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A D.C. public defender describes terrible conditions at the city's jail

By **Radley Balko**

April 14, 2020 at 8:00 a.m. EDT

My friend Amy Phillips is a public defender in Washington. She visited the D.C. jail last week, just before most legal visits were curtailed because of fears about covid-19. I asked her to describe what she saw, as well as her fears and concerns for her clients. Her answers here are her own opinions and observations — and not necessarily those of her employer. Some of her answers have been edited for length.

When did you last visit the D.C. jail, and why?

I visited on Saturday, April 4. I have clients incarcerated in the D.C. Department of Corrections' two facilities: the Central Detention Facility (CDF, what most people think of as D.C. Jail) and the Correctional Treatment Facility (CTF, an adjacent facility that houses the main medical unit). Most of those clients are pretrial and have not been convicted of any crime. They're just waiting for their trials. I usually visit the jail a couple of times a week to talk with my clients about their cases. Until very recently, we didn't have a mechanism for confidential legal communication other than meeting face to face. Phone calls were either recorded (and prosecutors could listen to them) or monitored by a staff member. The jails have recently begun setting up secure phone lines but, at the time, there was no way to discuss a client's case other than by going into the jail. So I went in.

Can you describe what you saw?

What I found most terrifying was just how little the standard routine had changed. Our lives have changed radically in the last few weeks, but the DOC largely felt the same. I didn't see any evidence they were doing even simple things to make the facilities safer.

Over more than five hours of visitation, I saw no one doing any cleaning. The public areas of the jail are dirty and crowded with people, without the space for social distancing. There were people — both incarcerated people and staff — coughing, and no one did anything about it.

Only a few things have changed. Someone took my temperature with a forehead thermometer on the way in. My temperature first registered 95 degrees, then 96.5 degrees on a second reading, yet I was allowed in even though the thermometer seemed to be malfunctioning. I was asked to fill out a short survey asking whether I had any symptoms of covid-19, had been exposed, or had recently traveled to countries with outbreak. They didn't ask about travel within the United States, where several places have had more cases than the countries they asked about.

A few of the corrections officers wore masks, including some handmade cloth masks they had brought with them from home, but most did not. The staff told me that masks often weren't available, so anyone who wanted to wear one had to bring it from home. A staff member still hand-searched all of my belongings, without washing or sanitizing their hands before or after. The corrections officers who handed me my visitor badges used their bare hands. The hand-sanitizer dispenser in the CDF lobby was empty and, as usual, there were no paper towels in the CTF lobby bathroom. When new staff came to change shifts at the end of my visit, a half-dozen or so of them crowded into the cramped lobby of the jail, some with less than a foot of space between them. In the CDF visitation area, three people worked side-by-side in an enclosed office about 10 feet square, with no masks or gloves. A sign at the intake desk at CTF proclaimed that the facility has been disinfected, and had a cleaning log attached. The last cleaning date logged was March 24, 2020. That was more than a week before my visit.

I only saw the public areas of the jail. But multiple people, both residents and staff, told me that conditions in the housing units, where nearly 1,500 men and women live in cells, is much worse. They are confined to their cells 22 or more hours per day, often with cellmates. Those cells can be as small as 70 square feet, and contain bunk beds, a small table, and a toilet sometimes without a lid. They sleep with their heads right next to those toilets, and their cellmates can be swapped out for a different stranger at DOC's whim. There is no recourse and no moving out if your cellmate gets sick.

Hand sanitizer is not available to the residents, who often run out of soap and find that the only available sink is behind a locked door. Detained men and women are trying their best to keep their own living quarters safe, but the cleaning solution they're given, when it's available at all, is watered down. Sometimes no cleanser is available, and they just use water. Or they don't clean. When the residents tasked with cleaning the common areas are given cleaning rags, they have to reuse the same dirty ones over and over again because the cleaning supplies are in a locked cabinet that they're not allowed to access. I'm told that the staff don't clean the units, and they don't inspect the cleaning the residents are supposed to do.

When people use the public phone, they have no way to sanitize it after the last person held it close to the face. People who want to clean their own cells are using their own bath towels to wipe down surfaces and floors, and then have to use the same bath towels when they shower. We've recently heard reports of problems with the water, including units where water has been turned off for most of day, and where people aren't being allowed to shower.

Were you worried about your own health?

A legal visitation room at the D.C. jail is about seven feet wide, and about nine feet deep. I could barely sit six feet away from my client if we both sit as far back as possible. But we have to close the door to get any privacy, and there's no ventilation.

My clients were not given masks to protect them from me or me from them. One client who requested a mask to meet with me was told he could use a paper towel to cover his face. We've been told that the DOC has been cleaning and sanitizing both facilities frequently. But when I used the disinfecting wipes I brought from home to wipe down the door knobs and tables and chair handles in those tiny visitation rooms, the wipes showed visible grime.

Staff are reporting to work sick and being told they can't go home. The kitchen staff — a mix of contractors and detainees who prepare the food — are sick, coughing while they prepare food, some of them shoulder to shoulder. They hand out food trays without wearing gloves or masks. An incarcerated worker faces punishment for skipping work due to illness without a doctor's note, and so when no medical care is available, they go to work sick anyway.

When I prepared for this visit, I took every precaution the [Centers for Disease Control and Prevention] recommends. I wore an N99 mask my sister had scrounged up and mailed to me, and nitrile gloves I brought from home. I poured hand sanitizer into a two-ounce plastic bottle and packed disinfecting surface wipes into a clear plastic bag — both of which were contraband that could have gotten me banned from the jail a few weeks ago. I washed my hands multiple times during and after my visits. I did everything I could to protect myself, and to keep from bringing more illness into a facility already full of it. But, yes, I was — and am — scared for my own health.

How many people incarcerated in D.C. have tested positive? How many staff?

When you asked me this question on April 8, the number of incarcerated people who had tested positive was 28. At the time I'm answering on April 11, the number is 52. Based on the current trajectory, I expect it to be higher by the time this interview is published. Anyone interested can get the latest numbers of confirmed tests [from the Mayor's Office website](#). However, that data is based only on people they've tested. As of April 10, another 224 people were in quarantine because they had contact with someone who tested positive. Among staff, DOC is reporting that 15 people tested positive as of April 10, with another 159 people in quarantine due to suspected exposure. Again, I expect those numbers may get higher.

They're not even testing everyone who has the hallmark symptoms. Both incarcerated people and staff, including the DOC union, have reported there are symptomatic people who are still in non-quarantined residential units and are not being tested. But even with the sporadic testing, the rate of infection in the jail is significantly higher than that of the city, or the surrounding community.

Are the people who are symptomatic or who test positive getting medical care?

Both staff and residents and have reported to me, to other lawyers, to the courts, and to the Fraternal Order of Police, and to the correctional officers' union that there are many, many people who have symptoms and can't get medical care. To see a medical professional in the jail, you have to fill out a written sick-call slip and give it to your unit's case manager. Then, you wait until your case manager next comes to work on your unit. Some of them are split between more than one unit, and I've been told that many are now out sick or in quarantine or staying home from work. The sick-call slips are triaged, appointments are scheduled, and only then do you actually get to talk to a medical professional. In non-pandemic times, that can take anywhere from a few days to a few weeks. Now, the medical staff is overwhelmed. Corrections officers are telling people the infirmary is full. Case managers are telling people they've run out of sick-call forms, so no requests can be made until they get more forms. Everyone I've talked to has reported that there are people on their units who are coughing, complaining of fever or having trouble breathing, but who haven't even been able to get their temperatures taken.

This all seems like quite a different picture than what city officials are saying publicly.

The DOC has told the courts, the press, and the District government that they're deep-cleaning public spaces, providing hand sanitizer and taking other precautions. I didn't see any of that, and from what the staff and incarcerated people I've talked to have said, it isn't happening in the non-public areas of the jails, either.

Most of the city officials we've been hearing from publicly — including both in the media and in court hearings — aren't people who regularly work inside, where people live and corrections officers work. These officials talk a lot about what the policies are, what the rules and procedures are, what staff and incarcerated people are supposed to have access to. And many of those policies are pretty good on paper. But what I saw was more consistent with what I've hear from staff and clients. The correctional officers' union represents the staff who actually work inside those facilities, and what they're saying is that they're not being given the resources to implement the written policies. That's the disconnect.

As I understand it, the jail will soon be substantially limiting visitation, requiring lawyers to get advance permission from the DOC. If that happens, what concerns do you have for your clients?

Information. If we don't have a reliable way of contacting our clients, we can't defend them. We can't try to keep them safe. They also won't be able to get any information about the outside world. Both facilities will be soon be locking people in their cells — usually with a cellmate — for 23½ hours a day. They'll have 30 minutes each day out of their cells for recreation, showers and phone calls, either to family or to their lawyers. Those phone calls are their only source of information other than the news. One person told me he had never heard the word “quarantine” until I explained to him during a visit what it was. Several others told me that they only know about social distancing from watching the news. I've been told that all of their radios were recently confiscated, so now that they're locked in their cells, they can't get any news. They won't hear updates on the pandemic, like when the advice recently changed to tell us all to wear masks even if we're healthy.

The lack of information not only makes people unsafe because they can't take available precautions, it also causes panic. Imagine the quarantine you're in right now, except you have zero access to any updates about what's going on outside, how long you're going to be in danger or what the medical community is saying.

I know you, other lawyers, and civil rights groups have been working to try to get people out. What sort of response have you received from the courts and prosecutors?

The court is largely shut down. It hears about fifteen bond hearings a day via conference call, with our clients participating by video feed from the jail. Defense attorneys have filed hundreds of motions to depopulate the jail, and the courts are slowly working through them. Superior Court recently ordered a review of everyone who is held on misdemeanor charges to see how many of them can be safely released. D.C. District Court also appointed an independent monitor who will go into both facilities to see what conditions actually look like and report back to the court. Those efforts have made a difference, but not enough to make the jails safe.

The U.S. Attorney's Office has opposed almost all motions for release. Maybe I shouldn't be, but I was really surprised by that: Despite my major disagreements with them, I know many prosecutors genuinely want to make the public safer. But they're filing motions essentially trying to reassure the court that it is safe and healthy to keep people stacked on top of each other without access to hygiene supplies. They're telling the courts, without checking, that DOC is following their own policies, and that being incarcerated is no more dangerous than quarantining at home with your family. They're failing to grasp the huge risk to the community posed by having a covid-19 hot spot right in the middle of a residential neighborhood, where thousands of people live and work.

For anyone now in the jail awaiting trial, it will be at least three months before the government has to present evidence of their guilt. We have people in our jail who are there for parole violations, such as relapsing into drug addiction or missing a meeting with a parole officer. We have people in our jail who have no previous criminal records. All of those people are presumed innocent. We like to think that we don't believe in punishing people before they've been given a fair trial. But in the midst of a deadly pandemic we're locking people up, before they've been convicted, in the perfect environment for the virus to spread. That is definitely punitive.

Have city police changed their arrest policy when it comes to nonviolent, low-level crimes like drug possession, trespassing, etc.?

The number of people brought to court in custody is almost half what it was before the state of emergency was declared. That's a very good thing. But even now, there are people being brought into court for petty charges such as defacing property (vandalism), misdemeanor drug possession, unlawful entry (trespassing), shoplifting, driving a car with expired tags or smoking marijuana in public. One person taken into custody last week was charged with a traffic offense, and one of the arrest charges was that he was wearing a mask while driving. Undercover police are still approaching people and asking to buy drugs, then arresting anyone who agrees to sell to them. On the day the entire cellblock at the courthouse had to be shut down because a U.S. marshal tested positive for covid-19, potentially exposing everyone brought to court, there were four people in U.S. Marshals Service custody for driving without a valid permit, all of whom were then incarcerated an extra day so the courthouse could be sanitized.

One thing I was very pleased to see was that [D.C. Police Chief Peter] Newsham has directed police officers to try not to make custodial arrests for violating the "stay at home" order, and has said that officers can't use suspicion of violating the order as a pretext to stop or search people. A lot of people will be watching to make sure that directive is followed.

Is there anything else you think the public should know?

We don't have the death penalty in the District, but that's going to be the end result for a lot of people if we don't make some radical changes. We need to dramatically reduce the number of people crowded into those buildings, and we need to change the way the DOC treats staff and incarcerated people. Otherwise, I fear we're going to see an unfathomable amount of death and suffering, both at the DC jail and in the surrounding community.

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