



TESTIMONY OF:

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The New York City Council Committee on Public Safety

Hearing on Int. 1847

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My name is Lisa Schreibersdorf and I am the Executive Director of Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over tens of thousands of clients in Brooklyn every year. We thank the New York City Council Committee on Public Safety, and, in particular, Chair Donovan Richards, for the opportunity to testify about Int. 1847, which would expand the role of the Office for the Prevention of Hate Crimes (OPHC).

This hearing is happening at a pivotal moment, just as our state legislators and Governor Andrew Cuomo took decisive action toward ending mass incarceration by enacting new bail, discovery and speedy trial laws.¹ Yet, as we speak, this fragile progress is threatened. Opponents of reform are spreading fear and hate, utilizing misleading and outright false headlines, paying for a flood of Facebook posts which spew a steady stream of propaganda designed to force Albany to not only roll back these changes, but pass laws that are even more regressive than those preceding the reforms.

¹ Lawmakers consulted with all stakeholders, from public defenders and formerly incarcerated New Yorkers to prosecutors and law enforcement for several years and ultimately made critical changes to our pre-trial justice system so that people in poverty would not suffer the extreme punishment of jail before a fair trial in most cases, just as has always been the case for those who could afford to pay bail. They also guaranteed that people facing criminal allegations would get access to the evidence in their cases, which had already been the law in 46 other states across the country.

Perhaps one of the most disturbing examples of this hate and fear-mongering messaging has been about Tiffany Harris, a person whom my office represents. I cannot speak to the details of her case, other than what has been publicly reported. At least two out of three of her alleged victims have said they believe Ms. Harris belongs in a hospital and that is exactly where she is at this time. Ms. Harris has been in a hospital receiving treatment for mental illness since January 1. She has had other arrests for similar behavior that clearly derive from her mental illness, most of them not involving Jewish people. If she were arrested only a few weeks before, Tiffany would certainly be in jail. She would be on Rikers Island in a place beset by violence and rape. She would not be receiving even adequate care and would likely be getting worse while she was incarcerated. Instead, forced by the new law to choose any option but jail, the judge found the solution that was actually more appropriate, more humane and better for public safety in the long run – one which everyone seems to agree makes sense.

The use of charged language in the case of Tiffany Harris, designed to inflame the religious Jewish community, is deeply problematic. As a Jewish person myself, I find it troubling that an oppressed people would contribute to the oppression of another people. In this country, Black people are oppressed by mass incarceration after a long history of enslavement and violent disempowerment, using language that is strikingly similar to what we are hearing at this time about “dangerous” people and the fact that we must immediately incarcerate them, not even provide a trial, much less a fair one.

We cannot ignore this history when we talk about how to solve the problem of hatred, bias and intolerance. And in particular we must not conflate people acting from untreated mental illness with those who know exactly what they are doing when they commit acts against someone because of their race, gender, sexual and gender identity, religion, ethnicity, immigration status or other characteristics.

As a City, our goal should be to combat and ultimately eradicate all forms of hate, discrimination, and violence, but we must know that we cannot achieve this through the criminal justice system. Our society has created a craving for jail by often making it the first and only response to social problems, forsaking opportunities to address problems in any other way. The proliferation of alternatives to detention and incarceration have shined a spotlight on non-carceral solutions, but we must go much further to actually address the roots of social problems by ensuring access to quality mental health and substance use disorder treatment in the community. Instead, we have fostered an addiction to punishment. We use it as a coping mechanism to deal with our anxieties and fear, to satisfy our hatreds and resentments, to park our bias and to validate a simple, but wrong, story about the world.

While it is a positive for the City Council to focus on hate, it is problematic that this is being done at this precise moment, when Tiffany Harris has been used as an example of anti-Semitism rather than a victim of racism against Black people, which would be a lot more accurate. Ms. Harris is a victim of poor services and a lack of will toward adequately funding resources for people of color in this city.

As a Jewish woman whose mother and grandparents lived through the Holocaust, I really do appreciate the look at hate and violence in the wake of the apparent rise in anti-Semitism, something that is extremely scary to me. But why didn't we have this hearing when Black people were suffering in this city in the definitively American version of hate? Why are we having this hearing right as the bail laws are changed and jail was not an option for Tiffany Harris?

Allowing ourselves to fall into the scapegoating of a Black woman with mental illness, someone more likely to be the target of hatred and bigotry than the perpetrator of it, is not only blatantly naive, it is dangerous. And if we adopt any of this rationale or the reasoning that flows from it, we are all complicit in allowing white supremacy to win once again. And that is because the use of punishment before trial is the province of a mob mentality, not a reasonable government attempting to follow the constitution and American values. And the use of predicting so-called "dangerousness" is a uniquely American trope designed to justify such horrors as lynchings of Black people for decades.

Policymakers agree that the use of the criminal legal system and mass incarceration perpetuates, inflicts, and even creates violence, particularly in jails and prisons. In fact, just last week, the Council held a hearing on the exponential increase in violence in City jails, much of which is inflicted by staff on a population that is 86% Black and Latinx. Not only is there violence, but a 2016 investigation in The New York Times found a "scourge of racial bias" and brutality based on race in New York State's prisons, to which the state apparently responded only with a still-going (after three years) investigation.²

Many people targeted by hatred in the community based on their identities have the experience of being targeted by law enforcement for that same reason. In particular LGBTQ people of color report constant harassment by police. They are not likely to report incidents of violence due to their fundamental distrust of police and the system. People of color in general tend to under-report acts of hate because they understand that society tacitly approves of the attitudes that give rise to the hatred itself. That is one reason that this hearing, while well-intentioned, has a timing that is not satisfying. It seems to be pandering to one type of hate and does nothing to address another. It does not distinguish between hate derived from underlying attitudes that pervade our society while focusing on surface interactions that are a symptom of those attitudes and are merely the tip of the iceberg. And, by continuing to use police as the first responders, we will do nothing to move into another solution, one that can have a long-lasting impact and one which cuts against the messages our residents are unfortunately getting from Trump and the white supremacy movement, flamed by our very own police chief and other law enforcement officials. To truly foster safety and justice for all New Yorkers, we need to de-link efforts to fight hate and intolerance from the use of the police.

I recognize this de-linking is, in part, the spirit of the OPHC. According to its website, "Embedded in the Mayor's Office of Criminal Justice, OPHC will take a holistic approach to preventing hate crimes, developing and coordinating community-driven prevention strategies to address biases fueling such crimes, and fostering healing for victims and their communities." Yet

² <https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html>

even in its name the OPHC remains inextricably linked to criminalization, and the law explicitly directs the office to work with law enforcement, raising questions about which communities will feel safe engaging its services. The placement with the Mayor's Office of Criminal Justice also makes clear that there is a law enforcement element to the solution that really does not belong there, except in the most dire cases.

Int. 1847 would expand this mission to require individualized responses to hate crimes and “[p]rovide relevant information to the affected community within 24 hours of a determination that a violent hate crime has occurred. Such information shall include how the administration is responding to the alleged violent hate crime and the resources currently available to affected persons.” OPHC would also be required to notify the Mayor, the Speaker, the Public Advocate, and the local Councilmember about the hate crime. But it does not require any diversion or reduced law enforcement role in such situations, even if the victims want it, as was the case when Tiffany Harris was first arrested.

Certainly, providing targeted resources and information to communities and individuals affected by acts of hate and violence is important. However, we must assure ourselves that all the communities of this city living in such victimization and ongoing trauma are to be equally served. The City Council must also be extremely cautious not to fall into the trap of sounding an alarm in communities that are already terrified that will lead them to a misguided and ineffective “solution” in rolling back the new bail law that is, quite honestly, giving Tiffany Harris and her victims a chance at healing, something the old system did not do.

Ultimately, eradicating hate and violence requires solidarity and compassion between all communities – one element of which is a small and fair criminal justice system. BDS looks forward to continuing to work with the Council toward that end.

Thank you for your time and consideration of my comments. If you have any additional questions, please contact Jared Chausow, Senior Policy Specialist, at jchausow@bds.org.