



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

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*BROOKLYN DEFENDER SERVICES***

**Presented before**

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

**Oversight Hearing on Violence in City Jails**

**October 25, 2017**

My name is Kelsey DeAvila; I am the Jail Services Social Worker at Brooklyn Defender Services. I would like to thank the Committee on Fire and Criminal Justice Services for convening this hearing on violence in New York City jails. BDS provides comprehensive public defense services to more than 30,000 people each year, thousands of whom are incarcerated in the city jail system either while fighting their cases or upon conviction of a Misdemeanor and sentenced to a year or less. BDS' Jail Services Division provides supportive services and direct advocacy on behalf of our incarcerated clients. This testimony draws on the experiences of our clients and staff in the jails. We also call the Committee's attention to the Fourth Quarterly Report ("Report") recently filed by the Independent Monitor in the Nunez case regarding the Department of Corrections' ("DOC" or "Department") efforts to reduce violence under the settlement reached in that case.

In any discussion about improving jail conditions, it is crucial to first acknowledge the vast number of people who simply should not be incarcerated in the first place. For example, many thousands of New Yorkers are needlessly detained each year because they are unable to immediately pay bail, resulting in short jail stays with devastating consequences. Individuals are separated from families and communities; risk loss of employment, benefits and housing; suffer interruptions in medical care; and endure chaotic and often violent stays in custody. Thousands more are detained for longer stretches because bail is set, either intentionally or neglectfully, in

an amount and form their families could never afford. Meanwhile, high turnover in the jail population puts a strain on staff, housing and healthcare resources in the jails. Broken Windows policing and the widely-discredited Drug War needlessly sweep masses of people into the criminal legal system; of the 268,775 arrests in New York in 2016, more than 122,000 stemmed from allegations relating to fare evasion, drugs, petit larceny (often baby food, laundry detergent and other essentials), trespass (often related to shelter-seeking), graffiti, or sex work. In addition to mitigating harm to individuals, ending unnecessary arrests and discriminatory bail practices that discriminate against poor New Yorkers will contribute to reducing violence and easing other management challenges.

Nevertheless, addressing endemic violence in New York City jails will take more than reducing population turnover and crowding. More broadly, the Department and city officials must act urgently to address the culture of violence which remains deeply entrenched among uniformed jail staff at all levels.

### **The Culture of Brutality Persists in NYC Jails**

The Nunez Report details the same disturbing behavior routinely reported by our clients: Officers who “relish confrontation,” stoke conflict between incarcerated people, and resort to violence as a first response. Despite the Department’s efforts to train staff in de-escalation techniques, staff are reported to utilize a one-size-fits-all approach to force, unleashing violence far out of proportion to what is necessary to contain a situation. Incidents of real or perceived non-compliance which are minor or already under control result in individuals being thrown to the ground.

Claims that the behavior of incarcerated people justifies current rates of violent force are easily belied by the data. According to the Nunez Report, during the monitoring period, uses of force to prevent harm declined by 78% and those in response to fights dropped by 18%. Meanwhile, uses of force in response to “resisting restraints” doubled, and those responding to “refusal to comply” were up 35%. Altogether, the Report finds that nearly a quarter of use of force incidents were avoidable – a third of those arising from unprofessional staff behavior. In sum, rather than exercising patience, restraint and common sense, uniformed staff too often fuel conflict through belittling name-calling and provocation, then jump at the chance to use violence.

We are deeply troubled by frequent and persistent reports that staff use pepper spray indiscriminately and without provocation. BDS clients have reported several incidents which illuminate the problem. In one instance, an officer flew into a rage during a verbal disagreement with our young client. Despite no physical threat to the officer or others, she took out her MK9 pepper spray. When our client fled, the officer unleashed the pepper spray as she chased him through the mess hall, dousing everyone else in the area. The excessive pepper spray triggered a severe asthma attack which left our client coughing up blood. He was taken to intake where he waited several hours before receiving medical care. The incident likely sent many bystanders to the clinic as well.

This story is but one among many. I and other BDS staff members frequently take reports about entire housing units enshrouded in a fog of chemical agents. Staff’s lack of restraint with respect to the use of chemical agents is galling. Just last week I witnessed officers on the bus jeering as

their colleague regaled them with stories of emptying canisters of pepper spray on people – including one in which he “made a grown man cry.”

More challenging to quantify than staff use of force, but nevertheless disturbing, is that our clients frequently report that staff are complicit in, encourage, and facilitate gang violence to do their bidding. In one recent incident, an officer engaged our client in a verbal argument, ultimately threatening to place him in a unit housing rival gang members. Making good on this threat, our client was later moved to a cell in the jail’s intake where he encountered approximately seven members of a rival gang. As planned, he was attacked and suffered two deep cuts on his face, requiring several stitches.

### **People in Rikers Are Subject to Daily Humiliations and Deprivation**

Beyond the most serious cases of brutality, stemming the tide of violence in city jails requires addressing the myriad humiliations people in city jails endure on a daily basis. These structural and social cruelties contribute to an environment rife with tension. For example, most young people are limited to visits devoid of meaningful physical contact – separated by a wide table and plexiglass barrier. Ostensibly a security measure, the enforced separation of young people from their mothers’ loving touch breeds deep resentment. To make matters worse, conversations during visits are often dominated by the humiliating ordeal visitors endure to get through “security procedures” prior to seeing their loved ones.

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

All agree that reducing violence among incarcerated people is a worthy aim. As a first step, it is paramount to address the ways staff practices fuel the broader culture of violence in city jails. So long as humiliation remains a celebrated tactic and gangs are manipulated to control or intimidate, violence will likely remain unabated in New York City jails. Unfortunately, the Department’s investigation and promotion practices only reinforce the conclusion that uniformed staff are permitted to brutalize the people in their care with impunity.

### **Internal Investigators Help Cover-Up of Abuse**

At the facility-level, supervisors routinely ignore evidence of collusion and decline to interview victims or witnesses of uses of force, opting instead to rubber-stamp the statements of officers they are tasked to oversee. Inquiries by the Department’s Investigation Division also exhibit substantial deficiencies, and are plagued by severe delays.

Interviews with victims or witnesses of use of force regularly take place within earshot of other people and staff. Uniformed staff are known to retaliate against people who report misconduct, both violently and through more subtle means, for example, denying access to commissary or visits. Fearing reprisals, many of our clients are unwilling to give full accounts of an incident without confidentiality. When victims and witnesses choose to make statements despite the risk of retaliation, their accounts are too often discredited without justification.

The apparent consequence is an investigations process that fails to uncover staff misconduct or serves to justify it, rather than enforce accountability. As noted by the Nunez Monitor, 92% of investigations between January and June 2017 found no staff wrong-doing, despite clear objective evidence of much higher rates of unjustified force. In rare cases that an investigation finds staff misconduct, discipline is delayed and largely ineffectual, except in certain high-profile cases.

### **DOC Supervisors Model Bad Behavior**

A major shift in Department culture can only be engendered when supervisors and management respect the basic human dignity of the people in their care, demonstrate a baseline of professionalism, and ensure accountability among the rank and file. At present, this is sadly far from the case. This challenge is of the Department's own making. The long-standing and consistent failure to meaningfully investigate staff misconduct and bring those responsible to account has allowed many of the individuals responsible for that misconduct to advance into leadership roles.

BDS staff spend considerable time in the jails and are dismayed by the demeaning language and dehumanizing attitudes routinely on display among supervisors. As a matter of course, people in department custody are almost never referred to as "people" – at best they are "packages" or "bodies," frequently they are called "animals" and too often they are referred to only by expletives or racial epithets. Rather than setting an example of professionalism, supervisors routinely exchange gossip and insults about incarcerated people. During a jail tour last year, a BDS staff member witnessed a supervisor laughing enthusiastically as their subordinate recalled threatening to empty a canister of pepper spray into the open mouth of a person who was lying prone on the floor, handcuffed.

It is not uncommon to hear supervisors encourage cruelty, disrespect and violence toward incarcerated people. More disturbing, however, is the frequency with which supervisors themselves are responsible for unnecessarily escalating conflicts and encouraging their subordinates to resort to violent force quickly and excessively. Once an incident is underway, supervisors sometimes participate in the very acts of brutality they should intervene to prevent.

The Nunez Monitor documents one such incident in which a Deputy Warden ordered officers to use military-grade pepper spray on an individual who was restrained, facing a wall and not resisting. Such misconduct on the part of supervisors sends a clear message to line staff that violence against incarcerated people is permissible and encouraged.

We urge the Department and city officials to closely review promotions, demand a baseline of professionalism and competence from supervisors, and strictly enforce accountability. With

even a semblance of adequate supervision, we believe some of the most egregious incidents could be avoided. In the long-term, it is imperative that management and supervisory staff embrace and demonstrate respect for the dignity of the people in their custody. Similarly, the city must hold Department leadership accountable for policies and practices that continue to violate the human rights of people in New York City jails.

Thank you for your time and consideration of our comments. If you have any questions, please feel free to reach out to Jared Chausow, our Advocacy Specialist, at 718-254-0700 ext. 382 or [jchausow@bds.org](mailto:jchausow@bds.org).