



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

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Presented before

The New York City Council Committee on Courts and Legal Services

Public Hearing on Int. 958-2015

In relation to client satisfaction surveys for city-funded indigent legal services

December 4, 2015

My name is Lisa Schreibersdorf. I am the Executive Director of Brooklyn Defender Services (BDS). BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for 40,000 clients in Brooklyn every year. I thank the New York City Council Committee on Courts and Legal Services for the opportunity to testify about Intro 958-2015 to mandate client satisfaction surveys for city-funded indigent legal services.

New York City's public defenders are among the highest quality defenders in the United States, in large part due to funding and ongoing support from the Mayor and the New York City Council and due to statutory case caps that assure adequate resources to our offices. BDS takes pride in our ability to provide support to thousands of clients on a daily basis in a variety of ways. One aspect of our self-evaluation is how we treat our clients, their families and the communities from which they come. In fact, as the City Council members know, BDS is in the forefront of addressing important issues that affect these very clients and communities. Examples of our advocacy on behalf of clients include protecting the rights of people in jail, particularly young people on Rikers Island. In addition, BDS not only advocated for the rights of detained immigrants, we created, along with other defenders, and thanks to City Council funding that we advocated for, the first-in-nation right to counsel program for immigrants facing deportation.

BDS has developed a model of representation that includes specialized attorneys and staff for clients with special needs, such as the mentally ill, victims of trafficking, veterans and adolescents. In each of these units, clients receive direct and collateral services that meet their specific needs, such as helping veterans apply for a change in discharge status or assigning an education attorney to advocate for 16- and 17-year-olds in the school setting.

There is no question that BDS takes the concerns of clients very seriously, that we provide excellent legal representation and that we also provide services that our clients desperately need and often cannot access anywhere else. We do this because it is the right thing to do, because we are morally and ethically required to do this and because as an organization that has been entrusted with significant public funds, it is the right thing to do.

Int. 958-2015 is a well-intentioned effort to assess how clients feel about the services they are receiving from BDS and other organizations. Although BDS agrees wholeheartedly with the sentiment that led to this bill, we must respectfully oppose the legislation in its current form.

We have two sets of concerns regarding this bill. The first and primary is the requirement in the legislation that individuals waive confidentiality when they fill out the prospective survey instrument.

Int. 958-2015 states in pertinent part:

“Such [client satisfaction] survey and instructions each shall include a prominent notice informing the client that by submitting the survey, **the client waives confidentiality with respect to the client’s responses, including the existence of the representation.**”

BDS strenuously objects to any legislation that requires our clients to waive any aspect of the attorney/client relationship for a client survey. The attorney/client relationship is founded on the privileged nature of any communications between client and attorney. This privilege is so fundamental and inviolable that it is only by way of a court order issued in very limited circumstances that we would ever disclose confidential information given to us by our client. Once the client waives confidentiality, there may be no limit to the possible use of the information provided in the survey. There is no way for a client (or even us, as attorneys) to understand the possible impact of such a waiver on their case now or in the future. Information given in a seemingly innocuous survey could be used against an individual in immigration, housing, child welfare or other proceedings. In some cases, once communications are subject to a waiver, any party can be subpoenaed to testify. If a client waived the privilege and said he told his lawyer he was innocent, it is conceivable that a prosecutor could call the attorney to the stand and argue that the privilege has been waived, forcing the attorney to testify to the nature of the client conversations. With the current legislation, there is nothing to prevent a prosecutor from issuing a subpoena or making a FOIL request for a client’s survey responses.

As valid as an assessment of the client experience with his or her attorney may be, it is not worth giving up this extremely precious and meaningful right. Nor is there any reason this needs to happen. Most client surveys gauging criminal defendants' satisfaction with their public defenders have been conducted by independent researchers, with the results collected and reported anonymously.¹ There is no other valid way to conduct such a survey.

BDS also has a variety of concerns regarding the collection, validity and use of these planned satisfaction surveys.

First, the likelihood of a statistically valid sample being obtained in these types of client surveys is very low. In the area of health care patient satisfaction survey data, studies find that only a small percentage could be considered statistically valid or reliable.² We foresee similar difficulties in drafting and implementing client satisfaction surveys for legal services.

In a study of criminal defendants conducted by Washington State University researchers in 2009, 27% of potential survey takers completed the client satisfaction study. Researchers obtained the majority of their survey responses (134 total) from in-person interviews that took place at the local courthouse (68), at the public housing authority (11), and at the public defender's office (55).³ The least effective methods included the mailed surveys, for which only 12 responded out of the 300 mailed. Also among the least effective were the telephone (10 responses of 50 attempts) and the internet link sent via postcard (zero recorded responses out of 218 mailed). Researchers opined that "these low response rates were to be expected due to the disproportionate lack of internet access and a permanent address among members of this population."⁴

Second, client satisfaction scores do not necessarily correlate to the quality of the work of a legal services provider or individual attorney. In our work, it is important for attorneys to be honest with their clients and give them the real story. Many of our clients are in dire circumstances, facing significant prison time or other serious consequences. In this system, it is only the defense attorney who is legally permitted to speak to the client once the case is brought. Thus, the old adage about blaming the messenger is often brought to life in this context. Our clients often associate the consequences they are facing with us, as their attorney, because we are the one explaining the plea offer on the case or the risk of proceeding to trial.

¹ See Christopher Campbell et al, *Unnoticed, Untapped, and Underappreciated: Clients' Perceptions of their Public Defenders*, BEHAV. SCI. LAW (2015).

² John Sitzia, *How valid and reliable are patient satisfaction data? An analysis of 195 studies*, 11 INTL J. FOR QUALITY IN HEALTH CARE 319–328 (1999).

³ Christopher Campbell et al, *Unnoticed, Untapped, and Underappreciated: Clients' Perceptions of their Public Defenders*, BEHAV. SCI. LAW (2015), p. 5.

⁴ *Id.*

It is important that we be able to be straight and honest with our clients, even when the news is bad. But if the client might decide he doesn't "like" the attorney because of that bad news, some attorneys may decide that being "liked" is more important than being candid with the client. This could create poorer actual legal services, a goal that is not in anyone's best interest.

Client satisfaction surveys have resulted in absurd unintended consequences in the medical field, such as an uptick in prescribing unnecessary medications to patients.⁵ *The Atlantic* recently reported that an alarming number of hospitals offer poor care and still get high patient-satisfaction ratings. These are hospitals, in other words, that patients like but which have higher rates of patient fatalities, hospital re-admittance, or serious complications. As one clinician noted in the article, "Patients can be very satisfied and be dead an hour later."⁶

BDS values conveying information honestly and candidly to our clients. We also value excellent legal work, including investigation of cases, researching legal issues, conferencing cases with colleagues and supervisors, attending continuing legal education programs and training sessions. Each of these actions are invisible to clients yet may be the most important in obtaining the best possible result in each case. To be sure, treating clients with dignity and respect is the hallmark of our office. We know that in the lives of poor people, callous treatment is commonplace. We take the time with our clients so they know what is happening in their court case, so they can adequately explain the circumstances of their arrest to us and so they can ask questions about the justice system.

Many of our clients are mentally ill, have developmental disabilities or are facing obstacles that are unimaginable to the City Council. In Brooklyn, a large percentage of our clients are from other countries and do not understand anything about the American judicial system. It is hard to imagine how these issues will be factored into surveys.

⁵ For example, when the Affordable Care Act linked patient satisfaction surveys to hospital pay, many experts noted an uptick in the prescription of opiate drugs as an unintended consequence. See, e.g., Jeffrey Bendix, *Are Medicare's patient satisfaction surveys contributing to opioid abuse?*, MEDICAL ECONOMICS, June 26, 2014.

⁶ Alexandra Robbins, *The Problem with Satisfied Patients*, THE ATLANTIC, April 17, 2015 available at <http://www.theatlantic.com/health/archive/2015/04/the-problem-with-satisfied-patients/390684/>. Unsurprisingly, research shows that hiring more nurses, and treating them well, results in the best patient outcomes. See, e.g., Matthew D. McHugh et al., *Nurses' Widespread Job Dissatisfaction, Burnout, And Frustration With Health Benefits Signal Problems For Patient Care*, 30 HEALTH AFFAIRS 202-210 (2011); see also Norman Lefstein, *Securing Reasonable Caseloads*, AMERICAN BAR ASSOCIATION (2011), available at http://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf (arguing the importance of reducing public defender caseloads in order to improve the quality of representation)

Proper evaluation and measurement of client experience

It is completely appropriate and desirable for the the Mayor's Office of Criminal Justice to collect and assess information on the quality and effectiveness of legal offices that provide services to New York residents. We would look forward to working with the Mayor's office to analyze the standards by which we should be judged—such as standards set forth by the New York State Office of Indigent Legal Services. Fundamental understanding about what it takes to provide the type of defense work we do would be as valuable to us and our clients as it would be to the City.

BDS recommends that the City Council engage with an independent consultant to analyze the best way to assess the services provided by public defenders and to gain an understanding of the concerns of the consumers of the criminal justice system. This could improve the experience of the public and create a more fair and just system, goals we can all agree with.