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## Beyond the Island: Changing the Culture of New York City Jails

Michael Jacobson

*Executive Director of the CUNY Institute for State and Local Governance*

Elizabeth DeWolf

*CUNY Institute for State and Local Governance*

Margaret Egan

*CUNY Institute for State and Local Governance*

David Hafetz

*Executive Director of Crime Lab New York*

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# BEYOND THE ISLAND: CHANGING THE CULTURE OF NEW YORK CITY JAILS

*Michael Jacobson,<sup>\*</sup> Elizabeth DeWolf,<sup>\*\*</sup> Margaret Egan<sup>\*\*\*</sup> & David Hafetz<sup>\*\*\*\*</sup>*

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<sup>\*</sup> Michael Jacobson is the Executive Director of the CUNY Institute for State and Local Governance (“ISLG”). Prior to launching ISLG, he served as President of the Vera Institute for Justice from 2005 to 2013. He was New York City correction commissioner from 1995 to 1998, New York City probation commissioner from 1992 to 1996, and worked in the New York City Office of Management and Budget from 1984 to 1992 where he was a deputy budget director. Michael was a member of the Independent Commission on New York City Criminal Justice and Incarceration Reform and chaired the “Future of Jails” subcommittee.

<sup>\*\*</sup> Elizabeth DeWolf is a Policy Associate at ISLG, where she conducts policy research on re-imagining New York City’s criminal justice system as well as for ISLG’s Equality Indicators project. She has a background in urban sociology and design.

<sup>\*\*\*</sup> Margaret Egan is a Senior Fellow at ISLG and the Director of Strategic Initiatives at the City University of New York. In her previous role at ISLG, she oversaw work on the Independent Commission on New York City Criminal Justice and Incarceration Reform and re-imagining New York City’s criminal justice system. Prior to joining ISLG she served as Assistant Secretary for Public Safety to Governor Andrew M. Cuomo and Director of Policy and Government Affairs to Cook County Sheriff, Tom Dart.

<sup>\*\*\*\*</sup> David Hafetz is executive director of Crime Lab New York, a University of Chicago research organization that partners with civic and community leaders to design, test, and scale promising programs and policies to reduce crime and improve lives. Before joining Crime Lab, David worked as a senior policy associate at ISLG on projects to reduce crime and improve outcomes for defendants in the criminal justice system. David also worked in criminal defense, clerked for the Honorable Katharine S. Hayden of the U.S. District Court of New Jersey, and served as Special Counsel at PILnet: The Global Network for Public Interest Law. Before becoming a lawyer, David reported on criminal justice issues and other subjects for newspapers in New York City, Austin, and Philadelphia. David received his BA from Princeton University and his JD from Columbia Law School and researched in Chile as a Fulbright scholar.

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### INTRODUCTION

The city and its department of correction now stand at a historic crossroads. New York City’s jail system, largely symbolized by the persistently violent and inhumane conditions in the massive jail complex on Rikers Island, is an ongoing source of public shame.<sup>1</sup> But after years of crime and incarceration reduction,<sup>2</sup> closing the jail facilities on Rikers Island and reimagining the New York City Department of Correction (“DOC”) now has become a realistic possibility.

Constant litigation and a number of accounts of violence and mistreatment of those held in the DOC’s custody prompted a loud and sustained cry for reform. Perhaps no story galvanized this public call more than the story of Kalief Browder, first published in *The New Yorker* in October of 2014.<sup>3</sup> Browder was sixteen years old when he was arrested and charged with robbery, grand larceny, and assault.<sup>4</sup> He was held on \$3000 bail and spent three years on Rikers Island waiting for his trial, unwilling to plead guilty to crimes he did

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1. See Anna Mae Duane, *The Shame of Rikers: The Odious 19th-Century History of Rikers Island Provides Just One More Good Reason to Shut It Down*, SLATE (July 13, 2017), [http://www.slate.com/articles/news\\_and\\_politics/history/2017/07/rikers\\_island\\_is\\_the\\_northern\\_equivalent\\_of\\_confederate\\_monuments\\_but\\_worse.html](http://www.slate.com/articles/news_and_politics/history/2017/07/rikers_island_is_the_northern_equivalent_of_confederate_monuments_but_worse.html) [<http://perma.cc/3PPP-E82R>].

2. Michelle Mark, *New York City Is Proof That Cities Don’t Need to Lock Up Tons of People to Drive Down Crime*, BUS. INSIDER (Nov. 5, 2016), <http://www.businessinsider.com/how-nyc-managed-to-lower-incarceration-and-crime-rates-at-the-same-time-2016-11> [<http://perma.cc/G9XX-7ML9>].

3. See Jennifer Gonnerman, *Before the Law*, NEW YORKER (Oct. 6, 2014), <http://www.newyorker.com/magazine/2014/10/06/before-the-law> [<http://perma.cc/7NCL-DJVN>].

4. *Id.*

not commit.<sup>5</sup> During that time, he experienced brutality at the hands of other inmates and staff, and spent months in solitary confinement, attempting suicide several times.<sup>6</sup> Browder's case, though eventually dismissed, shined a spotlight on the failures of New York City's criminal justice system, and Browder's suicide in June of 2015 furthered public outrage about both the conditions on Rikers and the excessive delays in the city's court system.<sup>7</sup>

The ever-present claims of abuse and poor conditions of confinement on Rikers Island prompted former City Council Speaker Melissa Mark-Viverito to set up the Independent Commission on New York City Criminal Justice and Incarceration Reform ("Commission"), which was to be led by former Chief Judge of the New York Court of Appeals, Jonathan Lippman.<sup>8</sup> The Commission began its work in April of 2016 and began exploring whether or not closing Rikers Island was possible, what new jail facilities should look like and where they should be located, how the city would pay for it, and if closing the jail was possible, what would become of it.<sup>9</sup>

In April of 2017, the Commission outlined an ambitious and comprehensive blueprint for reforming the city's criminal justice system.<sup>10</sup> The plan calls for shuttering the jails on Rikers Island and demolishing the other jails currently operated by the DOC off the island in order to develop a new smaller, safer, and effective incarceration system for New York City.<sup>11</sup> At the center of this plan are the Commission's recommendations for dramatically reducing the

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5. *See id.*

6. *See* Jennifer Gonnerman, *Kalief Browder Learned How to Commit Suicide on Rikers*, NEW YORKER (June 2, 2016), <https://www.newyorker.com/news/news-desk/kalief-browder-learned-how-to-commit-suicide-on-rikers> [https://perma.cc/P9SG-MKYS].

7. *See id.*; Michael Schwirtz & Michael Winerip, *Kalief Browder, Held at Rikers Island for 3 Years Without Trial, Commits Suicide*, N.Y. TIMES (June 8, 2015), <https://www.nytimes.com/2015/06/09/nyregion/kalief-browder-held-at-rikers-island-for-3-years-without-trial-commits-suicide.html> [https://nyti.ms/2jHSU4B].

8. Melissa Mark-Viverito, Speaker, N.Y.C. Council, State of the City Address at the Samuel Gompers Campus, South Bronx, N.Y. (Feb. 11, 2016), <http://mtprauhwprtlccouncil.nyc.gov/html/pr/021116mj.shtml> [http://perma.cc/VK9B-NPJE].

9. *See* Indep. Comm'n on N.Y.C. Criminal Justice & Incarceration Reform, *About Us*, A MORE JUST N.Y.C., <http://www.morejustnyc.com/about-us/#about-us/rethinking-rikers-island> [http://perma.cc/R733-ZEUV].

10. *See generally* INDEP. COMM'N ON N.Y.C. CRIMINAL JUSTICE & INCARCERATION REFORM, A MORE JUST NEW YORK CITY (2017) [hereinafter A MORE JUST NEW YORK CITY], <https://static1.squarespace.com/static/577d72ee2e69cfa9dd2b7a5e/t/595d48d1e6f2e1e5bcaa411a/1499285717652/Lippman+Commission+Report+FINAL+Singles.pdf> [http://perma.cc/85JG-4ASN].

11. *Id.* at 14.

daily jail population by almost half, from its current population of approximately 9500 to 5000, and developing new a state-of-the-art borough-based system with detention facilities in each of the five boroughs.<sup>12</sup> According to the Commission's plan, Rikers Island would no longer have jail facilities but would be redeveloped to expand LaGuardia Airport and replace obsolete, borough-based public infrastructure with next-generation infrastructure on the island (i.e. wastewater treatment plants and power storage, composting, and waste-to-energy facilities).<sup>13</sup>

Under the Commission's plan, new jails would be located near courthouses and public transportation, thereby easing the operational burden on the DOC and increasing access to the jails by attorneys, service providers, and visitors.<sup>14</sup> Existing jails in Manhattan, Brooklyn, and Queens would be replaced with new buildings, and entirely new facilities would be constructed on Staten Island and in the Bronx on city-owned land.<sup>15</sup> This new built environment would be based on, and incorporate, more humane design principles such as direct supervision.<sup>16</sup> Direct supervision is both a facility design and management approach based on the prevention of violence through relationship building and communication skills, freedom of movement for the incarcerated population, and a normalized environment for everyone—from detainees to DOC staff to visitors—spending time inside jails.<sup>17</sup> The Commission also called for the development of a new, dedicated DOC training academy as well as a longer, more robust training process for line officers and managers.<sup>18</sup> This presents an opportunity to completely reimagine the role of the DOC and its staff to align with a vision for a more legitimate criminal justice system.<sup>19</sup>

After publicly announcing his support for closing Rikers in late March, New York City Mayor Bill de Blasio released his own roadmap for closing Rikers Island in June of 2017 and formed a task force to implement the roadmap's recommendations.<sup>20</sup> The roadmap

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12. *Id.* at 13–19.

13. *Id.* at 107–12.

14. *Id.* at 17–18, 71.

15. *Id.* at 71.

16. *Id.* at 78–82.

17. *Id.*

18. *Id.* at 85–86.

19. *See generally id.* at 17–19.

20. OFFICE OF THE MAYOR, CITY OF N.Y., SMALLER, SAFER, FAIRER: A ROADMAP TO CLOSING RIKERS ISLAND 5 (2017) [hereinafter SMALLER, SAFER,

primarily focuses on the criminal justice reforms necessary to reduce the population to a point at which Rikers Island could, feasibly, be closed.<sup>21</sup> Many of these recommendations track those of the Commission.<sup>22</sup> The mayor's roadmap also outlined the importance of a built environment and culture change, though it was silent on where the new jails would be located.<sup>23</sup> When the mayor released this report, he also announced the formation of a task force to implement the policy changes outlined in the mayor's roadmap.<sup>24</sup> Importantly, there will be a dedicated committee developing and implementing recommendations for culture change.<sup>25</sup>

However, reducing the population and developing new, state-of-the-art facilities in the city's five boroughs—closer to families, attorneys, and resources such as employment and mental health services providers—are reforms that will not, on their own, solve the deeper problems that have long troubled the DOC. Although much of the current criticism of the DOC focuses on a rampant “culture of violence” that has persisted on Rikers Island, the jail complex's problems are symptoms of the violent, overly punitive, and neglected correctional system that operates throughout the DOC jails.<sup>26</sup> All DOC jails—not just those on Rikers Island, but also the existing facilities operated in the Bronx, Brooklyn, and Manhattan—have high levels of violence, are in various states of decay, are outmoded, and are marred by inhospitable conditions for those held and staff alike.<sup>27</sup>

Simply closing Rikers Island and the existing borough facilities and moving to a borough-based jail system will not bring long-term reform.<sup>28</sup> In tandem with the criminal justice reforms outlined by the Commission and in the mayor's plan, the city must take difficult and

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FAIRER], <https://rikers.wpengine.com/wp-content/uploads/Smaller-Safer-Fairer-1.pdf> [http://perma.cc/PW9P-REYG].

21. *Id.* at 8–9.

22. *Id.* at 4–5.

23. *Id.* at 39.

24. *Id.* at 48.

25. *Id.*

26. The Mayor's Management Report (“MMR”) is a mandated report released twice a year to provide a public account of the performance of city agencies. For the DOC, data aggregates violence metrics across the entire system and does not separate by facility or island versus non-island facilities. MAYOR'S OFFICE OF OPERATIONS, MAYOR'S MANAGEMENT REPORT 84–89 (2017) [hereinafter MMR 2017], [http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2017/2017\\_mmr.pdf](http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2017/2017_mmr.pdf) [https://perma.cc/W897-7UY5].

27. *See A MORE JUST NEW YORK CITY*, *supra* note 10, at 71.

28. *See infra* Section I.A.

concrete steps to address the organizational culture that exists at the DOC, regardless of geography.<sup>29</sup> This includes addressing the core issues of violence, mismanagement, and inefficiency that have long plagued the DOC itself.<sup>30</sup> Reform through piecemeal litigation or policy change—strategies that have driven past reform efforts at the DOC, while achieving some important results, have never successfully addressed many of the DOC’s underlying, deep-rooted problems.<sup>31</sup>

Organizational culture consists of the beliefs, assumptions, and values that guide an organization’s operations and affect how its members think and act.<sup>32</sup> Culture involves the unspoken ways that an organization solves its problems, and the assumptions and habits that members, including new members, share and adopt.<sup>33</sup> Culture is fundamental to an organization’s operations, although it is often mistakenly overlooked or else not prioritized in efforts to change an organization. This Article will explore this concept of culture change through the lens of historical reform efforts, in order to firmly establish the importance of addressing culture and corresponding operational challenges as the city contemplates closing the Rikers Island jail facilities.

This Article proceeds as follows. Part I provides an overview of the history of violence of New York City jails, past efforts for reform, and current recommendations for reform. Part II presents the idea of comprehensive reform through cultural change, both outlining its tenants and detailing how it can be applied within the DOC to achieve lasting positive changes.

## I. HISTORICAL CONDITIONS AT NEW YORK CITY JAILS

Part I will outline the conditions in the jails throughout the DOC, the history of litigation, historical reform efforts, and current reform plans as outlined by both the Commission and the mayor. Section I.A describes the conditions in the DOC jails on Rikers Island and throughout the boroughs, including the legacy of violence and neglect and efforts at reform from the 1970s to 2014. Section I.B details the

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29. *See infra* Section I.A.

30. *See infra* Section I.A.

31. *See infra* Section I.A.

32. CAROL FLAHERTY-ZONAS ASSOCS., NAT’L INST. OF CORR., BUILDING CULTURE STRATEGICALLY: A TEAM APPROACH FOR CORRECTIONS 15 (Flaherty-Zonas ed., 2007).

33. EDGAR H. SCHEIN, ORGANIZATIONAL CULTURE AND LEADERSHIP 7–21(4th ed. 2010).



*Nunez v. City of New York*<sup>34</sup> litigation, describing the complaint and the federal consent decree under which the DOC is currently operating. Section I.C outlines the current agenda for reform as embodied in the Commission's recommendations and the recommendations outlined in the mayor's roadmap to close Rikers Island.

#### A. Conditions at DOC: Historic and Continuing Challenges

One ever-present challenge of Rikers Island is its geographic isolation. Rikers Island functions as New York City's penal colony, with ten facilities located on a remote 413-acre piece of land perched in the East River between the Bronx and Queens.<sup>35</sup> The majority of the population—over seventy-five percent—are being held there pre-trial, meaning that they have not yet been convicted of a crime.<sup>36</sup> The island's remote location contributes to delays in court processing time for felony and misdemeanor cases, inhibits access to attorneys and programming, and discourages visits by family.<sup>37</sup> It also results in an “out of sight, out of mind” approach to the city's jail system that is unsafe and unproductive for those who are held and those who work there.<sup>38</sup>

But remoteness and isolation are only part of the deep-rooted problems troubling Rikers Island. The facilities on Rikers, which first opened as a jail complex in the early 1930s, are in deep decay.<sup>39</sup> Facilities throughout the system have rotting floorboards, malfunctioning heating and cooling systems, sewage backups, leaking roofs, broken showers, and flooded bathrooms.<sup>40</sup> This decay has led to harmful conditions for those incarcerated,<sup>41</sup> and has created an inhospitable environment.<sup>42</sup> This inhospitable environment is further worsened due to the lack of basic services, such as heating in winter

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34. 11-cv-5845 (S.D.N.Y. 2011).

35. A MORE JUST NEW YORK CITY, *supra* note 10, at 103.

36. *Id.* at 33.

37. *Id.* at 73–75.

38. *Id.* at 14.

39. N.Y.C. DEP'T OF CORR., *History of DOC*, <http://www1.nyc.gov/site/doc/about/history-doc.page> [<http://perma.cc/VB2B-RL73>].

40. *See* A MORE JUST NEW YORK CITY, *supra* note 10, at 72.

41. For example, the broken materials provide opportunities for people to make weapons. *See id.* at 72.

42. *See* Raven Rakia, *A Sinking Jail: The Environmental Disaster That Is Rikers Island*, GRIST (Mar. 15, 2016), <http://grist.org/justice/a-sinking-jail-the-environmental-disaster-that-is-rikers-island/> [<http://perma.cc/MYW3-QYFC>].

and air conditioning in summer.<sup>43</sup> In addition to decaying and dangerous facilities and the lack of basic services, incarcerated persons are typically housed in multi-occupancy cells with no privacy, and the jails have little space for social services that are best practice in a modern correctional system.<sup>44</sup>

Even worse, the people held on the island endure physical and mental abuse, a rampant culture of violence, and overly punitive conditions.<sup>45</sup> This has included alarming rates of force used against adolescents, rampant inmate-on-inmate assaults, and correction officers using blows to the head and force as punishment or retribution in response to verbal altercations with officers.<sup>46</sup> In addition, there is a link between jail conditions and the violence that occurs within the facilities both by staff and by those held in the facilities.<sup>47</sup> For example, the deteriorating physical conditions throughout the system provide an opportunity to fashion weapons from light fixtures, radiators, and sprinkler heads; in fact, most of the weapons found inside the jails in 2014 were improvised from materials already inside the jails.<sup>48</sup> For both staff and those held, these punishing conditions, in addition to the rampant violence, have persisted for decades; those held on Rikers Island have described the island using terms such as “hellhole,” “torture island,” and “the land that time forgot.”<sup>49</sup>

These problems are not confined to Rikers, nor do they only impact those who are incarcerated. These problems also lead to an inhospitable environment for correction officers (“COs”) and other DOC staff. City data demonstrates that, like the facilities on Rikers Island, borough-based facilities also are marred by pervasive violence

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43. See *id.*; Brad Hamilton, *Cell Damage: Rikers in Ruins After Years of Neglect*, N.Y. POST (Jan. 13, 2013), <http://nypost.com/2013/01/13/cell-damage-rikers-in-ruins-after-years-of-neglect/> [<http://perma.cc/2654-66KG>].

44. See A MORE JUST NEW YORK CITY, *supra* note 10, at 13, 77.

45. See U.S. ATTORNEY FOR THE S. DIST. OF N.Y., U.S. DEP’T OF JUSTICE, CRIPA INVESTIGATION OF THE NEW YORK CITY DEPARTMENT OF CORRECTIONS JAILS ON RIKERS ISLAND 3 (2014) [hereinafter SDNY RIKERS REPORT], <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf> [<https://perma.cc/4QPB-2VVK>].

46. *Id.* at 4.

47. See A MORE JUST NEW YORK CITY, *supra* note 10, at 72.

48. See *id.* at 72.

49. See *id.* at 27; see also Jonathan Lippman & Melissa Mark-Viverito, Opinion, *Closing Rikers Island Is a Moral Imperative*, N.Y. TIMES (Mar. 31, 2017), <https://www.nytimes.com/2017/03/31/opinion/closing-rikers-island-is-a-moral-imperative.html> [<https://nyti.ms/2nFxqVW>].

and by decaying and outmoded conditions.<sup>50</sup> While the average daily population has steadily declined, rates of violence in the DOC have persisted. There are a number of explanations for violence in the facilities, between COs and those held and between inmates, including inability to appropriately manage the population due to inadequate training and management of staff and deteriorating facilities across the DOC.<sup>51</sup> As on Rikers Island, the borough-based jails are generally inhospitable, with deteriorating buildings, broken heating and cooling systems, harsh lighting, and reverberating surfaces.<sup>52</sup> And with the exception of the Manhattan Detention Center, all the DOC facilities are based on now obsolete design principles with a linear layout that makes curbing violence difficult.<sup>53</sup>

Figure 1, below, shows the historical violence trends in the DOC over the last two decades. The trends are based on what the system calls “stabblings and slashings.” This is inmate-on-inmate violence with the use of a weapon (usually some type of razor or homemade knife).<sup>54</sup> If stabbing and slashing rates are high, it is also quite likely that all use of force, unjustified use of force, and attacks on COs will also be high.<sup>55</sup> The opposite is also true, if stabbing and slashing rates are low, use of force will be low.<sup>56</sup>

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50. Press Release, N.Y.C. Comptroller, Comptroller Stringer 2015 Analysis: Violence at City Jails Spikes Dramatically and Cost per Inmate Explodes Even as Inmate Population Declines (Oct. 16, 2015), <http://comptroller.nyc.gov/newsroom/comptroller-stringer-2015-analysis-violence-at-city-jails-spikes-dramatically-and-cost-per-inmate-explodes-even-as-inmate-population-declines/> [<http://perma.cc/WG5T-LLHK>].

51. See A MORE JUST NEW YORK CITY, *supra* note 10, at 73.

52. *Id.*; see also, e.g., Daniel Beekman, *Bronx’s Notorious Spofford Shut Down*, N.Y. DAILY NEWS (Mar. 31, 2011), <http://www.nydailynews.com/new-york/bronx/bronx-notorious-spofford-aka-bridges-juvenile-center-finally-shut-article-1.119333> [<https://perma.cc/6WQD-47Z6>].

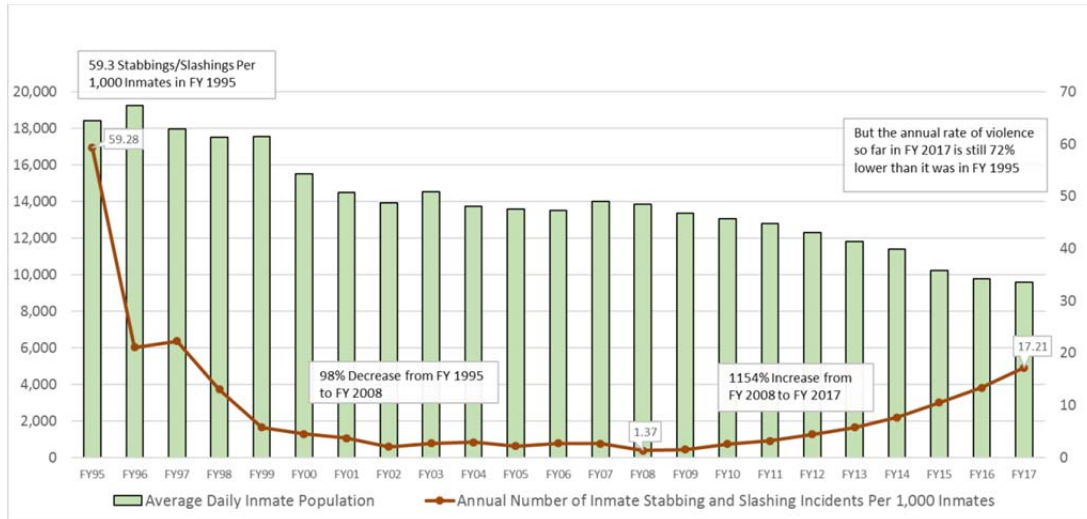
53. Linear jails typically contain cells lined up along corridors, so that correction officers cannot easily monitor groups consistently. Richard Wener et al., *Direct Supervision of Correctional Institutions*, in PODULAR, DIRECT SUPERVISION JAILS INFORMATION PACKET 1–8 (Nat’l Inst. of Corr. ed., 1993).

54. N.Y.C. BD. OF CORR., VIOLENCE IN NEW YORK CITY JAILS: STABBING AND SLASHING INCIDENTS 2 (2015) [hereinafter VIOLENCE IN N.Y.C. JAILS 2009–2014], [http://www1.nyc.gov/assets/boc/downloads/pdf/Violence%20in%20New%20York%20City%20Jails\\_Slashing%20and%20Stabbing%20Incidents.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Violence%20in%20New%20York%20City%20Jails_Slashing%20and%20Stabbing%20Incidents.pdf) [<http://perma.cc/HLP7-G6HC>].

55. *Id.* at 2.

56. *Id.*

Figure 1. Historical Violence Trends at the DOC, as Measured by Stabbing and Slashing Incidents.<sup>57</sup>



As shown, while the average daily population has steadily decreased since fiscal year 1995, violence rates, which peaked at over 59 stabbings and slashings per 1000 inmates in 1995, declined to a low of under 2 per 1000 inmates from 2003 to 2009.<sup>58</sup> After an initial

57. See MMR 2017, *supra* note 26, at 72–74; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT 81 (2016) [hereinafter MMR 2016], [http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2016/2016\\_mmr.pdf](http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2016/2016_mmr.pdf) [http://perma.cc/57LL-MUPB]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT 82–83 (2015) [hereinafter MMR 2015], [http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2015/2015\\_mmr.pdf](http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2015/2015_mmr.pdf) [https://perma.cc/SG3M-SRCK]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT 143–44 (2008) [hereinafter MMR 2008], [http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0908\\_mmr.pdf](http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0908_mmr.pdf) [https://perma.cc/M9XC-SR66]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT: SUPPLEMENTARY INDICATOR TABLES 76 (2004), [http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0904\\_indicators.pdf](http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0904_indicators.pdf) [https://perma.cc/D82M-9WUB]; MAYOR’S OFFICE OF OPERATIONS, MAYOR’S MANAGEMENT REPORT: SUPPLEMENTARY INDICATOR TABLES 71 (2002), [http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0902\\_indicators.pdf](http://www1.nyc.gov/assets/operations/downloads/pdf/mmr/0902_indicators.pdf) [https://perma.cc/N4HW-YF3X]; VIOLENCE IN N.Y.C. JAILS 2009–2014, *supra* note 54, at 2; Mayor’s Office of Criminal Justice, *Average Daily Jail Population in New York City, 1980–2017*, CITY OF N.Y. (Jan. 1, 2018), [http://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/population\\_reduction\\_sheet.pdf](http://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/population_reduction_sheet.pdf) [https://perma.cc/8L47-C4A7]; NYC Department of Correction at a Glance, N.Y.C. DEP’T OF CORR. (Apr. 27, 2017), [http://www1.nyc.gov/assets/doc/downloads/pdf/DOC\\_At-Glance-4-27-17.pdf](http://www1.nyc.gov/assets/doc/downloads/pdf/DOC_At-Glance-4-27-17.pdf) [http://perma.cc/Y87N-QKAT].

58. See MMR 2008, *supra* note 57, at 143–44; VIOLENCE IN N.Y.C. JAILS 2009–2014, *supra* note 54, at 2.

dramatic decrease in violence rates, and a leveling off, the DOC has seen a steady increase in violence since fiscal year 2009.<sup>59</sup> Since 2009 violence rates have steadily increased to over 17 per 1000 inmates in 2017, a thirteen fold increase from 2008.<sup>60</sup> While still not close to 1995 levels, the trend is deeply concerning.<sup>61</sup> These conditions, coupled with the changing needs, particularly those related to behavioral health, of people cycling through the system, have developed a reputation for the DOC as a hopeless institution for staff and inmates alike.<sup>62</sup>

### 1. *A Legacy of Violence, Neglect, and Litigation*

The troubling and inhumane conditions in New York City jails are not new. Before the bridge to Rikers Island was constructed in 1966, the majority of pre-trial detainees were housed in borough jails.<sup>63</sup> The Manhattan House of Detention (“the Tombs”), once was as notorious as Rikers Island due to its severe overcrowding and poor conditions for both inmates and officers.<sup>64</sup> In the late 1960s, the Correction Officers Benevolent Association (“COBA”), New York City’s union for correction officers, urged the DOC to address the jail’s deteriorating conditions, severe understaffing, and a lack of new officer training.<sup>65</sup> The DOC made attempts to expedite case processing times to address overcrowding at the Tombs, but did little else to address rising tensions within the facility.<sup>66</sup> In 1970, tensions came to a head as an inmate uprising at the Tombs brought public attention to the overcrowding, officer brutality and racism, overly punitive conditions of confinement, and deteriorating environmental conditions.<sup>67</sup> Those held were “locked-in” to their cells twenty-four

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59. See MMR 2017, *supra* note 26, at 84; MMR 2015, *supra* note 57, at 82; VIOLENCE IN N.Y.C. JAILS 2009–2014, *supra* note 54, at 2.

60. See MMR 2017, *supra* note 26, at 84; MMR 2008, *supra* note 57, at 143.

61. See MMR 2008, *supra* note 57, at 143–44.

62. See A MORE JUST NEW YORK CITY, *supra* note 10, at 71.

63. *The Long-Term Plan for Borough Jails and Rikers Island, Hearing Before the N.Y.C. Council Comm. on Fire & Criminal Justice 1* (Apr. 25, 2006) (statement of John Boston, Dir., Prisoners’ Rights Project, The Legal Aid Soc’y).

64. See John Surico, *The Legacy of Violence at the Manhattan Jail Known as the ‘Tombs,’* VICE NEWS (July 19 2015), [https://www.vice.com/en\\_us/article/tales-from-the-tombs-the-legacy-of-violence-at-the-manhattan-detention-complex-719](https://www.vice.com/en_us/article/tales-from-the-tombs-the-legacy-of-violence-at-the-manhattan-detention-complex-719) [<http://perma.cc/QAM9-F6H6>].

65. John J. Dilulio, Jr., *The Impact of Judicial Intervention on Prisons and Jails*, in COURTS, CORRECTIONS, AND THE CONSTITUTION: THE IMPACT OF JUDICIAL INTERVENTION ON PRISONS AND JAILS, 144 (John J. Dilulio, Jr., ed. 1990).

66. *Id.* at 143.

67. *Id.*

hours per day, meaning they were unable to leave their cells at any time for exercise or family visits, and some were not taken to court appearances.<sup>68</sup> They were denied showers and shaves, as well as access to religious counseling.<sup>69</sup> Sick calls were also unavailable.<sup>70</sup> Finally, people were served sandwiches rather than normal dinner menus and were forced to eat in their cells.<sup>71</sup>

Mounting tensions, overcrowding, and poor conditions led to a series of lawsuits in the second half of the twentieth century and the early part of the twenty-first century challenging the conditions of confinement and treatment of those held at jails both on and off Rikers Island. In 1970, the Legal Aid Society filed a federal class-action lawsuit, *Rhem v. McGrath*,<sup>72</sup> against the DOC for conditions at the Tombs in Manhattan.<sup>73</sup> The suit—the first in a series of federal class action lawsuits brought by the Legal Aid Society (“Legal Aid”) against the DOC over four decades—resulted in a 1973 consent decree, which addressed the issues related to overcrowding, unsanitary conditions, and medical care.<sup>74</sup>

In 1974, after the city failed to submit adequate plans for compliance with the consent decree, presiding Judge Morris E. Lasker of the United States District Court for the Southern District of New York ordered the Tombs to be shut down.<sup>75</sup> Judge Lasker understood that the changes under the consent decree would require significant planning and funding, and found that it was apparent that the city would not develop a plan for a reform.<sup>76</sup> The city appealed Judge Lasker’s decision citing a lack of adequate resources.<sup>77</sup> The Second Circuit upheld Judge Lasker’s decision holding “that inadequate resources did not justify the state’s deprivation of constitutional rights.”<sup>78</sup> Furthermore, the 400 men still incarcerated

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68. *Rhem v. McGrath*, 326 F. Supp. 681, 684 (S.D.N.Y. 1971).

69. *Id.*

70. *Id.*

71. *Id.* Another uprising occurred at Queens House of Detention later that same year. See John Sibley, *Prisoners Seize Hostages, Take Over Jail in Queens*, N.Y. TIMES (Oct. 2, 1970), <http://www.nytimes.com/1970/10/02/archives/prisoners-seize-hostages-take-over-jail-in-queens-prisoners-take.html> [<https://nyti.ms/2nDfATK>].

72. 326 F. Supp. at 681.

73. *See id.* at 684.

74. Harold Baer, Jr. & Arminda Bepko, *A Necessary and Proper Role for Federal Courts in Prison Reform: The Benjamin v. Malcolm Consent Decrees*, 52 N.Y.L. SCH. L. REV. 3, 19 (2007).

75. *See* Dilulio, *supra* note 65, at 149.

76. *See* Baer & Bepko, *supra* note 74, at 20.

77. *Id.* at 21.

78. *Id.*

at the Tombs were transferred to the House of Detention for Men (“HDM”) on Rikers Island, where conditions—like overcrowding, deteriorating physical conditions, and disciplinary procedures—were just as poor as at the Tombs.<sup>79</sup>

As the city budget crisis of the early 1970s worsened, action to address conditions of confinement was delayed, and in 1975, the most destructive inmate uprising yet erupted on Rikers Island.<sup>80</sup> Corrections Commissioner Benjamin J. Malcolm was able to negotiate an end to the protests, which arose out of complaints from inmates due to overcrowding and conditions in the facilities, and avoid bloodshed by agreeing to address the grievances of those incarcerated.<sup>81</sup> After the uprising, the DOC was forced to move people to other DOC facilities while repairs were made to large holes in cells and other debris was cleaned up.<sup>82</sup> But COs on Rikers Island staged a walkout to protest the fact that the DOC had not issued a plan to address the unsafe working conditions in the facilities.<sup>83</sup>

Following that uprising, Legal Aid filed a new federal class action lawsuit, *Benjamin v. Malcom*,<sup>84</sup> alleging that conditions at the HDM were also unconstitutional.<sup>85</sup> The Koch administration negotiated a settlement agreement that would cover all of the city jails on and off Rikers Island.<sup>86</sup> In 1978, a consent decree was agreed to by all parties and in 1979, Judge Lasker approved and entered the consent judgment.<sup>87</sup> Two critical issues covered by the consent decree were overcrowding and developing policies for the treatment of those held at HDM.<sup>88</sup>

In 1983, Legal Aid brought *Fisher v. Koehler*,<sup>89</sup> alleging that the DOC used excessive force on individuals incarcerated in the Correctional Institution for Men (“CIFM”), now the Eric M. Taylor

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79. *Benjamin v. Malcom*, 564 F. Supp. 668, 670 (S.D.N.Y. 1983).

80. See Tom Goldstein, *318 Prisoners Are Transferred from Riot-Damaged Rikers Jail*, N.Y. TIMES (Nov. 29, 1975), <http://www.nytimes.com/1975/11/29/archives/318-prisoners-are-transferred-from-riotdamaged-rikers-jail.html> [https://nyti.ms/2GglNOor].

81. *Id.*

82. *Id.*

83. See Peter Kihss, *Rikers Island Revolt Ends with Release of Hostages*, N.Y. TIMES (Nov. 25, 1975), <http://www.nytimes.com/1975/11/25/archives/rikers-island-revolt-ends-with-release-of-hostages-rikers-island.html> [https://nyti.ms/2Fbyjxi].

84. 495 F. Supp. 1357 (S.D.N.Y. 1980).

85. *Id.* at 1360.

86. See Baer & Bepko, *supra* note 74, at 23.

87. *Id.* at 23–24.

88. *Id.* at 24.

89. 692 F. Supp. 1519 (S.D.N.Y. 1988).

Center, on Rikers Island.<sup>90</sup> Judge Lasker also heard this case and ruled in favor of the plaintiffs, finding that use of force was excessive and “that the pervasiveness of staff-on-inmate violence was the predictable result of defendant’s policies and practices . . . .”<sup>91</sup> In 1985, Legal Aid brought a similar case, *Jackson v. Montemagno*,<sup>92</sup> against the DOC claiming abuse of the incarcerated population by staff at the Brooklyn House of Detention.<sup>93</sup> The case was settled in 1991, referencing the agreement reached in *Fisher*, requiring the DOC to develop and implement systems for controlling and investigating use of force incidents and disciplining COs for unnecessary or excessive force.<sup>94</sup>

In 2003, the DOC and the Urban Justice Center also settled a class action suit, *Brad H. v. City of New York*,<sup>95</sup> which had been brought in state court claiming that the city failed to provide adequate discharge planning as part of their care for those with a diagnosed mental illness.<sup>96</sup> While this case covered the DOC as a whole, it again targeted a specific population, i.e., those with a diagnosed mental illness.<sup>97</sup> A settlement agreement was reached that required the DOC to develop a discharge plan based on an assessment for those individuals’ needs for continued treatment and support services, public benefits, and appropriate housing.<sup>98</sup> The DOC was also required to provide assistance and access to the services set forth in the plan.<sup>99</sup> A monitoring team was established that continues to monitor progress towards the agreement, and the thirty-seventh monitor’s report was filed in June of 2017.<sup>100</sup>

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90. *Id.* at 1519; see also *Facilities Overview*, CITY OF N.Y. DEP’T OF CORR., <http://home2.nyc.gov/html/doc/html/about/facilities-overview.shtml> [<https://perma.cc/R9RU-7XL4>].

91. *Id.* at 1564.

92. Stipulation of Settlement at 3, *Jackson v. Montemagno*, CV 85-2384 (E.D.N.Y. 1991).

93. *Id.* at 3.

94. *Id.*

95. Stipulation of Settlement at 2, *Brad H. v. City of New York*, No. 117882/99 (Jan. 8, 2003), 2003 WL 5582869.

96. *Id.*

97. *Id.*

98. *Id.* at 14.

99. *Id.*

100. See Thirty-Seventh Regular Report of the Compliance Monitors at 6, *Brad H.*, No. 117882/99 (June 6, 2017). For public access to the full docket, see *Brad H. v. City of New York*, URBAN JUSTICE CTR., <https://mhp.urbanjustice.org/mhp-bradH.v.cityofnewyork> [<https://perma.cc/8S5J-6LWS>].



In 2012, the United States Attorney's Office for the Southern District of New York ("USAO") began an investigation into the treatment of adolescent males between the ages of sixteen and eighteen held on Rikers Island.<sup>101</sup> The investigation, pursuant to the Civil Rights of Institutionalized Persons Act,<sup>102</sup> focused on excessive and unnecessary use of force by the DOC COs and supervisors, whether the DOC adequately protects adolescent males from violence by other inmates, and whether the DOC's reliance on punitive segregation subjects young people to excessive risk of harm.<sup>103</sup> At the conclusion of the investigation, the USAO sent a letter to Mayor de Blasio, DOC Commissioner Ponte, and Corporation Counsel Zachery Carter, outlining the findings of their report.<sup>104</sup> The USAO concluded that there was a pattern and practice of conduct that violated the constitutional rights of adolescents held on Rikers Island.<sup>105</sup> The adolescents were not adequately protected from serious physical harm from the "rampant use of unnecessary and excessive force by DOC" and were also not protected from harm caused by violence from other inmates.<sup>106</sup> Furthermore, the USAO found that the DOC relied too heavily on punitive segregation, placing adolescents in solitary confinement "at an alarming rate and for excessive periods of time."<sup>107</sup> Generally, the investigation revealed that a deep-seated culture of violence was pervasive throughout the adolescent facilities on Rikers Island.<sup>108</sup>

## 2. *Efforts at Reform: 1970s to 2014*

Between the 1970s and 2014, the federal court made efforts to reform the DOC through its judicial opinions and through the implementation of judicial oversight. For example, in the early 1980s the federal court monitored implementation of policy and practice changes under the terms of the settlement agreements in *Benjamin* and *Fisher*, discussed above. However, those cases only covered policy and practice in specific facilities rather than across the DOC as

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101. See SDNY RIKERS REPORT, *supra* note 45, at 1.

102. See *generally* Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997–1997(j) (2012).

103. See SDNY RIKERS REPORT, *supra* note 45, at 1–2.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*; see also discussion *infra* Section I.B.

a whole.<sup>109</sup> Then in 1990, Judge Lasker held that the city violated an order prohibiting the housing of incarcerated individuals in non-housing areas, including gymnasiums and receiving areas, and found that the violence at CIFM was caused by overcrowding, inadequate staffing and supervision, excessive reliance on dormitory housing, lack of adequate classification, and inadequate systems for controlling, investigating, and disciplining staff misuse of force.<sup>110</sup> In 1989, Judge Lasker approved a new use-of-force policy to address the violence at CIFM, under *Fisher*, and in 1990, during the population surge at the DOC, imposed a series of fines holding that the DOC had violated his order prohibiting the housing of individuals in non-housing areas.<sup>111</sup> In the early 1990s, the DOC began addressing other condition-of-confinement issues including the provision of food services, access to the law library, environmental health (sanitary conditions, ventilation, lighting, and extreme temperatures), attorney visitation and confidentiality, placement of pre-trial detainees in restraints, fire safety, and modular housing units.<sup>112</sup>

In 1982, under the *Malcolm* case, Judge Lasker ordered the creation of the Office of Compliance Consultants (“OCC”), to oversee implementation of the consent decree requirements.<sup>113</sup> The OCC was designed to be an agency of the city, not the court or the DOC, with leadership appointed by the city and staff from the DOC.<sup>114</sup> This agency was designed to allow for greater cooperation among the city, Legal Aid, and the DOC.<sup>115</sup> Because it was considered a relatively neutral party, the OCC was successful in inducing the DOC to adopt reform strategies, though these reforms only chipped away at the DOC’s entrenched culture.<sup>116</sup>

In addition to court oversight, the New York City Board of Correction (“the Board”) provides more general oversight of the DOC, separate from court oversight. Originally established in 1957 by Mayor Robert F. Wagner, and expanded in 1977 under Mayor Beane, the Board is a citizen watchdog agency to set and enforce minimum standards for the DOC.<sup>117</sup> The minimum standards seek to

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109. *See supra* Section I.A.1.

110. *See* Baer & Bepko, *supra* note 74, at 27.

111. *Id.* at 28–29.

112. *Id.* at 36.

113. *Id.* at 25.

114. *Id.* at 25–26.

115. *Id.* at 26.

116. *Id.*

117. *About the BOC*, N.Y.C. Bd. OF CORR., <http://www1.nyc.gov/site/boc/about/about.page> [<https://perma.cc/8W2Q-YBW4>].

ensure the care, custody, correction, treatment, supervision, and discipline of those held in the DOC.<sup>118</sup> The Board fulfills this mission through the evaluation of the DOC's performance and operation of a system for hearing grievances and issues from the DOC, both from those incarcerated in the DOC facilities and from the general public.<sup>119</sup> Made up of nine members appointed by the mayor and the city council, the Board has the right to access any DOC data or records and the right to inspect and visit any DOC facility at any time.<sup>120</sup> The Board continues to incorporate best practices into its minimum standards, including those related to the use of force and punitive segregation, as well as the provision of basic necessities to ensure proper conditions of confinement.<sup>121</sup> The Board sets minimum standards, but its success as an oversight agency has been limited primarily because it lacks strong mechanisms to actually incentivize compliance or to enforce its rights to obtain data and documentation from the DOC.<sup>122</sup>

These reform efforts function primarily through litigation and reflect a largely backward-looking responsive policy approach rather than a forward-looking comprehensive approach to reform at the DOC. There are many external factors that contribute to this reactive policy approach. A primary factor is the ever-changing nature of leadership in public bureaucracies, which makes stability hard to come by.<sup>123</sup> The DOC is an agency within city government, and its commissioner is appointed by and serves at the pleasure of the mayor.<sup>124</sup> This means that the highest rung of DOC leadership can change every four years, or less, depending on the performance of the commissioner or on the number of terms the appointing mayor serves.<sup>125</sup> Many of the staff, however, stay much longer.<sup>126</sup> In the

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118. *Id.*

119. N.Y.C. BD. OF CORR., A STUDY OF THE DEPARTMENT OF CORRECTION INMATE GRIEVANCE AND REQUEST PROGRAM 1 (2016), [http://www1.nyc.gov/assets/boc/downloads/pdf/final\\_board\\_of\\_correctionreport\\_oct2016.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/final_board_of_correctionreport_oct2016.pdf) [<http://perma.cc/CYG3-8EVG>].

120. N.Y.C. CHARTER §§ 626, 626(c)(1) (2004).

121. N.Y.C. BD. OF CORR., *supra* note 119, at 1.

122. *See generally id.* at 12–14.

123. ROBERT J. LAVIGNA, ENGAGING GOVERNMENT EMPLOYEES: MOTIVATE AND INSPIRE YOUR PEOPLE TO ACHIEVE SUPERIOR PERFORMANCE 58–60 (2013).

124. *See* Baer & Bepko, *supra* note 74, at 23.

125. N.Y.C. CHARTER § 6 (2004).

126. N.Y.C. DEP'T OF CITYWIDE ADMIN. SERVS., WORKFORCE PROFILE REPORT 160 (2015), [http://www.nyc.gov/html/dcas/downloads/pdf/misc/workforce\\_profile\\_report\\_fy\\_2015.pdf](http://www.nyc.gov/html/dcas/downloads/pdf/misc/workforce_profile_report_fy_2015.pdf) [<http://perma.cc/ELW8-QUOZ>].

absence of consistent leadership from above, default subcultures can develop within the staff that set standards for operations.<sup>127</sup>

### B. *Nunez*. The Complaint, the Consent, and the Monitor

Ever worsening conditions and the recent spike in violence, coupled with press attention to a number of high-profile incidents, prompted Legal Aid to file a new class-action lawsuit in 2011 known as *Nunez v. City of New York* in the District Court for the Southern District of New York.<sup>128</sup> That lawsuit resulted in a consent decree that outlined a number of areas for reform to address the pattern and practice of permitting violence across the DOC.<sup>129</sup> To oversee the reform, the consent decree also appointed a monitor who reports progress and remaining challenges back to the court on a bi-annual basis (“Monitor”).<sup>130</sup> The complaint and resulting consent decree will be discussed in turn.

#### 1. *The Complaint*

In the complaint, the plaintiffs alleged that a pattern and practice of unnecessary and excessive use of force by uniform staff, including COs, captains, and wardens, existed and was knowingly permitted and encouraged by the DOC supervisors in the jails and at the highest levels of the DOC.<sup>131</sup> They further alleged that the DOC supervisors created and perpetuated a deeply entrenched pattern and policy of permitting uniformed staff to use unlawful, excessive force against inmates with impunity.<sup>132</sup>

To support these allegations, the complaint cited previous litigation that had exposed a culture of routine and institutionalized violence against inmates by staff, a failure of accountability at all levels, and deliberate and calculated indifference to constitutional violations.<sup>133</sup> The complaint argued that if the relief obtained by the respective classes in the previous litigation had been sustained, the unconstitutional conditions and culture would have been

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127. See SCHEIN, *supra* note 33, at 18.

128. See Amended Complaint, *Nunez v. City of New York*, 11-cv-5845 (S.D.N.Y. filed May 24, 2012) (No. 15).

129. Consent Judgement, *Nunez & United States v. City of New York*, 11-cv-5845 (S.D.N.Y. 2015) (No. 249).

130. *Id.* at 51.

131. See *id.* at 1.

132. *Id.*

133. See Amended Complaint, *supra* note 128, at 2–5, 26.

addressed.<sup>134</sup> The complaint cited to specific failed reforms such as staff training, video monitoring, thorough investigations into serious uses of force by staff, discipline for staff who violate the DOC's use-of-force policy, staffing practices to ensure those who violate the use-of-force policy have little to no contact with those incarcerated, and personnel policies that terminate the worst violators while promoting conscientious officers.<sup>135</sup>

## 2. *The Consent Decree*

In October 2015, a consent decree was reached in *Nunez* that required a drastic overhaul of the DOC in order to fundamentally reform the DOC's culture of violence.<sup>136</sup> The consent decree outlined provisions around use-of-force training, anonymous and accurate reporting and investigation procedures, increased video surveillance, and greater accountability for staff.<sup>137</sup> The USAO joined the *Nunez* settlement to ensure that the reforms would also apply to the adolescents held on Rikers Island.<sup>138</sup> This litigation and consent decree provide the most comprehensive reform action to date, requiring reforms across a number of policy and procedure areas for the entire DOC and specific measures for sixteen to eighteen-year-olds held in city jails.

First, the *Nunez* consent decree set robust requirements for developing a new use-of-force policy, including requirements for reporting use of force and conducting complete and timely investigations of use of force and other violent incidents.<sup>139</sup> Meeting these requirements involves designating a Use-of-Force Auditor to be responsible for analyzing all data relating to use of force incidents and identifying trends and patterns.<sup>140</sup> The DOC is also required to develop a new computerized case management system to track data relating to all violent incidents (including alleged sexual assault) involving COs in a centralized manner.<sup>141</sup> A centralized system must also be developed to allow correctional staff to anonymously report

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134. *Id.* at 3.

135. *Id.*

136. *See* Consent Judgment, *supra* note 129.

137. *See generally id.*

138. United States' Motion to Intervene Pursuant to the Civil Rights of Institutionalized Persons Act 42 U.S.C. § 1997, *Nunez & United States v. City of New York*, 11-cv-5845 (S.D.N.Y. filed Dec. 18, 2014) (No. 179).

139. *See* Consent Judgment, *supra* note 129, at 10–15.

140. *Id.* at 32.

141. *Id.* at 33.

all incidents of institutionalized violence.<sup>142</sup> The DOC must retain an outside consultant to conduct an independent review of the DOC's infractions processes and procedures.<sup>143</sup>

Second, the consent decree requires the DOC to take all necessary steps to impose appropriate and meaningful staff discipline, up to and including termination, when COs engage in the excessive or unnecessary use of force or otherwise violate the use-of-force policy.<sup>144</sup> This system must include standardized guidelines to impose such appropriate and meaningful discipline, including a range of penalties and a system of progressive disciplinary sanctions.<sup>145</sup> The DOC must also develop a system, subject to the Monitor's review and approval, to identify, as soon as possible, COs whose conduct may warrant corrective actions or raise systemic policy or training deficiencies.<sup>146</sup> Prior to promotions, the DOC must also undertake a review of an officer's prior involvement in use-of-force incidents to verify that this does not raise concerns about the officer's qualifications.<sup>147</sup>

Third, the DOC must install a comprehensive video surveillance program.<sup>148</sup> This includes installing stationary wall-mounted surveillance cameras to ensure complete camera coverage in all areas of all facilities by February 28, 2018.<sup>149</sup> The DOC must also pilot body-worn cameras in specific areas across the jail facilities, including intake, the mental health observation units, punitive segregation units, young inmate housing units, and other areas that have high violence or staff-on-inmate contact rates.<sup>150</sup> Finally, DOC is required to designate a supervisor to maintain cameras and monitors and preserve all video for at least ninety days generally and for four years after an incident.<sup>151</sup>

Fourth, the consent decree requires the DOC to develop and implement a number of new pre-service and in-service training programs, as well as strengthen and improve existing training programs addressing a variety of subject matters. New policy and

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142. *Id.* at 15.

143. *Id.* at 46.

144. *Id.* at 25.

145. *Id.*

146. *Id.* at 31.

147. *Id.* at 34.

148. *Id.* at 28.

149. *Id.*

150. *Id.* at 29.

151. *Id.* at 31.

procedure training modules are required in the following areas: use of force; crisis intervention and conflict resolution; probe team response to emergency situations and alarms; defensive tactics; cell extraction policies and procedures; and procedures, skills, and techniques for investigations.<sup>152</sup> In addition, new trainings are also required in the areas of young inmate management, and direct supervision as well as retraining when a staff member violates the use-of-force policy.<sup>153</sup>

Fifth, the consent decree requires the DOC to develop a comprehensive staff recruitment program to attract well-qualified applicants and to employ an objective process to select and hire staff.<sup>154</sup>

Sixth, the consent decree outlines a number of provisions specific to the safety and supervision of those under the age of nineteen held at the DOC.<sup>155</sup> The consent decree requires officers to supervise young people at all times to protect them from an unreasonable risk of harm, and requires officers to inspect housing areas daily to ensure safe and secure conditions.<sup>156</sup> The consent decree also requires the development of an age appropriate classification tool specifically for sixteen- and seventeen-year-olds.<sup>157</sup> A classification tool measures the incarcerated person's risk of violence while in the jail system.<sup>158</sup> Such a tool will separate those at high and low risk of violence in addition to separating sixteen- and seventeen-year-olds from adults.<sup>159</sup> The long-standing classification model for the DOC has been to assign detainees a score according to age, severity of charge and previous convictions, history of escape, past institutional conduct, gang affiliation, and number of prior arrests and felonies.<sup>160</sup> According to their score, each inmate is classified as minimum, medium, or maximum custody, and housed accordingly, with reclassification occurring every sixty days.<sup>161</sup>

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152. *Id.* at 35–38.

153. *Id.* at 38–39.

154. *Id.* at 33.

155. *Id.* at 40.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at 41.

160. First Report of the *Nunez* Independent Monitor at 92, *Nunez & United States v. City of New York*, 11-cv-5845 (S.D.N.Y. 2012) (No. 269) [hereinafter *First Monitors Report*] (reporting on the first monitoring period of October 22, 2015 through February 26, 2016 and filed on May 31, 2016).

161. *Id.*

It also mandates there be a sufficient level of programming for young people consistent with best practices.<sup>162</sup> The DOC is required to take appropriate action to protect vulnerable young people and when the individual, family, or attorney expresses concern, that individual should be placed in secure housing.<sup>163</sup> Moreover, those individuals under the age of eighteen shall no longer be placed in punitive segregation or isolation and the DOC should develop systems, policies and procedures to incentivize positive behaviors and to address disciplinary issues while not compromising the safety of staff and other inmates.<sup>164</sup> Finally, the Mayor's Office of Criminal Justice is required to make best efforts to identify an alternative housing site not on Rikers Island for those under the age of eighteen.<sup>165</sup>

Seventh, the consent decree outlines the monitoring provisions, including requiring the DOC to submit progress reports to the Monitor and plaintiff's counsel.<sup>166</sup> The Monitor is also appointed, and access to information is established.<sup>167</sup> The Monitor is required to submit a report, at the end of each reporting period, evaluating the DOC's progress towards compliance.<sup>168</sup>

### 3. *The Monitor*

The Monitor is tasked with reviewing the reforms undertaken by the DOC within the major operational areas addressed by the consent decree, discussed above, and reporting progress to the court twice a year.<sup>169</sup> Overall, the Monitor has found the DOC to be committed to reform and cooperative in efforts to reach it. However, all of the Monitor's reports to date have expressed concern regarding whether the DOC lacks sufficient staffing, management, and space resources to sustain the new policies and procedures.<sup>170</sup> The resignation of DOC Commissioner Joseph Ponte in May 2017 only contributes to

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162. *Id.* at 40.

163. *Id.* at 41.

164. *Id.* at 44.

165. *Id.* at 46.

166. *Id.* at 54–55.

167. *Id.* at 51–52.

168. *Id.* at 54.

169. *Id.* at 51.

170. Fourth Report of the *Nunez* Independent Monitor at 17, *Nunez & United States v. City of New York*, 11-cv-5845 (S.D.N.Y. 2012) (No. 305) [hereinafter *Fourth Monitors Report*] (reporting on the fourth monitoring period of January 1, 2017 through June 30, 2017 and filed on October 10, 2017).



the challenges.<sup>171</sup> While the Monitor has found that progress has been made in some areas, there are remaining challenges facing the DOC in their efforts to reach substantial compliance, as discussed below.

*a. Accountability: Reporting, Investigations, and Discipline*

A critical area for reform under the consent decree is the use of force by staff against those detained. The DOC, working with the Monitor, has developed a new directive, effective October 2017 that addresses all reporting requirements.<sup>172</sup> The development of this new use-of-force directive has been a priority for the Monitor.<sup>173</sup> The directive outlines both permissive and impermissible use of force by staff.<sup>174</sup>

The Monitor found that the DOC has made several strides in its efforts to curb violence and inappropriate behavior and implement a new and more robust use of force directive. First, the DOC has appropriately and thoughtfully advised its staff about the implementation of the new directive.<sup>175</sup> In addition, the messaging campaign for the training program was creative, constructive, and conveyed a positive and productive message.<sup>176</sup>

Second, the DOC has made efforts to more accurately and reliably track incidents of violence and inappropriate use of force through more structured internal oversight.<sup>177</sup> For example, the DOC has made improvements to its methods of data collection and utilization, which enables it to better understand and respond to the ways in which the staff uses force in the jails.<sup>178</sup> In March of 2016, the DOC

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171. Michael Schwirtz & William K. Rashbaum, *Joseph Ponte to Resign as New York City Jails Chief*, N.Y. TIMES (May 11, 2017), <https://www.nytimes.com/2017/05/11/nyregion/bill-de-blasio-joseph-ponte-correction-commissioner.html> [https://nyti.ms/2q7EIW2]. Acting Commissioner Cynthia Brann was appointed DOC Commissioner by Mayor de Blasio on October 3, 2017. J. David Goodman, *De Blasio Appoints Acting Commissioner to Head City Jails*, N.Y. TIMES (Oct. 3, 2017), <https://www.nytimes.com/2017/10/03/nyregion/jails-rikers-correction-commissioner-cynthia-brann.html> [https://nyti.ms/2xQP4eL].

172. See Consent Judgment, *supra* note 129, at 10.

173. *Id.* at 5.

174. *Id.*

175. Third Report of the *Nunez* Independent Monitor at 42, *Nunez & United States v. City of New York*, 11-cv-5845 (S.D.N.Y. 2012) (No. 295) [hereinafter *Third Monitors Report*] (reporting on the third monitoring period of August 1, 2016 through December 31, 2016 and filed on April 3, 2017).

176. *Id.*

177. See Fourth Monitors Report, *supra* note 170, at 13.

178. *Id.*

implemented an anonymous reporting hotline to provide a confidential space for reporting use-of-force violations.<sup>179</sup> This hotline is in addition to already available mechanisms for reporting alleged use-of-force policy violations such as calling 311, notifying the Department of Investigation, and alerting Legal Aid, among others.<sup>180</sup> The DOC also hired a Use-of-Force Auditor, who began working at the DOC in August 2016 and reports directly to the commissioner.<sup>181</sup> The Monitor has been impressed with the analysis the Use-of-Force Auditor has demonstrated in his quarterly reports.<sup>182</sup>

Further, in early 2016, the DOC contracted with Jeffrey A. Beard, Ph.D., former secretary of the California Department of Corrections and Rehabilitation, to conduct an independent review of its use-of-force infraction process and procedures, which the DOC and monitoring team are considering reforming.<sup>183</sup> The DOC has also been building a case management system (“CMS”) to gather, track and report use-of-force data, but it is not yet complete.<sup>184</sup> The Monitor has found the in-progress CMS to be robust and believes it will surpass the requirements outlined by the consent decree.<sup>185</sup>

Fourth, the DOC has developed a draft of the New Disciplinary Guidelines Policy addressing all of the specific discipline requirements under the consent decree. These guidelines were to take effect on October 27, 2017, which is thirty days after the effective date of the new use-of-force directive.<sup>186</sup> The DOC also recruited and hired a Deputy Risk Manager who will be responsible for developing and implementing risk mitigation systems to achieve the goals of this provision.<sup>187</sup>

Finally, the DOC is on track to meet the deadline to install additional wall-mounted cameras but has requested an extension for the body-worn camera pilot project.<sup>188</sup>

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179. See Third Monitors Report, *supra* note 175, at 98.

180. *Id.* at 99.

181. Second Report of the *Nunez* Independent Monitor at 119, *Nunez & United States v. City of New York*, 11-cv-5845 (S.D.N.Y. 2012) (No. 291) [hereinafter Second Monitors Report] (reporting on the second monitoring period of March 1, 2016 through July 31, 2016 and filed on October 31, 2016).

182. See Fourth Monitors Report, *supra* note 170, at 157.

183. See Third Monitors Report, *supra* note 175, at 236.

184. *Id.* at 172.

185. *Id.* at 173.

186. *Id.* at 184.

187. *Id.* at 162.

188. *Id.* at 100, 102–03.

Despite this progress, the Monitor has also identified areas in need of improvement. The Monitor noted that while the DOC has made progress in addressing use of force, there remains a deeply entrenched culture of managing difficult or dangerous inmates with an iron fist.<sup>189</sup> To overcome these challenges, the Monitor urges the DOC to hire additional staff to support the Use-of-Force Auditor's efforts.<sup>190</sup> Additionally, to support the DOC's progress, the Monitor recommends creating high-ranking uniformed liaisons from each unit to participate in the *Nunez* Compliance Unit that was created within the DOC to ensure adherence to the consent decree terms.<sup>191</sup> The Monitor also recommends creating full-time, continuous positions within the *Nunez* Compliance Unit for civilian staff and uniformed staff at all ranks.<sup>192</sup> Further, the Monitor has expressed concern regarding the use of hand-held cameras to capture use-of-force incidents, finding that footage often was not captured because staff were either not bringing cameras to the scene or not adequately filming the incident.<sup>193</sup> As such, the Monitor continues to urge the DOC to hold staff more accountable when it comes to filming use-of-force incidents.<sup>194</sup>

*b. Workforce: Recruiting, Training, and Promotions*

The Monitor has observed several positive developments in terms of workforce recruiting, training, and promotions. First, the Monitor has observed significant improvements in the DOC's efforts to strengthen its recruiting and hiring practices in order to reduce violence. For instance, as a part of this process, the Recruitment Unit brought on a new human resources director in May of 2016, and developed a profile for an "ideal candidate" for the DOC, including criteria for leadership and communication styles, physical attributes, and experience.<sup>195</sup> In 2015, the DOC also created a Recruiter Training Manual to specifically outline the ideal candidate profile and describe overall recruitment goals, strengths, challenges, threats, and opportunities.<sup>196</sup> This manual was accompanied by a new training program for recruitment staff as well as an updated external presence

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189. See Fourth Monitors Report, *supra* note 170, at 157.

190. See Third Monitors Report, *supra* note 175, at 7.

191. *Id.* at 6–7.

192. *Id.* at 7.

193. *Id.* at 102.

194. *Id.* at 112.

195. See First Monitors Report, *supra* note 160, at 113.

196. *Id.*

for the DOC, including a revamped DOC website and marketing campaign.<sup>197</sup> By prioritizing engagement with potential recruits through career fairs and community events, the Recruitment Unit substantially increased the number of candidates taking the required exam and applying for staff positions.<sup>198</sup>

Second, the Monitor noted that the DOC has made strides in attracting a much stronger candidate pool,<sup>199</sup> a crucial step towards creating a more competitive and high-quality DOC workforce. For instance, new leadership at the Applicant Investigation Unit (“AIU”) has focused on building up the capacity of the unit to improve the screening of applicants. The AIU has grown dramatically, from four to eighty-seven civilian staff members, and has created a system whereby uniformed staff can provide support as needed.<sup>200</sup>

Third, the Monitor also confirmed that the DOC continues to maintain an objective process for selection and hiring that adheres to clearly identified standards, criteria, and other selection parameters established by laws and regulations.<sup>201</sup> The AIU has developed an objective screening process that assesses candidates based on employment history, criminal history, relationships with gangs or current inmates, medical screenings, and credit and background checks.<sup>202</sup> This objective process also includes automatic disqualifiers like work dismissals, arrests, and driving violations.<sup>203</sup> The AIU has also expanded its medical and psychological testing team to conduct those screenings.<sup>204</sup>

Fourth, the Monitor also found that the DOC’s policies on promotions are now consistent with the consent decree, and a review of recent promotions has demonstrated that the policies are being adhered to.<sup>205</sup>

The Monitor has also highlighted several areas for improvement. First, the Monitor has expressed concern over scenarios where AIU primary investigators have raised red flags for several candidates and

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197. *Id.*

198. *See* Second Monitors Report, *supra* note 181, at 156–57.

199. *See* Third Monitors Report, *supra* note 175, at 245.

200. Colby Hamilton & Gloria Pazmino, *With New Officers at Rikers, City Seeks to Change a Harmful Culture*, POLITICO (May 24, 2016), <http://www.politico.com/states/new-york/city-hall/story/2016/05/with-new-officers-at-rikers-city-seeks-to-change-a-harmful-culture-102086> [<http://perma.cc/E44M-AKRF>].

201. *See* Third Monitors Report, *supra* note 175, at 242.

202. *See* First Monitors Report, *supra* note 160, at 116.

203. *Id.* at 115–16.

204. *See* Second Monitors Report, *supra* note 181, at 158.

205. *See* Third Monitors Report, *supra* note 175, at 194.

then proceeded to hire them without any documented explanation of why the red flag was disregarded or overridden.<sup>206</sup> Examples of these red flags included criminal histories, contact with inmates on Rikers, a history of domestic violence, and failed psychological screenings for other city jobs.<sup>207</sup> The Monitor investigated these specific applications and found that the AIU's decisions to overlook the red flags were reasonable, but stressed the need to document the reasons for these decisions.<sup>208</sup>

Second, the Monitor has also found that due to the unprecedented volume of training efforts and resources required, the original one-year deadline set in the consent decree is unrealistic.<sup>209</sup> Not only does the DOC need to cover operations while staff are being trained, but they also do not have adequate space for training.<sup>210</sup> The Monitor has consistently and strongly urged the City of New York to create a new training facility for the DOC; lack of quality training space has made it incredibly difficult for the DOC to carry out the training requirements of the consent decree.<sup>211</sup> To its credit, the city has also included \$100 million in the fiscal year 2018 budget for a new training academy.<sup>212</sup> That said, the DOC has requested an extension to the deadline for training requirements.<sup>213</sup>

*c. Young Inmate Management—Classification and Programming*

In the fourth monitors report, it is noted that young inmates under the age of nineteen continue to contribute to a disproportionate share of both the DOC's use-of-force and inmate-on-inmate violence.<sup>214</sup> However, the DOC had made significant progress in increasing programming for young people, which reduces idle time and, in turn, reduces violence.<sup>215</sup>

First, the DOC began working with an external consultant shortly after the conclusion of the most recent monitoring period in order to validate the existing classification tool.<sup>216</sup> The DOC also recently

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206. See Second Monitors Report, *supra* note 181, at 160.

207. *Id.*

208. *Id.*

209. See Third Monitors Report, *supra* note 175, at 71.

210. *Id.*

211. *Id.* at 7.

212. See SMALLER, SAFER, FAIRER, *supra* note 20, at 36.

213. See Third Monitors Report, *supra* note 175, at 72.

214. See Fourth Monitors Report, *supra* note 170, at 14.

215. *Id.*

216. *Id.* at 214.

devised and began using an evidence-based classification model known as the Housing Unit Balancer (“HUB”).<sup>217</sup> This tool was developed based on the analysis of approximately 60,000 DOC inmate records (including adolescent males), and uses a conditional (“if, then”) decision tree model to classify inmates according to violent conduct, mental health issues, age, severity of charge, gang-affiliation, and number of prior arrests.<sup>218</sup> Under the HUB model, inmates are assessed every 100 days, or after each violent incident, and classified as minimum, minimum-medium, medium-maximum, or maximum, and housed accordingly.<sup>219</sup> The HUB system has an override mechanism, so that both adult and adolescent inmates with special circumstances (such as mental health issues or emotional immaturity) can be placed in the appropriate housing option.<sup>220</sup> The DOC plans to ultimately use this classification system across all DOC facilities, for all populations.<sup>221</sup>

However, the Monitor has expressed concern in areas related to young adult classification and programming. Moreover, the DOC’s new HUB classification system has been determined unfit for classifying adolescents, and the DOC must either create a new, evidence-based classification instrument from scratch or pilot a model currently used in another context for classifying adolescents.<sup>222</sup>

Second, the DOC has been working with the Monitor to develop plans to deliver direct supervision training to staff,<sup>223</sup> but it is important to note that the physical layout of all existing facilities on Rikers Island and the Brooklyn House of Detention are not in line with the design requirements of direct supervision, which will make adoption of this training model more challenging than in a more modern facility.<sup>224</sup>

Finally, in addition to the previous abolition of the practice of punitive segregation for sixteen- and seventeen-year-olds in December 2014, the DOC abolished the use of punitive segregation for eighteen-year-old inmates on June 30, 2016.<sup>225</sup> In earlier reviews, the Monitor expressed concern about the sustainability of this

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217. See First Monitors Report, *supra* note 160, at 92.

218. *Id.* at 92–93.

219. *Id.* at 93.

220. *Id.* at 93–94.

221. *Id.* at 93.

222. See Fourth Monitors Report, *supra* note 170, at 214–15.

223. See *id.* at 86.

224. See A MORE JUST NEW YORK CITY, *supra* note 10, at 77.

225. See Third Monitors Report, *supra* note 175, at 218.

practice since other disciplinary sanctions had not been fleshed out.<sup>226</sup> By the end of the third monitoring period, the DOC demonstrated promising efforts to increase alternative forms of discipline for young inmates.<sup>227</sup> But the Monitor warned that alternative disciplinary programs, such as cognitive behavioral therapy, are a drastic shift from the DOC's status quo and will need significant time to become a successful replacement.<sup>228</sup>

### C. Current Agenda for Reform

Throughout the years, the strongest sources pushing for DOC reform have been the courts and legal advocates, through litigation efforts. This kind of litigation strategy is popular across the United States: at one point, nearly one third of large U.S. prisons were under court orders to address unconstitutional conditions of confinement.<sup>229</sup> One of the primary purposes of litigation is to deter unacceptable conduct or conditions, and specifically in the case of corrections, it can serve to create a space where inmates are treated with respect and as citizens.<sup>230</sup>

However, the DOC has historically not treated settlements as essential tools to help guide long-term structural reforms. The key examples of the DOC's litigation history from *Rhem* to *Benjamin* and *Fisher* to *Nunez*—though by no means an exhaustive account—reveal a pattern of illegal treatment of incarcerated people followed by successful lawsuits against the DOC that resulted in piecemeal responses rather than a holistic strategy for reform.<sup>231</sup> This stems partly from a consistent turnover of DOC leadership and outside experts as well as an absence of strong reform precedents in the DOC.<sup>232</sup> That said, the presence of the *Nunez* Monitor, the release of the Commission's report, and the mayor's commitment to closing Rikers Island all present critical opportunities to implement comprehensive reforms at the DOC.

As previously mentioned, the Commission recommended closing Rikers Island and redeveloping borough-based jails in order to create

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226. See Second Monitors Report, *supra* note 181, at 142.

227. See Third Monitors Report, *supra* note 175, at 226.

228. *Id.* at 219.

229. Wayne N. Welsh, *The Dynamics of Jail Reform Litigation: A Comparative Analysis of Litigation in California Counties*, 26 LAW & SOC'Y REV. 591, 591 (1992).

230. See Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1666 (2003).

231. See *generally* Stipulation of Settlement, *supra* note 95.

232. See Dilulio, *supra* note 65, at 154–55.

a smaller, safer, more humane and effective jail system for New York City.<sup>233</sup>

The DOC is a frequent target of public outrage, advocacy, and legal action.<sup>234</sup> But history has shown that even scandal and outrage are not enough to change the culture of the DOC.<sup>235</sup> Lasting change will require deliberate analysis, strategic planning, and execution over a long period of time. In order to take full advantage of this rare opportunity of galvanized political will for closing Rikers Island, reforming the broader criminal justice system, and building new state-of-the-art borough-based jails, the city and the DOC should prioritize organizational culture reform.

## II. ORGANIZATIONAL CULTURE CHANGE

Part II turns to a critical piece of the comprehensive reform agenda—culture change. Reforming the DOC culture, and thus, operations, will be difficult and will not be immediate. But, to fully realize the mayor's goal of a smaller, safer, fairer jail system, it is necessary.

The subsequent sections outline the tenants of organizational culture change and culture change specific to correctional institutions, and then focus specifically on five critical areas for developing a culture change plan, including: accountability in management and performance; procedures and policies; recruiting and hiring; training and education; and wellbeing and support. These five areas do not exhaustively cover the challenges facing the DOC, rather, they are critical areas to take into account when devising a comprehensive strategic plan for organizational culture change for the DOC.

### A. Changing the Culture at the DOC

The following sections will explore organizational culture and its relationship to the DOC's operations. This section first outlines a process for understanding and evaluating organizational culture. Next, this section turns to developing a plan for reform. Finally, this section outlines priority areas for operational reform in order to fundamentally change the organizational culture in the DOC.

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233. See *A MORE JUST NEW YORK CITY*, *supra* note 10, at 15; see also discussion *supra* Introduction.

234. See *A MORE JUST NEW YORK CITY*, *supra* note 10, at 73–75.

235. See generally, e.g., Stipulation of Settlement, *supra* note 95.



### 1. *Understanding Organizational Culture*

Understanding organizational culture theory is important when assessing and developing a reform plan for the DOC. According to the Competing Values Framework, developed by Kim Cameron and Robert Quinn, an organization's culture can be defined by how it balances its internal and external priorities, or how it values flexibility and agility versus structure and control.<sup>236</sup> Cameron and Quinn identify four types of organizational culture: adhocracy, market, clan, and hierarchical.<sup>237</sup> Correctional organizations typically fall under the "hierarchical" category, which describes organizations that are internally focused and prioritize well-defined responsibilities, structure, and control over flexibility, collaboration, and agility.<sup>238</sup> Another way to categorize organizational culture is according to Roger Harrison's four typologies: power orientation, task orientation, person orientation, and role orientation.<sup>239</sup> Role orientation would appear to be the most apt descriptor of the DOC, as well as of other public bureaucracies, because it relies on procedures and rules to maintain order, with fixed rights and privileges for staff that follow those rules.<sup>240</sup>

However, organizations are rarely fully consistent or monolithic. When major elements of an organization, such as its leadership or mission, change frequently, it is more likely that the organization will split into *differentiated* or *fragmented* cultures—known as "subcultures."<sup>241</sup> In fact, culture change efforts often reveal extensive fragmentation of priorities within an organization and can lead to an "us versus them" attitude that pits different staff divisions against one another, creating inefficiencies and limiting collaboration.<sup>242</sup> The beliefs, assumptions, and values of these subcultures may be at odds with each other, ultimately detracting from an overall organizational

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236. KIM CAMERON, HAWORTH, AN INTRODUCTION TO THE COMPETING VALUES FRAMEWORK 1–2, <https://faculty.mu.edu.sa/public/uploads/1360773197.1216organizational%20cult125.pdf> [<https://perma.cc/CBS9-9VGR>].

237. *Id.* at 3.

238. NANCY CEBULA ET AL., NAT'L INST. OF CORR., CULTURE AND CHANGE MANAGEMENT: USING APEX TO FACILITATE ORGANIZATIONAL CHANGE 1, 5 (2012), <https://info.nicic.gov/nicrp/system/files/025300.pdf> [<https://perma.cc/6QM7-DPNL>].

239. ROGER HARRISON, *Understanding Your Organization's Character*, in COLLECTED PAPERS OF ROGER HARRISON 1, 7 (1994).

240. *Id.* at 8–9.

241. See SCHEIN, *supra* note 33, at 18.

242. CHRIS INNES, HEALING CORRECTIONS: THE FUTURE OF IMPRISONMENT 51 (2015).

mission.<sup>243</sup> When pursuing change in any form, organizational leadership tends to push forward piecemeal solutions that cannot produce the desired holistic outcome, and ends up encouraging different staff groups to isolate themselves deeper into silos.<sup>244</sup>

## 2. *How Organizational Culture Develops and Sustains*

Cultures in organizations develop through staff interactions as they learn how to do their jobs according to what the organization has expected and has deemed effective.<sup>245</sup> Grounded in communication, cultures both show and tell participants the rules of survival in a given context.<sup>246</sup> Culture is largely created unconsciously or *covertly*, meaning that the forces that create and maintain culture are generally invisible.<sup>247</sup> There are, however, many observable manifestations that can shed light on what is happening beneath the surface: culture is reflected in members' interpersonal interactions, in the unwritten rules for getting along, in the climate or mood within a physical space, in celebrations, and in other ways.<sup>248</sup>

Once established, culture becomes deep and pervasive.<sup>249</sup> Culture affects an organization's operations and becomes inextricably linked to the personality and identity of an organization and its staff.<sup>250</sup> At the deepest level of an organization's culture lies shared underlying assumptions about the workplace—theories about “the way things are” that are not debatable within the context of the organization or the field.<sup>251</sup> Imagining a reality outside of these shared assumptions can be quite challenging: the longer an organizational culture has been reinforced, the more difficult it is to change.<sup>252</sup> Although bringing in new members to the organization seemingly offers an opportunity to reexamine the organization's culture, new employees are more likely to adopt the existing culture than to change it.<sup>253</sup> When attempts are made to change an organization's culture, those

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243. *Id.* at 88–93.

244. *Id.* at 51.

245. *Id.* at 50.

246. *Id.*

247. ROBERT MARSHAK, *COVERT PROCESSES AT WORK MANAGING THE FIVE HIDDEN DIMENSIONS OF ORGANIZATIONAL CHANGE 1* (2006).

248. *See* SCHEIN, *supra* note 33, at 15–16.

249. *See id.* at 28.

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

attempts often generate extreme anxiety among its members.<sup>254</sup> Members may feel such a change is akin to stripping them of their “sense of self.”<sup>255</sup>

### 3. *Specific Culture Issues in Correctional Organizations*

Correctional organizations are often characterized by conflicting pressures imposed by policy, public opinion, and the organizational cultural issues endemic to many criminal justice and law enforcement organizations.<sup>256</sup> The DOC certainly experiences these conflicting pressures.<sup>257</sup> The National Institute of Corrections (“NIC”) found that, across dozens of correctional institutions, the most common issues between various divisions of staff were low levels of trust and respect, poor communication, unclear expectations for performance, and a lack of recognition for achievements.<sup>258</sup> Fragmentation of staff into silos with distinct, and often competing, subcultures is common in correctional organizations, with tensions found between virtually every division of staff, both vertically and horizontally.<sup>259</sup> Fragmentation can result in poor communication of expectations between silos, which leads to mutual lack of trust and respect and can eventually foster an environment that breeds apathy and frustration towards the organization itself.<sup>260</sup> It is not uncommon for organizations with a fragmented staff to also experience staff conduct issues such as corruption, sexual abuse, and overuse of force.<sup>261</sup> These negative actions could be mitigated through the implementation of more supportive work environments with flexibility and discretion built in for officers.<sup>262</sup>

Correctional organizations focus on preparing staff to react to catastrophe instantly.<sup>263</sup> As a result, they are preoccupied with failure and reluctant to streamline inefficient processes due to fear of any gaps or oversights that might lead to disasters, such as an escape or death.<sup>264</sup> For this reason, in addition to being hierarchical

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254. *Id.* at 29.

255. *Id.*

256. *See generally* James B. Jacobs & Harold G. Retsky, *Prison Guard*, 4 J. CONTEMP. ETHNOGRAPHY 5, 6–9 (1975).

257. *See supra* Section I.A.

258. *See* CEBULA ET AL., *supra* note 238, at 10.

259. *See* INNES, *supra* note 242, at 11, 148.

260. *Id.* at 11.

261. *Id.*

262. *Id.* at 13.

263. *See* CEBULA ET AL., *supra* note 238, at 8–9.

264. *Id.* at 9.

establishments, correctional organizations tend to rely on redundancy and are excessively bureaucratic as a way to eliminate risk.<sup>265</sup> Most correctional organizations are biased towards pre-existing expertise and skill as a way to respond to crisis, rather than looking to innovation and new ideas to alter the overall approach of the organization.<sup>266</sup> The DOC is particularly reliant on redundancy as a security measure; it has a staffing ratio of one officer per incarcerated individual, which is higher than most staffing ratios at similar institutions across the country.<sup>267</sup>

#### 4. *Impacts of Conflict Between Treatment and Custody*

All correctional institutions across the world operate under some sort of custody model, and most incorporate rehabilitation to varying degrees.<sup>268</sup> The custody model is based on the idea that the sole purpose of corrections is to protect the community by detaining people who may pose a threat to public safety.<sup>269</sup> This approach requires social distance between staff and inmates: no informal relationships or affective ties are formed so that staff can exercise coercive power.<sup>270</sup> In an effort to maintain this social distance, staff must rely on following specific orders and avoiding decisions based on judgment or nuance—in order for staff's authority to be perceived as legitimate, discretionary rule-enforcement is discouraged.<sup>271</sup> Performance is assessed objectively according to statistics around adherence to rules, and success is measured by a low rate of over-exertion of force.<sup>272</sup> In the custody model, order is maintained through punitive measures.<sup>273</sup> The punitive trend that has existed for many years in U.S. corrections suggests that U.S. correctional institutions have been prioritizing the custody model over the rehabilitative approach to incarceration.<sup>274</sup>

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265. *Id.*

266. *Id.* at 8–9.

267. *See* A MORE JUST NEW YORK CITY, *supra* note 10, at 88.

268. John R. Hepburn & Celesta Albonetti, *Role Conflict in Correctional Institutions: An Empirical Examination of the Treatment-Custody Dilemma Among Correctional Staff*, 17 CRIMINOLOGY 445, 447 (1980).

269. *Id.* at 446.

270. *Id.*

271. *Id.*

272. *Id.* at 446–47.

273. *Id.* at 446.

274. *See generally* Vivien Stern, *The International Aspects of U.S. Policies, in* INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 279 (Marc Mauer & Meda Chesney-Lind eds., 2002).

The rehabilitative model for correctional environments requires staff to develop effective ties with incarcerated persons and enforce rules with discretion according to a nuanced understanding of inmates and their behavior.<sup>275</sup> Staff still manage the incarcerated population through communication and some behavioral incentives, but this requires great technical skill and a strong commitment to these ideals.<sup>276</sup>

In contrast to many prisons in Central Europe and Scandinavia,<sup>277</sup> which lean very strongly toward rehabilitative principles, most U.S. institutions over the past several decades have resisted the concept of rehabilitation in favor of a “tough-on-crime” approach.<sup>278</sup> However, even as incarceration rates have risen, policy changes and litigation have forced improved conditions of confinement and protections from punitive action by COs.<sup>279</sup> This trend has resulted in somewhat improved conditions of confinement in places where administrations have embraced reforms.<sup>280</sup> Litigation tends to result in mandated reforms and restrictions on staff, limiting the coercive power of COs.<sup>281</sup>

When COs are expected to perform both custody and treatment functions, this sets up a conflict of roles for staff.<sup>282</sup> Though line officers are expected to remain socially distant to maintain order, they

275. See generally ROBERT G. LEGER & JOHN R. STRATTON, *SOCIOLOGY OF CORRECTIONS: A BOOK OF READINGS* 1–7 (1977).

276. *Id.* at 446–48.

277. While the Scandinavian philosophy is instructive, it is important to note the differences between jails and prisons. In the United States, jails are local facilities that hold individuals pending trial and for sentences of a term of less than a year while prisons hold individuals sentenced to terms of more than a year. This presents distinct operational challenges as well as opportunities.

278. See RAM SUBRAMANIAN & ALISON SHAMES, *VERA INST. FOR JUSTICE, SENTENCING AND PRISON PRACTICES IN GERMANY AND THE NETHERLANDS: IMPLICATIONS FOR THE UNITED STATES* 1, 7 (2013), [https://storage.googleapis.com/vera-web-assets/downloads/Publications/sentencing-and-prison-practices-in-germany-and-the-netherlands-implications-for-the-united-states/legacy\\_downloads/european-american-prison-report-v3.pdf](https://storage.googleapis.com/vera-web-assets/downloads/Publications/sentencing-and-prison-practices-in-germany-and-the-netherlands-implications-for-the-united-states/legacy_downloads/european-american-prison-report-v3.pdf) [http://perma.cc/63V2-T839]; Doran Larson, *Why Scandinavian Prisons Are Superior*, *THE ATLANTIC* (Sept. 24, 2013), <https://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-are-superior/279949/> [http://perma.cc/PBD8-FHTV]; see also *supra* Section I.A.2.

279. See generally Eric D. Poole & Robert M. Regoli, *Alienation in Prison: An Examination of the Work Relations of Prison Guards*, 19 *CRIMINOLOGY* 251, 252–53, 256, 264 (1981).

280. James B. Jacobs, *The Prisoners’ Rights Movement and Its Impacts, 1960–80*, 2 *CRIME & JUST.* 429, 462–63, 465 (1980).

281. See Poole & Regoli, *supra* note 279, at 252–53.

282. Oscar Grusky, *Role Conflict in Organization: A Study of Prison Camp Officials*, 3 *ADMIN. SCI. Q.* 452, 455 (1959).

are also increasingly urged to form close, supportive relationships with inmates and guide them to make their own decisions.<sup>283</sup> Custody goals and rehabilitative goals are typically at odds by definition, and if organizational leadership does not develop a comprehensive strategy to integrate the two models, correctional staff will often encounter role strain and role conflict.<sup>284</sup> Role strain refers to the tensions that an employee experiences when different duties within his or her role are difficult to achieve simultaneously.<sup>285</sup> Role conflict is when one employee has multiple, distinct roles that are incompatible.<sup>286</sup>

When faced with too much role conflict, officers are more likely to revert to the custody model of coercive and punitive control because its clear guidelines and results can be more easily measured.<sup>287</sup> The adoption of new cultural ideals, such as rehabilitation models, must be accompanied by a clear and direct tool of measurement for success.<sup>288</sup>

For long-term change to take hold, organizations and their staff must go through a process of reframing and redefining roles and missions so that old operations no longer seem acceptable.<sup>289</sup> Elements of an organization's culture, such as shared attitudes, assumptions, beliefs, and behaviors guide individuals in managing how to work and survive together.<sup>290</sup> Since a group's attitudes, assumptions, and beliefs develop out of the need for consistency and meaning, any efforts to adjust an organization's culture must address these needs as they progress.<sup>291</sup> Unless these elements and functions are recognized and addressed, the appropriate route to culture change will never be understood, let alone embraced.<sup>292</sup>

### 5. *How Organizations Can Change*

Organizational culture is dynamic and can be influenced by a number of changes to an organization. In some cases, promoting

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283. *See id.* at 470.

284. *See* Mayer N. Zald, *Power Balance and Staff Conflict in Correctional Institutions*, 6 ADMIN. SCI. Q. 22, 23 (1962).

285. William M. Evan, *Role Strain and the Norm of Reciprocity in Research Organizations*, 68 AM. J. SOC. 346, 347–48 (1962).

286. Sam Matthews, Lecture on Social Roles, slide 11 (2016), <http://core.ecu.edu/soci/juskaa/SOCI2110/Lectures/structure/sld011.htm> [<http://perma.cc/SR2A-XQU9>].

287. *See* Jacobs & Retsky, *supra* note 256, at 6.

288. *See* SCHEIN, *supra* note 33, at 83–88.

289. *See* INNES, *supra* note 242, at 8–9.

290. *See id.*

291. *Id.* at 9; *see also* SCHEIN, *supra* note 33, at 300.

292. *See* INNES, *supra* note 242, at 9.

members of certain subcultures within an organization can spread that subculture more widely within the organization.<sup>293</sup> Culture change can also be galvanized through scandal or public crisis – when major issues are brought to light, organizations may seek radical change in order to survive.<sup>294</sup> Moreover, new technologies can be incorporated that neutralize certain problematic processes that were once left up to discretion—like body cameras and digitized systems that flag officers that show signs of abuse or distress.<sup>295</sup>

Organizations hoping to see lasting change will undoubtedly face resistance, confusion, and anxiety in the process.<sup>296</sup> Culture change expert Edgar Schein describes five principles that an organization needs to accept—and be prepared to deal with—in order to effect true change: (1) staff must feel more survival anxiety, or fear of failing in their roles, than they feel anxiety about learning new things; (2) leaders pushing for organizational culture change must focus their efforts on reducing anxiety related to learning new things (rather than increasing survival anxiety); (3) goals of the change must be defined concretely in relation to the specific problems at hand (rather than merely referred to as “culture change”); (4) new cultural elements will only be embraced if they lead to positive results and satisfaction; and (5) cultural change will be at first psychologically painful, so efforts must be made to ensure psychological safety for staff.<sup>297</sup>

Creating and sustaining psychological safety for staff is one of the most crucial components of culture change efforts. Staff within an organization undergoing culture change often experience many types of fear: fear of losing power or position, of incompetence, of punishment, and of losing identity or group membership.<sup>298</sup> These fears are powerful, and collectively can significantly undermine reform strategies.<sup>299</sup> Thus, successful cultural change in an organization requires the existence of psychological safety.

Psychological safety can be achieved through: the development of a compelling positive vision; adequate formal and informal training; involving the learner in managing the process; flexibility for practice; support groups for processes; and new systems and structures that

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293. See SCHEIN, *supra* note 33, at 283.

294. *Id.* at 291, 293.

295. See Consent Judgement, *supra* note 129, at 29.

296. See SCHEIN, *supra* note 33, at 300–05.

297. *Id.* at 311–13.

298. *Id.* at 304.

299. *Id.* at 304–05.

reinforce new ideals.<sup>300</sup> These reforms must be rolled out strategically to create the safety that staff need in order to embrace change in their organization.<sup>301</sup> It is important to note that even if the correct problems are identified and the staff is willing, change attempts will fall flat if the organization rushes to implement changes without taking the necessary time and thought to put together a long-term, sustainable strategy.<sup>302</sup>

*a. Culture Change in Correctional Systems*

The NIC has been investigating and facilitating cultural assessments and change processes within correctional organizations since 2000.<sup>303</sup> The NIC endorses the principles laid out by change management expert Dr. John P. Kotter.<sup>304</sup> Kotter's principles have been incorporated into many successful organizational change efforts.<sup>305</sup> In order for change to occur, Kotter recommends the following: (1) inspire a sense of urgency amongst critical stakeholders to create and maintain the momentum required to push change forward; (2) have a Change Team of respected senior managers who are committed to the goals of the change; (3) establish an emotionally charged vision that can be easily communicated, inspires staff, and addresses their primary fears regarding the change; (4) learn about each stakeholder's best interests in order to build buy-in; (5) provide clear tools for action so that staff are empowered to make the change; (6) present short-term, achievable milestones and finish them before moving on; (7) never stop highlighting these achievements and pushing for further progress; and (8) provide positive reinforcement for successes to encourage sustainable change.<sup>306</sup>

The NIC has used these principles as inspiration to create its own change management model specifically for corrections called Achieving Performance Excellence Initiative ("APEX").<sup>307</sup> APEX is a roadmap and toolkit that can help correctional institutions understand where to begin and what steps are necessary to effect lasting culture change.<sup>308</sup> The APEX model incorporates best

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300. *Id.* at 306–07.

301. *Id.* at 307.

302. *See* CEBULA ET AL., *supra* note 238, at 45.

303. *Id.* at 9.

304. *Id.* at 18.

305. *See id.*

306. *Id.* at 19.

307. *Id.* at 21.

308. *Id.*



practices from organizational change processes in general, with an emphasis on those that are particularly relevant to correctional organizations.<sup>309</sup> APEX advocates for a system-wide approach that acknowledges that every piece of the culture change process will affect every part of the organization.<sup>310</sup> The steps of APEX are as follows: (1) plan and assess; (2) define the goal; (3) organize for results; (4) plan the implementation strategy; (5) implement the change management plan; and (6) sustain the change effort.<sup>311</sup>

Under the APEX model, the first step for any culture change process is an informal self-assessment.<sup>312</sup> Though there are many existing tools for organizational self-assessment, APEX has created its own tool specific to corrections called the APEX Assessment Tools Protocol.<sup>313</sup> It includes the APEX Screener, the APEX Organization Profile, and the APEX Inventory.<sup>314</sup> The APEX Screener is a brief, twenty-four question survey to assess staff's concerns and readiness for change.<sup>315</sup> The APEX organizational profile provides questions for leadership and staff that are specifically targeted at analyzing operations, environment, relationships, and performance.<sup>316</sup> The APEX Inventory offers a more comprehensive assessment of readiness for change, along with guidance for how management can operationalize change.<sup>317</sup>

An assessment of an organization's culture that is superficial can end up doing more harm than good. For example, analysis and decisions based simply on reported data without an understanding of underlying dynamics will most likely lead to culture change failure.<sup>318</sup> Even when a comprehensive analysis is undertaken, if the organization is not prepared to address the anxiety, anger, and resistance that this analysis may engender among some of its members, then culture change will still fail.<sup>319</sup>

The next step is identifying the goal and objectives of the change process. APEX recommends a clear definition for why change is necessary, along with a specific vision for the future of the

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309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.* at 22.

313. *Id.* at xiv.

314. *Id.*

315. *Id.* at 24.

316. *Id.* at 25.

317. *Id.*

318. *See* SCHEIN, *supra* note 33, at 188.

319. *Id.* at 188.

organization.<sup>320</sup> Leadership should then identify specific practices, behaviors, and procedures that are top priority for the change, as well as who will be affected and how.<sup>321</sup> Most importantly, leadership needs to consider how it will know when it meets its goals and how to measure its success.<sup>322</sup> Communication is critical to this process: organizations should develop an “elevator pitch” that can clearly convey the goals to all staff.<sup>323</sup>

Organizing for results entails bringing the entire leadership team on board and creating specific roles to lead the change.<sup>324</sup> These roles would include a specific change leader and supporting change team, and a steering committee.<sup>325</sup> A significant responsibility of the change leadership is to manage relationships with all stakeholders, especially with managers who are not directly involved in the process.<sup>326</sup>

The change team then develops the detailed implementation plan, a project management tool for the organization to follow as it goes through the change process.<sup>327</sup> APEX recommends key steps to be included in this process—such as conducting surveys, focus groups, and interviews to understand social dynamics in the organization, identifying successes or failures of any prior change efforts, or coming up with a communications strategy for the plan—but also recognizing that there is no single correct way for an organization to undertake this process.<sup>328</sup>

The next step is to actually implement the carefully developed strategic plan.<sup>329</sup> APEX recommends having an intervention team execute the specialized tasks involved in coming up with plans for specific processes.<sup>330</sup> The change team should monitor and track progress, and keep all staff as informed as possible.<sup>331</sup> Communication of why and how changes are being implemented is

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320. See CEBULA ET AL., *supra* note 238, at 28.

321. *Id.*

322. *Id.* at 29.

323. *Id.*

324. *Id.*

325. *Id.*

326. *Id.* at 30.

327. *Id.*

328. *Id.* at 31.

329. *Id.* at 36.

330. *Id.* at 32.

331. *Id.* at 36.

perhaps the most important element of any change management process.<sup>332</sup>

The final, perhaps most difficult, stage involves sustainability.<sup>333</sup> Organizational change can only last if changes are embraced by staff and accompanied by positive reinforcement as well as ongoing guidance and training.<sup>334</sup> Management must be held accountable for the success of implemented changes, and progress must be tracked on an ongoing basis.<sup>335</sup>

*b. Case Study: Virginia Department of Corrections and a Healing Environment*

Organizational culture change is not a common undertaking for correctional organizations. However, the Virginia Department of Corrections (“VADOC”) is currently in the midst of a massive culture change initiative aimed at creating a “healing environment” within the agency.<sup>336</sup> The initiative began in 2010 when VADOC began investigating its effectiveness in reducing recidivism within Virginia’s criminal justice system.<sup>337</sup> In an evaluation of its programs and services, the VADOC recognized that it could only have an impact on recidivism rates if it assessed and changed its organizational culture.<sup>338</sup>

VADOC Director Harold W. Clarke aimed to create a strategic plan for culture change by assessing staff attitudes and experiences, how the institution was perceived by external entities, and how care was received by the incarcerated population.<sup>339</sup> All staff members received specific training on how to participate in the culture change effort as well as what his or her role would be in carrying out culture change goals.<sup>340</sup> The strategic planning efforts resulted in the “healing environment”—a cultural model for the organization that aimed to create productive change for both staff and those

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332. *Id.* at 37.

333. *Id.* at 38.

334. *Id.* at 38–39.

335. *Id.* at 39.

336. See Scott Richeson, *Can Corrections Heal? Reducing Recidivism and Increasing Public Safety in Virginia*, CORRECTIONS TODAY, Nov. 2014, at 26, 26–29.

337. See *id.* at 26.

338. *Id.* at 27.

339. See generally VA. DEP’T OF CORR., MANAGEMENT INFORMATION SUMMARY ANNUAL REPORT YEAR ENDING JUNE 30, 2014 (2014), <https://vadoc.virginia.gov/about/facts/managementInformationSummaries/2014-mis-summary.pdf> [<http://perma.cc/7GV5-9T37>].

340. See Richeson, *supra* note 336, at 2.

incarcerated.<sup>341</sup> Unlike “command and control,” this model prioritized mutual respect and de-escalation techniques to restore peace in the correctional setting.<sup>342</sup> Through the healing environment model, use of force was deemphasized and a continuum of responses for various infractions was introduced.<sup>343</sup>

A key element of VADOC’s healing environment was a practice known as “Dialogue,” which establishes a structured model for staff-wide discussions about the most pressing issues involved in the culture change process.<sup>344</sup> It requires specific training to provide staff with the skills necessary to listen without judgment, effectively creating a safe space that encourages staff to share their thoughts and experiences, and also allows leadership to gauge how culture change is progressing.<sup>345</sup> In Virginia, this training was carried out by “learning teams,” interdisciplinary groups of staff selected by leadership in each facility who were trained by Dialogue coaches.<sup>346</sup> The critical component of Dialogue is that it does not stop once culture change efforts have been implemented—it is an ongoing part of the process and necessary to sustaining positive change.<sup>347</sup>

The Urban Institute, an economic and social policy think tank, is currently conducting an evaluation of this initiative at VADOC, and has released interim data showing that Dialogue has likely led to an increase in staff support for culture change initiatives at VADOC.<sup>348</sup>

### **B. Developing a Culture Change Plan at the New York City Department of Correction**

As New York City prepares to shutter Rikers Island and move to new, borough-based facilities, the DOC has a unique opportunity to reimagine its role and make strides towards a more humane jail system.<sup>349</sup> The goals of such a process would be to dramatically improve professionalism, mental and emotional balance, transparency, and accountability in order to significantly reduce

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341. *Id.*

342. *Id.*

343. *Id.* at 3–4.

344. *Id.* at 3.

345. *Id.*

346. *Id.*

347. *Id.*

348. See Press Release, Va. Dep’t of Corr., Urban Institute Completes Third Employee Survey at Virginia Department of Corrections—VADOC’s Environment, Recent Culture Change Measured (Feb. 19, 2015), [https://vadoc.virginia.gov/news/press-releases/15Feb19\\_UISurvey.shtm](https://vadoc.virginia.gov/news/press-releases/15Feb19_UISurvey.shtm) [<http://perma.cc/AT9E-Z6U9>].

349. See A MORE JUST NEW YORK CITY, *supra* note 10.

violence and improve outcomes. It will require fierce commitment from leadership and the recognition that culture change is extremely difficult, as well as acceptance of some risks.<sup>350</sup>

While the DOC may decide to work with an external consultant to assess their culture and develop a strategic plan, any culture change or strategic planning consultants should approach the process as a discovery process that focuses on asking the right questions and helping the organization arrive at conclusions on its own.<sup>351</sup>

Should the DOC choose to undergo an assessment and develop a comprehensive plan for reform, this Article recommends several specific areas of focus for analysis: (1) accountability in management and performance; (2) formal processes and procedures; (3) recruiting and hiring; (4) training and professionalization of staff; and (5) staff wellbeing. The following section analyzes each of these areas in turn, highlighting ongoing, manifest issues at the DOC.

### 1. *Accountability in Management and Performance*

The legitimacy of reform efforts hinges on correctional leadership at all levels of management taking responsibility for the DOC's performance and progress during the process.<sup>352</sup> Organizational leaders must evaluate all levels of their staff according to new culture ideals and provide them with positive or negative reinforcement in accordance with their adoption of the new principles.<sup>353</sup>

#### a. *Effective Management as the Primary Driver of Accountability*

Dramatic changes in performance are more likely if culture change is led by a “transformational leader”—someone who has the skills to influence and inspire organizational commitment amongst staff.<sup>354</sup>

The NIC has developed standards for correctional leadership known as the Correctional Leadership Competencies for the 21st Century (“CLC”).<sup>355</sup> The CLC holds accountability as one of the key values of successful correctional management.<sup>356</sup> The CLC model

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350. See CEBULA ET AL., *supra* note 238, at 38.

351. *Id.* at 19.

352. See SCHEIN, *supra* note 33, at 142.

353. *Id.* at 307.

354. See CEBULA ET AL., *supra* note 238, at 10.

355. See *generally* NANCY M. CAMPBELL, NAT'L INST. OF CORR., CORRECTIONAL LEADERSHIP COMPETENCIES FOR THE 21ST CENTURY: EXECUTIVES AND SENIOR-LEVEL LEADERS (2005), <https://s3.amazonaws.com/static.nicic.gov/Library/020474.pdf> [<https://perma.cc/D7K4-6RXA>].

356. *Id.* at xix.

identifies key competencies required for executive and senior leadership, which include: publicly acknowledging and rewarding behavior that encompasses organizational values; working strategically with investigators and auditors to enable accurate data collection and reinforce ethical values; explicitly modeling behaviors that the organization wants to promote; clearly aligning rewards and discipline with desired behaviors and values; setting clear boundaries around acceptable and unacceptable behavior; and addressing misconduct fairly, decisively, and in a timely manner.<sup>357</sup>

As discussed previously, the *Nunez* complaint cited a long history of the DOC's failures to select and promote managers with a commitment to ending violence or to ensure appropriate investigations and discipline of staff.<sup>358</sup> Other recent events highlight a serious lack of accountability within the DOC's middle-management, who should be setting the standard for staff behavior and transparency. For example, an August 2016 *Daily News* report contained internal documents and anonymous staff accounts claiming that administrators had been ordering officers to make use-of-force statistics "go away."<sup>359</sup> At least one of the administrators involved was later promoted.<sup>360</sup>

Most critiques of accountability, particularly in the form of litigation, within the DOC center on its chronic use-of-force issues.<sup>361</sup> The DOC's culture of violence is a frequent target of public outrage, advocacy, and legal action.<sup>362</sup> But the lack of accountability at the DOC is not limited to the area of violence—the DOC has underperformed in areas ranging from hiring to investigations to data tracking to training.<sup>363</sup> By failing to take responsibility, management sends the message to staff that integrity, ethics, and performance are not top priorities for the DOC. Taking action against misconduct while rewarding staff who demonstrate the desired cultural principles can reinforce the culture that the DOC hopes to promote.<sup>364</sup>

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357. *Id.* at 67.

358. *See* Amended Complaint, *supra* note 128, at 14.

359. *See* Stephen Rex Brown & Reuven Blau, *Exclusive: Rikers Island Correction Bosses Routinely 'Purge' Unfavorable Violence Stats to Create Illusion of Reform, Review Shows*, N.Y. DAILY NEWS (Sept. 28, 2016), <http://www.nydailynews.com/new-york/exclusive-rikers-island-bosses-cover-violence-stats-article-1.2768232?cid=bitly> [<http://perma.cc/8AXS-FD3S>].

360. *Id.*

361. *See* Fourth Monitors Report, *supra* note 170, at 4.

362. *See supra* Part I.

363. *See supra* Section I.B.

364. *See* Fourth Monitors Report, *supra* note 170, at 9.

*b. Strong Performance Measurement Facilitates Greater Accountability*

A recent trend in performance management in corrections is to broaden the scope of indicators to include community-based outcomes as well as departmental outputs.<sup>365</sup> In effect, these systems collect two kinds of data: outputs that departments or programs can directly control (such as number of classes taught and number of times COs used alternatives to punitive segregation), and outcomes that programs and departments can only influence (like recidivism rates and gainful employment for formerly incarcerated people).<sup>366</sup> Organizational leaders must work with staff to help them understand which indicators they can directly control and are therefore responsible for, and which they can only influence and therefore should see as part of the larger picture towards improving the criminal justice system.<sup>367</sup> This requires leaders to demonstrate and reinforce the link between internal indicators and broader criminal justice issues, which can connect internal culture change efforts to the big picture.<sup>368</sup>

Performance reports must be used as learning opportunities rather than merely making information available.<sup>369</sup> For performance measurement systems to function most effectively, all staff who are held accountable to these measures must have structured opportunities for face-to-face dialogue to raise concerns and questions with organizational leaders, and they must be involved in the brainstorming process regarding what should be measured and the best approaches for measuring.<sup>370</sup> The most successful measurement efforts have leaders who reward staff success frequently in structured ways: rituals, celebrations, and retreats provide opportunities for staff to be unified around the purpose of the performance measurement effort and recognized publicly for their successes.<sup>371</sup>

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365. KATHE CALLAHAN & KATHRYN KOLBY, IBM CTR. FOR THE BUS. OF GOV'T, MOVING TOWARD OUTCOME-ORIENTED PERFORMANCE MEASUREMENT SYSTEMS 7 (2009), <http://www.businessofgovernment.org/sites/default/files/KlobyReport.pdf> [<https://perma.cc/7LUC-SMZW>].

366. *Id.* at 7.

367. *Id.*

368. *Id.* at 21.

369. *Id.* at 22.

370. *Id.* at 7.

371. *Id.* at 19–20.

The most successful performance measurement systems are framed as part of the “DNA” of the department, and are managed by a program director with no other responsibilities.<sup>372</sup> This sends a message that performance measurement is enough of a priority to bring on specialized staff for this purpose.<sup>373</sup> This person must be a “champion of the cause” and have the communications skills necessary to keep staff on board.<sup>374</sup> Correctional organizations with a clear chain of command with one director who will assess overall performance are more successful at implementing performance measurement systems than those with decentralized management structures.<sup>375</sup> Centralized leadership, combined with frequent meetings and face-to-face interactions, is key to maintaining compliance across internal departments or units.<sup>376</sup>

The DOC currently employs a performance measurement system called Total Efficiency Accountability Management System (“TEAMS”), which was implemented in 1995 in response to prevalent inmate-on-inmate violence.<sup>377</sup> During the first decade it was implemented, it drastically improved CO performance.<sup>378</sup> However, while it was once a core element of the DOC’s operating strategy, TEAMS now appears to be used as a monthly check-in amongst DOC leadership.<sup>379</sup> Reform efforts are impossible to sustain without prioritizing accountability and performance across the DOC, starting with its leadership.

Ideally, the aim of TEAMS is to connect the roles of staff within individual units to the mission of the overall agency, rather than keeping staff in silos.<sup>380</sup> To this end, TEAMS sets agency-wide agendas, and then tracks data and performance reported by staff according to these agendas by unit.<sup>381</sup> TEAMS works by identifying dozens of monthly performance indicators in the reports collected related to use of force, inmate violence, use of services, maintenance,

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372. *Id.* at 17, 19.

373. *Id.* at 17.

374. *Id.*

375. *Id.* at 15.

376. *Id.* at 17.

377. *See* CAMPBELL, *supra* note 355, at 170.

378. *Id.*

379. *See* Fourth Monitors Report, *supra* note 170, at 18.

380. *See* Paul E. O’Connell & Frank Straub, *Why the Jails Didn’t Explode*, CITY J., Spring 1999, <https://www.city-journal.org/html/why-jails-didn%E2%80%99t-explode-11794.html> [<https://perma.cc/C5UC-QA7X>].

381. *Id.*



overtime, and other areas.<sup>382</sup> Top uniform and civilian leadership then create a monthly report that serves as the focus of monthly TEAMS meetings, during which the leaders of each facility give presentations to a large group of supervisors who set expectations for next steps.<sup>383</sup> The monthly meetings serve to share progress, identify problems, and build strategies for improvement among staff.<sup>384</sup> The role of TEAMS in the DOC could be restored to its original strategic importance as an integrated management tool that is actionable and broadened to include more levels of staff.<sup>385</sup>

*c. Integrity of Data*

Despite reportedly still having TEAMS in place, investigators and monitors have found that line staff are not being held accountable by leadership for inaccurate or incomplete reporting. In particular, incomplete records on use of force, medical issues, and maintenance needs have made it impossible for the DOC or any oversight body to accurately evaluate performance.<sup>386</sup> The monitoring team in *Nunez* analyzed the DOC's data reporting processes and found that staff often do not fill out reports accurately, and that they tend to leave out important details when reports involve use of force.<sup>387</sup> The incompleteness of the data undermines efforts to measure performance.<sup>388</sup> A commitment to accuracy is critical to tracking and evaluating the performance of the DOC and its reform efforts.

*d. Using Data as an Evidence Base for Management Decisions*

Successful culture change requires organizational leaders to be explicit about how staff performance will be evaluated and what the consequences are of not upholding new cultural principles.<sup>389</sup> Though the DOC is currently working with the Monitor to roll out a centralized CMS to systematically track use-of-force incidents, management should work closely with all levels of staff in order to develop appropriate metrics for performance management in all areas

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382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.*

386. See Third Monitors Report, *supra* note 175, at 16.

387. See Fourth Monitors Report, *supra* note 170, at 52.

388. *Id.* at 20.

389. See CEBULA ET AL., *supra* note 238, at 48–49.

in order to increase ownership of department-wide performance outcomes.<sup>390</sup>

Currently, the DOC's system only allows the person filling out a use-of-force report to provide a single reason for why a use-of-force incident occurred. This oversimplifies the complex nature of these incidents and obscures what the motivation and drivers may be.<sup>391</sup> The system should be updated to allow for more nuanced accounting of events. Staff must also be encouraged and rewarded for providing appropriately detailed information.<sup>392</sup> This evidence base will allow investigators and supervisors alike to understand and address motives for staff behaviors.

The DOC can also implement an Early Warning System ("EWS"), which is an evidence-based model of managing staff that could significantly reduce violence.<sup>393</sup> EWSs are a relatively new tool for corrections, though commonly used by police departments.<sup>394</sup> These systems use data to spot predictive indicators—such as a history of unprovoked violence, negative human resources performance reviews, or absenteeism—that a CO will pose a risk to the safety of its unit.<sup>395</sup> However, agencies have had varying degrees of success with these types of models, depending on the data available.<sup>396</sup> The DOC is currently using existing data streams to try to identify risk while working with the Monitor to develop its own EWS system.<sup>397</sup> The success of this EWS program will be crucial to the performance of the DOC.

## 2. Policies and Procedures

While the DOC cannot rely fully on its formal processes and procedures to effect culture change, organizational operations are integrally related to culture.<sup>398</sup> Culture change will require a re-

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390. See Fourth Monitors Report, *supra* note 170, at 58–59.

391. *Id.* at 35.

392. See CEBULA ET AL., *supra* note 238, at 40.

393. See SAMUEL WALKER ET AL., NAT'L INST. OF JUSTICE, EARLY WARNING SYSTEMS: RESPONDING TO THE PROBLEM POLICE OFFICER 1 (2001), <https://www.ncjrs.gov/pdffiles1/nij/188565.pdf> [<https://perma.cc/KC4R-MR2H>].

394. See Jack Harne, *Identifying At-Risk Officers: Can It Be Done in Corrections?*, 278 NIJ J. 1, 1–3 (2017).

395. *Id.* at 1.

396. *Id.*

397. See Fourth Monitors Report, *supra* note 170, at 150.

398. See generally SYMBOLS AND ARTIFACTS: VIEWS OF THE CORPORATE LANDSCAPE (Pasquale Gagliardi ed., 1990).

envisioning of policies and operations that clearly stem from and reflect the vision for the organization going forward.

*a. Clarifying and Bringing Directives Up to Date*

A critical issue is the way the DOC policy is organized, accessed, and taught to staff. All policy directives can be found on the DOC's website, but many are out of date.<sup>399</sup>

The DOC's use-of-force directive is a case in point. As noted above, a new use-of-force directive was introduced in 2016, but it has not been updated on the organization's website.<sup>400</sup> It is unclear how staff access directives and how often they are reviewed. For example, the *Nunez Monitor* expressed concern for staff's level of knowledge and competency around the use-of-force policy.<sup>401</sup> The Monitor also found that the use-of-force directive did not provide specific how-to guidance for officers, nor did it clearly lay out staff responsibilities.<sup>402</sup> Although the Monitor primarily focuses on use of force, any operational assessment should consider the state of all policy directives that govern the daily operations of the DOC.

An important step in changing the culture at the DOC would be to update the directives system and make it easily accessible to staff. Though updated directives and rules will not alone address the issues in the DOC, keeping a system of directives that is organized, up to date, and easy to navigate communicates to staff that adherence to policies is valuable to the organization, rather than a formality.

It is impossible to guarantee that rules will dictate behavior—in fact, coercion alone has been shown not to be effective.<sup>403</sup> But writing directives and policies that are as explicitly detailed as possible eliminates opportunities for interpretation and makes expectations clear. Having an in-depth understanding of policy is critical for staff who often need to make discretionary decisions in unpredictable circumstances.

*b. Using an Evidence Base in Setting Policies and Procedures*

Many DOC policies and procedures are not evidence-based practices and do not set benchmark goals. For example, the DOC

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399. See *Directives*, N.Y.C. DEP'T OF CORR., <http://www1.nyc.gov/site/doc/directives/directives.page> [<http://perma.cc/F9XL-Z5MT>].

400. *Id.*

401. See Fourth Monitors Report, *supra* note 170, at 5–6.

402. *Id.*

403. See SCHEIN, *supra* note 33, at 308–09.

does not have the right metrics available to understand if its new Enhanced Supervision Housing program is successful at reducing violence.<sup>404</sup> Implementing new programs without a clear sense of whether or not they will work can backfire. In 2015, the DOC began a large undertaking to house young adults ages eighteen through twenty-one separately from the adult population, believing that this would help reduce violence.<sup>405</sup> After spending significant resources to make this change, which affected every element of the organization from facilities to programming, it was discovered that violence increased in this unit.<sup>406</sup> The DOC is now in the process of undoing this policy decision, gradually mixing younger people back in with the older population.<sup>407</sup> Not only is this inefficient from a departmental resources perspective, but also it has led to additional violence and trauma for both staff and the incarcerated population that could have been avoided if evidence had been gathered before the policy decision had been made. This approach further communicates to staff that there are not necessarily reasons for implementing certain policies over others, and thus undermines organizational operations.

An evidence base is particularly important when it comes to classification of the incarcerated population, especially if the DOC is to move into a direct supervision model of management.<sup>408</sup> The direct supervision philosophy holds that normalized environments inspire normal behavior, and that when staff can monitor the entire incarcerated population at once and are trained to deescalate tension using communication skills, they can keep violence at bay.<sup>409</sup> This model is effective if strictly adhered to from a design and training

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404. See N.Y.C. DEP'T OF CORR., AN ASSESSMENT OF ENHANCED SUPERVISION HOUSING x–xi (2017), [http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/FINAL-BOC-ESH\\_Assessment-Adults-2017.04.26.pdf](http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/FINAL-BOC-ESH_Assessment-Adults-2017.04.26.pdf) [<http://perma.cc/H9L7-4HFG>].

405. See Colby Hamilton & Gloria Pazmino, *Department of Correction Seeks to Delay Young Adult Housing Plan*, POLITICO (Dec. 15, 2015), <https://www.politico.com/states/new-york/city-hall/story/2015/12/department-of-correction-seeks-to-delay-young-adult-housing-plan-029159> [<http://perma.cc/6Y2V-UGRU>].

406. See MMR 2016, *supra* note 57, at 80.

407. See Presentation, N.Y.C. Dep't of Corr., Presentation to the Board of Correction on the Young Adult Plan (June 13, 2017), [https://www1.nyc.gov/assets/doc/downloads/press-release/BOC\\_YA\\_presentation\\_n.pdf](https://www1.nyc.gov/assets/doc/downloads/press-release/BOC_YA_presentation_n.pdf) [<http://perma.cc/HN9Y-EGTC>].

408. See Fourth Monitors Report, *supra* note 170, at 236.

409. See RICHARD WENER, THE ENVIRONMENTAL PSYCHOLOGY OF PRISONS AND JAILS 52 (2012).

perspective.<sup>410</sup> There is evidence that jails that use this model can see a thirty percent to ninety percent reduction in violence.<sup>411</sup> The plan to dramatically reduce the number of people incarcerated in New York City, close Rikers Island, and refurbish or create new facilities in the five boroughs presents an ideal opportunity to transition to a direct supervision model.<sup>412</sup> Since direct supervision is based on reducing staff supervision of the incarcerated population unless it is too risky to do so, an effective evidence-based classification system is key for this system to operate safely.<sup>413</sup>

Generally, committing to the practice of using only evidence-based tools and policies is paramount to the performance of the agency and for achieving an organizational culture based on improving outcomes for the incarcerated population. Employing valid and evidence-based strategies also contributes to a transparent and procedurally just culture. Staff should always understand why they are expected to do certain things, as well as the expected outcome. An important element of a successful culture change process is that staff feel safe in their expected roles and are comfortable with the objectives they are aiming for—this is necessary for staff to buy in to and be on board with proposed reform strategies.<sup>414</sup>

### 3. *Recruiting and Hiring for Culture Change*

As the gateway into the organization for new employees, the hiring and recruiting process is key to any organizational change efforts. While culture does drive staff behavior, organizational culture itself is collectively created by the shared experiences and learnings of staff.<sup>415</sup> Staff are an agency's greatest resource and have a profound impact on its performance, so it is imperative to hire staff that will be

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410. Design principles for a normalized environment include single cells, using furnishings made of soft rather than indestructible materials, exposure to natural light, use of therapeutic paint and furnishing colors, and use of sound-minimizing acoustics. Direct supervision facilities take a unit management approach, dividing facilities into separate housing units that have their own amenities and recreational spaces. This approach cuts down on the need to transport inmate's long distances through the larger facility and allows staff to become familiar with the incarcerated people in their given unit. Most importantly, a unit management model provides incarcerated individuals with much more freedom of movement and allows them to manage their own time and use of space when possible. *See Wener et al., supra* note 53, at 11–12.

411. *Id.* at 2.

412. *See A MORE JUST NEW YORK CITY, supra* note 10, at 6–7.

413. *See Wener et al., supra* note 53, at 1–2.

414. *See SCHEIN, supra* note 33, at 300–07.

415. *Id.* at 14–23.

open to the vision for the organization's culture.<sup>416</sup> The DOC needs to develop a vision for a new organizational culture and then hire staff who can help advance changes to make this vision a reality.

*a. A Historically Fraught System*

Recruiting and hiring practices at the DOC have likely contributed to culture issues surrounding staff misconduct and violence. A 2015 report by the New York City Department of Investigation ("DOI") found that at least twenty-five percent of the DOC's staff misconduct incidents during that year would have been avoided if the DOC had in place an adequate approach to screening and hiring COs.<sup>417</sup> The DOI's investigation found problems in the AIU that handles applications once they have been received by DOC.<sup>418</sup> These problems resulted in the hiring of many COs who should either have not been hired, or should have been hired under conditions of close monitoring.<sup>419</sup> The potentially disqualifying issues for these new hires included arrests for harassment, personality disorders, and close ties to currently incarcerated individuals.<sup>420</sup> The AIU staff neither followed standard background check procedures nor monitored new hires with previous gang affiliations shared by inmates.<sup>421</sup> Moreover, the investigation found that the approach to hiring was not strategically linked to the department-wide reform efforts.<sup>422</sup>

A weak recruiting and hiring process is incredibly costly. In addition to the dangers posed to inmates, staff who underperform or engage in misconduct and violence are an incredible financial burden on an organization.<sup>423</sup> In fact, the DOC cost the city nearly \$420 million in personal injury settlements from 2009 to 2014.<sup>424</sup> Even more importantly, hiring the wrong staff can completely undermine

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416. See CEBULA ET AL., *supra* note 238, at 37; N.Y.C. DEP'T OF INVESTIGATION, REPORT ON THE RECRUITING AND HIRING PROCESS FOR NEW YORK CITY CORRECTION OFFICERS 23 (2015) [hereinafter DOI REPORT ON RECRUITING AND HIRING], [https://www1.nyc.gov/assets/doi/downloads/pdf/2015/jan15/pr01rikers\\_aiu\\_011515.pdf](https://www1.nyc.gov/assets/doi/downloads/pdf/2015/jan15/pr01rikers_aiu_011515.pdf) [<http://perma.cc/6PYA-K27F>].

417. See DOI REPORT ON RECRUITING AND HIRING, *supra* note 416, at 3.

418. *Id.* at 3–24.

419. *Id.* at 5.

420. *Id.* at 1–2.

421. *Id.* at 2.

422. *Id.* at 23.

423. Marcia Morgan & Jack E. Smith, *Hiring the Right Individual for Your Corrections Staff*, CORRECTIONS TODAY, Aug. 2009, at 22, 22.

424. Office of the N.Y.C. Comptroller, *ClaimStat Alert* (Aug. 2014), <https://comptroller.nyc.gov/wp-content/uploads/documents/ClaimStat-Alert-0814.pdf> [<http://perma.cc/JGR3-LGUH>].

any attempt to pursue an organizational culture that prioritizes rehabilitation and human dignity for those who are incarcerated.

*b. Strategic Hiring for Culture Change*

While the DOC is certainly improving its recruitment and hiring approaches,<sup>425</sup> moving to a direct supervision system presents an opportunity for the DOC to use recruiting and hiring to intentionally spur changes to the organization's culture. Key to this process would be expanding the profile of the "ideal candidate" to diversify the range of skills and experience of DOC staff.

Currently, the accepted qualifications for COs favor candidates with military or law enforcement backgrounds.<sup>426</sup> As New York City's model of incarceration shifts to focus increasingly on rehabilitation and programming, the DOC's hiring team might consider recruiting candidates with experience and training relevant to these new priorities, including candidates with social work and mental health backgrounds. The current requirements for employment as a CO include: sixty completed college credits (the equivalent of an associate degree); a high school diploma/GED plus two years honorable full-time U.S. military service; a high school diploma/GED plus two years of full time experience as a police officer, peace officer or its law enforcement equivalent; or six years of active U.S. Military Reserve service with an honorable discharge.<sup>427</sup> A four-year university degree is not a prerequisite for employment, which makes being a CO an attractive and well-paying profession for people with only associate degrees or military training.<sup>428</sup> However, the DOC might consider requiring four-year university degrees for officers working with special populations like youth or those with mental illness. Higher education helps foster the desire for continued learning and helps teach the skills and build the capacity necessary for acquiring new information.<sup>429</sup> This is critical in a field like corrections, which is constantly evolving due to new research, policy, and societal changes, and which involves working with special populations like youth and people with mental illness.<sup>430</sup> In general,

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425. See Consent Judgment, *supra* note 129, at 33.

426. *How to Qualify*, N.Y.C. DEP'T OF CORR., <http://www1.nyc.gov/site/jointheboldest/officer/how-to-qualify.page> [<http://perma.cc/V7UJ-Z7PR>].

427. *Id.*

428. *Id.*

429. See DON A. JOSI & DALE K. SECHREST, *THE CHANGING CAREER OF THE CORRECTIONAL OFFICER: POLICY IMPLICATIONS FOR THE 21ST CENTURY* 46 (1998).

430. See *id.*

having college-level education makes it more likely that COs have had exposure to a diverse range of backgrounds different from their own, expanding their capacity for empathy; this exposure to difference is invaluable to learning potential ways to deescalate violent incidents.<sup>431</sup> In order to recruit and hire the right staff for the mission and organizational culture the DOC would like to implement, it should create a comprehensive recruiting and hiring vision replete with a strategic plan that is directly in line with its overall culture change goals and efforts. According to the *Nunez* Monitor, the AIU is about to undergo a comprehensive review process of all current practices and will then draft an overall strategy for going forward.<sup>432</sup>

#### 4. *Training and Education as Tools for Culture Change*

A supportive and healing training program can create the psychological safety needed for staff to accept change, and it can also position staff as agents of change by helping them develop the skills necessary to sustain a healing culture in the organization.<sup>433</sup> For a hierarchical structure like the DOC, the process of opening up dialogue across silos likely will be difficult and uncomfortable at first. These initial steps should be treated as an opportunity to build skills and train staff for ongoing dialogues among all levels in the DOC. As seen in the Virginia Department of Corrections, staff likely will become accustomed to this new way of working and more willing and better positioned to contribute to innovation within the DOC.<sup>434</sup>

##### a. *Training for a Healing Environment*

Training plays a significant role in establishing legitimacy and procedural justice in a criminal justice setting: when correctional staff demonstrate competence and fairness in carrying out their jobs, the incarcerated population may be more likely to respect their authority.<sup>435</sup> New York City's Police Department is currently transitioning from a strictly "law and order" approach to a more "community-based policing" model.<sup>436</sup> Its 2015 Neighborhood

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431. See Christine Tartaro, *Watered Down: Partial Implementation of the New Generation Jail Philosophy*, 86 PRISON J. 284, 297 (2006).

432. See Fourth Monitors Report, *supra* note 170, at 193.

433. See SCHEIN, *supra* note 33, at 305–06.

434. See Press Release, Va. Dep't of Corr., *supra* note 348.

435. See STEPHEN C. MCGUINN, PRISON MANAGEMENT, PRISON WORKERS, AND PRISON THEORY: ALIENATION AND POWER 56–57 (2015).

436. See WILLIAM J. BRATTON, N.Y.C. POLICE DEP'T, THE NYPD PLAN OF ACTION AND THE NEIGHBORHOOD POLICING PLAN: A REALISTIC FRAMEWORK FOR



Policing Plan emphasizes ongoing respectful engagement with citizens as the only way to properly maintain safety in the city.<sup>437</sup> The DOC can learn from this initiative by making engagement, communication, and de-escalation—principles at the core of the direct supervision jail model—essential parts of its approach to maintaining safety.<sup>438</sup>

A transition to a direct supervision model would require the DOC to build its entire training program around techniques that have typically been considered supplementary training modules. A study on the full adoption of direct supervision principles in newly designed jails shows that facilities that focus on only the design elements of direct supervision, ignoring the training, management, and culture components, see status quo results in violence prevention.<sup>439</sup> In fact, this happened at the Tombs, which is a direct supervision facility that has not been able to keep violence down, apparently due to mismanagement.<sup>440</sup> In other cases, partial implementation is due to a misinterpretation of the direct supervision model, such as only placing COs in direct contact with inmates without providing a safe physical environment or ensuring the CO has the requisite communication skills to control the environment.<sup>441</sup> Again, in facilities that have fully implemented direct supervision principles, violence drops dramatically.<sup>442</sup> In those that adopted direct supervision in design only, violence was largely unaffected.<sup>443</sup>

Therefore, the DOC must implement direct supervision comprehensively. The difficulty of this task should not be understated. The DOC has had, in the past two decades, commissioners who were committed to change and were able to make some important and invaluable reforms in the agency.<sup>444</sup> The kind of culture change discussed in this Article will require not just that kind of leadership, though it is essential, but a long term commitment from the mayor, the budget director, the Office of Labor Relations, the

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CONNECTING POLICE AND COMMUNITIES 1–2 (2015), <http://home.nyc.gov/html/nypd/html/home/POA/pdf/Plan-of-Action.pdf> [<http://perma.cc/2UMY-ZRWA>].

437. *See id.* at 3.

438. *See A MORE JUST NEW YORK CITY*, *supra* note 10, at 88.

439. *See* Tartaro, *supra* note 431, at 291.

440. *See* Surico, *supra* note 63.

441. *See* Stephen I. Saunders, III, Direct Supervision Jails: A Management Model for the 21st Century 3 (Jan. 1995) (unpublished research paper, Florida Criminal Justice Executive Institute), <http://www.fdle.state.fl.us/FCJEI/Programs/SLP/Documents/Full-Text/Saunders.aspx> [<https://perma.cc/X7QK-5VE5>].

442. *See* Wener et al., *supra* note 53, at 11.

443. *See* Christine Tartaro, *Examining Implementation Issues with New Generation Jails*, 13 CRIM. JUST. POL'Y REV. 219, 225–26 (2002).

444. *See supra* Section I.B.

Mayor's Office of Operations, the Department for Citywide Administrative Services, as well as the city council, among others. This is no small undertaking and without this kind of substantial commitment from all levels of city leadership, it is unlikely to happen.

*b. A Healing Environment Will Make Punitive Tools Obsolete*

A common criticism from staff at the DOC is that the recent reduction in the use of punitive measures for dealing with inmates leaves staff with no tools to curb violence.<sup>445</sup> Decades of reliance on solitary confinement as a primary anti-violence tactic with only cursory attempts at providing alternatives has left staff feeling powerless against violence.<sup>446</sup> A common response to this dilemma is to say that officers simply need more training.<sup>447</sup>

The judicial response also has mirrored this approach. For example, the consent decree in *Nunez* calls for many additional training programs in efforts to reduce violence in the DOC, focusing on use of force, conflict resolution and crisis intervention, defensive tactics, cell extractions, as well as procedures, skills, and techniques for investigating use-of-force incidents.<sup>448</sup> Recently, the DOC has made great strides in rolling out its "Continuum of Alternative Disciplinary Responses," and as of this writing is no longer using punitive segregation at all for sixteen- to eighteen-year-olds.<sup>449</sup> This continuum includes several specialized housing options, depending on age and infraction, paired with programming aimed at behavioral change.<sup>450</sup> COBA, which represents the COs currently being trained in these new strategies, strongly prefers the use of punitive segregation because officers feel vulnerable to violence without it.<sup>451</sup> Indeed, while the Monitor has found the drafting and testing of these new programs to be promising, it has warned that in order for correctional staff to feel secure without punitive segregation, these

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445. See Press Release, Corr. Officers' Benevolent Ass'n, Inc., COBA President Elias Husamudeen Regarding the DOC's Elimination of Punitive Segregation for 18–21 Year Old Inmates (Oct. 11, 2016) [hereinafter COBA Press Release], <https://www.cobanyc.org/news/immediate-release-coba-president-elias-husamudeen-regarding-doc%E2%80%99s-elimination-punitive> [<https://perma.cc/U37S-8YKU>].

446. *Id.*

447. *Id.*

448. See Consent Judgment, *supra* note 129, at 37–40.

449. See Fourth Monitors Report, *supra* note 170, at 233.

450. *Id.* at 240.

451. See COBA Press Release, *supra* note 445.

new policies must be extremely clear and rolled out carefully.<sup>452</sup> The monitoring team has also stressed that the DOC must expand the possible responses for mid-level misconduct that would not require the use of the specialized housing programs but should still be addressed.<sup>453</sup>

If implemented properly, the direct supervision model will render punitive tactics practically obsolete. As mentioned above, through direct supervision, staff manage inmates using communication, de-escalation, as well as relationship-building and leadership skills.<sup>454</sup> Direct supervision principles should inform how all staff engage with the incarcerated population at all times, rather than as an afterthought.

*c. Redefining Staff Roles Through Professionalization*

As noted above, seeking a more professionalized staff by recruiting officers with higher education qualifications is one approach to changing the dynamics between COs and the incarcerated population.<sup>455</sup> However, research has found that if underlying organizational culture issues are not addressed, hiring more educated and human-service oriented staff has little effect on changing culture.<sup>456</sup> For this approach to be successful, staff must be fully integrated into strategic development and be fully capable of acting in accordance with reform goals.<sup>457</sup>

Job redesign is an approach that concedes more autonomy and control over operations to lower-level staff, thus providing opportunities for enrichment through increased responsibility and challenge in the workplace.<sup>458</sup> Staff should be trained with the skills and knowledge necessary to have more autonomy over their decision-making, which can heighten their sense of personal responsibility and pride in their role.<sup>459</sup>

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452. If punitive segregation is no longer an option, it must be replaced with a clear program of graduated responses to violent behavior.

453. See Fourth Monitors Report, *supra* note 170, at 244.

454. See *supra* note 182 and accompanying text.

455. See JOSI & SECHREST, *supra* note 429, at 46.

456. Nancy C. Jurik & Michael C. Musheno, *The Internal Crisis of Corrections: Professionalization and the Work Environment*, 3 JUST. Q. 457, 477 (1986).

457. See generally Richard F. Elmore, *Organizational Models of Social Program Implementation*, 26 PUB. POL'Y 188 (1978).

458. See John W. Slocum, Jr., *Job Redesign: Improving the Quality of Working Life 5* (S. Methodist Univ, Working Paper No. 19, 1981).

459. ROGER CHEVALIER, A MANAGER'S GUIDE TO IMPROVING WORKPLACE PERFORMANCE 65-66 (2007).

Another approach is to develop an academic program for all staff that lasts between one and two years and that goes beyond traditional training modules to include fields such as criminal law, sociology, law enforcement history, and education.<sup>460</sup> In German correctional institutions, often considered a global model, officers spend their two-year probationary period learning self-defense and communication, as well as criminal law and educational theory.<sup>461</sup> This professionalizes staff by providing them with skillsets found in professions requiring university degrees.<sup>462</sup>

### 5. *Wellbeing and Support for Staff*

Staff treatment and support are core elements of a positive organizational culture.<sup>463</sup> This is particularly true in corrections considering the occupational stressors for correctional staff, which include fear of inmate violence, confrontation with inmate suicides, requirements to frequently work overtime, and demands of rotating shifts that can impede life outside of work.<sup>464</sup> For correctional organizations to perform optimally and effectively, staff must be adequately supported and cared for.<sup>465</sup> Adequate training of staff is also incredibly important to their wellbeing—when staff are inadequately trained, they can easily find themselves in situations that cause extreme stress and fear.<sup>466</sup>

As recommended by the Commission, facilities should provide normalized spaces for staff that are separate from the incarcerated population and offer a sense of connection to the outside world.<sup>467</sup> The Commission recommended that these spaces would include natural materials, soft furniture, regular lamps and tables, and other every day furnishings.<sup>468</sup> The value of natural light and temperature

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460. Maurice Chammah, *The Stiff Competition to Work in German Prisons*, THE MARSHALL PROJECT (June 22, 2015), <https://www.themarshallproject.org/2015/06/22/the-stiff-competition-to-work-in-german-prisons#.dtvud6iqt> [<http://perma.cc/7G24-VDMZ>].

461. *Id.*

462. *Id.*

463. See JAIME BROWER, OFFICE OF JUSTICE PROGRAMS DIAGNOSTIC CTR., U.S. DEP'T OF JUSTICE, CORRECTIONAL OFFICER WELLNESS AND SAFETY LITERATURE REVIEW 1 (2013), [https://www.ojpdiaagnosticcenter.org/sites/default/files/spotlight/download/CorrectionalOfficerWellnessSafety\\_LitReview.pdf](https://www.ojpdiaagnosticcenter.org/sites/default/files/spotlight/download/CorrectionalOfficerWellnessSafety_LitReview.pdf) [<https://perma.cc/TS3D-MPMK>]; see also CEBULA ET AL., *supra* note 238, at xiii.

464. See BROWER, *supra* note 463, at 11–13.

465. See CEBULA ET AL., *supra* note 238, at 48–51.

466. See BROWER, *supra* note 463, at 1.

467. See A MORE JUST NEW YORK CITY, *supra* note 10, at 82.

468. *Id.*

control was also stressed.<sup>469</sup> However, as with other improvements related to physical facilities, the changes will mean little without a complete overhaul of how staff wellbeing and health are considered within the DOC.

Moreover, role conflict and unsupportive leadership can lead to many other conditions that afflict staff as they attempt to manage their relationships to their jobs and to their organization. For instance, burnout is a syndrome of emotional exhaustion, depersonalization, and a reduced sense of personal accomplishment that is a considerable risk for correctional staff.<sup>470</sup> Studies have shown that of all correctional personnel, staff in custody roles report higher levels of burnout.<sup>471</sup>

Beyond being unpleasant, burnout can lead to officers becoming careless on the job and can pose risks to the safety of the correctional institution.<sup>472</sup> This is an argument for providing ample support, challenge, and autonomy early in a CO's career, when they are at greater risk of burning out.

Though seniority on staff comes with benefits and perks, some of these may also be harmful. For example, overtime allows officers to dramatically increase their wages; however, excessive overtime takes an emotional and physical toll on COs.<sup>473</sup> The DOC has become dependent on overtime as a way to staff posts, particularly when officers need to miss shifts for training, and frames it as a "perk" even though it can be harmful to officers in the long run.<sup>474</sup>

Developing and maintaining a supportive and healing culture is critical to staff wellbeing. Jails are trauma-inducing environments.<sup>475</sup> The average CO will encounter twenty-eight first-hand events related

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469. *Id.*

470. See Caitlin Finney et al., *Organizational Stressors Associated with Job Stress and Burnout in Correctional Officers: A Systematic Review*, 82 BMC PUB. HEALTH 1, 1 (2013).

471. See Marie L. Griffin et al., *Job Involvement, Job Stress, Job Satisfaction, and Organizational Commitment and the Burnout of Correctional Staff*, 32 CRIM. JUST. BEHAV. 239, 241 (2010).

472. See BROWER, *supra* note 463, at 11.

473. Michael Schwirtz & Michael Winerip, *Rikers Jail Costs Soared Despite Fewer Inmates, Comptroller Finds*, N.Y. TIMES (Oct. 17, 2014), <https://www.nytimes.com/2014/10/17/nyregion/rikers-jail-costs-soared-despite-fewer-inmates-comptroller-finds.html> [<https://nyti.ms/2FWNqvy>].

474. See *id.*; see also David A. Fullard, *Fixing Jail Violence Means Worrying About Officers' Health*, CITY LIMITS (Nov. 7, 2014), <https://citylimits.org/2014/11/07/fixing-jail-violence-means-worrying-about-officers-health/> [<http://perma.cc/VY4E-FLF3>].

475. Fullard, *supra* note 474.

to serious violence, injury, or death within his or her career.<sup>476</sup> Unlike police officers, COs experience a sustained threat of violence, and have fewer opportunities to build rewarding relationships with the populations they work with, given that those populations are being held against their will.<sup>477</sup> Staff who are exposed to events involving violence, injury, or death on a recurring basis are more likely to develop post-traumatic stress disorder (“PTSD”) and depressive disorders.<sup>478</sup> These disorders can have dire consequences for staff—one study found that COs’ suicide rate is thirty-nine percent greater than other professions, and double the rate of police officers.<sup>479</sup>

The DOC should be proactive when it comes to ensuring the wellbeing of its staff. When COs are happy, healthy, adequately trained, and well-supported, they create a more positive and supportive environment for incarcerated people, and can improve behavior while reducing violence and the need for punitive measures. These benefits, which serve both individuals and the organization, however, can only be achieved with meaningful commitment from leadership.<sup>480</sup>

Currently, the DOC has a unit called the Correction Assistance Response for Employees (“CARE”). The CARE unit exists to assist officers who seek counseling around traumatic experiences, anxiety, PTSD, and job-related stressors, among other needs.<sup>481</sup> Officers needing additional services or treatment are referred elsewhere by the unit.<sup>482</sup> However, there is a strong stigma in correctional culture against seeking mental health treatment. David Fullard describes a “warrior ethos” in corrections, where COs are expected by their peers and supervisions to never show weakness, accept defeat, quit, or admit illness, making it much less likely that staff will seek help to cope with the extreme stress of the job.<sup>483</sup> An additional challenge with internal CARE units is that they may be perceived as an

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476. *Id.*

477. *See* BROWER, *supra* note 463, at 5.

478. MICHAEL D. DENHOF & CATERINA G. SPINARIS, DESERT WATERS CORR. OUTREACH, PREVALENCE OF TRAUMA-RELATED HEALTH CONDITIONS IN CORRECTIONAL OFFICERS: A PROFILE OF MICHIGAN CORRECTIONS ORGANIZATION MEMBERS 2 (2016), [http://www.mco-seiu.org/files/2016/05/MCO-Paper\\_FINAL.pdf](http://www.mco-seiu.org/files/2016/05/MCO-Paper_FINAL.pdf) [<https://perma.cc/B49U-4KJK>].

479. *See* BROWER, *supra* note 463, at 12.

480. *See* Griffin et al., *supra* note 471, at 252.

481. *See* *Correction Assistance Response for Employees*, N.Y.C. DEP’T OF CORR., <http://www1.nyc.gov/site/jointheboldest/overview/correction-assistance-response-for-employees.page> [<http://perma.cc/3WCZ-SXL4>].

482. *Id.*

483. *See* Fullard, *supra* note 474.

extension of the organization, and therefore may not be as trusted by staff who are dealing with issues resulting from organizational stressors.<sup>484</sup> One solution may be off-site facilities with strict confidentiality regulations that ensure the DOC is only informed of mental health issues in extreme cases.

A critical part of a larger culture change effort would be to help shift the stigma around mental health within its own organizational culture.<sup>485</sup> Though seemingly insignificant, vocabulary around mental health has a large impact on staff perception and says a lot about its culture.<sup>486</sup> The DOC can seek to normalize and neutralize conversations around mental health and incorporate healing practices such as the Dialogue process (discussed in earlier sections)<sup>487</sup> into its operational status quo. Peer support programs, or “stress units,” can be especially helpful in fields prone to PTSD and where stressors are often shared.<sup>488</sup> Stress units are group meetings led by peer mentors under mental health professional supervision where staff can discuss daily challenges or seek guidance for more serious incidents.<sup>489</sup> These sessions can be more comfortable and successful than formal mental health services, which are often stigmatized.<sup>490</sup> The DOC’s organizational culture should strive to be one that encourages dialogue, reflection, and sharing of both positive and negative experiences. This will create a healthier jail system for all.

### CONCLUSION

The recent announcement of the eventual closure of Rikers Island marked a watershed moment in corrections in New York City and on a national scale.<sup>491</sup> There is an unprecedented amount of public and governmental support for eliminating Rikers—a penal colony plagued by a history of violence, abuse, and despair for the incarcerated population and DOC staff alike.<sup>492</sup> But simply building new jails off the island will not automatically result in a reformed DOC. Better outcomes for staff and incarcerated people in New York City requires a complete rethinking of the DOC’s organizational culture, including

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484. See BROWER, *supra* note 463, at 15.

485. See *id.* at 9–12.

486. See Fullard, *supra* note 474.

487. See *supra* Section II.A; see also CEBULA ET AL., *supra* note 238, at 53–60.

488. See Fullard, *supra* note 474.

489. *Id.*

490. *Id.*

491. See A MORE JUST NEW YORK CITY, *supra* note 10.

492. *Id.*

clarifying how the DOC operates and behaves, its values, and what its ultimate goals are.<sup>493</sup> Regardless of where the new facilities are located and how they are designed, the DOC must seize this historic opportunity to transform itself holistically.

Much of the operational reforms over the last fifty years at the DOC have been the result of litigation and consent decrees.<sup>494</sup> While litigation can have an impact on operations, particularly in developing minimum standards to govern department operations, it cannot force the holistic reforms necessary to make lasting change at the DOC.<sup>495</sup>

After decades of litigation and corresponding consent decrees, the *Nunez* case and consent decree forced larger-scale reforms at the DOC.<sup>496</sup> The *Nunez* monitoring team is working closely with the city and the DOC to develop and implement reforms across a host of core functions including hiring, training, and use of force.<sup>497</sup> However, these reforms are being devised under the relatively narrow scope of the litigation rather than being contemplated as a sustainable reform strategy.<sup>498</sup>

Comprehensive reform—the kind of reform that can stop endemic violence and truly change treatment and conditions in DOC facilities—involves more than just remaking the DOC’s physical space. The DOC must, in many respects, start anew and rebuild itself by developing and carefully executing a strategic change management plan.<sup>499</sup> Critical to this plan, and its ultimate success, will be the DOC’s deliberate analysis of its current organizational culture and the impact of that culture on daily operations.<sup>500</sup>

In order for operational reforms to take hold in the long-term, organizational culture change must also be addressed.<sup>501</sup> A proactive and supportive environment for staff and management will allow the operational reforms to be successful. This Article has described the litigation and reform history at the DOC, the theory underlying culture change in correctional facilities, as well as certain critical areas of operational reform.<sup>502</sup> The five areas of focus outlined in this

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493. See MMR 2017, *supra* note 26, at 83.

494. See *supra* Part I.

495. See *supra* Section I.A.

496. See *supra* Section I.B.

497. See *supra* Section I.B.2.

498. See *supra* Section I.C.

499. See *supra* Section II.A.

500. See *supra* Section II.B.

501. See *supra* Section II.B.

502. See *supra* Section II.B.



report—accountability in management and performance, procedures and policies, recruiting and hiring, training and education, and wellbeing and support—do not exhaustively cover the challenges facing the DOC.<sup>503</sup> Rather, they are key areas to take into account when devising a strategic plan for the DOC's organizational culture change.

Unless the DOC reforms its organizational culture, the broader criminal justice reforms and the development of new jail facilities will bring the DOC only so far. The abuse and troubling conditions of confinement will continue, simply moving off the island into the new facilities along with the staff and those who are detained.

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503. *See supra* Sections II.B.1–5.