

David E. Patton
*Executive Director and
Attorney-in-Chief*

Deirdre D. von Dornum
Attorney-in-Charge

MEMORANDUM

To: Chief Judge Dora L. Irizarry
From: Deirdre von Dornum
Re: Visit to West Building Housing Units, February 1, 2019
Date: February 2, 2019

Pursuant to Chief Judge Irizarry's Order, I visited the West Building of the MDC from approximately 4:15 until 8:00 p.m. on February 1, 2019. The COs at the front desk screened me as soon as I presented the Order.

When I first entered the West Building, I immediately felt the cold. The COs at the lobby desk were wearing multiple layers including scarves wrapped around their heads. The lighting was dim.

While I waited for John Ross (Senior Investigator from the U.S. Attorney's Office, EDNY) to arrive, one CO came downstairs and the CO at the front desk asked her if the inmates were getting meals. The CO from downstairs said "we are going to let them out one at a time to get their meal, and otherwise lock their asses in."

Congresswoman Nydia Velasquez arrived shortly after I did. She asked that we be able to walk around together, but Nicole McFarland from Legal refused, and said that the Court Order said that I was to inspect with the representative from the US Attorney's Office and she would not permit Investigator Ross and I to be with the Congresswoman.

Investigator Ross and I were admitted at 4:30, and escorted throughout our visit by AW King, Legal Attorney Nicole McFarland, and Legal Attorney Holly LNU.

I asked to focus our visit on the housing units in SHU, 8th floor, 7th floor and 6th floor because inmates throughout the week who had used legal phones and come to court had reported worse conditions on those floors, with better access to heat and hot water on the 5th and 4th floor housing units.

Observations common to all units:

Pitch black in cells. Too dark to see medication labels or food given to eat.

No ability to make medical requests through the computer system.

Not able to obtain medication refills because the medical computer system is down. (Pill line still coming around, so those inmates who do not need new medical care or do not need a refill are receiving their medications.)

No family calls since Sunday, January 27, 2019.

No access to corrlinks since Sunday January 27, 2019.

No legal visits since Sunday, January 27, 2019.

Cannot review discovery because too dark in cells and computers not working.

No access provided to law library.

No clean clothes or sheets since Sunday, January 27, 2019. (Including no clean underwear)

Commissary closed since Friday, January 25, 2019, so cannot purchase additional clothing or food or stamps. Inmates who had not previously purchased additional clothes from commissary were wearing only short-sleeved shirt and light cotton pants. Inmates without stamps cannot write to their families.

Repeatedly required to eat meals in total darkness without being able to see their food.

No extra blankets or clothing provided.

Specific Housing Units:

Heat and access to hot water varied from unit to unit, as did amount of time of lockdowns since the fire.

Note: I have removed inmate names and Reg. numbers from this version of the memorandum for privacy reasons. Their names and numbers are available to the Court or to counsel.

SHU (9th Floor)

Escorted by SHU Lt. Ramos, who seemed caring and concerned. He explained that the main power conductor for the building had burned down on Sunday evening. The inmates on this unit were largely calm and primarily worried by the dark and not being able to leave their cells for rec.

The cells are pitch black inside. Emergency lighting in hallways. Inmates do not have flashlights or any other way to see in their cells.

Lt. Ramos confirmed the following: No one in SHU has been out of their cells at all (except a couple of medical cases) since Sunday. Ordinarily have one hour of recreation outside of cell each per day, but not this week. No family calls. No legal access. No extra blankets. No laundry. Ordinarily heat food on the units, but the food heater has no power, so now the food comes up from the kitchen and loses heat rapidly, but they try to serve it as fast as they can. Most SHU cells have two inmates, which presents safety concerns without lights, so the COs are trying to walk the unit more regularly. Even the SHU medical room has no lighting. Laundry delivered to the unit February 1, 2019 (for first time in a week). Lt. hopes to distribute clean underwear, socks, etc. this weekend.

The east side of the SHU (facing away from the water) was relatively warm. The west side (Range 4) was significantly colder. Inmates on that side appeared to be wrapped in blankets and towels. (Inmates on the other side were dressed normally).

A couple of SHU inmates told me that the ceiling in their cells was leaking and water from the last rain/snow wetting their beds. This, in combination with the cold, and no laundry for a week is very difficult, they said. I asked the Lt if anything could be done about water coming down onto people's beds in the freezing cold, and he said (with sympathy) no, that the roof has significant leaks that have not been fixed. The SHU inmates were receiving a hot meal when I was there.

We were permitted in an empty cell on the east side and the temperature felt okay, perhaps in the 60s.

We tested the shower water in an empty cell, and it went up to tepid after a few minutes.

Inmates repeatedly reported they were cold, needed clean underwear at the least, and felt awful from being in total darkness.

Notes on specific inmates I was able to speak to:

- Inmate in cell 114 reported that ceiling is leaking over his bed (top bunk) and his sheets are wet, and now getting frozen. He has no other place to sleep (floor is cold concrete; he has a cellmate in the other bunk). Lt. confirms that several cells have leaking ceilings that have not been repaired.
- Inmate has Sickle Cell anemia and has not received medical care. Is on SHU until can receive medical attention (not in SHU for disciplinary issues). Is cold and scared.
- Inmate wrapped in towels and blankets. Having trouble breathing.

Inmate feels his mental health degrading from sitting in cell in dark for a week

- Inmate has hot water in his shower.
- Inmate desperate to talk to his lawyer. Provides me contact information.

Eighth Floor Housing Units

Everyone locked in. AW informs us this is only because of the count. We were only able to speak to the orderlies, because the count actively occurring at this time. Temperature fine in common areas. Emergency lighting in common areas. Pitch black in cells. We were not able to go into a cell.

AW informed us the inmates have had hot meals every day. The orderlies said today was the first day of hot food, previously it was cold food for every meal since the fire. They then looked at the AW and asked “are we going to get in trouble for saying that?”

K81 (cadre unit. 21 inmates)

Everyone locked in except the two orderlies. Temperature in common room fine.

K82 (cadre unit. 78 inmates)

Everyone locked in. Temperature in common room fine.

K84 (21 pre-trial inmates)

Everyone locked in. Temperature in common room fine.

K83 (59 pre-trial inmates)

Everyone locked in. Temperature in common room fine.

Seventh floor

Everyone was still locked in, even though the count was over, which the Assistant Warden now explained was because the elevators had been down this morning. It was again significantly colder on the unit facing the water. The inmates in the western facing unit were wrapped head to toe in blankets and towels. I spoke to many inmates through their cell doors. They said they had been locked in all day. No showers since Wednesday, and then only scant hot water. Cold food until today and they have to eat in their pitch black cells. Numerous inmates described asking for and not receiving medical care. Inmates who have run out of medication cannot receive refills, they are being told, until the computers come back up. One inmate who takes ten medications said he has his pills but can't see which is which. Inmates with asthma repeatedly reported trouble breathing in the cold. Several inmates taking medicine for bipolar disorder don't have their medication.

All were very upset about the lack of information as to when they will be able to speak to their families or lawyers.

The other side of the building was warmer. One unit on the 7th floor was let out just as we walked in. Many people wanted to speak to me, often on behalf of other inmates they were worried about for health reasons, including a young man with Crohn's Disease who looked emaciated, and a federal defender client whom I know about because he has repeatedly swallowed razor blades - he has not had psych medication for four days. An inmate with a gunshot wound to his hand showed me pus-filled bandages that have not been changed for two weeks.

J71

Count has ended but everyone is still locked in. AW says this is because elevators were out in the building earlier in the day, with only one elevator working. Inmates are angry and pounding on their cell doors and pressing their emergency buttons. Inmates tell us that they have been locked in all day with no explanation. Pitch black in cells.

AW says hot food every day. Inmates (including orderlies serving food) say today (February 1) is first day with hot food since the fire. They were previously let out to the common area, as usual, to eat their meals, but today have been forced to eat their meals in their cells in the dark.

Same clothes all week because no laundry.

Inmates say hot water in showers for only a few minutes and they all have to share those minutes. Investigator Ross and I test water and after a few minutes, it is fairly hot.

Notes on Specific Inmates:

- Shows me glass with Tap water from the pipes seems polluted and to have particles in it.
- Feels like he is in solitary, locked in the dark, with no ability to talk to anyone.
- Water very dirty. He and his cellmate experiencing constant diarrhea since Monday. Both are visibly (through cell window) wrapped in blankets and towels head to toe.

J72 (111 inmates)

All still locked in, despite count being over for some time. Two inmates being let out at a time to get their meals and then return to their dark cells and be locked in to eat.

We tested the shower water, which was relatively warm. Common room temperature was fine.

AW says other than today they have been out and about as regular since the fire. Every inmate (English and Spanish speakers, even an inmate I spoke to in French) contradicts this and says they have been let out of their cells in the days since the fire for a couple hours in the morning and a couple hours in the afternoon, but otherwise locked in.

Inmates on this unit report variable temperatures. On one side, their cells are very hot. No ventilation at all. On other side of the unit, feel cold wind coming out from the cracks of the cells.

Notes on specific inmates:

- severe asthma. When at home, uses oxygen mask, particularly at night. Given inhaler here, but gasping for breath. Yesterday pressed emergency button and told CO his chest was hurting and he felt like he was suffocating. CO closed door and did not return. Sanchez's cell mate expressed concern for him and said that he hears him gasp all night.
- Elderly man with congestive heart failure, allowed to have cell door open to speak to us. Explained he was blinded by a handball while at MDC and has hemorrhaging in his eye. Was taken to hospital 10 days after the incident, despite asking for medical care immediately, and doctors said he needed surgery or would go blind in that eye. No surgery has been provided. His eye is burning. Can't put in additional medical copouts because the computers are down.

- Congestive heart failure, kidney failure, prescribed 10 medications but can't see which is which in the dark and is afraid to take wrong one / wrong quantity. Went to Kingsbrook when had heart attack but now needs follow up care.

J73

Inmates on this unit reported more significant lockdowns. They also had been locked in all day Friday, but also were locked down on Thursday, January 31, other than to eat meals and shower.

I could feel cold air from their cells blowing out the cracks and into the warmer air of the common room.

Notes on specific inmates:

- Recently had surgery on his leg, which did not go well. He has had no follow up. He is still bleeding and needs medication.
- Feeling desperate to talk to his family. Gave me contact information
- Needs a refill for his medication asap

Sixth Floor

Inmates had been calling our office frantically on Thursday afternoon about the cold but we had heard no word from them all day Friday. All were locked in and they said they had been since yesterday afternoon. West side of building again much colder. I could feel cold wind through the cracks in the doors and inmates were covered head to toe with blankets and towels. These units had a panicky feeling. Many inmates reported untreated colds and flu. One man showed us his infected open leg wound through the cell window and told us his colitis is so bad that he woke up bloody - and no fresh sheets are available. He shoved his medical records through the door crack and the USAO Investigator and I saw that indeed he has colitis and an infected wound and seizure disorder. No clean underwear or socks for a week. Mostly cold food. Several inmates have sentencing next week and haven't been able to speak to their lawyers. No extra blankets provided (the AW agreed with this but said she would check the heat when I pointed out the cold gusts from their cells). Many inmates noted they are pre-trial and yet being treated like they are in SHU. They were very upset to not even be allowed into the common areas that have the emergency lights. Several inmates showed me cups with brown or cloudy water from the tap and said it is not drinkable.

Acrid smell on the floor, particularly the upper tier.

Notes on specific inmates:

- showed us his swollen leg that had an open, and visibly infected wound and described waking up that morning in a small pool of blood on his sheets from his colitis. (He also noted that because they are locked in and have no access to clean sheets, he will sleep on the bloody sheets.). Mr. X put his medical records from Brooklyn Hospital through the crack in the door. The records indicated a wound that will not heal and requires antibiotic treatment daily, ulcerative colitis and seizure disorder. Mr. X indicated that since returning from the hospital he has not received antibiotic cream and the wound has worsened. He has been told by the COs to wash it with soap and water. There is no longer soap available on his unit because commissary is closed and the soap has run out.

- Sentenced 12/6/18 and designated but has not been transferred. Fell off top bunk earlier in the week and badly hurt his foot. It is swollen and bruised. He has asked for medical attention but not received it.
- So cold in his cell that water in drinking cup is freezing over. Acrid smell in his cell from the vents, and he is waking up with headaches. Wearing 7-8 layers of clothing.

Unit 61

Inmates are out of their cells and receiving meals. They report having been locked down all day until we arrived. Numerous inmates complain of getting colds and flu from the cold cells and lack of hot shower water. Some inmates are dressed only in short sleeved shirts and say they did not have money to purchase warm clothes in commissary before the fire. They have run out of soap and toothpaste and commissary is closed.

Notes on specific inmates:

- Serious psychiatric history of suicide attempts. Has not received his psych meds. Needs his asthma pump. Freezing cold in cell.
- Shows me severely swollen gums. Has asked for medical attention but has not received.
- Looks emaciated and eye sockets are hollow. Explains he has Crohn's disease. Has lost significant amount of weight since Sunday.
- Shows us bandaged hand, where was shot. Bandages not changed for two weeks. Eyes swollen and red, and appear to be bulging. He says he is worried about eye pressure because has history of glaucoma.

- Had a seizure yesterday, pressed the emergency button. No one ever came. (history of seizures documented. Has medication but it does not always prevent the seizures).
- Finger numb, needs x-ray. Was in court today and AUSA reported conditions to judge that were not accurate.

Unit 63

Significantly colder on this unit. Cold air actively blowing out of the vents in the cells, including one we are allowed to enter.

- Has not received his psych meds. Suffering dental pain.

Unit 62

Locked in continuously since noon on Thursday. (AW says not true, they were out yesterday afternoon, but inmates of various languages and all sides of the unit confirm this lockdown. When I ask AW why our office received no legal calls at all from this unit since Thursday afternoon, she did not have a response.)

Notes on specific inmates:

- Mr. X was wearing three sets of thermals (top and bottom), two pairs of socks and a sweatshirt and sweatpants. He reported that when they were on lockdown, he was let out of his cell to go see the psychiatrist. On the way back, he stopped at the phone that calls to the Federal Defenders Office to let us know that his unit was on full lockdown all day. When the officers saw him on the telephone, they directed him to hang up. A full team of officers then went to his cell and searched it, throwing his legal mail on the floor. Mr. X also showed us through the cell door a cup of water he had just filled from the sink tap in his cell. It appeared brown. He asked for clean water in order to take his psychiatric medications.
- For several weeks, his toilet has been overflowing and will not flush. He had repeatedly requested it be fixed prior to the power issues, and it was not. Now he is locked down in his cell in the dark with it overflowing and has been required to eat his meals in close proximity to it. He has asthma, which is being aggravated by the cold.
- Needs his seizure medication.
- Mr. X had a hard time getting out of bed, where he was wrapped in a mound of clothes and blankets. He said he had the flu and had not received medical attention. His cell

mate was visibly worried about him, but said they have limited ability to communicate with each other because Mr. X is a Spanish speaker.

- His sentencing is Monday and he has not been able to speak to his lawyer.
- 4 week RICO trial starting and he has not talked to his lawyer.
- Infection in chest. Previously taken to hospital but no followup care since Sunday. Scared.
- His asthma pump has run out and he can't get a refill because the computer request system is down.
- Abscess in mouth. Has requested treatment but not received.
- Has not been able to take his psych medication this evening because has not received any food.
- Elbow infected and swollen. Taken to hospital earlier in the week, but no follow up care and is in pain.
- Freezing cold, feels like an animal eating cold food in the dark that he cannot see. No shower or clean clothes. Asthma aggravated by the cold.
- Needs his psychiatric medications refilled and is suffering from asthma.
- Father and son locked in cell. Freezing cold.
- Asthma aggravated by cold and has not received medical attention.
- Cold and panicking.
- Has sentencing next week and has not been able to speak to his lawyer or his family to prepare for it.
- Suffering from the cold and dark.
- Mr. X is suffering pain in his chest and back, as well as his left arm. He has requested medical care but has not been seen. He asks that we call his wife and let her know he is okay.
- Needs a refill of his medications

- Ear infection and high blood pressure Has requested medical attention but has not been seen.
- For last three weeks has had a badly abscessed tooth. It feels like his nerve is exposed and any cold liquid or cold air hitting it is very painful. Has repeatedly requested dental care but has not received.
- Sentenced prisoner, in transit, has not eaten because too dark to see his food, freezing cold.
- In transit to Allenwood, has been at MDC almost 30 days, just wants to get to a warm place.
- Heat out since late November, no clean clothes, multiple 24 hour lockdowns, no access to law library, no light since January 27, 2019

Information Regarding Duration of Conditions

AW King and Legal Department staff indicated they hope the power will be restored on Monday, but that it may take additional days to get full services restored. The COs I spoke to seemed to think it could be another full week without light or email/phone service.