



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Yung-Mi Lee – Supervising Attorney, Criminal Defense Practice

BROOKLYN DEFENDER SERVICES

**Presented before
The New York City Council
Committee on Courts and Legal Services
Oversight Hearing: Evaluating the Progression of Justice Reboot**

October 26, 2015

My name is Yung-Mi Lee. I am a Supervising Attorney in the Criminal Defense Practice at Brooklyn Defender Services (BDS). I have practiced as a criminal defense attorney in New York and New Jersey for over 22 years. I currently represent misdemeanor and felony clients in Brooklyn criminal and Supreme Court.

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 over 40,000 clients in Brooklyn every year. We thank the City Council Committee on Courts and Legal Services and the Committee on Public Safety for the opportunity to testify about Justice Reboot and case processing in Brooklyn.

Brooklyn Defender Services strongly supports the City's efforts to reduce the number of people who await trial on Rikers Island. In 2015, 67,672 people were admitted to New York City jails, with an average daily population of 10,240.¹ During this period, approximately

¹ Mayor's Management Report, available at http://www1.nyc.gov/assets/doc/downloads/pdf/MMR_FY15_FINAL.pdf

13,100 people arraigned in Brooklyn courts spent time on Rikers Island, 89% of who were identified as “African-American” or “Hispanic.”² Roughly 75 percent of people on any given day at Rikers Island are there in pretrial detention – presumed innocent under the law and ostensibly waiting for their day in court. Yet the reality is that judges and prosecutors are just waiting for them to plead guilty.

Justice Reboot aims to reduce “unnecessary incarceration” by reducing court processing times.³ While a laudable goal in concept, in a system where the favored outcome is a plea bargain, the singular focus on case-processing time results in pressure on the defendant to take a plea even if that plea is not fair or does not reflect his or her individual circumstances. As the attorney for those clients, we agree that the courts should move cases expeditiously but we warn against the tyranny of harsh and inflexible time limits and pressures because they can work against individualized justice and fairness.

There are ways beyond simply expediting cases to significantly reduce the jail population in NYC. For example, an honest look at the District Attorneys’ policies regarding bail requests could be start. Since every stay at Rikers cost NYC thousands of dollars, the District Attorneys, as elected officials, should be held accountable for the manner in which they recommend the use of these expensive resources. Another important example would be to promote the better transfer of information about the case to the defense earlier in the proceedings. Although reform of the discovery laws would require legislative change, the City Council and Mayor’s Office of Criminal Justice have the ability to persuade prosecutors to adopt a policy of voluntary discovery that would immediately improve the case processing time of cases, dramatically improve the fairness of the proceedings and would save the City millions of dollars in reduced pending caseloads and pre-trial incarceration. .

Justice Reboot’s efforts to reduce the duration of felony cases has resulted in a drop in the number of pending jail cases that are two or more years old. Yet 2016 data from the Office of Court Administration shows that the number of pending felony cases is up since 2015.

Jailed Pending Supreme Court Caseload (10/07/2016 vs 10/16/2015 Snapshot)															
County	All Ages			0-1 Years Old			1-2 Years Old			2-3 Years Old			3+ Years Old		
	2016	2015	% Chg	2016	2015	% Chg	2016	2015	% Chg	2016	2015	% Chg	2016	2015	% Chg
BX	1,493	1,410	6%	1,013	908	12%	346	336	3%	97	108	-10%	37	58	-36%
BK	1,334	1,255	6%	1,031	974	6%	254	227	12%	41	43	-5%	8	11	-27%
MN	1,985	1,911	4%	1,649	1,581	4%	278	260	7%	41	45	-9%	17	25	-32%
QN	591	638	-7%	422	472	-11%	142	128	11%	24	26	-8%	3	12	-75%
SI	139	130	7%	120	106	13%	17	18	-6%	2	6	-67%	0	0	n.a.
NYC	5,542	5,344	4%	4,235	4,041	5%	1,037	969	7%	205	228	-10%	65	106	-39%

Source: OCA

Updated: 10/13/2016

² Rikers Island Population Demographics, FY16 Qtr 4, available at

http://www1.nyc.gov/assets/doc/downloads/pdf/FY16_4TH_QUARTER_INTRO_766_AD_P ADMITS.PDF.

³ Press Release: Mayor de Blasio and Chief Judge Lippman Announce Justice Reboot, an Initiative to Modernize the Criminal Justice System, Office of the Mayor, April 14, 2015, available at <http://www1.nyc.gov/office-of-the-mayor/news/235-15/mayor-de-blasio-chief-judge-lippman-justice-reboot-initiative-modernize-the>.

The OCA data is consistent with the trends that BDS has seen over the past few years. BDS data and case tracking shows that the number of indicted felony cases has increased and so has the length of the life of those cases. Indeed, we have the exact same number of felony cases where clients are in jail for more than one year as of the end of September as we did in April, when Justice Reboot was announced. While the system is resolving older cases at a slightly faster rate than a year ago, we now have more felony cases and indictments and the cases last, on average, longer than they did a year ago, so there is no net gain. At BDS, we are not feeling the impact of Justice Reboot on our case load.

It is clear that the project's emphasis on prioritizing the oldest cases has not worked to reduce Rikers populations in any meaningful way. We recommend, instead, that the project instead on understanding the causes of delay and incentivizing the courts and prosecutors to reduce unnecessary incarceration, in line with the Council's and MOCJ's objectives.

1. Qualitative Review of Cases

The City should evaluate the cases that are approximately six months old rather than only the oldest cases. These cases are the ones where early plea bargaining has not been successful. Some of these cases are intended for trial and those cases should be expedited. Cases where there are impediments to resolving the case by plea bargain should be analyzed as to the reason. It is better to determine the best path of the case early on, including alternatives to incarceration, and have the time for the parties to agree and pursue these options. At this point there should be an emphasis on reducing or eliminating bail for our clients who are still incarcerated after so long, particularly on cases where a non-jail disposition is possible.

2. To truly decrease case processing times, DA's should turn over the police reports early in the case.

The greatest injustice in New York's criminal justice system is that our criminal procedure laws do not require early disclosure of the evidence on the case to the defense. This lack of information is unfair and results in wrongful convictions. It also has a pernicious effect on the process of plea bargaining. Without any information on the case, it is hard for the defendant to trust the attorney when we recommend acceptance of a plea. It is hard for the defense attorney to even assess the legitimacy of a plea offer without the police reports. Without the information we need to negotiate the plea bargain we believe is fair and appropriate, we are unable to move the process forward. Instead the case ends up in a standstill for months. When the case finally comes to trial, our experience is that the plea offer often drops significantly. In Brooklyn, many cases are subject to open file discovery due to the policy of the DA's office. Our data shows that the open file discovery alone reduces the average length of case by six months. Due to the expense associated with delay, the City Council should request that the District Attorneys explain why they decline to adopt an open file discovery policy for all cases other than those in which they are concerned about the witness' safety.

We spoke in depth about the need for discovery reform at the Committee on Courts and Legal Services hearing on September 23, 2016. Please see our testimony, available on www.bds.org, for more information along with recommendations on what the Council can do to support statewide discovery reform.

3. Encourage prosecutors and judges to think holistically about the consequences of their bail recommendations and decisions

The Vera Institute of Justice completed a groundbreaking report detailing how New Orleans went about reducing the number of people the city incarcerates on any given day by more than two-thirds since Hurricane Katrina.

The researchers found that decreasing the number of jail beds from 5,832 to 1,438 was critical in reducing incarceration. “There’s absolutely no underestimating how important it is to constrain demand for jail beds by restricting supply,” one researcher said. By capping the number of available beds, the City Council sent a signal to everyone in the system—police, prosecutors, judges—that jail was a resource that was not to be overused.⁴

Similarly, in Rochester, the number of jail beds is limited. Each day the court is advised about the number of available slots and the Judges are able to use the resource in way that makes the most sense.

The City Council could encourage the Office of Court Administration to generate information for Judges regarding their use of jail beds. Prosecutors could also be required to keep data on their own bail requests so that the public would have access to that information. This could also form the basis for DA self-evaluation regarding bail practices. Judges and prosecutors should have some accountability for the expense associated with setting bail. In addition, the Council should recommend eliminating thousands of jail beds in NYC rather than increasing the supply, as has been requested by DOC.

Of note, the New Orleans City Council also changed the summons system, resulting in officers writing summonses for 70 percent of nonviolent offenders.

The New York City Council has already taken important steps in reforming summonses and how NYPD handles low-level cases. We look forward to seeing the fruits of those reforms when they go into effect next year. But the other lesson from the Vera report is clear: in order to lower the number of people the system incarcerates, we have to take away the incentives for incarceration and provide fewer opportunities for incarceration.

Conclusion

⁴ Calvin Johnson, Mathilde Laisne, & Jon Wool, *Criminal Justice: Changing Course on Incarceration*, DATA CENTER RESEARCH (June 2015), available at https://s3.amazonaws.com/gnocdc/reports/The+Data+Center_NOI10_Changing+Course+on+Incarceration.pdf.

The City Council should consider whether the goal of the Justice Reboot initiative, to reduce case processing times, is sufficient to properly guarantee the most limited and appropriate use of pre-trial detention. Although clearly one important aspect of reducing the incarceration rate at Rikers, other measures that get to the heart of the bail decision and the pre-trial process must also be addressed. A drastic increase in programs and policies to address mental illness, poverty, addiction, homelessness, and widespread discrimination would go a long way to doing the decreasing incarceration by stopping the cycle of incarceration and reducing the chance of re-arrest while improving the life circumstances of poor people of color in NYC .

We look forward to working with you to achieve these goals. If you have any questions, please do not hesitate to contact me at ylee@bds.org or 718-254-0700 ext. 104.