

**Testimony of The Legal Aid Society**  
**on**  
**The Long-Term Plan for Borough Jails**  
**and Rikers Island**

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

**Presented by**  
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Thank you for the opportunity to testify concerning the future of the jail system, on Rikers Island and in the boroughs. The Legal Aid Society has been dealing with the problems of the jail system indirectly, through its criminal defense practice, for a century, and directly, through its Prisoners' Rights Project, for 35 years.<sup>1</sup> From both perspectives, Legal Aid is intensely interested in the City's planning for the future housing of the pre-trial detainee population.

In a nutshell, moving prisoners from Rikers Island to the boroughs is an excellent idea, one whose time has come back, but there are some practical concerns that need to be kept in mind to see that it is done right and that other important obligations of the correction system are not forgotten.

### **Rikers and the boroughs: the recent history**

Until the 1970s, pre-trial detainees were held almost entirely in borough jails. In fact, there was no bridge to Rikers Island from the mainland until 1966, and the Island was occupied primarily by sentenced prisoners. The women's and adolescents' facilities were moved there a few years after the bridge was completed. The shift to Rikers Island began in earnest when the

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<sup>1</sup> Examples of the Project's current and recent litigation concerning the jail system include efforts to reduce physical abuse of prisoners by jail staff, *see Ingles v. Toro*, 2006 WL 859361 (S.D.N.Y., Apr. 3, 2006) (approving settlement requiring numerous measures to control use of force by staff); enforcement of young prisoners' rights to general and special education, *see Handberry v. Thompson*, \_\_\_ F.3d \_\_\_, 2006 WL 997252 (2d Cir., April 4, 2006) (as amended); challenges to the physical conditions of confinement, *see Benjamin v. Fraser*, 343 F.3d 35 (2d Cir. 2003) (affirming findings of constitutional violation with respect to ventilation, lighting, exposure to extreme temperatures, and sanitation); and challenges to painful restraint practices and excessive delays in attorney visits, *see Benjamin v. Fraser*, 264 F.3d 175 (2d Cir. 2001); *see also Benjamin v. Fraser*, 2002 WL 31845111 (S.D.N.Y., Dec. 6, 2002) (holding City in contempt for disobedience of order concerning restraint practices).

City closed the Tombs in the mid-1970s rather than make the improvements the federal courts held were necessary to meet constitutional standards.<sup>2</sup> The City soon changed its mind, realizing the need for a detention facility near the Manhattan courts, and renovated the Tombs, later adding a second jail building next to it. But meanwhile the great expansion of jail population of the 1980s was accommodated almost entirely on Rikers Island through the construction of new, very large facilities and additions to existing ones. The trend towards concentrating prisoners on Rikers Island was completed by the closing of the Brooklyn, Bronx, and Queens jails in the last several years.

### **The advantages of borough jails**

Holding detainees near the courts in which their cases are pending has a number of advantages. Most obvious is that it will reduce the need for a massive long-distance transportation system from Rikers Island, one which inevitably slows down both the operations of the courts and traffic in the congested areas near the courts. In addition, keeping detainees in the boroughs will facilitate contacts with their attorneys, which will improve both the quality of defense services and the efficiency of case processing as detainees better understand the course of the proceedings and their options. Further, housing detainees in borough jails will facilitate contact with prisoners' families, which is essential both for the well-being and mental health of the detainee and to ease the disruption for the family that is occasioned by the arrest and incarceration of one of its members.

### **The disadvantages of Rikers Island**

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<sup>2</sup> See *Rhem v. Malcolm*, 507 F.2d 333, 336 (2d Cir. 1974); *Rhem v. Malcolm*, 389 F.Supp. 964 (S.D.N.Y. 1975).

The disadvantages of Rikers are in many respects the mirror image of the advantages of borough jails. The daily exodus from and return to Rikers is expensive, complicated, and often excessively protracted (court appearances can consume as much as 14 hours of travel and waiting),<sup>3</sup> even when everything is working, and has significant traffic consequences for others. The inaccessibility of Rikers makes face-to-face consultation with lawyers difficult and burdensome, even after that process was expedited by a court order obtained by Legal Aid.<sup>4</sup> It has even worse consequences for family members; a consent judgment Legal Aid negotiated to expedite the family visiting process has been terminated, and we are once again hearing stories of family members' spending many hours on Rikers Island in order to have a one-hour visit with their loved one in jail.

Further, the large institutions on Rikers Island have been much more difficult to operate safely and efficiently than the smaller borough commands. Complaints to Legal Aid of violence and gang domination have always come disproportionately from the larger Rikers jails. The worst patterns of excessive force have emerged from those jails. The difficulties in consistently providing essential services such as medical care have long been concentrated in those jails. While the smaller commands have never been problem-free, it has long been clear that the Department of Correction was simply able to manage better in its smaller units than its larger ones.

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<sup>3</sup> In Legal Aid's litigation concerning the painful restraint practices imposed on some prisoners when they are out to court, we showed that a court appearance from Rikers Island may involve as much as 14 hours from departure from Rikers to return there after court. *Benjamin v. Kerik*, 102 F.Supp.2d 157 (S.D.N.Y. 2000), *aff'd*, 264 F.3d 175 (2d Cir. 2001).

<sup>4</sup> See *Benjamin v. Fraser*, 264 F.3d 175 (2d Cir. 2001) (holding delays in attorney visits unconstitutional). The order resulting from these proceedings requires that clients be produced for interviews within 45 minutes of an attorney's checking in for the visit at the Rikers Island Control Building. This improvement, however, does not remedy the difficult and time-consuming character of getting to and from Rikers Island for counsel visits.

This observation is consistent with conventional correctional wisdom: smaller commands tend to operate more effectively than super-sized ones.

In this connection, it is worth mentioning the new admissions process on Rikers Island. Some years ago, this process became such a bottleneck that prisoners entering the system sometimes spent days in receiving room bullpens awaiting placement in a housing area. They remained there under grossly crowded and unsanitary conditions, sleeping on concrete floors, many with unattended medical, mental health, or drug withdrawal problems. Legal Aid went to court and showed that those conditions were unconstitutional, obtaining an order that the City would be fined for keeping prisoners in non-housing areas for more than 24 hours, with the fines to be paid to the prisoners in question as damages.<sup>5</sup> Subsequently, the City sufficiently streamlined its process that the order was terminated in the absence of a continuing violation of law. However, recent reports from our clients and admissions from the Department of Correction indicate that the receiving room back-ups and delays have begun to recur.<sup>6</sup> Dispersing the new admissions process (and the court production process, which goes through the same receiving rooms as intake) to additional locations should be helpful in avoiding these delays, the resulting inhumane conditions of confinement, and the new litigation that may result if this trend continues.

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<sup>5</sup> See *Benjamin v. Sielaff*, 752 F.Supp. 140 (S.D.N.Y. 1990).

<sup>6</sup> “The growing jail population is already causing logistical and bureaucratic problems on Rikers Island, including unacceptably long waits to process newly arriving inmates, Mr. Horn told members of the city's Board of Correction at a public meeting last month.” “City Inmate Population Up; Brooklyn Jail May Reopen,” *New York Times*, March 3, 2006, <http://select.nytimes.com/search/restricted/article?res=FA0712FF3F550C708CDDAA0894DE404482>. Legal Aid has received complaints from clients of multiple days waiting in the receiving rooms.

## **The potential pitfalls of borough jails**

The removal of prisoners from Rikers Island to jails in the boroughs is a worthy goal but one that must be pursued consistently with the foregoing comments.

Most importantly, it would be a disastrous mistake to create in the boroughs jail commands of the size of the large jails on Rikers Island. We have seen statements suggesting that the capacity of the Brooklyn House of Detention might be expanded to as many as 1600 prisoners. A jail of such size would be as unmanageable in Brooklyn as on Rikers Island. We note that when the Department of Correction expanded its detention capacity in Manhattan, it did so by creating a physically separate structure. Manageability may also be enhanced through “unit management” techniques, which create smaller, relatively self-contained sub-commands within a larger institution and maintain continuity of supervision and staffing rather than rotating personnel in and out of the unit.<sup>7</sup> Any major expansion of the capacity of the Brooklyn jail should be accomplished by creating a separate physical and command structure.<sup>8</sup> The same principle of limiting the size of commands should govern the creation of detention jails in the other boroughs.

A second potential problem with expansion of borough detention capacity is that high-rise jails like the Brooklyn Detention Center are utterly dependent on elevators and subject to severe disruption when the elevators fail. Without functioning elevators, it becomes extremely difficult

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<sup>7</sup> This technique was applied in the Central Punitive Segregation Unit on Rikers Island and in our view made a substantial contribution to bringing that unit, with its serious pattern of physical abuse by staff, under effective control, and allowing judicial supervision to be ended four years after the entry of a consent judgment in Legal Aid’s excessive force litigation. *See Sheppard v. Phoenix*, 210 F.Supp.2d 450 (S.D.N.Y. 2002).

<sup>8</sup> The state Department of Correctional Services managed its capacity expansion of the 1980s and ‘90s, not by creating more large institutions comparable to Attica and Green Haven Correctional Facilities, but by building new prisons of roughly 800 beds, often near existing prisons to permit efficient sharing of resources such as medical facilities.

and cumbersome to get prisoners to necessary programs and services (court, medical care, religious services, law library, etc.), resulting in friction and tension. It also becomes difficult for staff to get from place to place within the jail in an emergency, potentially threatening the safety of both inmates and staff. Elevator failure and malfunctions were a recurrent problem at the Brooklyn jail; an upward expansion beyond the existing ten floors would increase the demands on the elevator system and worsen the practical consequences of elevator failure. For this reason, as well as the above stated manageability concern, we suggest that any capacity expansion in Brooklyn should consist of a separate structure adjacent to the existing jail. Certainly, no upward expansion should be approved without assurances that an adequate and reliable elevator system will be installed and will reliably be maintained. The same concerns would apply to any new construction or modification in the other boroughs.<sup>9</sup>

We note that the existing closed borough jails are old and somewhat antiquated buildings and are not in the best of physical condition. We suggest that if those buildings are to be used, rather than new construction, then substantial internal renovations consistent with current correctional knowledge should take place, as was done with the Manhattan House of Detention.

### **Physical conditions on Rikers Island**

Since even the most ambitious program of borough detention will leave thousands of prisoners on Rikers Island, the City should also proceed without delay to address the substantial problems of the physical plant of the Rikers jails, and should continue its program of construction

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<sup>9</sup> We understand that the former Bronx Detention Center and its site have been relinquished for non-correctional purposes. However, the Queens Detention Center would present some of the same concerns as the Brooklyn jail if the Department proposed to expand and reopen it.

on Rikers Island as needed to allow the closure and replacement of existing dilapidated housing there.

The maintenance of physical plant has long been a significant problem on Rikers Island. In some respects, there have been improvements in the past decade, such as the court-ordered renovation of kitchen and food storage facilities.<sup>10</sup> The lighting in most of the jails is also being upgraded pursuant to court order.<sup>11</sup> However, a recent report on sanitation in the Rikers Island jails found that sanitation is compromised by the lack of maintenance and the sheer level of unrepaired damage to the buildings:

. . . Most shower and toilet rooms, many dorm and cell areas have structural defects which make proper sanitation difficult. Conditions such as missing floor and wall tiles, peeling paint, grout missing between tile work, corroded metal walls or surfaces, cracks in surfaces such as shower floors and at the wall floor junctions in dorm areas where the wall coving has come off the wall require extra diligence to maintain sanitation.<sup>[12]</sup> All of these surfaces should be maintained in a smooth and easily cleanable condition. Rough surfaces harbor disease organisms and are difficult to clean. It is possible to keep these clean and sanitary, but at a tremendous cost and effort. It is in this effort that the institution is not effective as evidenced by the soil accumulations observed in these defective areas. . . .

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<sup>10</sup> See *Benjamin v. Jacobson*, 1995 WL 681297 (S.D.N.Y., October 2, 1995) (approving renegotiated plan for food service renovations and improvements); *Benjamin v. Malcolm*, 156 F.R.D. 561 (S.D.N.Y. 1994) (holding City in contempt for failure to carry out obligations re food service).

<sup>11</sup> The federal district court found that lighting levels in many of the jails was so inadequate as to violate the Constitution. The appeals court affirmed that finding, though it remanded for further proceedings to determine the appropriate remedy. See *Benjamin v. Fraser*, 343 F.3d 35, 52, 54-55 (2d Cir. 2003). The district court entered a new lighting order on April 7, 2006, providing for completion of a lighting upgrade by February 28, 2007.

<sup>12</sup> Impressionistically, from Legal Aid's own observations, many parts of the Adolescent Reception and Detention Center are in particularly poor repair, *e.g.*, with cells missing half or more of the linoleum from their floors, in addition to the kinds of damage cited by the consultant. It seems especially inappropriate to house young offenders in the deteriorated and depressing environments we have seen in that jail. We urge Council members to visit ARDC, as well as the jails, and especially ARDC, to observe the conditions themselves.

Maintenance also continues to compromise sanitation in the area of vermin control. Exterior emergency doors are badly damaged, corroded, and have a large opening along the bottoms which allow the entrance of vermin in from the outside. Some window screens are torn or the glass broken, these likewise are allowing the entry of vermin. . . . Failure to do these fundamental repairs is undermining the efforts of the vermin control program.

Routine maintenance cleaning of soil drain lines in shower, toilets, and utility closets is needed to prevent the drain fly infestations observed. Most soil drains in these areas are up to 1/2 the pipe diameter clogged with a buildup of organic debris, soil, and soap residue. . . .<sup>13</sup>

Similar inattention to physical plant issues is revealed in the report of a fire safety engineer who inspected the Anna M. Kross Center on Rikers Island last year, after having made two prior reports documenting that jail's multitudinous failings. The engineer found a lack of maintenance resulting in essential equipment that did not work (sometimes unbeknownst to staff) and fire exits that were blocked and unusable; there was a broad lack of knowledge on the part of staff concerning how to use equipment in the event of a fire. He stated:

. . . [T]he overall level of fire safety has not substantially improved from my first survey of the building in 1993. . . . Although new fire alarm systems have been installed in the Chevron Units, many of these new fire alarm systems were not operational at the time of the site visit and had not been operational for some months prior to the site visit. . . .

. . . [T]here is a lack of detail to maintenance of systems and fire safety training of correctional officers that is critical to the overall fire safety of inmates. It is clear from the review of fire drill reports and weekly fire inspection reports that the staff is just going through the motions of a paperwork exercise. . . .

From maintenance standpoint backup unlocking mechanisms and procedures failed during

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<sup>13</sup> Eugene B. Pepper, R.S. [Registered Sanitarian], *Sanitation Inspections for New York City Jail Facilities at Rikers Island* (March 3, 2006). Mr. Pepper is the expert consultant on sanitation for the Office of Compliance Consultants, the court monitor in the ongoing *Benjamin* litigation about jail conditions, who was retained after the federal court found "unconstitutionally unsanitary conditions" in the jails. See *Benjamin v. Fraser*, 343 F.3d 35, 55 (2d Cir. 2003). Mr. Pepper's comments are based on observations made in January and February of 2006.

the site visit. In addition, several new and existing fire alarm systems did not work. Although [jails] are a notoriously harsh environment for mechanical and electronic systems requiring continuous maintenance and repair, what was of concern was the lack of work orders to accomplish the repairs and the length of time these emergency systems were impaired.

. . . Housing unit correctional officers did not know how to use backup cell unlocking methods and whether they carried keys to unlock fire alarm manual pull stations and fire extinguisher cabinets. . . .

In the housing units where new fire alarm systems have been installed, the old inoperative fire alarm systems have not been removed. This is basically unheard of. . . .

There was no evidence of any work orders to repair the fire alarm systems in the Chevron Buildings and no known timeframe for replacing the fire alarm system in the Dorm Building. Also of importance was the fact that the fire alarm systems have been out of service for many months and many of the correctional officers in the housing units were unaware that the fire alarm systems did not work . . .

A tree was located in the outside exit discharge route from the rear exit from Quad #3 in Building #1. It is clear that this is the result of poor inspection and maintenance and the lack of use during drills.

The rear exit stairways in Quads #11 and #13 were full of masonry debris and were not usable. It is my understanding that the debris was the result of renovations in the housing units that were completed over 9 months prior to the site survey. . . .

. . . Similar to the fire drill reports, the Weekly Fire Inspection Reports appear to be completed by the numbers. Not a single Weekly Fire Inspection Report noted any fire alarm systems impaired, even around the time of the site survey, except for the Dormitory Building. . . .<sup>14</sup>

A similarly long list of malfunctions and failure to maintain and repair appears in the recent report of an engineering firm on the ventilation systems in four of the Rikers jails. Specifically, the consultant firm noted problems of closed fire dampers and unbalanced volume dampers at three Rikers jails; improper operation of air handler units at three jails; an air handler unit and a relief fan not running because of electrical problems at one jail; loose insulation in the fan plenum or

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<sup>14</sup> Thomas W. Jaeger, P.E., Jaeger & Associates, LLC, *Evaluation of Fire Safety: Anna M. Kross Center, Rikers Island* (February 17, 2006).

compartment in two jails; split flexible connections on exhaust fan discharges at two jails; disconnected damper actuators at two jails. At the George R. Vierno Center, the report notes that the system is designed for automatic operation of dampers, control valves, and other controlled devices, but that the automatic control system mostly appears not to be working. Similarly, at the Rose M. Singer Center, the report says that the air handlers are supposed to be controlled automatically, but that system mostly isn't working either. At Singer, the static pressure is almost twice what it should be, resulting in a reduction of air flow by about one-third at the supply side and two-thirds at the exhaust side. At the 70-year-old North Infirmery Command, the antiquated fan system was functioning, but there was no air flow at the cells themselves, as a result of partially or completely closed dampers at the cell grilles, and multiple openings in chases from pipe, duct, and other wall penetrations (meaning that the air flow from the fans is dissipated because the air leaks out from breaches in the channels that are supposed to carry it to the cells).<sup>15</sup>

A significant amount of the housing on Rikers Island is in “modular” housing units, flimsy temporary structures installed on Rikers Island mostly during the 1980s to accommodate the rapid growth in jail populations. These units have an average life span of about five years, according to the Department of Correction's Director of Environmental Health,<sup>16</sup> and at this point they are all past their useful life by well over a decade—and they show it. The federal court observed five years ago that they are “plagued by inadequate ventilation, air temperature extremes, deteriorated

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<sup>15</sup> Lawless & Mangione Architects & Engineers, LLP., *Air Ventilation Study at Rikers Island* (July 14, 2005). This firm was engaged by the Office of Compliance Consultants in response to the federal court's finding that ventilation in the jails was unconstitutionally deficient and presented health hazards to the detainee population. *Benjamin v. Fraser*, 343 F.3d at 52.

<sup>16</sup> *Benjamin v. Fraser*, 161 F.Supp.2d 151, 189 (S.D.N.Y. 2001).

bathrooms and showers, and compromised sanitation.”<sup>17</sup> They have been kept functioning only by extraordinary maintenance and repair efforts, which make disproportionate demands on the Department’s resources and undoubtedly contribute to its inability to maintain other parts of the jail system adequately. The Department of Correction’s current construction program on Rikers Island is intended in part to allow these deteriorated units to be closed and replaced, and it is essential that that purpose be carried out, even if there is to be additional jail capacity constructed or renovated in the boroughs.

### **What the City should do**

The City should without question pursue the goal of getting more prisoners off Rikers Island and into facilities in the boroughs and near the courts. However, in doing so, it should not replicate the problems of Rikers Island by creating commands too large to be manageable, or high-rise jails without sufficient reliable elevator service for movement of staff and inmates through the building as needed. It must also address the condition of the physical plant on Rikers Island, where thousands of prisoners will remain even if borough jails are reopened or constructed.

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<sup>17</sup> *Id.* In more recent proceedings, an engineer retained by Legal Aid found, among other deficiencies, that some of the modulars’ wood roof trusses had failed, rendering them unsafe for occupancy, or had sustained other serious damage. Plywood roof sheathing had failed in some of them. In addition, many of the modulars had sustained considerable water damage both to wood and steel structural supports, floors, and other parts of the structures, as a result of unrepaired leaks in the units’ pipe chases. Donald W. Lucas, P.E., R.S., *Report of Findings: Investigation of Structural Conditions, Modular Housing Units, Rikers Island Facility* (March 2002). These leaks had apparently gone undetected by the Department of Correction for a protracted time period. Subsequently, the modulars with failed roof trusses have been closed, the plumbing leaks and water damage have been repaired, and the Department of Correction has promulgated a maintenance protocol for the modulars. The federal court has entered a new order reflecting the parties’ negotiations. *Benjamin v. Horn*, No. 75-3073, Order re: Modular Housing Units (S.D.N.Y., Feb. 17, 2006).

