

TESTIMONY OF DANIELLE MUSCATELLO, ESQ.
BARKET EPSTEIN KEARON ALDEA & LOTURCO, LLP

“On October 4, 2023, I was incarcerated at Green Haven Correctional Facility. I was locked in my cell in the Special Housing Unit (“SHU”). The prison was locked down, and Correctional Emergency Response Team officers were in the SHU. I could hear them marching and chanting, something to the effect of “cuff ‘em up, break ‘em up.” They were wearing what looked like black riot gear. Four CERT officers stopped in front of my cell and directed me to strip down to my boxer shorts. I recognized the officers from the lockdown at Sing Sing in November 2022. The officers remembered me as well. I was beaten so badly by CERT officers at Sing Sing that I defecated on myself. The officers ordered me to face the wall of my cell and put my hands on my head. I complied, but almost immediately, I heard my cell gate open, one or more officers yelled, “Stop Resisting,” and the CERT officers rushed into my cell. I turned around and was punched in the face so hard that I fell back into my sink. I was then pulled to the floor, and with my back on the floor, I was kicked in my ribs. The officers bent my fingers backwards, stomped on my legs and ankles, and spread my legs and kicked me in the genitals. I was crying. I thought I was going to die.”

Good afternoon. My name is Danielle Muscatello. I am an attorney and member of the law firm Barket Epstein Kearon Aldea & LoTurco, based in Garden City, New York. What I just read to you is the statement of one of my clients. I have spent the better part of my career as a criminal defense attorney, with a focus on post-conviction litigation, but in the fall of 2022, when the mother of one of my appellate clients called to alert me that something had happened at Sing Sing Correctional Facility, I took a trip to Ossining, and my attention was called to a different type of post-conviction issue – the inhumane treatment of incarcerated men and women in state correctional facilities and the pattern of abuse, neglect, and abject indifference that has come to define correctional culture in this State.

Our firm now represents nearly 90 men who have all suffered physical and psychological abuse at the hands of the men and women entrusted to safeguard and rehabilitate them. 32 of these men were brutalized by CERT members during the Sing Sing lockdown in November 2022, and 48 of them were brutalized by CERT members during the Green Haven lockdown in October 2023. And these are just the men who, with the assistance of their loved ones, were able to reach us. What is also remarkable, and what should disturb everyone listening, is that these lockdowns and overall facility searches were conducted in the presence of OSI staff, the very people charged with policing correctional officers and investigating their misconduct.

Our clients have suffered ruptured spleens, broken ribs, fractured facial bones, and disfigured fingers and toes. They have been kicked in the face and genitals, choked, slammed headfirst into concrete walls, and blinded and gagged by chemical spray. One of our clients, a man in his early sixties, whose daughter is here today to share her experience, was beaten by CERT members at Green Haven, transferred to Upstate Correctional Facility and put in segregated confinement, and 30 days later, after being denied medical care, and the medicine he needed to control his blood sugar, he died; another client, a young man in his 30s, was beaten by CERT members at Sing Sing, and this past December, after his pleas for mental health care were ignored, he was found dead in a SHU cell at Attica; and two other clients were beaten by CERT members at Green Haven, drafted out of the facility immediately, and then water boarded at the now shuttered Great Meadow Correctional Facility later the same day. One described an officer holding a rag around his face and repeatedly dunking his head in a bucket of water, and the other, through tears, described being laid down on a gurney while an officer held a dirty rag over his head and poured water over it.

What is also so disturbing about these harrowing accounts is that in addition to being beaten and dehumanized, many of these men are threatened with retaliation if they report their injuries, denied medical care, moved to segregated housing, and issued Misbehavior reports, falsely and predictably accusing them of either having a weapon or taking up a fighting stance. It is clear, in other words, that not only is there a culture of violence in our State's prisons, but there is also a culture of cover-up, and, as a result, incarcerated men and women have been unseen and unheard for far too long.

Reform is desperately needed. Section 24 of the Correction Law prohibits litigants from suing correctional officers in their individual capacities in State Court for tortious acts committed within the scope of their employment; the contract between the correctional officers union, NYSCOPBA, and the State makes it almost impossible to fire or even discipline prison guards; and DOCCS' antiquated paper-based record keeping system, as detailed by the Inspector General in her August 2024 report on the first two years of the HALT Act, invariably stalls the litigation of meritorious claims and thwarts the efforts of oversight organizations.

Individuals who commit violent felonies and other serious offenses can and should be held accountable for their crimes. I am not an abolitionist. But if we truly care at all about rehabilitation, reducing recidivism, and preventing generational trauma, we have to start also holding correctional employees accountable for their crimes. To start, the Legislature should pass Senate Bill S7312, and expand surveillance,

recording and investigation standards. Further, if the Legislature is truly serious about reform, it *must* pass legislation mandating that DOCCS overhaul and modernize its recordkeeping practices. This should not be controversial. Increased visibility increases accountability. And finally, it is time to take from private anonymous arbitrators the final say in firing correctional officers in cases of serious misconduct and place that power where it belongs – with the commissioner.

Thank you for the opportunity to speak here today and be part of this important conversation.