

**DISTRICT OF COLUMBIA COUNCIL  
PERFORMANCE HEARING – DEPARTMENT OF CORRECTIONS and  
CORRECTIONS INFORMATION COUNCIL**

**March 12, 2010**

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Thank you for this opportunity to provide testimony at this 2010 oversight hearing of the Department of Corrections (DOC) and the Corrections Information Council (CIC). The DC Prisoners' Project of the Washington Lawyers' Committee for Civil Rights & Urban Affairs is one of the primary "watchdog" organizations for prisoners held by the DOC, in addition to our advocacy work on behalf of prisoners held in the federal Bureau of Prisons (BOP), residents of community halfway houses, and formerly incarcerated people in DC and their families and friends.

### **The DC Department of Corrections**

As is likely known to this Committee by now, the DOC anticipates that the DC Jail will receive full official "accreditation" by the private American Correctional Association (ACA) in a few months. Although this is an accomplishment worth noting, we must take exception with DOC Director Devon Brown's statement in the DOC press release yesterday: "The DOC has experienced monumental improvements throughout all areas of its functioning in recent years, particularly at the jail."

It is important to note that there have been many important reforms at the DOC in recent years, including the fact of ACA accreditation. The contracting of health services with Unity Healthcare has also been a significant accomplishment under Mr. Brown's leadership. Additionally, in contrast to the increasing secrecy at DOC described in this testimony, in some instances the DOC has even been forthright about providing information to advocates. For example, DOC's General Counsel recently provided useful background information about the handling for foreign national detainees at the DC Jail.

Nonetheless, as described in this testimony, there has also been a disturbing regressive trend in the DOC's compliance with DC law, its ability to maintain safe and sanitary jail conditions, and in its relationships with advocates and DC residents. For example, in 2009-10, we saw the population of the DC Jail briefly exceed the court-mandated limit, and the Jail continued to hover (and still does) near that limit for most of the year. Frequent complaints reaching our office related to violence, uncontrolled contraband, and generally unsafe and unhealthy conditions have soared in the last year. And perhaps most importantly, the DOC is now more closed off from public accountability and scrutiny than it has been since the 1970s, before decades-long litigation forced DOC management into reform.

In prior years, our organization has provided detailed testimony about issues affecting prisoners at the Jail and the Correctional Treatment Facility (CTF), based in part on documents provided at least annually by the DOC and based on our own interactions with DOC staff and with DOC prisoners. Unfortunately, the documents we normally rely upon to report to this Committee (and required under the Jail Improvement Act, discussed below), are unavailable this year. It is our understanding (from Committee staff) that the DOC did not provide such documentation this year, despite its legal requirement to report to the Council on a quarterly basis.

Most of our testimony this year is therefore based on information secured from our clients, and secured through litigation and other advocacy involving the DOC. David Zumba, a student intern with our organization, will provide in his separate testimony a summary of correspondence with prisoners held at the DC Jail (and copies of some of those letters). I will provide a similar piece of correspondence from a CTF prisoner. Although we cannot vouch for the veracity of every detail of these letters, they reflect the real concerns of people held within facilities to which we have no real access. I think you will find their concerns to be compelling, and authentic.

As discussed below, the need for the Corrections Information Council (CIC) could not be more obvious, nor more compelling. It is an outrage that this critically important, and legally-mandated, entity has remained an empty shell since 2006 because neither the Council nor the Mayor has made its required appointments. Several years ago, the Council addressed the problem of perceived secrecy at the DOC, and the lack of oversight (in a bill supported by then-Councilmember Fenty), by expanding the role of the CIC to conduct inspections of the Jail and CTF. However, by simply ignoring its duty to actually appoint members to the CIC, the Mayor and the Council have abdicated their responsibilities to residents held at the Jail and CTF (and the BOP), and to the DC community. ACA accreditation does not eliminate the need for vigilant oversight and compliance with DC law.

### **Failure to Comply with the Jail Improvement Act of 2003**

In 2003, in the wake of the murders of December 2002 at the Jail, the Council passed the DC Jail Improvement Act (JIA), recognizing the need for some measure of transparency in a system vulnerable to misconduct in the treatment of prisoners. This was the same year the DC Court of Appeals dismissed the decades-long *Campbell v. McGruder* consent decrees, ending federal court supervision of the DOC. Gradually, the DOC, and the Williams and Fenty Administrations, whittled away the safeguards enacted under the JIA .

Late Releases: In 2009, the Fenty Administration declared unilaterally that it would not comply with the provisions mandating that all prisoners be released before 10:00 pm. There was no change in law, only an alleged re-interpretation of the law by the Attorney General. In 2009, this Committee offered the “Safe Release of Inmates Amendment Act of 2009” (Bill 18-424) in an attempt to compromise with the Mayor’s blatant refusal to comply with DC law. The bill would require the DOC take

responsibility for people it released after 10 pm by providing transportation, securing housing if necessary, and other services. Not only did the Fenty Administration refuse this compromise, the DOC has refused to provide to this Committee even basic information about the number of people (illegally) released after 10 pm and the reasons for their late releases.

It is worth noting that the DOC continues to blame DC Superior Court procedures for why it cannot release prisoners without outstanding charges or detainers at a reasonable hour. It is illuminating to recall the recent (January 15, 2010) incident where the DOC mistakenly released an inmate, despite the orders of two Superior Court judges to hold her. (See *City Paper* story on issue:

<http://www.washingtoncitypaper.com/blogs/citydesk/2010/01/21/d-c-jail-releases-inmate-early-city-officials-wrongly-blame-superior-court/>). The DOC blamed the Court, claiming not only that Court staff had provided wrong information, but that these staff had apologized for the error. This was an obvious and verifiable falsehood. As the City Paper article quotes a Superior Court statement:

*"No notice was ever given to the Jail to release [the inmate] on January 15<sup>th</sup>, nor did anyone at the Court ever communicate to the Department of Corrections (DoC) that an error had been made."*

We should give very little credibility to DOC assertions that the culpability for its failures to comply with the law and release people at a reasonable hour lies with the DC Courts.

Quarterly Document Production: The JIA also requires that the DOC provide, on a quarterly basis, basic reports to this Committee on maintenance, population, and grievances issues, among others. After years of half-hearted compliance with these document production requirements of the JIA (which I have repeatedly cited in prior testimony before this Committee, most recently in 2007, 2008 and 2009 testimony), even this effort seems to have ceased. For years, the DOC has provided primarily dozens of pages of useless maintenance logs and a smattering of more substantive information in these documents. According to information from this Committee's staff, it appears that the DOC has not provided any such quarterly information since mid-2009.

DC Jail Population: After more than two years of litigation, in 2008 the DOC agreed to comply with the JIA's population cap requirements. In July 2009, the Jail population exceeded the mandated limit of 2,164. For months after, the population still hovered over 2,100 on a more or less consistent basis. The December 2009 population was just a few dozen prisoners below the maximum permitted capacity. The DOC often cites its inability to control the number people sent into its custody by the courts, yet it has taken minimal steps to address the broader issues. Further, *for at least the last three years, the DOC has contracted with the US Marshals Service to hold its prisoners (from US District Court in Greenbelt, MD), in addition to DC prisoners.* The DOC has never reported to this Committee about the number of prisoners held under the Marshals contract, nor did it report this arrangement during the course of the *Anderson v. Fenty* litigation imposing the population cap, despite the obvious impact of such an arrangement on the Jail's capacity.

## **Securing Information from the DOC**

Perhaps as disturbing as the DOC's blatant disregard for the JIA, the Department has frequently refused to comply with requests from this Committee for information about internal operations and incidents at the Jail. For example, the DOC has flat out ignored inquiries from this Committee about an apparent increase in stabbings and deaths in the Jail in 2009, as reported by prisoners, their family members, corrections staff, and the news media. When this Committee was preparing Bill 18-424 to address the issue of late-night releases from the Jail, the DOC refused to provide detailed information about the number of people released after 10 pm and the reasons for the delayed releases, if any occurred.

Advocates are similarly finding that access to DOC information is extremely limited. Faculty and students at UDC's School of Law recently had to engage in extended appeals for months to secure information under the Freedom of Information Act (FOIA) regarding the DOC's policy on Emergency Evacuations, as well as an accounting of lock failures for the last five years. The DOC initially refused to provide any of this information, claiming unspecified "security considerations," dubious grounds that were reversed on appeal. As detailed below, the DOC ultimately provided extremely limited information, which however included *36 episodes on one day in which prisoners were "stuck in cells" due to malfunctioning locks*. It is unclear which security considerations barred release of this highly embarrassing information from the public.

Our organization has difficulties on a routine basis securing information under FOIA related to violent incidents at the Jail. Although the DOC's FOIA office will generally provide medical records related to an incident (*eg*, a stabbing or assault) upon formal request, it is extremely rare that the same office will provide incident reports and other documentation requested, even on FOIA appeals. Further, in lawsuits we have filed against the DOC, we have received through discovery routine records that should have been provided under the initial FOIA request (and which might have expedited the litigation outcomes) but were illegally withheld. This broader issue is likely to resolved only through litigation.

### **Broken Locks**

Probably the most persistent complaint coming out of the DC Jail during 2009-10 is the widespread problem of malfunctioning locks. Obviously, the ability to actually lock and unlock a jail cell is a basic function of a jail facility, yet this seems to be a function over which the DOC has lost control. As other witnesses today will testify (including David Zumba of the Washington Lawyers' Committee), there have been dozens of reports of stabbings *inside cells* at the Jail. Prisoners complain that, during periods when the cell doors are supposed to be locked (and in protective custody units), some prisoners are able to easily "pop" the locks and enter another cell to assault or rob another prisoner. The horrible consequences of basic maintenance failures in a large jail like this are wholly predictable.

As noted, DOC staff have refused to respond to requests from this Committee regarding the broken locks, and resulting assaults. When our organization raised this issue directly with DOC senior staff last Fall, our inquiries were derided and ignored. Nonetheless, we continue to receive a high volume of complaints from our clients at the Jail that the problems persist. There have been scattered news reports on this issue, including a report on a near-fatal stabbing in November 2009 and a detailed February 22, 2010 *City Paper* article summarizing reports on at least six stabbing incidents there (<http://www.washingtoncitypaper.com/blogs/citydesk/2010/02/22/at-least-six-stabbings-inside-d-c-jail-since-november/>).

The DOC provided some startling information about this issue in its FOIA production to UDC Law School (noted earlier). One DOC document summarized 550 “lock failure incidents” over an 18-month period (January 2008 to June 2009), which appears to be only a limited report. Each of these incidents describes only “Inmates Stuck in Cell,” but does not include malfunctioning locks in other contexts. Perhaps more alarming, the DOC revealed that on one day (March 20, 2009, a date when UDC students attempted to interview a prisoner and were told that he had been “stuck in his cell” due to lock failure), there were at least 36 “stuck in cell” incidents. Two of these March 20 incidents involved two separate doors and three involved “gate problem in cellblock.” These incidents do not apparently include incidents where cells were broken into by inmates themselves, which are likely far more numerous. (The full UDC FOIA production is available to this Committee upon request.)

The lock failures documented under the UDC FOIA production highlight urgent issues for the DOC. In the event of an emergency that required evacuation of the facility, such efforts will be impossible without improvements in basic maintenance at the Jail. It is fortunate that the efforts of UDC School of Law have brought this issue to light, rather than finding out through a natural disaster or other incident. However, given the DOC’s refusal to provide basic information on this problem, and the lack of any outside oversight, we will have no way of knowing when and if the problems are ever addressed.

### **Problems at the CTF**

Our organization recently received correspondence from a female prisoner at the CTF (where most women incarcerated by the DOC are held) in anticipation of this hearing. I have attached this detailed letter to my testimony. (The full identity of the letter writer can be provided to this Committee upon request and with the consent of the prisoner.) She details some alarming conditions and practices at the CTF and the DOC:

- Crowding large numbers of women into small elevators for medical transport purposes, even women with obvious medical problems.
- Shackling of pregnant prisoners (in their last trimester) despite regulations banning this inhumane practice. She cites a woman forced to wear belly, wrist, and ankle chains for a court appearance on February 24, 2010.

- Unprofessional conduct by certain corrections staff at CTF, yelling and making threats that lead to confrontations.
- Rampant problems with mail delivery, including “lost” money orders, delayed delivery of legal mail, missing parcels, missing newspaper deliveries, and unexplained refusals to accept delivery of certain reading materials.

We cannot verify the veracity of these complaints, but urge the Committee to follow up on them to the extent possible.

### **The Internal Grievance System**

In the previous two years, I have reported on efforts to reform the DOC’s internal grievance procedures (IGP) in collaboration with the DOC. Unfortunately, I need to report this year that this collaboration has come to a grinding halt, with the DOC informing us that it is unwilling to make any changes to fix the IGP, even to correct internal inconsistencies in the policy itself. This is extremely disappointing, and points to an even deeper recalcitrance within the DOC to collaboration with advocates.

In 2008, our staff met with DOC senior staff, including Director Devon Brown, to discuss in detail our concerns about the IGP. The current system for Jail inmates to submit complaints to staff and management on issues ranging from food quality to sexual assaults is only marginally useful for resolving issues and for raising the profile of issues with DOC management. The current system includes unrealistically short deadlines for submitting grievances and an overly complex four-step system that includes three levels of appeal. Further, there is no way to effectively pursue a grievance filed in the DC Jail after one is transferred to the CTF, a frequent occurrence. Further, there is no way to “exhaust” the grievance procedure once one is transferred to the federal system.

We submitted a detailed review, along with proposals for reforming the IGP, to the DOC in December 2008. In November 2009, we met with the DOC senior staff, who indicated that they had not reviewed our detailed draft and could not respond to the issues we raised. It appeared that the primary function of this meeting, initiated by the DOC, was to berate our staff regarding prior testimony before this Committee. A few months later, we learned that none of our proposed reforms of the IGP would be accepted and that the current policy would remain in place as written.

A functioning grievance system can resolve small problems before they become larger ones. It can inform Jail/CTF management of problems – of staff misconduct, of sexual assault, of health or safety violations. It can help to maintain order. The DOC does not utilize the IGP system effectively, as evidenced by the tiny number of formal complaints reported in the DOC’s documents (when it used to report such data). Further, the current policy is riddled by internal inconsistencies and complexities that make it simply unusable. We understand that the DOC is in the process of producing a video to describe to prisoners how to utilize the IGP. It is unfortunate that they did not also choose to fix the IGP itself before embarking on that effort.

The DOC insists that its informal complaint resolution system is functioning efficiently, eliminating the need for a complex IGP process with appeals and more detailed responses from staff. Without oversight and compliance with the Jail Improvement Act, we will never know whether this statement is true.

## **The Corrections Information Council**

For the last six years, our organization has voiced concerns about the failure to adequately fund, or to even appoint competent members to, the Corrections Information Council (CIC). Included below is my testimony for March 2009. All of the points here remain unchanged, a disturbing reflection on the failure of the Council and the Fenty Administration to comply with basic law. The need for the CIC could not be more urgent, particularly in light of the issues raised here today around secrecy at the DOC, and failures to provide basic information about lock problems, assaults, population, and other issues.

Further, the DC government has completely abdicated any responsibility for DC prisoners sent to the federal system. The DC criminal justice system is effectively run by three federal agencies (in addition to the Office of the US Attorney): the federal Bureau of Prisons (BOP), the US Parole Commission (USPC), and the Court Services and Offender Supervision Agency (CSOSA). The DOC's role, while important, is dwarfed by the far more significant roles played by these federal agencies. Yet the DC government has virtually no authority over these agencies, and plays no oversight role in monitoring the treatment of DC prisoners in their custody and control. The District funds one small office, the Mayor's Office on Ex-offender Affairs, which deals only indirectly with the federal agencies, and lacks staff, resources and authority to play any kind of monitoring role.

Compounding the DC government's failure to address any of the myriad issues facing DC prisoners in the federal system is the shameful refusal to staff and fund the CIC. There is overwhelming community support for the CIC, and its mission. There is both a Congressional and Council mandate for its existence and responsibilities. There are numerous concerned citizens interested in participating in the CIC's committees. There is simply no excuse for continued inaction on this pressing matter.

*Included below is my testimony from March 2009 on this issue.*

As this Committee is well-awared, the U.S. Congress created the Corrections Information Council (CIC) under the DC Revitalization Act to monitor the conditions of confinement for D.C. prisoners held in federal Bureau of Prisons (BOP) facilities across the country. The scope of authority of the CIC was expanded by the Council under the DC Jail Improvement Act of 2003, enabling the CIC to also monitor conditions in the DC Jail and CTF.

Unfortunately, Congress created the CIC as an entirely volunteer entity. This is a significant responsibility for unpaid individuals. Partly for this reason, no CIC member has ever paid a visit to any DC prisoner held in BOP facilities, leaving the Council and the people of the District without access to the vital information the CIC could potentially provide about conditions under which their family members and loved ones are being held.

Further, the recent history of the CIC has been no less than scandalous, with no appointments to the CIC since the expiration of the terms of the prior members in late 2006. Further, the CIC members serving in 2004-06 performed only one cursory inspection of the Jail and the CTF, releasing its scant report in a single public hearing. CIC leadership at that time was unresponsive to the concerns of advocates, and refused to follow up on frequent complaints from men and women held in these facilities.

Although the Council has approved significant funds for the CIC over the last three years, and paid an administrative staff person for several years (until she resigned last year), this money has been wasted. The need for the CIC has never been greater, yet the Mayor and the Council have each failed to even nominate individuals to serve for the last two [**now four**] years.

In particular, we are in dire need of information from the federal Bureau of Prisons (BOP), both statistical data on DC prisoners and detailed information about individual matters. For example, we have no information on the number of DC prisoners who have died in BOP custody, and their causes of death. We learn of such deaths only when family members contact an attorney or the DC Council. When a prisoner is murdered while held in the BOP, their families have no way to secure information about the death. They have no access to investigative reports and, indeed, are often not even notified officially by the institution.

As this Committee is aware, the late Virginia Spevak was a member of the first CIC and a strong advocate for its revival. It would be a fitting tribute to this tireless advocate for criminal justice issues in the District to finally revive the CIC and perhaps name it in her honor.

We recommend:

1. That this Committee, in collaboration with the Office of the City Administrator, develop a comprehensive “job description” for CIC membership, detailing the responsibilities expected of the CIC chair and two supporting members. This description should be widely distributed to generate a pool of potential candidates.
2. As soon as possible, the Council and the Mayor should make its appointments to the CIC. The vacancies are now three years old, and counting.
3. At the same time that it is making these appointments, the Council and the Office of the City Administrator need to take necessary steps to provide infrastructure for the

CIC. This would involve: (1) hiring professional staff to facilitate the work of the CIC; previously, CIC staff have been strictly administrative, without the skills to take a leading role in pressing the CIC's agenda; (2) work with the Office of the Attorney General to negotiate MOUs with the BOP (and new US Attorney General Eric Holder, who was instrumental in passage of the Revitalization Act) to enable CIC members to visit BOP facilities; (3) negotiate arrangements for CIC access to the Jail and CTF under the terms of the Jail Improvement Act, including unannounced visits; and (4) locate and assign office space for the CIC that is not within the Department of Corrections.

4. The Mayor should consider a collaboration with U.S. Congressional delegate Norton to make the CIC paid positions. This would require a technical amendment to the DC Revitalization Act. This would not incur a significant expense, and could even be contracted to an outside organization. The CIC should be the full time work of dedicated staff, responding to complaints from DC prisoners and reporting to the Mayor, the Council and the public on conditions under which DC prisoners are held.

Currently, the work that should be done by the CIC is left to private advocacy organizations, which can only respond to individual complaints. We do not have the statutory power of the CIC that provides access to facilities themselves. Along with other advocates, we welcome the opportunity to work with the newly-revitalized CIC and to develop a comprehensive reporting strategy on the conditions of confinement of DC prisoners locally and in the BOP.