.

20 : Just-- I'm sorry. Just one thing real
21 quick. Part of my testimony--

22 CHAIRPERSON CROWLEY: [interposing] No,
23 you're going to be asked more questions--

24 ELISA HUSAMUDEEN: [interposing] No, no.
25

2 CHAIRPERSON CROWLEY: from other
3 committees, too.

4 ELISA HUSAMUDEEN: Just one more thing.
5 If you guys can be as helpful as you can in getting
6 the District Attorneys of this city, Brooklyn, Bronx,
7 Queens, all of the District Attorneys into one room
8 to resolve some of the issues that was actually
9 eloquently addressed by the District Attorney so that
10 we can get these guys off of the island, so that we
11 can get them out of our system so that we can reduce
12 the amount of assault against correction officers,
13 because this population is largely responsible for a
14 lot of it. I'm sorry.

15 CHAIRPERSON CROWLEY: We'll look to do
16 that, but it would take a state law to change your
17 jurisdiction. I thank you for the work that you do.
18 I know that your members of the union work hard under
19 very difficult circumstances. So, again, I
20 appreciate the work of correction officers as well as
21 the management there. I'm going to now transfer it
22 over to my Co-chair.

23 CHAIRPERSON GIBSON: Thank you very much,
24 Chair Crowley, and good afternoon to all of you, Mr.
25 President and to your team. We appreciate you being

2 here and certainly understanding the challenging
3 dynamics that we work in. So, before I begin, let me
4 just comment. In your testimony you made a lot of
5 criticism towards the City Council, and let me first
6 say--

7 ELISA HUSAMUDEEN: [interposing] Members--

8 CHAIRPERSON GIBSON: [interposing] that
9 any Council Member that was here earlier who is
10 certainly not here, that does not mean that they are
11 not equally as dedicated to working with you and COBA
12 and DOC and many others. So, I know you referenced
13 one of my colleagues, and I certainly don't want this
14 hearing to end and my colleague thinking that you
15 called him out because he had to leave. So, let me
16 be clear, any members that come to our hearing today
17 and have come forth, their commitment is absolutely
18 firm. You know, we have schedules and it doesn't
19 mean that this information is not important, but I
20 certainly want to make sure that, you know, blanket
21 statements towards the City Council towards these
22 committees, I certainly will not allow to go on
23 record. So, I want to make sure you're clear and
24 understand where I'm coming from, because you called

2 out one of my colleagues that sits on my committee.

3 So, just want to make sure that's clear.

4 ELISA HUSAMUDEEN: I need to make sure
5 that you're clear--

6 CHAIRPERSON GIBSON: [interposing]
7 Absolutely.

8 ELISA HUSAMUDEEN: that I have been
9 coming to these council hearings for almost 20 years.

10 CHAIRPERSON GIBSON: Okay.

11 ELISA HUSAMUDEEN: And I'm quite
12 accustomed to City Council Members who come in--

13 CHAIRPERSON GIBSON: [interposing] Right.

14 ELISA HUSAMUDEEN: put there whatever on
15 the floor and leave, and don't have the respect to
16 stay. If you have some-- if you're going to come here
17 and you're going to put an argument or you're going
18 to put a particular idea on the floor as if there's
19 some type of inhumane treatment that's going on, then
20 I have every right in representing my members to call
21 you out, and I absolutely, positively will. There
22 are members of this City Council, and they may not be
23 sitting up there, who every chance they get they take
24 a hit at New York City Correction Officers--

2 CHAIRPERSON GIBSON: [interposing] Oh,
3 okay.

4 ELISA HUSAMUDEEN: and they find it
5 necessary to blame us, and I consider--

6 CHAIRPERSON GIBSON: [interposing] I got
7 you.

8 ELISA HUSAMUDEEN: Jumaane Williams and
9 Danny Dromm and Ydanis Rodriguez and quite a few
10 other ones to be those people. So, I--

11 CHAIRPERSON GIBSON: [interposing] Okay.

12 ELISA HUSAMUDEEN: am offended when they
13 come to these meetings, make their statement, ask the
14 question on behalf of whoever pocket they're in, and
15 then leave.

16 CHAIRPERSON GIBSON: Oh, okay. So, you're
17 entitled to your opinion, but as the Chair of Public
18 Safety--

19 ELISA HUSAMUDEEN: [interposing] I
20 understand.

21 CHAIRPERSON GIBSON: and you know,
22 working with my committee members, I certainly want
23 to make sure I go on record. I've been here for
24 three years. So, I don't have the tenure of 20
25 years, but certainly in my three years of chairing

2 this committee I want to make it clear that we are
3 committed to working with you. So, we know emotions
4 are high, and you know, don't think that I don't
5 understand what your members go through every single
6 day, because I have friends that are on the job.

7 ELISA HUSAMUDEEN: Absolutely.

8 CHAIRPERSON GIBSON: So I get it. I get
9 it.

10 ELISA HUSAMUDEEN: It's not about you.

11 CHAIRPERSON GIBSON: Absolutely. This is
12 about the bigger picture of making sure that
13 correction officers are safe, they're experienced,
14 they're well trained, and they're given the services
15 that they need.

16 ELISA HUSAMUDEEN: And--

17 CHAIRPERSON GIBSON: [interposing] So, in
18 your testimony you talked a little bit about
19 resources. You talked about iPad. You talked about
20 other things. That's a simple measure that can
21 happen. So, is it just the new CO's that are coming
22 out of the Academy that are given the smartphones and
23 other technology and the existing CO's are not being
24 given these new devices?

25 ELISA HUSAMUDEEN: Yes.

2 CHAIRPERSON GIBSON: Is that what you're
3 saying?

4 ELISA HUSAMUDEEN: Yes, currently.

5 CHAIRPERSON GIBSON: Okay.

6 ELISA HUSAMUDEEN: That's definitely
7 true.

8 FAISAL ZOUHBI: Just to add to that,
9 they're only given that to work inside of the
10 Correction Academy, not to-- as part of their day-to-
11 day equipment.

12 CHAIRPERSON GIBSON: Oh, okay. So that's
13 an even bigger problem then.

14 ELISA HUSAMUDEEN: We're still in a
15 dinosaur days when it comes to collecting data,
16 collecting information and producing the necessary
17 reports of things that can actually assist us in
18 doing our job.

19 CHAIRPERSON GIBSON: Okay. And with some
20 of the other technology that we've talked about with
21 the DA as far as the different technology that we
22 obviously need state approval, is that something that
23 COBA has already been working on in terms of getting
24 state law changed? You have relationships in Albany
25 with many of my former colleagues. So, do we have a

2 further commitment that you can help us to see if we
3 can get some kind of success in this year's session?

4 THOMAS FARRELL: Absolutely. We're very
5 hopeful. They changed the Chair of the Correction
6 Committee up in the Assembly. So we're hoping that--

7 CHAIRPERSON GIBSON: [interposing] So I
8 heard.

9 THOMAS FARRELL: the new Chair will be a
10 little more towards the middle and a little more
11 understanding as to what the City needs and what we
12 need to do our job and to protect not just our
13 members but the inmate population as well.

14 CHAIRPERSON GIBSON: Right. Okay. And
15 let me ask a question, because I did get a chance to
16 ask Commissioner Ponte about the de-escalation
17 training and the crisis intervention training. Can
18 you give me your thoughts on that, because you know,
19 I always hear multiple sides of a story, one side,
20 the other side, and then the truth is in the middle.
21 So, can you give me your perspective on the de-
22 escalation and crisis intervention for officers?

23 ELISA HUSAMUDEEN: Chairwoman, the fact
24 of the matter is is that the de-escalation training
25 and the other start [sic] program and the training,

2 the things that they're given to correction officers,
3 actually the training means nothing. It means
4 absolutely nothing at all if we're not going to
5 enforce the basic laws of the land. If we're not
6 going-- if you're going to tell my member and teach
7 my-- train my member to de-escalate a situation, but
8 you're not going to train my member what to do when
9 that situation can't be de-escalated, or if they end
10 up with procedural violations of that, then you want
11 to suspend them or maybe even arrest them. It means
12 nothing. I don't think that anything that is said by
13 the Commissioner here today or anyone else, it's hard
14 for us to take it serious, because until you deal
15 with the basic fundamental issues that are facing us,
16 we have to be safe, and the de-escalation training
17 hasn't done anything to make us safer. It hasn't
18 done anything to even make us feel safer. So, until
19 they begin to literally address this handful of
20 inmates that they're allowing to put the agency and
21 the city in a chokehold, none of this other training
22 and none of this other stuff really matters. It's
23 just not important. I mean, this is just my opinion
24 of talking to my members and being in the jails and
25 seeing exactly the result is that all of this

2 training that we've been-- that they said they're
3 giving us, what's been the outcome? What's been the
4 result? What has it done? It hasn't decreased the
5 numbers. So obviously, they're not paying attention
6 to whatever it is that they need to be paying
7 attention to.

8 CHAIRPERSON GIBSON: So, if that is your
9 position and many of your members, I mean, we are
10 investing millions and millions of our taxpayer
11 dollars getting to the root issues that we deal with,
12 you know, focusing on the consecutive versus
13 concurrent. DOC has the authority to determine which
14 infractions are prosecuted first. So, you talked a
15 little bit about some of the more minor infractions,
16 but they're still infractions. No correction officer
17 should be urinated on. That's unacceptable. It's
18 disgusting--

19 ELISA HUSAMUDEEN: [interposing] It's
20 probably happening right now.

21 CHAIRPERSON GIBSON: that a human would
22 do that to another human, right? Let's call it what
23 it is. So what do we need to do to get the
24 Administration to look at every single infraction
25

2 with the equal level of attention? That's the bottom
3 line.

4 ELISA HUSAMUDEEN: One of the things--
5 and I'll let President Zouhbi answer for himself.

6 One of the things is this-- and yes, we are
7 definitely about and interested and support the
8 consecutive sentences. The problem is that's only a

9 part of the problem. That is only a part of the

10 solution. The immediate problem is that my members
11 should be able to come to work and feel safe first.

12 So, as far as the Department being in a position to

13 address what comes first and what infractions, at the

14 end of the day they're not addressing the issue

15 that's most important like urine and feces and spit

16 and slashing and stabbing and the things that are

17 being done to my members. We have to address those

18 issues before we can move forward. It makes no sense

19 to try to help somebody that's homeless unless you're

20 going to give them some place to stay. It makes no

21 sense to try to preach to somebody who's freaking

22 hungry unless you're going to feed them first. The

23 first thing that they have to do and they have to

24 focus on is making us safe, keeping us safe, and then

25 we can move forward to all the other things, because

2 then it's easier. It'll fall right in place. I'm
3 sorry, Zou?

4 FAISAL ZOUHBI: Yeah, I agree with
5 President Elias. There are many working parts that
6 go along with it. The problem and if Corrections is
7 going to give you statistics to say that there's a
8 large mental health population, I don't know if the
9 courts have identified these issues, but if we're
10 dealing with a large mental health population and
11 you're teaching de-escalation tactics, they're not
12 mental health psychologists or psychiatrists that can
13 diagnose these problems. They can try to identify
14 them, but it won't always lead to a positive outcome.
15 The reality of it is that the guys who are throwing
16 feces and spitting on staff and assaulting staff like
17 that, they are also manipulating the system. They
18 know that if they commit these acts it prevents them
19 from going to state prison and/or prolongs their stay
20 on Rikers Island. There's a lot of working parts to
21 it.

22 CHAIRPERSON GIBSON: Okay. So, I know we
23 have to move on, but you know, let me just say that,
24 you know, obviously the old system isn't working and
25 we have to be much more creative. We should be

2 smarter than those that are on the inside. That's
3 the bottom line. If they play the game, then we need
4 to play the game better. That's just the reality, and
5 I refuse to sit here and think that all of our
6 education and experience, all the titles we have and
7 we somehow can't find a solution to this. There are
8 more of us than there are of them. Like, it's
9 absolutely just ridiculous sometimes that we have to
10 keep having these conversations. Even down to
11 something as simple as technology, let's get it done.
12 I know it sounds easy, but I guess I'm committed to
13 doing it because I'm frustrated. I hear from my
14 residents all the time, and they're frustrated. So
15 therefore, I'm frustrated, right? So, you know, this
16 is something that we have to keep dealing with, and I
17 appreciate your willingness, but you know, also
18 understand that everyone's got to give something,
19 right? This is about negotiation, but we should
20 never jeopardize or minimize our commitment to our
21 members. So, I'm fighting for my district. You're
22 fighting for your members. Your members need to be
23 safe. My district needs to be safe. So we all have
24 a vested interest, but how we get there is the
25 critical path that we have to figure out. And you

2 know, to me, as long as violence continues to erupt
3 on the island, then we're all taking responsibility,
4 and I take responsibility as Chair of this committee.
5 So, you know, we have a lot more to discuss and we
6 can't do it all in two hours and three hours--

7 ELISA HUSAMUDEEN: [interposing]

8 Absolutely.

9 CHAIRPERSON GIBSON: but you know,
10 certainly I look forward to working with you. But you
11 know, being clear again, I get the criticism, and
12 I'll take the criticism where, you know, I think I
13 have not done my role, but I also want to make sure
14 that you understand that there's obviously more
15 stakeholders that are involved in this process that
16 really have to work with us. You know, we can't just
17 talk about it, we have to be about it. That's the
18 bottom line.

19 ELISA HUSAMUDEEN: I mean, not to
20 interrupt you. This union has been attempting to
21 work with this agency in this city for I don't know
22 how many years. We've never ever--

23 CHAIRPERSON GIBSON: [interposing] Well
24 before my tenure.
25

2 ELISA HUSAMUDEEN: We have never ever not
3 want to work to make things safer for us. That's
4 just-- makes no sense. So, we are definitely on the
5 same page. Listen, Councilman Gibson, I know you.
6 You know me. I appreciate you. I appreciate
7 everything that you've done as well as Councilman
8 Crowley as correction officers is concerned. It's
9 just that the fact of the matter is, we need to be
10 safe, and you guys are in a position to make that
11 happen. I mean, the same way you guys push, write
12 these rules, write these laws, it needs to be done,
13 and I think that the Commissioner's feet needs to be
14 held to the fire. I mean, let's just call it what it
15 is. I think it was Councilman Crowley asked him
16 about EHS, and she asked him, "Is it punitive?"
17 Well, listen, let's call it what it is. It's
18 punitive. Why in the business of law enforcement are
19 we going to be afraid to say it's punitive? That's
20 the business that we're in, and if we're going to
21 keep officers and inmates and civilians safe, there
22 are going to have to be punitive measures taken to
23 answer or to resolve or to address certain types of
24 behavior. But the Commissioner is in a position
25 where he's scared to death because the Board of

2 Corrections or the City Council or in particular some
3 City Council Member is going to take him to task
4 because he's saying yes, EHS is a punitive measure,
5 and that's exactly what it is. You can't say that
6 you want to protect correction officers, protect the
7 inmates, and not want to use punitive measures when
8 it becomes necessary. So, we have a situation where
9 everybody's afraid to say the word punitive. We need
10 to say the word punitive. We need to make it very
11 clear. Listen, ma'am, you commit a crime in these
12 streets. You get arrested. You go to jail. That's
13 punitive. You go to jail. You could have commit the
14 same crimes in the jail. You should be subjected to
15 punitive measures to correct or address your
16 behavior. You can't tell us that we can't do head
17 shots and the inmate comes out of his cell trying to
18 take my head off. We're dealing with a bunch of
19 people who don't have boots on the ground and don't
20 have a clue as to what we do. But they want to sit
21 in these places and in these chambers and tell us
22 what our job is, and that pisses me off, and it
23 pisses off my members, and I'm hoping that it pisses
24 off the City Council and everybody else involved.
25 Because at the end of the day last year more than 600

2 of my correction officers were assaulted, 600. Do
3 you know the kind of freaking fever would be going on
4 in this city if we said 600 police officers were
5 officers? So, what, we don't count? We're law
6 enforcement officers just as everybody else. We have
7 been brought here to uplift and to protect public
8 safety, and we don't get the same type of reaction or
9 respect that everybody else get. There's no way in
10 the world that the City Council, any City Council
11 member, any mayor, anybody should be comfortable that
12 600 law enforcement officers charged with enforcing
13 the laws in these jails were assaulted, and that's
14 okay. I'm sorry. It's just not something that's
15 going to continue--

16 CHAIRPERSON CROWLEY: [interposing] No,
17 it's not okay.

18 ELISA HUSAMUDEEN: to be tolerated.

19 CHAIRPERSON CROWLEY: That's why we had
20 the hearing today, to understand why inmates are not
21 getting prosecuted, whether they're assaulting an
22 officer or another inmate. I do appreciate the whole
23 panel for being here today to testify. We're going
24 to continue to work together to do what we can to
25 bring justice to those who are victims of crime on

2 Rikers Island, and we're also going to work together
3 to reduce the violence or hold this Administration
4 more accountable. There'll be more hearings and you
5 know my number. I'm always open. We'll continue
6 this conversation. I'm sorry that we don't have more
7 time today, but as I mentioned earlier, we do have to
8 get out of this room and there's a second part to
9 this hearing. We're actually going to hear a bill
10 now that is Council Member Lancman's. So, again,
11 thank you for being here, and I'm going to quickly
12 get into the second part of the hearing, which is a
13 bill introduced by Council Member--

14 ELISA HUSAMUDEEN: [interposing] Thank
15 you.

16 CHAIRPERSON CROWLEY: Thank you.
17 Council Member Lancman--

18 ELISA HUSAMUDEEN: [interposing] Thank you
19 Madam Chairs.

20 CHAIRPERSON CROWLEY: I'm not going to
21 speak to the bill in the interest of time. I'm going
22 let Council Member Lancman do that. Now, I'd like to
23 recognize Council Member Lancman. While he's getting
24 his opening out, I just want to also let the folks
25 here and the public know that Elizabeth Glazer who is

2 the Executive Director of the Mayor's Office of
3 Criminal Justice was invited today to give testimony
4 on behalf of this bill. She's not here. Is anybody
5 here today to-- with prepared testimony on behalf of
6 the Office of Criminal Justice? Council Member
7 Lancman.

8 COUNCIL MEMBER LANCMAN: Thank you. Good
9 afternoon. I'm Council Member Rory Lancman and a
10 member of the Committee on Fire and Criminal Justice,
11 and I'm the prime sponsor of Intro. 1373 which this
12 committee will now hear. I also chair the Committee
13 on Courts and Legal Services. I want to thank the
14 Committee on Fire and Criminal Justice chaired by
15 Council Member Elizabeth Crowley for hearing this
16 legislation today, and I look forward to what I'm
17 sure will be an interesting discussion. Today, more
18 than half of all inmates are sitting on Rikers Island
19 because they can't make bail. Indeed, in 2015, 84
20 per of the more than 6,000 non-felony defendants
21 assigned bail of 500 dollars or less failed to secure
22 bail at arraignment, and 40 percent of these
23 defendants never made bail prior to the final
24 disposition of their case. Rikers Island is filled
25 with people too poor to buy their freedom, but this

2 should come as no surprise when contrary to state law
3 almost no effort is ever made to evaluate a
4 defendant's financial ability to make even a
5 seemingly low bail amount. In June of 2015, this
6 committee together with the Committee on Courts and
7 Legal Services held a hearing on the state of bail in
8 New York City and potential ideas for reform. The
9 hearing featured testimony from stakeholders across
10 the criminal justice system, including the Mayor's
11 Office of Criminal Justice, the Center for Court
12 Innovation, New York City's Criminal Justice Agency,
13 retired judges, District Attorney Offices, indigent
14 defense providers, charitable bails funds, and
15 outside advocacy groups. Stakeholders emphasize that
16 we could make our current system more fair by
17 ensuring that judges set bail amounts with full
18 information and consideration of a defendant's
19 current financial situation, including what bail
20 amount if any they could realistically make and
21 whether they or their relatives had assets which
22 could be pledged if necessary to secure their
23 attendance at trial as the law allows. As even the
24 Office of Court Administration acknowledged in
25 explaining Chief Judge Johnathan Lippman's bail

2 reforms in October of 2015, arraignment parts suffer
3 from enormous case volumes and legally impose time
4 constraints, but often preclude a more thorough
5 consideration of relevant factors and where
6 information about a defendant's circumstances may be
7 limited. This is where the legislation that is being
8 heard today comes into play. The Criminal Justice
9 Agency already conducts pre-arraignment interviews of
10 every defendant to evaluate their flight risk. By
11 requiring CJA to also objectively and independently
12 evaluate a defendant's financial capacity to afford
13 certain amounts and certain kinds of bail, Intro.
14 1373 will ensure that judges have the full
15 information they need to, if necessary, set bail
16 amounts and bail mechanisms that are appropriate
17 given a defendants' financial resources. This law,
18 in conjunction with other reforms efforts such a the
19 Citywide Bail Fund sponsored by Speaker Melissa Mark-
20 Viverito and the City's expanded Supervised Release
21 Program will go a long way toward ensuring that
22 people are punished for their crimes, not for their
23 poverty. Let me close by citing the United States
24 Department of Justice in a brief filed last year in
25 the 11th circuit. At issue was a Georgia

2 Municipalities Bail Law that sent a man to jail for
3 six days because he couldn't pay 160 dollars bail for
4 the misdemeanor charge of being a pedestrian under
5 the influence of alcohol. "A bail practice violates
6 the 14th Amendment if without consideration of
7 ability to pay and alternative methods of assuring
8 appearance at trial, it results in the pre-trial
9 detention of indigent defendants." This fairly
10 describes the state of bail in New York City, and I
11 believe that the current operation of our bail
12 statute here in New York, and I believe the current
13 operation of our bail statute here in New York City.
14 I do look forward to hearing the witnesses'
15 testimony. Madam Chair, let me just mentioned that
16 MOCJ has planned to testify. There is written
17 testimony. The individuals who was going to provide
18 that testimony, Alex Crohn, I understand had a death
19 in the family, and so we understand. But at some
20 point in the conversation with some of the other
21 witnesses, I might highlight some of the points that
22 MOCJ raised in posing this bill. Thank you very
23 much.

24 CHAIRPERSON CROWLEY: We're ready to call
25 the first panel. Peter Kiers, representative from

2 New York City Criminal Justice Agency which is a
3 nonprofit organization.

4 PETER KIERS: Hi, thank you very much.
5 My name is Peter Kiers. I'm the Acting Executive
6 Director of the New York City Criminal Justice
7 Agency. I'm here to give testimony regarding the
8 bill at hand. Good morning to-- or good afternoon to
9 Chair Crowley, Gibson and Lancman and the people on
10 the committee. In the effort to save time I will not
11 read through it, but I believe you all have the
12 testimony that I have there, but I do want to read
13 the more pertinent points. As you know, CJA is an
14 outgrowth of the Manhattan Bail Project in 1961 where
15 it was reasoned that people, the developers of the
16 project rightly realized that the reason why jails
17 were full was because arrested persons could not
18 afford the bail. Persons who could afford the bail
19 were released, while those who could not afford the
20 bail sat in jail. Money was the deciding factor, and
21 that is what we want to talk about today, the
22 introduction of money in the bill. As we go forward,
23 the-- what happened with the Manhattan Bail Project
24 was a demonstration. It was a success because of the
25 interpersonal contact that was reached between the

2 project and the people who were arrested regarding
3 personal characteristics and community ties. We have
4 continued with that with using the assessment that we
5 do use, it's a more-- it's a validated risk
6 assessment, and we are able to go forward using that
7 with our ability to rightly asses defendants who are
8 going arraigned as to whether or not they should be
9 released on recognizance, and in some instances other
10 forms. Recently, the City has funded a Supervised
11 Release Program in all boroughs giving the court an
12 alternative non-monetary release option for
13 defendants who are likely to receive money bail a
14 release condition. Additionally, CJA provides a full
15 range of pre-trial options to better assure that
16 defendants who are released receive outreach from us
17 to return to court. We do notifications for both for
18 people for upcoming court dates, both several days
19 before and on the morning of the court date using
20 interactive computerized call, text messages and
21 letters that give appropriate court dates and
22 noncompliance warnings. We have Failure to Appear
23 Units that identify persons who did not appear in
24 court, and the staff reaches out to arrested persons
25 for up to 29 days, counseling them to return

2 voluntarily. The units have been successful in
3 getting over 40 percent to return without additional
4 warrant charges with having additional warrant
5 charges dismissed. The agency is cognizant of those
6 who leave court with low-cash bail and who are slated
7 for transport to Rikers Island and borough
8 facilities. With that in mind, we have Bail
9 Expediting Units. Those Bail Expediting Units are
10 very important because we're able to put holds in the
11 court for people who are able to have sureties come
12 to court and post the bail for them. They are not
13 transported to Rikers Island or to other correctional
14 facilities. We also are working with the bail funds
15 in that regard so that we are able to work with the
16 bail funds in identifying people and also to place
17 holds on them so that the bail fund representatives
18 can come and place the bails in the court. The core
19 principle in all of these initiatives that I just
20 mentioned is the exposure of the arrested person to
21 the people who work with him or her during the pre-
22 trial period to encourage court appearance and stress
23 to them the importance of not getting rearrested,
24 encouraging a defendant to be truthful, to
25 participate, to have him work with his family, and

2 also to come to court. What we are very concerned
3 about here is reintroducing money as a stakeholder.
4 The bill before us today is different. It rests
5 solely on assessing an amount of money to be levied
6 while recent initiatives in New York City focus on
7 the infusion of making the surety more personal in
8 the process. The language of the bill focuses on
9 using money as that which influences the released
10 decision. When we put into law or statute a
11 mechanism that focuses on using money bail no matter
12 what the amount, the court relinquishes a certain
13 discretion that is solely the courts and only the
14 court's prerogative. If you think about it, only the
15 court can simultaneously maximize the three-pronged
16 consideration necessary for a pre-trial release,
17 weighing the liberty interest involved in the
18 presumption of innocence and the presumption of
19 release, making choices that assure the court the
20 court appearance, and guarding the public safety in a
21 way that is consistent with the law. Without the
22 personal dynamic how can an amount of money better
23 assure safety? Can money guarantee appearance better
24 than non-financial or non-secure personal release
25 funds? Does money better ensure liberty? We already

2 know the answer to that. Regarding the proposed
3 bill, how do we arrive at an established amount that
4 the defendant can afford? What do we consider it?
5 Salary? Bank accounts? Assets and property? Cost
6 of defending oneself? Outstanding debt? And whose
7 money are we talking about anyway, the defendant's or
8 another personal surety? The work necessary to
9 ascertain the information is formable, and once an
10 amount is determined and the information goes to the
11 defense attorney to talk about money bail, to talk
12 about an alternative with his client, then money is
13 on the same playing field as the other forms of
14 release. What was individually informed decision by
15 the judge to grant our ROR, release of the
16 supervision, unsecured personal bond will become
17 largely a mechanical one determined by the nature of
18 the chare in an amount that a person can afford?
19 What seems to be the intention of the law is good?
20 As I can see, the law is meant to reduce the number
21 of defendants both at Riker and other correction
22 facilities by providing the attorney with-- excuse
23 me-- by providing the attorney and defendant
24 financial information obtained by the Pre-trial
25 Services Agency, which could be presented to the

2 judge, allowing him or her to have more factual
3 knowledge when setting a monetary bail. It is
4 presumed that the judge will use the information to
5 set a bail so that the defendant can bail him or
6 herself out. It is also presumed that the court
7 culture will change if the judge should have this
8 information. The DA also has the opportunity to
9 speak against it and to make bail recommendation. A
10 research report by CJA entitled, "Doctors influencing
11 release in bail decisions in New York City," by
12 Doctor Mary Phillips has shown that the most
13 important influence in the courts release decision is
14 the DA's bail request. Without cultural change, will
15 the court and other players buy into the bail scheme
16 that the law mandates? Just by making a law, we
17 think not. So, what to do right now to alleviate the
18 number of defendants going into DOC arraignment.
19 The estimated current cost we estimate of
20 implementing this proposal would be approximately
21 2,300,000 dollars, including personnel, fringe, shift
22 differential overtime, and OTPS. The number of
23 defendants held on bail in 2016 was about 41,586. The
24 number of defendants held on bail-- I'm sorry.
25 However, only 40 percent of them were employed, and

2 their median earning was 400 dollars per week. Most
3 of these defendants are unlikely to be able to afford
4 any amount of bail. If the Council is being asked to
5 allocate so much money to facilitate the release of
6 small numbers of defendants on bail, it would make
7 more sense to fund proposals that would give you more
8 bang for the buck. The following suggestions may be
9 helpful. One, the Mayor's Office of Criminal Justice
10 along with CJA will be working on new ROR risk
11 assessment that will be updated and hopefully will
12 expand the number of defendants recommended for ROR.
13 The assessment can also be used to identify
14 defendants who can safely be released under
15 supervised release with appropriate release
16 responses. We would certainly recommend funding the
17 expansion of supervised release and enhanced
18 supervised release so that such expansion with
19 guaranteed responses citywide can service more
20 defendants who would ordinarily be given bail. Two,
21 in the short term working with charitable bail funds.
22 Three providing money for judge training on the
23 arraignment process and extolling the purpose of law,
24 liberty interest and the release decision. Four,
25 working with the unified court system in New York

2 City to stress other forms of bail allowed by law but
3 usually ignored. There ae eight of them in the state
4 law. And five, provide funding for the pre-trial
5 services agency to review status of detained
6 defendants on an ongoing basis to determine if there
7 are any changes in eligibility for release or other
8 circumstances that might enable, the conditional
9 release of defendants and provide the court with
10 needed information to facilitate the release under
11 appropriate conditions. The goal should be to create
12 multiple non-cash options to help judges realize the
13 actual release ofailable [sic] defendants by
14 reducing the use of money bail. The goal should be
15 the elimination of money bail and each small decision
16 that is made regarding the judges release decision
17 should keep that in mid as we move to achieve the
18 ultimate goal. The philosophical and ethical
19 principles of creating a personal approach in
20 fashioning each defendants' release, ROR, supervised
21 release, unsecured personal bonds, working with
22 charitable bail organizations have their roots in the
23 original concept of bail. Without the use of bail,
24 more defendants become eligible and able to
25 participate. The court, the people and the

2 defendants are the stakeholders in the release
3 decision process. Money should never be a stakeholder
4 at the table. If the focus is shifted to any version
5 of the current money bail system, it will shift the
6 decision-making focus and hinder the personal
7 released decisions that are necessary for the
8 simultaneous considerations of liberty, assurance of
9 court appearance, and public safety. In conclusion, I
10 want to thank the Council for the court about the--
11 the council for its concern about the very critical
12 aspect of pre-trial release and for the opportunity
13 you have afforded me and others to offer comments and
14 suggestions.

15 CHAIRPERSON CROWLEY: Thank you for your
16 testimony. I'm going to recognize Council Member
17 Lancman with questions.

18 COUNCIL MEMBER LANCMAN: Good afternoon.
19 Thank you for your testimony. Thank you for your
20 patience.

21 PETER KIERS: Thank you.

22 COUNCIL MEMBER LANCMAN: I have to be
23 frank with you. There's an undercurrent in your
24 testimony and at some points it stated directly, and
25 I've heard it from other advocates of fellow fighters

2 of the good fight in the effort to try to eliminate
3 money bail. And it smacks of the perfect being the
4 enemy of the good. The reality is now, correct me if
5 I'm wrong, there are thousands of people each year
6 who are sent to Rikers Island for some period of
7 time, could be a day or two, could be weeks, it could
8 be months, because they cannot make small bail
9 amounts, 500 dollars, 1,000 dollars 1,500 dollars,
10 even less. And we start with the proposition while
11 we wait for the magical day to occur when cash bail
12 is-- monetary bail is eliminated in New York State
13 despite efforts of people far more prominent and
14 powerful than you or I or this City Council to
15 achieve that result. We start with the fact that
16 under state law now judges are required to examine,
17 among other factors, a defendant's financial
18 circumstances when deciding whether or not to set
19 bail and what amount, right? The Criminal Procedure
20 Law 510-30: the court must consider the kind and
21 degree of controller restriction that is necessary to
22 secure his court attendance when required. In
23 determining that matter, the court must on the basis
24 of available information consider to take into
25 account 11 different factors, nine different factors,

2 including defendant's employment and financial
3 resources. So, right now, that almost never happens.
4 I've sat in arraignment parts. Lord knows you've
5 seen numerable arraignments. That almost never
6 happens. And so we have an important piece of state
7 law that could contribute to changing the culture and
8 putting information in front of judges that will
9 enable them to apply state law and set bail amounts
10 that a defendant could reasonably make, and we're
11 being told that in part we shouldn't provide that
12 information. We should continue to allow the judges
13 to effectively ignore the law, because doing so might
14 undermined this higher principle of goal of one day
15 being able to eliminate monetary bail entirely. I
16 think that that is just a very, very unrealistic way
17 to view this problem and to try to help as many
18 people as we can without-- to be able to stay out of
19 Rikers Island. Because if you set-- for some people,
20 many people, if you set 500 dollars bail you might as
21 well set it at five million dollars. Let's go
22 through-- I'd like to go through some of the
23 suggestions that you--

24 PETER KIERS: Can I just make one quick
25 comment--

2 COUNCIL MEMBER LANCMAN: [interposing]

3 Sure.

4 PETER KIERS: the part that you just
5 said? In taking a look at that, one of the things
6 that-- there are a couple of things that we
7 mentioned. You know, and as you know, the pre-trial
8 process is always squeezed in the time frame of, you
9 know, the 24-hour rule, you know, arrest to
10 arraignment time, and when we take a look-- well,
11 when we take a look at people coming out of
12 arraignment in the Beck's [sic] program, for
13 instance, and we see that they have 500 dollar bails.
14 It's very seld-- you know, I mean, we get a few that
15 we call the surety up, usually mom, dad, wife,
16 whomever, you know, very-- they're able to make it,
17 but a lot of times they're just not able to, you
18 know, to make the bail. And the other thing is that,
19 you know, in looking at the timeframe, that's the
20 scariest part for us. Because as we come up with
21 these non-financial positions like supervised release
22 and-- well, certainly ROR is there, but we're afraid
23 that these things will get bumped because the court
24 culture will always go back to money, you know? And
25 it's just like the default mechanism. And when you

2 look at the state law, there are other types of bail
3 that are non--

4 COUNCIL MEMBER LANCMAN: [interposing]

5 Well, that's one of the problems also, because as we
6 know not only are there nine considerations that a
7 judge should give before setting bail and deciding
8 what the amount are, there are nine different
9 mechanisms for how that bail can be met. And right
10 now, 99.9 percent of the time, it's either cash bail
11 or an insurance bond, but if the judge was given
12 information that so and so maybe had real property or
13 personal property that could be pledged, or that so
14 and so's mother or father or brother could likewise
15 do that. We think that at least providing the judge
16 the information necessary to see if any of these
17 other seven much less onerous criteria than cash bail
18 or insurance bond could be met, then in some number
19 of instances, and I think a lot of them, but in some
20 number of instances the judge will then say, okay,
21 we're going to do number seven. You know, we're just
22 going to-- I'm just going to let you out. You're-- I
23 don't want to do ROR. I don't want to release you on
24 your own recognizance, whatever reason. I wasn't
25 doing it anyway, but you pledge if you don't show up,

2 I know you've got a job and you're going to have to
3 pay the court 250 bucks, whatever. If the court is
4 not being given the information to be able to
5 comfortably choose a different mechanism for paying
6 bail, we are consigning those defendants to the
7 reality that they will either be released on their
8 own recognizance, terrific, or be one of the very,
9 very lucky few who get into the bail fund or the
10 supervisory programs that we have, or be part of that
11 mass of thousands of people who end up going to
12 Rikers Island, because the only thing the court could
13 think of is 500 dollars, 500 dollars, 1,000 dollars
14 without any real thought or consideration given to
15 it.

16 PETER KIERS: Right. And the other two
17 things that we mentioned is that-- well, on the form
18 itself we do take in-- we do record information
19 regarding work, the people the person supports, the
20 amount of money that the person makes, you know, when
21 he's in his job. If he's unemployed, then he's
22 unemployed. So, that's why we came up with these
23 statistics that I just mentioned to you about 40
24 percent.

2 COUNCIL MEMBER LANCMAN: And listen, I've
3 had that opportunity which I appreciate to sit and
4 watch those interviews--

5 PETER KIERS: [interposing] Sure.

6 COUNCIL MEMBER LANCMAN: being conducted,
7 and I'm sensitive to the fact about the 24-hour
8 arraignment time, and I know all the DA's are very,
9 very sensitive about, you know, how well they're
10 doing in that time. I know Judge Brown in Queens is
11 almost fanatical about, you know, being the fastest
12 in the City, if that's true. I don't know. But he
13 says it. So, I get it, but I'm confident knowing
14 your agency, and we wrote the law vaguely. Like,
15 we're not prescribing the exact questions to be asked
16 and how to ask them, because we think that you can
17 figure that out maybe working with OCA and the
18 Defense Bar, and the DA's offices, but I don't think
19 it would take more than five, 10 minutes per person
20 to just get this basic information and be able to put
21 that in front of the judge. Look, let's go through
22 the specific things that you had mentioned as
23 suggestions, alright? The new risk assessment,
24 that's terrific. We look forward to seeing what that
25 is going to be, and we hope that appropriately

2 recalibrates the courts and the DA's offices in
3 particular expectation of how often ROR would be
4 offered, but I don't see that being mutually
5 exclusive, and at the end of the day there are going
6 to be a certain number of defendants that the DA's
7 offices and the courts are going to feel like this
8 guy's got to have some skin in this game, and for
9 those places we want to make sure that the skin is an
10 amount that can be reasonably be met. It mentioned
11 in the short-term working with charitable bail funds
12 to expand their use; amen, but we still haven't
13 gotten the council's bail fund up and running if I'm
14 not mistaken. We're close I'm told. We're still not
15 there, and I think it's been-- we're going on two
16 years now. Working with OCA with the court system to
17 stress the other forms of bail allowed by law--
18 listen, unless the courts are confronted with the
19 direct information which would pass through the
20 defense council that CJ was able to collect, I don't
21 see any compelling reason why would be able to do a
22 better job than Judge Lippman did who was completely
23 committed to this issue to getting the courts to
24 change that culture. Look, this is a starting point.
25 I know that's said often in legislation as a cliché.

2 It's a bill. It's a hearing. We want to move this
3 forward. I'm confident that if we work with you and
4 that if you have an open mind about how we can better
5 provide information to courts that they're legally
6 required to consider but don't currently have, we can
7 build a better mousetrap than what we have today.

8 PETER KIERS: Okay. I would just mention
9 the whole idea of the court culture being very
10 important, and I did mention the research project as
11 well about the effect of the District Attorney's bail
12 request in there. It's an extremely important element
13 in the court process.

14 COUNCIL MEMBER LANCMAN: Yeah, I remember
15 you briefing me on that when we had one of our
16 initial conversation and that what the DA asked for
17 is the significant-- is the most significant factor
18 in what is eventually offered. If the defense
19 counsel is able to get up and say, Mr. so and so has
20 no money in his bank account, no job, no nothing, but
21 you know, his mother's got a job, maybe they can put
22 up 50 bucks. I don't know. It's got to-- it's got
23 to-- confronting the courts with the reality that
24 thousands of people are being sent to Rikers Island
25 because they can't make what seems to us an

2 insignificant amount of bail has got to have an
3 effect on that culture, and we'll arm the defense
4 counsel to challenge the District Attorney's kind of
5 wrote recitation of we want 500, we want 2,500.

6 PETER KIERS: Well, I would-- I
7 understand where you're coming from. I understand
8 the realm of it. I just wanted to make sure that we
9 say what our experience has been both in the court,
10 in the culture of the court and also with the Beck's
11 programs that we put forward. and you know, I just--
12 we wouldn't absolutely would not want to see money
13 put on the same line with the judge's consideration
14 as supervised release and the expansion of supervised
15 release, because that's, you know, what the whole
16 testimony was about was that the personal contact
17 that was there seems to be more, much more than just
18 the dollar amount [sic].

19 COUNCIL MEMBER LANCMAN: As you know, I
20 hope you know, this council so far as I can observe--
21 I don't speak for the council, but this council,
22 myself, my committee, we're big advocates and
23 proponents of supervised release bail funds. Well,
24 bail funds as a measure of dealing with case bail, of
25 doing away with monetary bail to the extent that it's

2 realistically possible. In the meantime because
3 state law is what it is, we have not been successful
4 as a city in ramping up either our bail funds or our
5 supervised release, which you know, I don't want to
6 say they're a drop in the bucket, but for the people
7 who are effected by them, the few thousand people a
8 year, it's very important. But we also need to deal
9 with the state law as it is and the reality that we
10 are not going to be eliminating monetary bail in the
11 next couple years, even in the most wildest
12 expectations of your new risk assessment, our bail
13 fund and supervised release. Thank you.

14 PETER KIERS: Thank you.

15 CHAIRPERSON CROWLEY: Thank you. I have
16 no questions.

17 PETER KIERS: That's it.

18 COUNCIL MEMBER LANCMAN: You are free to
19 go.

20 CHAIRPERSON CROWLEY: If anybody is here
21 for the Cultural Affairs hearing, it has been moved
22 to the neighboring committee room. Next I'd like to
23 call the Legal Aid Society, Peter Jones, up to
24 testify.

25 COUNCIL MEMBER LANCMAN: Good afternoon.

2 PETER JONES: Good afternoon.

3 COUNCIL MEMBER LANCMAN: Liz had to step
4 next door for a minute. So, just state your name for
5 the record and give your testimony.

6 PETER JONES: My name is Peter Jones.
7 I'm the attorney in charge for the Legal Aid
8 Society's Criminal Defense Practice in the Bronx.
9 Let me just defer for a moment--

10 COUNCIL MEMBER LANCMAN: [interposing]
11 Just move the mic a little closer. Thank you.

12 PETER JONES: Sure. I just do want to
13 raise the issue that-- and point a fact, the nature
14 of my testimony unlike that of my colleagues relates
15 to the violence on Rikers Island, and it seems as
16 though that ship may have sailed, but I'm happy to--

17 COUNCIL MEMBER LANCMAN: [interposing] You
18 missed that boat.

19 PETER JONES: I think in part because we
20 came as a group. I am happy to summarize though my
21 summary of the submission and address that I think is
22 a very important issue.

23 COUNCIL MEMBER LANCMAN: On violence in
24 the jails?

25 PETER JONES: Yes.

2 COUNCIL MEMBER LANCMAN: Sorry.

3 PETER JONES: That's fine.

4 COUNCIL MEMBER LANCMAN: Let me ask if
5 there are other folks testifying on the bill. Is
6 anyone here today to testify on the bail bill?

7 PETER JONES: There are. They're
8 colleagues from my organization, and I'm happy to
9 defer to them.

10 COUNCIL MEMBER LANCMAN: Yeah, we want
11 them right now.

12 PETER JONES: Understood.

13 COUNCIL MEMBER LANCMAN: And If you could
14 stick around.

15 PETER JONES: Sure.

16 COUNCIL MEMBER LANCMAN: So, Legal Aid
17 folks-- what's the next panel? Okay. Josh Norkin,
18 Nick Malinowski, Brooklyn Defender Services, Scott
19 Levy, the Bronx Defenders, and Sergio De La Pava,
20 from New York County Defenders. Come on down. Let's
21 talk about bail. Also-- whoops, sorry. Rachel Foran
22 from the Brooklyn Community Bail Fund. Is she still
23 here? There she is. Just come on down. We'll do it
24 in one shot. Can we get her a chair? Can we get her
25 a nice chair? She's been waiting all day. With

2 cushions-- okay. If there's no preferred order, why
3 don't we just start from you on down. How's that?
4 Push the button, red light.

5 JOSHUA NORKIN: Joshua Norkin with the
6 Legal Aid Society. I work in the Special Litigation
7 Unit. I have been personally working on the Legal
8 Aid Society's bail reform issues for the past five or
9 six years or so, and officially sort of now work on
10 that issue fulltime. Our testimony today that was
11 prepared I'm going to just leave to the Council
12 Members to read for themselves, but I think the focus
13 of my testimony essentially piggy-backs on some of
14 the issues raised by the Criminal Justice Agency most
15 recently which is in their testimony which is what is
16 the potential impact of this bill, and will it
17 actually influence judges to make decisions to
18 release our poor clients who cannot afford to get out
19 of jail from Rikers Island. And I think that the
20 Legal Aid society hopes or at least has some hope
21 that this bill may provide some relief in that
22 regard. Right now there are very few if any people
23 being released on unsecured or partially secured
24 bonds which are authorized by the statute, but I
25 think that our experience over the past several years

2 and my experience individually is that when our
3 clients are released on these forms of bail, it tends
4 to be very successfully. It tends to ensure that our
5 clients get out, and we tend to have the same results
6 as having our clients released on their own
7 recognizance. Primarily probably because the
8 incentive to plead guilty has been removed from the
9 process by having them obtain their release. I can
10 say that my personal experience with this having been
11 a trial attorney in the Bronx is that having a client
12 released on an unsecured, partially secured bond to a
13 relative allowed that person to spend 21 days out of
14 jail. They did not take a plea. The case went to
15 trial, and that defendant was eventually acquitted of
16 all of the charges, and in our testimony we go
17 through a litany of different cases, and in
18 particular these examples include a number of
19 different non-violent and violent felony cases in
20 which we have had success having our clients released
21 on these types of bail and making their appearances
22 in court. And one thing that I would like to point
23 out, these types of bail are routinely used in
24 Federal Court. The numbers that we cite too in our
25 brief say that in Federal District Court roughly 36

2 percent of defendants are released on unsecured
3 bonds. Thirty-four percent of those are violent
4 crimes that the defendants have been released on an
5 unsecured bond. Given that the rate of release on
6 these types of bonds in New York City is essentially
7 zero at this point, and given the fact that we have
8 bail funds working, that there are certain
9 constraints to defendants being able to post 500
10 dollars bail that may not necessarily be solved by
11 this particular piece of legislation. There is a
12 hope in my mind that this legislation may reduce the
13 portion of Rikers that some of the other measures
14 don't address, and by injecting a non-partisan third-
15 party recommendation into this process at a point
16 that will allow our clients hopefully obtain their
17 release, then there is the hope that if there is the
18 shift in culture, judges, attorneys, and-- it's a
19 little unfortunate that our District Attorney Clark
20 has left the room-- that perhaps some of this culture
21 shift will actually take root because it largely
22 hasn't in our six years of advocacy. So, when judges
23 do this, I think that it has been largely very, very
24 successful. I think our own examples confirm that. I
25 think that when our attorneys ask for it, they are

2 met with sort of puzzled looks, silence, and a
3 judiciary that largely has not sort of acknowledged
4 that these remedies exist in the Criminal Procedure
5 Law, and I think that the great hope of this bill is
6 that by putting that information in front of judges,
7 in front of the District Attorney is going to be much
8 harder for them to ignore that, and it makes it much
9 more likely that the judges might be willing to do
10 something that when simply asked by a defense
11 attorney they previously weren't going to do. And
12 I'm sure everyone else here has got plenty to say, so
13 I'll leave it at that and take any questions.

14 COUNCIL MEMBER LANCMAN: Good. Thank
15 you.

16 NICK MALINOWSKI: My name is Nick
17 Malinowski. I'm here today on behalf of Brooklyn
18 Defender Services. We'd like to thank City Council
19 and the Committees for having the hearing today. BDS
20 staff is on the front lines of working to mitigate
21 the negative impact of bail policies. We heard a lot
22 earlier today about the issues at Rikers Island, but
23 also wanted to bring to your attention more also the
24 harsh consequences that follow up from our clients
25 who can actually pay bail. So, that is money that

2 they might otherwise use to pay rent, food or other
3 necessities. People often borrow money which can
4 create problems as well in the community. We have
5 done some mapping in Brooklyn of the neighborhoods
6 where our clients post bail, and as you might imagine
7 it's concentrated in a few specific zip codes, and
8 what we've been able to see is that there's an impact
9 throughout the entire neighborhood where money that
10 might be spent, you know, in the bodega, in local
11 small businesses instead is tied up in court. With
12 as many as 75 percent of people in the local jail
13 system being pre-trial detainees, the common
14 narrative is that people are in jail simply because
15 they're poor, but this suggests an abstract passive
16 process to which people simply find themselves locked
17 up on Rikers Island. In reality, individual judges
18 and District Attorneys make discretionary decisions
19 that lead to the pre-trial incarceration of
20 presumptively innocent people. While judges
21 ultimately set bail amounts and methods, the
22 financial recommendation of prosecutors made without
23 even a cursory glance at a defendants' financial
24 resources significantly impacts the judicial
25 determination of who goes to jail and who gets to go

2 home. The bill considered by City Council today
3 attempts to get at some of the issues listed above by
4 requiring CJA to report on people's ability to pay so
5 that judges have more information at their disposal
6 when making bail determinations. It's crucial that
7 bail is only used in the most limited circumstances.
8 The reality for our clients is the difference between
9 180 dollars in bail and 500 dollars in bail is
10 incredibly significant, but this is never considered
11 by judges. We rarely see bail set under 250 dollars
12 or even 500 dollars, and in general there are only a
13 handful of bail amounts that judges in Brooklyn use,
14 typically advancing in 500 dollar increments, again,
15 showing that no individualized determination is being
16 made with respect to defendants' financial resources.
17 While we believe it's essential for the court to
18 better consider our client's financial capacity to
19 pay, we also have concerns about due process and
20 privacy concerns. Public defenders should be the
21 gate-keepers to this information about our client's
22 financial resources, and we're also concerned about
23 net widening [sic] and that just because CJA has
24 determined that people have the capacity to pay bail
25 should not mean that they do. Lastly, in the last

2 piece of the bill it mentions commercial bail bonds
3 which we also have significant concerns about. Our
4 clients regularly report problems with the bondsmen,
5 and in addition we've seen that it's rare for
6 bondsmen to take bonds lower than a thousand dollars.
7 So, for many people even though that is provided by a
8 judge as an option, practically speaking it's not. I
9 guess in sum we support the bill and thank you for
10 allowing us to testify.

11 COUNCIL MEMBER LANCMAN: Good. Thank
12 you. the first version of the bill had the
13 information going directly to the court, but in
14 response to feedback like what you've given us, the
15 current version of the bill has the information going
16 to defense counsel, and then he or she can decide how
17 and when to use that.

18 NICK MALINOWSKI: We think that's very
19 important thank you.

20 SCOTT LEVY: Thank you. Scott Levy, I am
21 Special Counsel to the Criminal Practice at the Bronx
22 Defenders. Given everything we've heard I'll try to
23 keep it brief, but what we do know is the inability
24 to pay even small amounts of bail distorts the
25 administration of justice at every level. Just two

2 weeks ago I had a client who is charged with petty
3 larceny. What is considered a moderate amount of bail
4 was set. His family would have been able to come up
5 with some of that money but was not able to come up
6 with all of it, and as a result he ended up taking a
7 plea to a short jail sentence rather than waiting in
8 Rikers for his trial. And for many of our clients
9 the amount of bail set at arraignments seems
10 arbitrary and completely disconnected from the
11 realities of their lives, and when bail is set at an
12 amount or in a form that clients cannot make,
13 concepts like due process and a presumption of
14 innocence take a back seat to the realities of
15 poverty and economic dislocation. The legislation
16 that we're discussing here today would advance the
17 cause of justice in two important ways, and we've
18 discussed those already. First, it would ensure that
19 judges consider a client's financial circumstances
20 when setting bail, so that the amount does not feel
21 and is not in fact arbitrary, and is actually
22 calibrated to an amount that the client can play, but
23 secondly and equally important, the legislation would
24 require judges to consider alternatives forms of bail
25 such as partially secured bonds when making their

2 determinations. And as we've discussed, the courts
3 already have a number of tools already at their
4 disposal to ensure that bail serves its proper
5 function to ensure a person's return to court rather
6 than act as de facto preventive detention. When the
7 state legislature wrote our current bail statute it
8 included a long list of alternatives to traditional
9 bail and insurance company bonds. Despite these
10 efforts-- despite efforts of the defense bar to
11 educate judges, the alternative forms of bail that
12 have been on the books for decades have been slow to
13 take effect. The resistance to alternative forms of
14 bail it seems to us is neither principled or
15 ideological, but rather a result of a systemic lack
16 of training and familiarity, bureaucratic inertia,
17 and a lack of logistical and clerical support that
18 leaves judges with the impression that it's just not
19 worth the hassle. This legislation today rightly
20 encourages judges to consider the alternative forms
21 of bail already available to them by removing
22 significant bureaucratic and logistical obstacles,
23 providing judges with a clear roadmap. If embraced
24 by the courts, the legislation could finally allow
25 existing bail statute to be used to its full

2 potential. The legislation would add a layer of much
3 needed accountability and transparency in the City's
4 arraignment court rooms, and more crucially, this
5 effort will help safeguard the presumption of
6 innocence and due process for our clients.

7 COUNCIL MEMBER LANCMAN: Thank you.

8 RACHEL FORAN: Good afternoon. Thanks to
9 the Committees and the City Council for permitting
10 this testimony. My name is Rachel Foran. I'm the
11 managing director at the Brooklyn Community Bail
12 Fund. We are a charitable fund or a charitable bail
13 organization and operate under New York State law
14 which says we can pay bail in amounts of 2,000
15 dollars or less for misdemeanor defendants who can't
16 afford it. Grateful to be here with the PD offices
17 who can speak to the use of alternative forms of bail
18 outside of cash bail and insurance bond. I'm here to
19 speak to the intent of this bill based on our day-to-
20 day experience paying bail for New Yorkers who cannot
21 afford it and to but for our organization and the two
22 other charitable bail organizations operating in New
23 York City would be jailed for their inability to
24 afford even a small amount of bail. So, the Brooklyn
25 Community Bail Fund has been in operation for a year

2 and a half. In that time we paid for 1,300 low-
3 income New Yorkers. Despite our name, we operate in
4 Brooklyn, Manhattan and Staten Island, and serve New
5 Yorkers who are represented by all the PD offices in
6 those boroughs. So, on average the bail we pay for
7 our clients is 910 dollars. That's the difference
8 between freedom and jail for the New Yorkers we
9 serve. Unable to raise a few hundred dollars, our
10 clients would have spent an average of roughly two
11 weeks in jail. We all know that the collateral
12 consequences of even short lengths of incarceration
13 can be profound for individuals and their families
14 and their communities. As you can see from our daily
15 experience and from the data your committee has in
16 front of you, from CJA there are thousands of New
17 Yorkers every year who have a bail amount set, but
18 they will never be able to afford. What may seem
19 like small amounts on paper, it is often beyond the
20 reach of many New Yorkers. A study just last week
21 from CNN noted that 60 percent of Americans do not
22 have access to 500 dollars in savings or liquid cash.
23 So, we commend the intent of this bill. Our
24 existence and our experience show that the ability to
25 afford bail amounts must be considered if we are

2 truly to uphold New Yorkers' presumption of innocence
3 and equal justice. We know from our work at the
4 Brooklyn Community Bail Fund that the central tenant
5 of bail is flawed. Money is not what gets people
6 back to court. We provide our clients with friendly
7 phone call reminders of their court dates. We also
8 connect clients in need to community-based services
9 to meet the needs that they themselves identify. In
10 the extremely rare event that a client does not
11 return, it's not because they fled; they don't have
12 the desire or the resources to do so. Rather, they
13 may have been hospitalized or are really ill or
14 they're the sole breadwinner and are struggling to
15 keep food on the table and to make ends meet. Even
16 though they have no financial incentive to return,
17 not to us, not to the court, or to a commercial bail
18 bondsmen, 95 percent of our clients have made all of
19 their required court dates, at times facing great
20 difficulties, and this is despite the fact that 75
21 percent of our clients were judged to be either
22 moderate or high-risk of not return by CJA. So this
23 is the really-- this is the reason that they had bail
24 set in the first place rather than being released on
25 their own recognizance. The bill being considered by

2 City Council today attempts to confront the reality
3 we face every day by requiring CJA to report on
4 people's ability to pay, so that judges have more
5 information at their disposal when making bail
6 determinations, and we believe that this is
7 incredibly important. However, we do have some
8 concerns about how CJA would determine defendants'
9 actual financial capacity to pay bail and hope that
10 City Council will consider this as it considers this
11 bill. As I said before, 75 percent of our clients
12 were deemed moderate or high-risk of not returning by
13 CJA and then they return at 95 percent with no
14 financial incentive. These individuals should have
15 been deemed low-risk of not returning, and we must
16 ensure that any new system that's going to consider
17 financial capacity, confronts the process and the
18 tools for accurate measurement. And obviously, in
19 any new system there's going to be a lot of details
20 to work out and we commend the committees for
21 addressing a huge inequity in the current criminal
22 legal system, the jailing of people simply because of
23 their inability to afford bail and buy their freedom.
24 Thank you so much for this opportunity.

2 COUNCIL MEMBER LANCMAN: Thank you very
3 much.

4 SERGIO DE LA PAVA: Good afternoon and
5 thank you for this hearing and for the opportunity to
6 be heard. I'm Sergio De La Pava from New York County
7 Defender Services. I certainly join my colleagues in
8 applauding any attempts such as this one at bail
9 reform, but also feed the need to advocate on behalf
10 of a more radical re-thinking of this City's
11 procedures and practices in this area. The proposed
12 bill introduces a very welcomed element, a
13 determination that recognizes what should be a
14 fundamental truth. Judges must tailor bail to fit
15 the resources of the defendant. What concerns us is
16 that this ameliorative measure will reduce the always
17 tenuous incentive for more significant reform while
18 increasing the improper centrality of money bail in
19 our system. New York City must set as its goal the
20 elimination of money bail. Jurisdictions like
21 Washington D.C. long ago recognized the wisdom of a
22 system centered not on the ability to pay money, but
23 on an extensive system of supervised release to be
24 used when appropriate, and I guess my concern is if
25 resources are devoted to making this determination

2 that the bill calls for, will that be diverted where
3 it may, as representative from CJA mentioned, be more
4 properly infused into a more extensive supervise
5 release system. I think supervised release system
6 has been a genuine tangible success in this area in
7 the last years, and I would far welcome, and I assume
8 my colleagues would welcome an expansion of that
9 system, and that may be the best place to place
10 resources. Also of concern is the proposed statute's
11 explicit reference to insurance company bail bonds.
12 This is troubling to us because this is a form of
13 bail that should be at least strongly disfavored, if
14 not outright banned as it has been elsewhere. These
15 bonds introduce the elements of commerce and profit
16 taking where they most certainly do not belong. A
17 person's liberty and constitutional right should not
18 be a venue for commercial exploitation. Predictably,
19 the resulting industry is rife with abuse and bad
20 faith. What's required here is not further
21 normalization of insurance company bonds in the form
22 of distatutory [sic] language, but rather a de-
23 emphasizing of this improper practice. That said, we
24 certainly applaud any attempt to reduce the
25 population of pre-trial detainees based on poverty,

2 and for that reason we are generally in support of
3 the bill.

4 COUNCIL MEMBER LANCMAN: Terrific. I
5 don't have any questions.

6 CHAIRPERSON CROWLEY: I don't have any
7 questions.

8 COUNCIL MEMBER LANCMAN: Good. I want to
9 thank you very, very much for your patience and for
10 your perspective. It's extremely valuable. As I
11 mentioned, it already helped us to adjust an
12 important part of the bill, and as we go forward,
13 we're definitely going to rely on your experience
14 representing indigent defendants, in your case,
15 helping them make the small amounts of bail that are
16 not so small to them. So, don't take by my lack of
17 questions any lack of appreciation for your testimony
18 and input. Thank you all very, very much.

19 UNIDENTIFIED: Thank you.

20 CHAIRPERSON CROWLEY: Next and last we
21 have Legal Aid Society, Peter Jones. [off mic]
22 testify?

23 [off mic]

24 CHAIRPERSON CROWLEY: Good. So, the
25 Committee and the Council will be working with

2 Council Member Lancman on this bill. We appreciate

3 all that-- all those who came today to testify. We

4 know it is important to reduce the population on

5 Rikers Island and anyone who is not truly at risk of

6 flight should not be given a high bail or a bail.

7 So, we're going to continue this conversation. And I

8 think that concludes our hearing. This concludes

9 [gavel] Fire and Criminal Justice joint with Public

10 Safety Hearing of January 17, 2017. Thank you.

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date January 26, 2017