



Testimony of

Natalie Fiorenza and Rachel Sznajderman
Corrections Specialists

New York County Defender Services

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We are Natalie Fiorenza and Rachel Sznajderman, Corrections Specialists at New York County Defender Services (NYCDS). NYCDS is an indigent defense office that every year represents tens of thousands of New Yorkers in Manhattan’s Criminal, Family, and Supreme Courts. The NYCDS Corrections Specialist Team provides a direct channel of communication with and advocacy for our clients who are incarcerated.

I. Introduction

We thank the Board for developing a substantive agenda for this month’s meeting, and for its clear commitment to implementing Local Law 42 (“LL 42”).

This groundbreaking legislation demands a new era in the culture of NYC jails. If LL 42 is operationalized this summer, as required, it promises to bring the order, safety and humanity that has eluded this carceral institution for decades. We are grateful that the Board takes its important role in this implementation process seriously, and is diligently working to ensure LL 42 lives up to its potential.

In addition to the important topics covered in today’s agenda, NYCDS also wishes to raise the Board’s attention to two notable issues, outlined in depth below, concerning jail conditions: ongoing security concerns in counsel visit areas in the West facility, and the systemic and likely illegal surveillance by for-profit corporations. We hope the Board will further investigate and explore these topics at BOC Meetings in the coming months.

II. Counsel Visit Security Concerns at RESH and West Facility

For nearly one year now, NYCDS and our sister public defender offices have sounded the alarm about security lapses and unacceptable conditions in counsel visit areas.¹ Most of our focus has been on the chaotic and unsafe conditions at the ESH facilities at the Rose M. Singer Center (“RESH”). Collectively, the defenders have shared a slew of alarming anecdotes which should have raised serious alarms regarding the safety of legal representatives, those incarcerated in these areas, and even correctional staff in this facility. On multiple occasions, legal staff have been left to wander through facilities to find their own way to and from the counsel visit area, locked in rooms and cells and transport buses unattended for indefinite periods of time, and waited hours on end just to see their clients.

We are hopeful that the situation with RESH counsel visits is on the road to improving after engaging DOC in litigation on this matter this spring, but to our dismay, we are now receiving reports of similar alarming security lapses during counsel visits in West Facility

For example, we are pasting below an excerpt from an email recently sent to us from an NYCDS attorney recounting an experience visiting a client in West Facility:

I visited XXXXX at West Facility yesterday. ... [I]t seems to still be very disorganized.

When I was done with the visit, they wouldn't open the door to let me out of the wing with the interview booths because I didn't have a CO with me to escort me. The CO behind the glass told me to find a CO to escort me, which involved me wandering the entire, empty wing without success. When I tried to tell the CO behind the glass that I couldn't find a CO, he just said sorry I had to wait. Luckily, not too long after that, the CO who had escorted my client to the booth appeared but then just said you can go and did not escort me. It was pretty confusing remembering how to find my way back to the complex from which I came from but fortunately figured it out.

We have also received reports and directly observed ourselves that the counsel visit booths in West Facility are not conducive to productive legal conversations. The booths are separated by

¹Testimony of Natalie Fiorenzo and Rachel Sznajderman at the July 2023 Board of Correction Meeting, available at <https://nycds.org/nycds-testifies-at-nyc-board-of-correction-5/>; Testimony of Natalie Fiorenzo, Rachel Sznajderman, and Joshua White at the September 2023 Board of Correction Meeting, available at <https://nycds.org/nycds-testifies-at-nyc-board-of-correction-6/>; Testimony of Rachel Sznajderman at the February 2024 Board of Correction Meeting, available at https://www.nyc.gov/assets/boc/downloads/pdf/Meetings/2024/february/New_York_County_Defender_Services_20240228.pdf; see also Graham Rayman, *NYC detainee lawyers and their staff locked in Rikers Island cells while awaiting client visits*, NY Daily News, Feb. 27, 2024, available at <https://www.nydailynews.com/2024/02/27/nyc-detainee-lawyers-and-their-staff-locked-in-rikers-island-cells-while-awaiting-client-visits/>.

thick, soundproof glass and, thus, communication is only possible via phone. However, each booth only contains one telephone handset. This poses logistical difficulties when there is more than one attorney or legal staff member visiting the individual, as only one person can speak and listen at a time.

Finally, we also received a recent complaint that a legal visit in the West Facility was abruptly cut short without any notice or explanation. To be clear, it is an extremely time consuming, resource-intensive process to visit a client in person at Rikers Island. It is a great drain on our offices' limited resources and a major impediment to the swift adjudication of our clients' criminal cases to arbitrarily truncate important legal meetings.

The aforementioned complaints are consistent with a pattern of disregard for the constitutional right to counsel in NYC jails. We cannot overstate the importance of maintaining safe, orderly, and efficient counsel visit protocols for those incarcerated. Most of the individuals detained in NYC jails are awaiting trial, which means that they must be freely able to communicate with their legal representatives in order to litigate their cases, and, indeed, eventually leave Rikers Island. Unsafe and chaotic counsel visit conditions impede the progression of the criminal case and create needless delays in an already backlogged system; this, in turn, ultimately leads to an inflated jail population.

Our request, which we have made for nearly one year in multiple forums, is simply to require the Department to establish safe, organized counsel visit conditions and protocols so that those who are incarcerated pre-trial can have meaningful access to their legal representatives. We hope that the Board will support our efforts to achieve this goal, and call on the Department to explain its plan to establish these counsel visit conditions and protocols in the coming BOC meetings.

III. Widespread Unlawful Surveillance of People in Custody, Their Families, Friends, Legal Representatives by Profit-Driven Corporations.

As the Board is aware, there has been much recent scrutiny of the Department's surveillance practices, in particular as it relates to their telephonic surveillance at the hands of Securus Technologies. We urge the Board to add this topic as an agenda item at the next Board hearing, as this is an issue of great importance and universal impact to those in DOC custody, their families, and their legal representatives.

This recent scrutiny has arisen through both litigation and legislation. On April 15, 2024, NYCDS, along with other defender offices and a private law firm, brought an Article 78 petition against DOC for their vast array of illegal surveillance practices.² The lawsuit challenges DOC's

² Graham Rayman, "Millions of NYC jail call recordings stored in high-tech system, violating civil liberties: suit," Daily News, April 16, 2024, available at

mass surveillance system at the hands of Securus Technologies on the grounds that it violates statutory law, constitutional law, and the Board's own minimum standards.

The violations are pervasive. This Board is well-aware of the massive breach of privileged attorney-client communications that came to light in 2020 and 2021. What the Board may not be as familiar with is the constant and surreptitious collection of personal data from people in DOC custody and their families and communities back home. This includes the collection of personal biometric information, such as voiceprints, and financial information. Securus then shares this data in a platform that it markets to other law enforcement entities for profit. Users of DOC's telephone system are completely unaware that this data is being collected from them and shared with third party entities, and they certainly have not consented to it.

The result is a mass surveillance system that primarily targets specific communities in New York City: the Black and brown communities who are disproportionately impacted by policing and prosecution practices in New York City, and the low-income communities who cannot afford the bail that would allow their loved ones to fight their cases from home. The technology for this system derives from Securus Technologies, which has been shown to be a nefarious actor in the prison telecom industry³, and has been sued for this and other illegal practices in jurisdictions across the country.⁴

Because of the ongoing issues clouding the Securus contract at Rikers, and because of the shocking privacy breaches revealed in the new lawsuit, on June 20, New York City Council introduced legislation to end the practice of universal phone call recording by DOC outright.⁵ If passed, the legislation would prohibit the universal recording of phone calls to or from people in DOC custody, ban the collection of personal biometric and location data of phone users, and force the destruction of data that has already been collected.

When the Board first amended its minimum standards to allow for universal phone call recording back in 2008, much of the discussion at the Board hearings was about the need for this practice in order to further jail security. However, sixteen years later, this rationale has not borne out.

<https://www.nydailynews.com/2024/04/16/millions-of-nyc-jail-call-recording-stored-in-high-tech-system-violating-civil-liberties-suit/>.

³ See, e.g., Sarah Stillman, “Do Children Have a Right to Hug Their Parents?: Hundreds of counties around the country have ended in-person jail visits, replacing them with video calls and earning a cut of the profits.” *The New Yorker*, May 13, 2024,

<https://www.newyorker.com/magazine/2024/05/20/the-jails-that-forbid-children-from-visiting-their-parents>

⁴ See, e.g., Ella Fassler, “Prison Phone Companies Are Recording Attorney-Client Calls Across the U.S.,” *Vice News*, Dec. 13, 2021, available at

<https://www.vice.com/en/article/7kbbey/prison-phone-companies-are-recording-attorney-client-calls-across-the-us>.

⁵ Reuven Blau, “New Council Bill Would Ban Mass Recording of Rikers Calls by Jail Staff,” *The City*, Jun. 4, 2024, available at <https://www.thecity.nyc/2024/06/04/council-bill-ban-recording-rikers-phone/>.

Only a small percentage of phone calls are ever listened to by jail staff for jail security purposes. Instead, the vast majority of calls accessed and listened to are by prosecutor offices fishing for incriminating statements made by those they are prosecuting. Meanwhile, Securus continues to peddle their ever-expansive surveillance technology as a "must-have" for this nebulous jail security rationale, all while reaping a profit from DOC and the City.

As the wave of litigation, legislation, and media attention around universal jail call recording in general and Securus Technologies in particular continues to swell, it is time for the Board to pay direct attention to this issue at its hearings. It is time to seek answers from the Department about its practices and its continued contract with Securus despite the well-documented history of unscrupulous practices by this company nationwide. We strongly urge the Board to add this to the agenda at the next Board hearing, and to hold the Department accountable for enabling a mass surveillance system that targets entire communities in our city for the profit of a nefarious corporation.

IV. Conclusion

Thank you to the Board for developing today's robust agenda for this hearing. We strongly urge you to add the issues discussed above to your next agenda, in order to provide oversight on these important issues that have broad impact on the people in DOC's custody and the community at large.

If there are any questions about this testimony, please do not hesitate to contact us at correctionsspecialists@nycds.org.