



TESTIMONY OF:

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Presented before

**The New York City Council Committees on Criminal Justice and Women
Oversight Hearing Examining Sexual Abuse and Harassment in City Jails**

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My name is Kelsey De Avila, and I am a Jail Services Social Worker at Brooklyn Defender Services. Thank you for this opportunity to address the Council on the sexual abuse and sexual harassment that too many of our clients suffer in our city jails. BDS provides comprehensive public defense services to more than 30,000 people each year, thousands of whom are detained or incarcerated in the city jail system either while fighting their cases or upon conviction of a Misdemeanor and a sentence of a year or less. BDS' Jail Services Division provides supportive services and direct advocacy on behalf of our clients in Department of Correction (DOC) custody. This testimony is composed primarily of the accounts of our clients whose voices are underrepresented at today's hearing.

There should no longer be any question that rape and sexual violence are real and serious problems in our jails that demand attention. Whether a person is detained pre-trial and presumed innocent, as is the majority of the population in city jails, or enduring incarceration as a punishment or perhaps awaiting transfer to upstate prisons, they are New Yorkers – sons, daughters, mothers, fathers, cousins, friends, and neighbors. Yet they are often called “packages” or worse by DOC staff, and treated accordingly. We continue to urge the City to end the inhumane treatment of incarcerated New Yorkers and close the jails on Rikers Island. If the City cannot keep people in its custody safe, policymakers in all levels of government should question whether such custody should even be permitted.

The ‘Deep-Seated Culture of Violence’ at DOC Includes Sexual Violence

On August 4, 2014, the U.S. Attorney's Office for the Southern District of New York (USAO SDNY) issued a report to DOC regarding its Civil Rights of Institutionalized Persons Act (CRIPA) investigation of the jails on Rikers Island. The investigation infamously found a “deep-

seated culture of violence [that] is pervasive throughout the adolescent facilities.” However, directly impacted people, attorneys and social workers who serve them, and indeed the Department itself all know that this culture extends throughout the City’s jail system, and includes sexual violence. (In a footnote, the report noted that the investigation did not focus on sexual assault, but raised concerns that DOC was underreporting it.)¹ A former federal jail warden and then-member of the Board of Correction (BOC) once said in a public meeting, in regards to staff sexual assault at Rikers Island, “As long as we are going to have prisons we are going to have sexual abuse in prisons.”² A Department of Justice survey found that, on any given day, 50 of the 800 people held at the Rose M. Singer Center (Rosie’s) were being sexually victimized the staff, making it one of the worst jails for such abuse in the country.³ (The daily population at Rosie’s is now closer to 530.) Nevertheless, in each and every news article about an allegation of sexual misconduct by DOC staff, the agency’s response invariably includes its supposed “zero tolerance” policy. Whatever the policy, in practice, the DOC fails to protect people and hold officers accountable.

According to a June 2018 report by the agency, allegations of sexual abuse and sexual harassment increased by nearly 40% from 2016 to 2017 (823 to 1151), which the agency attributes to improved reporting mechanisms and other reforms implemented as part of an effort to comply with the federal Prison Rape Elimination Act (PREA). We do not accept this explanation as fact, given the enormous increase in reports amidst declining overall admissions and average daily population. Even so, staff sexual misconduct and harassment comprise 70% of these allegations. Allegations of staff sexual misconduct increased approximately 16% (322 to 374) and allegations of staff sexual harassment increased approximately 86% (232 to 432) during this period. At the time of the report, of the 823 allegations in 2016, the agency had only found three incidents to be substantiated. The vast majority of investigations (739) remained pending. In 2017, though the number of allegations increased, only one incident had thus far been deemed substantiated. 1112 investigations remained pending at the time of the report.⁴

This should be disturbing to the Council: Over a thousand cases are still pending, and DOC staff are allowed to remain employed despite pending allegations, and no action will be taken against them until the case is officially closed. Notably, our detained clients are subject to extremely punitive treatment and conditions – and exposed to this epidemic of sexual violence – while they fight criminal allegations against them.

¹ Jocelyn Samules et al., RE: CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island (USAO SDNY 2014), <https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf>.

² Nick Malinowski, NYC Official Says Rape Is Inevitable at Rikers Island: If True, We Cannot Send Anyone There, Huffington Post, Dec. 6, 2017 at https://www.huffingtonpost.com/nick-malinowski/nyc-official-says-rape-is_b_10600320.html.

³ John H. Tucker, Rape at Rosie's, New York Mag., <http://nymag.com/daily/intelligencer/2018/06/rape-at-rikers.html>.

⁴ NYC Dep't of Corr., NYC Board of Correction Sexual Abuse and Sexual Harassment Minimum Standards 5-40 Assessment Report (2018), <https://www1.nyc.gov/assets/doc/downloads/pdf/Annual-Sexual-Abuse-and-Sexual-Harassment-Assessment-Report.pdf>.

Mr. C's BDS attorney referred him to me after learning an officer had denied him food. When I met with Mr. C, he reported that the officer denying him food was the same officer who, during a separate incarceration a couple of years ago, watched and encouraged the brutal rape of Mr. C by three other incarcerated men inside the bathroom of his dorm. Mr. C has since undergone surgery to repair the tissue damage done to him that night and has made multiple attempts at suicide by swallowing razors. Two years later, Mr. C was in the custody of the same officer. The officer remembered Mr. C and shared with other residents of the unit that Mr. C was raped repeatedly and would only address him as 'pussy' and 'faggot'. Other staff regularly witnessed these comments but did not intervene. We reported the abuse to DOC and requested Mr. C's immediate transfer to another unit, and were able to secure his release within a couple days. This officer continued to work for DOC following the incident.

DOC's Failure to Comply with Minimum Standards

In 2016, pushed by survivors of Rikers Island, other activists, public defenders, and Office of the Public Advocate, the BOC adopted new rules to “detect, prevent, and respond to sexual abuse and sexual harassment” in City jails. One of the new rules, for which we and others fought, was a requirement that DOC install security cameras on in its buses, where people in custody are particularly vulnerable, as part of a one-year pilot program. The Department had roughly two years to meet its obligations, including providing a written report on the efficacy of the pilot by September 1, 2018. (The pilot itself was to be instituted by July 31, 2017.)⁵ As of this writing, DOC is in violation of this rule and recently requested a variance to allow for an extension of the deadline while it works to install cameras in one single bus.⁶ The Council should note that BOC's rule referred to the plural form of “vehicles” – not one bus.

⁵ NYC Bd. of Corr., Notice of Adoption of Rules (2016), <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2016-PREA/PREA%20Rules%20-%20FINAL%20FOR%20POSTING%2011.10.16%20w%20certification.pdf>.

⁶ NYC Dep't of Corr., Letter to NYC BOC re: Minimum Standards §5-04(g) “Supervision and Monitoring” – Transport Vehicle Camera Pilot Program and Written Report (2018), <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2018/September-14-2018/NYC%20Department%20of%20Correction-BOC%20Sexual%20Abuse%20and%20Sexual%20Harassment%20Minimum%20Standards%20-%2005-04%20-%20Transport%20Vehicle%20Camera%20Pilot%20and%20Report.pdf>.

Earlier on the day that Ms. A was raped, she had appeared in court with her lawyer. After her appearance, she requested to leave on the 3 pm bus back to Rikers. While she was in transit, Ms. A was raped by a male officer at the back of the bus in a parking lot on Rikers Island, all while the driver of that bus sat and watched. When she reported the incident, the bruises on her wrists and thighs were clearly visible. The two officers on the bus held Ms. A against her will and tortured her without anyone noticing or questioning the missing bus, the missing officers, the missing woman or why it took more than 10 hours for Ms. A to travel from court to her housing unit.

When she returned to her housing unit, a female DOC officer noticed that Ms. A was not acting herself and confronted Ms. A about her behavior. Ms. A felt safe with this female DOC officer and recounted the rape hoping for a safe way to report. In response, the female DOC officer told Ms. A that it would be safer if Ms. A reported it to her attorney, rather than the female DOC officer making a report. Ms. A took this to mean that the officer, herself, was afraid to report. Our client felt extremely vulnerable and alone during this time. Even the female DOC officer, an employee of the Department, seemed aware of the current culture of violence within DOC and unwilling or unable to fully protect the people in her custody.

We reported the rape to DOC and DOI and requested the latter, as an independent entity, investigate. We also reported it to the Bronx District Attorney's office. For Ms. A's safety we requested her transfer to another facility. There, she was placed in solitary confinement after spitting on an officer who was antagonizing her. To the best of our knowledge, the Bronx District Attorney's office declined to investigate, DOI punted to DOC, and DOC's investigation is ongoing while the officers involved continue to work for the Department.

Another BOC rule requires DOC to complete all investigations of sexual abuse and sexual harassment allegations no later than 90 days from the Referral Date, absent extenuating circumstances outside of the Department's control.⁷ Although this rule became effective on January 2, 2018, as discussed above, the vast majority of investigations stemming from 2016 and 2017 remain pending. The lack of accountability at DOC, therefore, is not limited to a few bad actors, but rather is endemic to the agency.

DOC's Failure to Properly Investigate Allegations of Sexual Harassment and Abuse

As part of its internal reform process to comply with PREA, DOC increased the options for filing complaints, and increased staffing for the Investigations Division. Nonetheless, we have not seen a commensurate increase in protections for people in custody or accountability for staff. DOC

⁷ NYC Bd. of Corr., Notice of Adoption of Rules (2016), <https://www1.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/Rulemaking/2016-PREA/PREA%20Rules%20-%20FINAL%20FOR%20POSTING%2011.10.16%20w%20certification.pdf>.

often fails even to take interim measures after allegations are reported. For example, one of the quickest ways to help protect people from harm, or continued harm, in jail settings is to transfer them to different units or facilities. This approach does not meaningfully address the root causes of jail violence, but it is an easily accessible tool for intervention in the moment. We often find that DOC only transfers people threatened with or victimized by sexual violence when we advocate on their behalf. Mr. W, a BDS client, was an exception, but only because he took extreme measures to advocate for himself:

Mr. W was raped by another incarcerated man on his housing unit. Mr. W took proactive steps and reported the rape to 311 and his housing officer. Despite his own self-advocacy, neither he nor the other man were moved. Our client continued to report the sexual assault to DOC officers and even a DOC captain, yet still was not moved. Mr. W was raped again in the same housing unit by the same man a week later. Investigators finally interviewed Mr. W, but despite their interaction, Mr. W was not separated from the man. Mr. W. was raped again. More than two weeks later, our client spit on a DOC officer and only then was he moved to another, more restrictive housing unit. He knew that by committing an “assault” on DOC staff, he would finally be moved. It was an act of desperation after being repeatedly failed by those in power.

Regardless of the complaint mechanism they use, our clients who report sexual harassment or abuse are visited by members of DOC’s Investigations Division, who come in plainclothes and wearing badges. Everybody inside—incarcerated people and staff alike—knows them, making people who report extremely vulnerable to retaliation. DOC regularly fails to protect them, surely dissuading others from making reports.

Sexual Abuse, Cavity Searches and Broader Corporal Control

Among the many serious and life-altering harms of incarceration in New York City is the routine sexual degradation involved in contraband searches. Often, the searches, themselves, are deliberately punitive, used by staff not as a response to a reasonable suspicion of the presence of contraband but rather to assert authority and control or to “send a message.” Incarcerated people are regularly subject to cavity searches, which are susceptible to all manner of abuse.

Mr. L reported that he was sexually abused during a routine housing search. DOC officers entered his cell, yelling, only to rough him up before he was even fully awake. One officer then held Mr. L’s head down with one hand while using the other hand to sexually abuse him. Fortunately, our client felt safe enough after the incident to call 311 to report the incident. Mr. L had difficulty defecating after the abuse and reported that he was experiencing extreme pain and bleeding. Months after the abuse, our client still reported discomfort, continues to have difficulty sleeping and trusting others around him due to the trauma of this incident.

The Council should recognize that the epidemic of sexual misconduct exists on a continuum of corporal control that deprives and dehumanizes incarcerated people. The power dynamics that make any and all sexual conduct between staff and incarcerated people coercive under the law play out in countless other ways, as well.

During a tour of the Rose M. Singer Center on Rikers Island, Ms. M shared her difficulty in getting extra toilet paper and feminine hygiene products from DOC staff. She shared how she would have to beg officers for assistance, only to be treated with disrespect that made her feel less than fully human and ashamed. Ultimately, the jail controls the cleanliness, health, and feelings of self-worth for all incarcerated people.

The Victimization of People with Intellectual and Developmental Disabilities

It is important for this conversation to include people with intellectual and developmental disabilities. This population is at particular risk for sexual victimization, and particular attention should be paid to their needs, even beyond the intake risk-assessment. We appreciate the work Correctional Health Services has done to better screen individuals who come into the custody of the Department and augment services for all victims of jail-based sexual trauma, but we know that too many incidents go undetected only increasing these clients' risk for abuse.

Mr. D is a young man with moderate mental retardation as well as mental health issues. During his incarceration, he was frequently the target of extortion and harassment. Mr. D had trouble following the rules and was disliked by many correction officers. As a result, he never felt comfortable asking for their help, even in the most extreme of circumstances. Mr. D learned to tolerate the abuse he suffered while incarcerated until he finally told us that what he described as "horseplay" had gone too far – he was being forced to endure sexual abuse by another person in his dorm – and was being ignored or undetected by staff. When we became involved, we were able to secure Mr. D's transfer to another unit, and eventually out of jail.

Conflicts of Interest in DOC Investigating Itself

Executive Order 16 states, "upon receipt of any information concerning corrupt or other criminal activity or conflict of interest related to his or her agency, the Inspector General of such agency shall report directly and without undue delay such information to the Department of Investigation (DOI), and shall proceed in accordance with the Commissioner's directions."⁸

⁸ NYC Executive Order 16 Section 4(e)

Staff sex abuse is criminal behavior that should always be referred to and investigated by DOI. Currently, DOC is permitted to conduct investigations of sex abuse by its own staff members, as reported by the agency at City Council hearings and Board of Correction meetings. In our experience, reports by our clients regarding sexual abuse by a DOC staff member are referred to both agencies, but DOI generally allows DOC's Investigation Division to conduct the investigation. This is a blatant conflict of interest and may contribute to the shockingly small number of cases referred for criminal prosecution by DOC.

The Charter of the City of New York (the City Charter) makes clear, "The jurisdiction of the commissioner [of the Department of Investigation] shall extend to any agency, officer, or employee of the city."⁹ DOI thereby has jurisdiction to conduct investigations related to allegations of sex abuse by New York City Corrections Officers, which would resolve the abovementioned conflict of interest. Furthermore, the City Charter requires that "upon completion of the investigation, [the Commissioner of DOI] shall also forward a copy of his [or her] written report or statement of findings to the appropriate prosecuting attorney."¹⁰ Currently, there is no written policy that states what constitutes an appropriate case for DOI to defer investigations to DOC's Investigation Division. The Council should push the agency to establish clear boundaries that would allow appropriate and thorough investigations without bias.

Sexual Harassment and Abuse of Visitors

Earlier this year, the New York City Jails Action Coalition (JAC) published a report, *'It Makes Me Want to Cry': Visiting Rikers Island*, documenting the horrific experiences families, friends, and others face when visiting Rikers Island to support a loved one. The report, which is based on interviews with more than a hundred visitors, makes clear that the epidemic of sexual misconduct extends to the staff who screen visitors. The acts described in the report include being told to "show [their] underwear not only in front of officers but in front of other visitors; forced to strip down to their underwear, [told to] show COs their genitals, [forced to] suffer through inappropriate touching of their breasts and genitals, and [forced to] undergo cavity searches."¹¹

In an NBC I-Team report, Stephanie Sanchez reported that she was ordered into a bathroom in the Brooklyn House of Detention and threatened with arrest if she did not comply with an officer's order. "By the time she was finished touching the top, like my breasts weren't even in my bra. My bra was all the way up to my neck," Sanchez said. "She (the officer), went in, she went inside, she moved around, touched my private area. And I just had to stand there. I was in shock," she said.

⁹ Charter of the City of New York, Chapter 34 § 803(d)

¹⁰ Id. § 803(c)

¹¹ NYC Jails Action Coal., *'It Makes Me Want to Cry': Visiting Rikers Island* (2018), <http://nycjac.org/wp-content/uploads/2018/01/VISITING-RIKERS-ISLAND-JAILS-ACTION-COALITION-1.9.18.pdf>.

Shauntay Mayfield was also threatened that if she did not consent to the search, officers would contact ACS. “They told me, Oh, ACS is going to get involved. I know you have kids. You want to go home to them tonight?” she recounted.

BDS stands with JAC and their recommendations in order to hold the Department accountable and keep visitors safe from sexual abuse by DOC staff. As an initial step, the City Council’s Committee on Oversight and Investigations should launch an independent and transparent investigation into the allegations of sexual abuse and unlawful strip searches.

As stated in the NYC JAC report, “visiting is a crucial piece to improving reentry and decreasing recidivism, improving jail safety and the mental health of incarcerated people, and helping families who deal with the collateral consequences of incarceration to maintain ties with their loved ones.” Yet, “many visitors report that COs’ behavior as a major concern and hindrance during visits” and fear and “risk of sexual abuse during unlawful strip searches” is a major barrier to visiting. Forcing people to choose between risking exposing themselves to possible sexual abuse or not visiting a loved one is disgraceful and the City should no longer turn a blind eye to the reality of the torture we are putting the families and loved ones of incarcerated people through.

Conclusion

If the people exposed to the soaring rates of sexual harassment and abuse in City jails were treated that way by any other government agency Councilmembers and other policymakers would have long ago called for the resignation of the Commissioner as well as fundamental structural reforms, if not elimination of the agency. Abuse complaints are rising and the City has no plan to improve accountability for staff. Even with the highly-publicized incidents of sexual abuse of visitors, DOC has reported no disciplinary actions against staff. Imagine what is happening behind the gate. Hundreds of complaints languish for years without any results or immediate changes to protect victims. DOC officers, who hold the profound responsibility for the care and custody of incarcerated people and yet use their position to abuse, are still working in extremely powerful positions for the Department. The policies in place are important, but they mean very little when DOC does not enforce them. No matter what side of the gate they are on, everyone deserves to be safe from sexual harassment and abuse. The City must finally address the underlying failures of the Department of Correction or remove people from its custody.

Thank you for your time and consideration of my comments. If you have any questions, please feel free to reach out to Jared Chausow, our Senior Policy Specialist, at 718-254-0700 ext. 382 or jchausow@bds.org.