



**BROOKLYN  
DEFENDER  
SERVICES**

**TESTIMONY OF:**

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*BROOKLYN DEFENDER SERVICES***

**Presented before**

**The New York City Council Committee on Criminal Justice**

**Oversight Hearing on Safety and Security in City Jails**

**Int 0447-2018 - Requiring the dept of correction to report on the rate of lockdowns.**

**Int 0741-2018 - Prohibiting fees for telephone calls from inmates in city jails.**

**Int 0779-2018 - Requiring the DOC to report on use by dept staff of any device designed to incapacitate a person through the use of an electric shock.**

**April 23, 2018**

My name is Kelsey DeAvila; I am the Jail Services Social Worker at Brooklyn Defender Services. I would like to thank the Committee on Criminal Justice, and in particular Chair Keith Powers, for convening this hearing on safety and security in New York City jails, as well as three important pieces of legislation. 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 a sentence of 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. BDS has testified to the Council on these topics before, most recently at the Oct. 25, 2017 hearing on violence in City jails. In addition to our comments today, we also call the Committee's attention to the Fifth Report of the Nunez Independent Monitor ("Nunez Report") regarding the Department of Corrections' ("DOC" or "Department") efforts to reduce violence

under the settlement reached in that case. Ultimately, we continue to urge the City to close the jails on Rikers Island.

### **BDS Supports Int 0447-2018 - Requiring DOC to report on the use of lockdowns.**

In its January 8, 2018 report on lockdowns, the Board of Correction revealed that, “Despite a 32% decrease in the DOC average daily population (ADP) since 2008, there has been an 88% increase in lockdowns.”<sup>1</sup> During lockdowns, people are confined to their cells and generally denied any and all access to programs and services. They cannot go outside for recreation, shower, use telephones or law libraries, access religious services, attend school, or receive family or counsel visits. They are often denied medical care, including mental health care. Some clients have reported being denied toilet tissue. Missed counsel visits can require cases to be adjourned, prolonging pre-trial detention. Missed mental health treatment can result in the rapid decompensation of vulnerable people. BOC’s report also found lockdowns often lead to violations of the Minimum Standards.<sup>2</sup>

Lockdowns amount to group punishment, apparently used by DOC as a convenient management tool with little regard for the rights of people in its custody. People are effectively held in solitary confinement for days at a time with no due process.

Int. 0447 will require regular reporting on the number of lockdowns and the underlying reasons for the lockdowns. Such basic transparency will assist policymakers and the public in analyzing DOC policies and practices. Ultimately, a new statute or Minimum Standard is needed to ensure that DOC does not abuse its ability to lockdown housing units or facilities, but this legislation is an important first step.

### **BDS Strongly Supports Int 0741-2018 - Prohibiting fees for telephone calls from inmates in city jails.**

Every year, the City of New York anticipates approximately \$20.5 million in revenue from the Department of Corrections, with the bulk of that money coming from incarcerated people and their families and friends. (In 2016, DOC actually collected \$22.4 million.) The majority of people in City jails are detained on bail they cannot afford, presumed innocent but, in effect, very severely punished. It is unconscionable that the City would turn to this population for revenue.

Approximately \$13 million is generated from people who are incarcerated themselves who are forced to pay high mark-ups on items in the commissary. These commissary purchases are often critical supplements to what is provided by DOC – food to offset a minimal diet, pain relievers for those with chronic injuries, feminine products for women.<sup>3</sup> Outrageously, regulations promulgated by the State Commission on Corrections (SCOC) require that local jail commissaries “provide a modest return above costs,” with profits “deposited in a separate bank account and shall be utilized only for purposes of prisoner welfare and rehabilitation.” In its

<sup>1</sup> NYC Board of Correction Lockdown Report (2018), available at: <http://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/Lockdown-Report-Jan-8-2018.pdf>.

<sup>2</sup> Ibid.

<sup>3</sup> NYC Council, Report of the Finance Division on the Fiscal 2018 Preliminary Budget - Department of Correction (2017), available at: <http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/072-DOC.pdf>.

February 2018 report on the worst jails in New York State, SCOC explicitly cited NYC DOC for failing to generate this return, instead finding it operates at a loss.<sup>4</sup> It is unclear whether this allegation is founded. Regardless, programs and services for incarcerated people should not be paid for by those whose liberty and economic means have been taken away.

Another \$5 million is generated in kickbacks from Securus, the company contracted by the City to provide telephone services. This is also unacceptable. Exorbitant rates for calls from City jails punish whole families and exacerbate inequality. The high rates force people to forgo food or other necessities just to be able to accept a call from a loved one. When our clients are in jail and, in many cases, ripped away from their jobs, the public has an interest in ensuring they can connect with their support networks and plan for the future. The government should not financially benefit by erecting barriers to these critical support networks. BDS applauds Speaker Corey Johnson for introducing Int. 0741 to end this injustice and urges the Council and the Mayor to enact it in this current budget.

I also note that one of the services provided by Securus and paid for by our clients and their families is warrantless surveillance. Securus and the government record and listen to phone calls made from within the jails and share the recordings with police and prosecutors to be used in criminal cases or other unrelated investigations. This practice raises serious Constitutional issues, as the City and a for-profit contractor are effectively waiving protections of the 4<sup>th</sup> Amendment for tens of thousands of people detained pre-trial every year without their consent, with a disparate impact that mirrors disparities in pre-trial liberty overall.

### **BDS Supports Int 0779-2018 - Requiring the DOC to report on use by department staff of any device designed to incapacitate a person through the use of an electric shock.**

BDS was alarmed to learn, via the press, that DOC would be providing Tasers to its staff. Already, corrections officers too often use violence not as a last resort but as a means of control and punishment. On their own, Tasers can be deadly, and they pose specific risks to people with medical conditions about which corrections officers are not typically aware. DOC staff will not be checking people's medical records before Tasing them, just as they do not check for asthma or other respiratory illnesses before using pepper spray.

If Tasers are readily available, we urge the Counsel to add this weapon to the list of categories to be disaggregated for reporting on uses of force. This information will help policymakers and the public analyze DOC policies and practices. Ultimately, BDS does not believe DOC can be trusted to safely and appropriately use Tasers.

### **Safety and Security in New York City Jails**

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<sup>4</sup> REPORT: The MOST PROBLEMATIC LOCAL CORRECTIONAL FACILITIES of NEW YORK STATE (New York State Comm'n on Corr. 2018), available at: <http://www.scoc.ny.gov/pdfdocs/Problematic-Jails-Report-2-2018.pdf>.

In any discussion about improving jail security, 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; struggle to maintain their mental health; 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. Taken together, people fighting drug charges constitute the largest group of people in City jails on an average day.<sup>5</sup> 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: “As discussed in the Staff Use of Force and Inmate Violence Trends section, many of the aspects of misuse of force that existed two years ago continue to plague the DOC, including head strikes, misusing chemical agents, use of prohibited holds, needlessly painful escort tactics, and incidents escalated by Staff (including hyper-confrontational Staff demeanor), and an overreliance on Probe Team responses... The Department does not consistently identify Staff misconduct when it occurs, and even when misconduct is identified, the Department does not always respond to it timely.”<sup>6</sup>

Claims that the behavior of incarcerated people justifies current rates of violent force are easily belied by the data. According to the Fourth 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

<sup>5</sup> NYC Dep't of Corr., NYC Department of Correction at a Glance (2017), [https://www1.nyc.gov/assets/doc/downloads/pdf/DOC\\_At\\_a\\_Glance-9-14-17.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/DOC_At_a_Glance-9-14-17.pdf).

<sup>6</sup> Steve J. Martin, et. al., Fifth Report of the Nunez Independent Monitor (Nunez Monitoring Team 2018), [https://static1.squarespace.com/static/59578aade110eba6434f4b72/t/5ad78195aa4a99b89ba58ca9/1524072853887/5th\\_monitor\\_report\\_04.18.18.pdf](https://static1.squarespace.com/static/59578aade110eba6434f4b72/t/5ad78195aa4a99b89ba58ca9/1524072853887/5th_monitor_report_04.18.18.pdf).

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, the officer 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 the officer “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, or through repeated and continuous verbal harassment. Fearing reprisals, many of our clients are unwilling to give full accounts of an incident without guarantees of 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.

### *Solitary Confinement is NOT the Answer*

Solitary confinement is at the core of mass incarceration in the United States – and, in particular, New York. It is the center of the onion of our inhumane and ineffective punishment system. In a letter of support for the HALT Solitary Confinement Act, Dr. Bandy X. Lee, Assistant Clinical Professor of Psychiatry at Yale and an internationally-recognized expert on correctional psychology and the prevention of violence, wrote: “It has now become evident that the opposite of solitary confinement—that is proper socialization, interaction, and training—is what brings about the result we all desire.”

In the wake of the attention to Kalief Browder’s tragic death, the New York City Board of Correction (BOC) heeded the call of grassroots activists, attorneys for incarcerated people, and mental health professionals, and implemented new minimum standards to dramatically curtail the use of existing solitary confinement units in City jails and prohibit it altogether for young people. However, these regulations explicitly allowed DOC to create new units for the indefinite isolation of the very people BOC sought to protect. BOC’s new standards failed to bring about the fundamental transformation of the punishment paradigm that is needed. Certainly, any rollbacks of these reforms would be a major step in the wrong direction. Rather, further steps are necessary to achieve the protection that BOC sought to create – ensuring that DOC cannot indefinitely isolate people is a necessary step towards promoting safety and security in the City’s jails.

*Improving Security and Preserving Family Bonds by Encouraging Contact Visits*

Research compiled by the VERA Institute shows that jail visitation preserves critical “pro-social supports” that improve behavior and, for young people, school performance.<sup>7</sup> VERA also found that “Incarcerated men and women who maintain contact with supportive family members are more likely to succeed after their release. For example, people in prison “who had more contact with their families and who reported positive relationships overall are less likely to be re-incarcerated. Families can motivate formerly incarcerated relatives to seek or continue drug treatment or mental health care, and they most frequently provide housing for newly released family members.”<sup>8</sup> Research conducted by the Minnesota Department of Corrections further found that “Visiting can help offenders build support networks they will need after release...[P]ositive interactions with friends and family can lower recidivism.”<sup>9</sup>

Our experience with clients in City jails affirms these findings. Beyond data and outcomes, visiting also provides immeasurable relief from the extreme stress of the jails. For our clients in solitary confinement, we are often the only people they see, other than occasional security staff, for days or weeks at a time. Others in General Population may get very few visits, even though they have family and friends who wish to support them. That should not be the case. However, the hardships of visiting at Rikers, in some cases coupled with unnecessary and humiliating security restrictions preclude many families and friends from being present during this difficult period. While we applaud the recent decision to restart a DOC bus that will bring visitors to Rikers, DOC has actively sought other policies and implemented other new practices to make visiting more difficult.

The Department has repeatedly argued that visiting restrictions are necessary to improve the security of the facility. For example, at the City Council Oversight Hearing on Violence in City jails on October 25, 2017, when asked what tool the Department needed in order to curb violence, and again at other more recent public hearings, DOC’s Commissioner Cynthia Bran said DOC sought more authority and autonomy to restrict and limit visits. If the primary concern of the Department is reducing violence, the Department should be working to improve access for visitors, make family visits more child-friendly, and reform the arduous visiting procedures to which families are subjected. Making visits more difficult and limiting physical contact will discourage family members from visiting, causing further isolation and desperation among the incarcerated population, thereby fomenting further violence.

DOC has not presented any compelling evidence to demonstrate that visitors are a significant source of contraband smuggling, but cited this purported concern when initiating its crackdown on visiting. To justify its request for a rule change to the BOC, the Department cited 29 individuals who were arrested with weapon contraband during the first 6 months of 2015. They also noted 24 weapons found in visiting rooms, although they do not define what constitutes a weapon. The Department stated that up to 1,500 people visit Rikers daily, though sadly that

<sup>7</sup> Sandra Villalobos Agudelo, *The Impact of Family Visitation on Incarcerated Youth’s Behavior and School Performance* (2013) at <http://archive.vera.org/sites/default/files/resources/downloads/impact-of-family-visitation-on-incarcerated-youth-brief.pdf>

<sup>8</sup> Ryan Shanahan and Sandra Villalobos Agudelo, *The Family and Recidivism* (2012) at <http://archive.vera.org/files/the-family-and-recidivism.pdf>

<sup>9</sup> Minnesota Dep’t of Corr. visiting information website at <https://mn.gov/doc/family-visitor/visiting-information/>

number has apparently declined by nearly a third in its most recent report.<sup>10,11</sup> Starting with the Department's data, if all the weapons referenced were smuggled in on one day – that would mean approximately 1,447 people (or 96%) had nothing to do with smuggling contraband. To capture the full six-month period, the number of visits jumps to 270,000, meaning that 269,447 visits had nothing to do with contraband smuggling during that period. It was absurd to adopt rule changes impacting hundreds of thousands of visits due to alleged smuggling by .0001% of visitors. What's worse, by making visiting an unnecessarily degrading and arduous endeavor, the reduction in the number and frequency of visitors means that the benefits of regular family visits are forgone, to the detriment of overall safety.

The Department of Investigation has found that a large majority of contraband is smuggled into the jails by uniformed and civilian staff and has since directed its enforcement efforts accordingly. BOC has found that a majority of weapons in the jails are made from materials found in the jails and not from smuggled items—another reason to shut down these decrepit facilities.<sup>12</sup> Either way, there is no justification for harsh limits on visiting.

**To be clear: Adding curtailment of visiting rights to the list of sanctions available to DOC will only decrease safety and security in the facilities.**

Ultimately, we must now secure the release of every person from Rikers Island and close the jails as quickly as possible.

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).

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<sup>10</sup> NYC Dep't. of Corr. visiting information website at <http://www.nyc.gov/html/doc/html/visit-an-inmate/visit-schedule.shtml>

<sup>11</sup> NYC Dep't of Corr., NYC Department of Correction at a Glance (2017), [https://www1.nyc.gov/assets/doc/downloads/pdf/DOC\\_At\\_a\\_Glance-9-14-17.pdf](https://www1.nyc.gov/assets/doc/downloads/pdf/DOC_At_a_Glance-9-14-17.pdf).

<sup>12</sup> New York City Department of Investigation, Commissioner Mark Peters, New York City Department of Investigation Report on Security Failures at City Department of Correction Facilities, November 2014. Available at [http://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr26rikers\\_110614.pdf](http://www.nyc.gov/html/doi/downloads/pdf/2014/Nov14/pr26rikers_110614.pdf)