



**Testimony of Jonathan M. Smith¹ Before
The Committee on the Judiciary & Public Safety
Department of Corrections
Oversight Hearing
March 2, 2022**

A defining characteristic of the District of Columbia is a harsh and unyielding criminal legal system that has had profound and negative consequences on Black and Brown communities. Ninety percent of the District's prison population is African American and only four per cent is white despite that the City is almost half white and half Black.² The District has one of the highest rates of incarceration in the nation.³ Involvement in the criminal legal system is a driver of persistent inequality and inequity, creating barriers to opportunity in housing, employment, credit, and education. It destroys lives, families, and communities and has harmed, rather than created, public safety. While the criminal system is not the only factor that creates and sustains racial inequality, it is a significant one.

There is no greater symbol of the cruelty of the criminal legal system than the crisis at the DC Jail. The Jail has been a troubled institution since its inception. The Jail was built in 1976 to replace the "Old Jail" that dated back more than 100 years. From the moment that the Jail opened until today, it has been the subject of repeated litigation and court orders concerning mismanagement and the failure to comply with the mandates of the constitution. Federal courts have entered injunctions to require the Department of Corrections to provide basic medical and mental health care; to ensure that persons with disabilities are accommodated; to address over-detention and miscalculation of sentences; to ensure that women who are incarcerated in, or employed at, the Jail are free from sexual assault and abuse; to employ basic infection control methods in the face of COVID-19; and to ensure that youth receive special education services. The District has paid contempt fines, judgments, and attorney's fees that have, over the years, cost the City millions of dollars.

¹ Jonathan M. Smith is the Executive Director of the Washington lawyers' Committee for Civil Rights and Urban Affairs. The Washington Lawyers' Committee was founded in 1968 to address civil rights violations, racial injustice and poverty-related issues in our community through litigation and other advocacy. The Committee has a long history of working to address discrimination in housing, employment, criminal justice, education, public accommodations and against persons with disabilities. We work closely with the private bar to bring litigation and pursue policy initiatives.

² Council for Court Excellence, Analysis of BOP Data Snapshot from July 4, 2020 for the District Task Force on Jails & Justice (September 30, 2020) [Analysis of BOP Data Snapshot from 7420.pdf](https://www.courtexcellence.org/analysis-of-bop-data-snapshot-from-7420.pdf) ([courtexcellence.org](https://www.courtexcellence.org)).

³ Bureau of Justice Statistics, Correctional Populations in the United States. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5177>.

Over the last several months, the focus has been on the report of the United States Marshall's Service that described conditions that have persisted at the Jail for decades. The reports of inadequate medical and mental health care, water cut offs and plumbing back-ups, vermin, and unhealthy and unsanitary food could all of come from monitor reports and contempt proceedings in the 1990's.

I recognize that there has been a change in leadership at the Department of Corrections and the new Director deserves a chance. However, over the years, there have been many changes in leadership, but the basic conditions have remained unaddressed. There are two steps that the Council must take to break this cycle of injustice:

First, the Council commissioned the Jails and Justice Task Force to make study the options for replacing the current Jail and to propose a plan of action. The Jails and Justice Task Force made a comprehensive set of recommendations a year ago that would, if implemented, dramatically reduce the number of people who are held in confinement, tear down the current Jail, and replace it with an institution that is smaller, humane, and focused on creating public safety through restorative practices. The ten-year plan outlined in the report could be significantly shortened with expedited Council and executive branch action. The recommendations, however, remain largely on the shelf.

Second, the walls of the Jail not only confine people in incarceration, but keep the horrors of the institution from public view. Periodically, through litigation, investigative journalism, or events like the Marshall's Service report, the public grabs a glimpse the conditions and state of the Jail.

In a different context, but apropos here Justice Louis Brandies wrote: "Sunlight is said to be the best of disinfectants." What the Jail needs most is more sunlight. To fix the longstanding problems in the Department of Corrections, that sunlight must come from robust, independent, and transparent oversight.⁴ The elements of oversight should include:

- **A Monitor independent from the political process.** The monitor should be appointed for a term of years and subject to removal only for cause.

⁴ See, Eg, Brennan Center for Justice, Independent Oversight Is Essential for a Safe and Healthy Prison System | Brennan Center for Justice; <https://www.brennancenter.org/our-work/analysis-opinion/independent-oversight-essential-safe-and-healthy-prison-system>; American Bar Association Standards, on the Treatment of Prisoners, Standard 23-11.3 External monitoring and inspection, https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners/#23-11.3

- **Responsive to a diverse Board that includes impacted persons.** Diverse communities are impacted by the operation of the Department of Corrections. A body that reflects that diversity of voices, including people who were confined in the Jail and their families, will create powerful legitimacy in the process.
- **Unfettered Access.** Other than for extraordinary security concerns, the monitor should have access to the facilities, staff, and records of the Department of Corrections without prior notice or approval.
- **The obligation to make frequent public reports.** Accountability requires transparency. For far too long, it was the opacity of the Department and the unavailability of the community and elected officials to have complete information that has allowed the problems to fester.
- **An adequate budget for experts and staff.** It is worth noting here that this investment will diminish, rather than increase the draw on the District's fisc. Litigation, damages, and attorney's fees are expensive.
- **Protection from retaliation for staff or incarcerated persons who provide information to the monitor.** Anyone with information potentially useful to the monitor should be able to provide it without fear.

The recommendation for a Department of Corrections monitor is not meant to be a criticism of the Corrections Information Council. The Corrections Information Council was never given the independence, access, or resources to effectively play this role despite a dedicated and talented staff.

There appears to be consensus that the current state of affairs is intolerable and has been intolerable for decades. Urgent steps are necessary and we encourage the Council to act.