



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES

**Presented before
The New York City Council Committee on Courts and Legal Services
Oversight Hearing
Examining the Collaboration between the Courts and Legal Service Providers to
Ensure Court Record Accuracy**

May 26, 2016

My name is Wesley Caines. I am the Reentry Specialist at Brooklyn Defender Services (BDS). BDS provides innovative, multi-disciplinary, and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 40,000 clients in Brooklyn every year. I thank the City Council Committee on Courts and Legal Services, and in particular Councilmember Lancman, for the opportunity to testify today about how recordkeeping errors impact the tens of thousands of clients that we represent every year. We are grateful to the Council for bringing to light the issues that our clients face and working toward solutions that will improve our courts and communities.

My testimony today will cover errors in a person's court file or criminal record, referred to as Record of Arrest and Prosecution (RAP) sheet errors. These errors are widespread and yet RAP sheet errors dramatically affect a person's outcome in his or her criminal case, create significant collateral consequences, and can even impact a person's liberty. Our experience shows the importance of public defenders and other non-profit organizations in advocating for the correction of errors in our clients' individual cases. Yet this alone is not enough. We hope that City Council will consider passing accountability measures to force the NYPD to keep accurate records and

support statewide legislation to allow all people free access to their own criminal records.

RAP Sheet Errors

RAP sheet errors are extremely common. In a typical arraignment shift, BDS criminal defense attorneys find RAP sheet errors in 50% of cases. The New York Legal Action Center prepared a study on RAP sheet errors and found that at least 30% of RAP sheets contained at least one error, and some contained as many as ten or more.¹

The most common errors include:

1. *Missing information about the disposition of cases, which gives the mistaken impression that they are still open.*
2. *Mistaken information about bench warrants, which can lead to countless arrests.*
3. *Information about old non-criminal violations and dismissals that should have been—but were not—sealed according to New York State law.*
4. *Errors made when different City and State agencies do not communicate, which can lead to unlawful detention.*

BDS represents clients with RAP sheet errors in every one of these categories on a regular basis. I share three of their stories today:

Ms. M – Missing information about case dispositions

Ms. M came to us through our family defense practice. As a teenager, Ms. M worked for a local child care provider. After high school, Ms. M left that job but subsequently re-applied for a position with the same child care provider as an adult. Her former employer ran a legally required background check and informed Ms. M that she had an open criminal case. She was given two weeks to straighten the matter out before her offer for employment would be rescinded.

Initially, Ms. M went to the NYPD on her own to try to find out about the open case and clear up the matter, but was turned away without gaining any additional information. Ms. M then told her BDS family defense team about the “open case” and she was referred to me. I learned that the open case referred to an erroneous arrest that Ms. M had believed was promptly voided when she was released at the precinct. Through intense advocacy work, we were able to provide proof that the arrest was voided, that it should never have been included in her criminal history, and Ms. M was able to begin her new job on time.

¹ “The Problem of RAP Sheet Errors: An Analysis by the Legal Action Center,” Legal Action Center (2013), available at http://lac.org/wp-content/uploads/2014/07/LAC_rap_sheet_report_final_2013.pdf.

Without BDS’s assistance, Ms. M would have been precluded from this job and others because of the missing information about the disposition of the arrest on her RAP sheet. Countless people every year are excluded from jobs that they are qualified for because of RAP sheet errors that are difficult if not impossible to fix without the assistance of a lawyer or advocate to navigate the dense bureaucracies.

Mr. G – Mistaken information about bench warrants

BDS was appointed to represent Mr. G, a 62-year-old wounded veteran currently on disability, when he came before the court on a thirty-year-old old warrant and an open container case. An open container violation does not, by itself, typically result in arrest and detention in Central Booking until the person can see a judge without something else like a warrant. Instead, a summons is usually issued.

Mr. G informed us that he had been picked up and brought to court at least twice before for this “warrant” that appears to exist only in the NYPD database. After every arrest, Mr. G would appear before a judge who would tell him that there was, in fact, no record of a warrant in any of the court’s files. The Court then ordered NYPD to be so notified, and yet, the next time Mr. G came into contact with the police, he would be arrested and detained on this non-existent warrant.

While we recently obtained an ACD for Mr. G in the open container case, as of today, the warrant may still remain in the NYPD’s database. He will continue on as our client as we work to ensure that the NYPD clears the false warrant from its database so that Mr. G is never again unlawfully detained. Mr. G’s case unfortunately is not uncommon, and the issue of unlawful warrant arrests was chronicled earlier this year in the *New York Times*.² In the case in the Times, the NYPD did not clear the unlawful warrant until the victim in that case filed suit in Manhattan federal court.

Filing a lawsuit against the NYPD should not be the only remedy for clearing up unlawful warrants. City Council should put in to place measures to sanction the NYPD for failure to update their database within 48 hours of learning of a warrant and requiring compensation to victims who are detained on an unlawful warrant. Subsequent arrests based on unlawful warrants should result in increased sanctions and compensation.

Mr. B - Information about old violations and dismissals that should have been—but were not—sealed according to New York State law.

Mr. B is a BDS immigration client and U.S. green card holder who was referred to our office because he needed assistance applying for citizenship. Mr. B had three RAP sheet errors that inhibited his ability to apply for citizenship and that would have made him eligible for deportation if he were to be apprehended by ICE. BDS was able to clear records that should have been sealed in Manhattan court but that unlawfully remained on his RAP sheet. Even worse, Mr. B’s RAP sheet showed that he pleaded guilty to two felony counts in the Bronx in 2005. Mr. B insisted that he only pleaded guilty to one low-level felony for which he received a probationary sentence. I

² Alan Fleur, “Cleared of a crime but hounded by a warrant,” N.Y. TIMES, March 28, 2016, available at <http://www.nytimes.com/2016/03/29/nyregion/cleared-of-a-crime-but-hounded-by-a-warrant.html>.

ordered the plea minutes and the sentencing records from the Bronx case and learned that Mr. B was correct. According to the transcript, Mr. B pleaded guilty to only one felony but the charge was listed on the RAP sheet twice. Yesterday I sent an intern up to the Bronx with notarized documents from our office. Mr. B and the BDS intern spent the morning with the Bronx Supreme Court clerk fixing the error. Mr. B now has updated certificates of disposition that accurately reflect his criminal record. BDS attorneys will now begin helping him apply for citizenship. More importantly, he no longer has an erroneous criminal record that would make him deportable. This labor-intensive case required time and expertise from both our immigration and criminal defense teams.

D- Errors made when City and State agencies do not communicate

16-year-old D was arrested after a minor conflict with the police. When the police ran his record, they noticed that Family Court had issued a warrant for a probation violation in a delinquency case. At arraignment on a Thursday, the Judge released D on the new charge but ordered that ACS come pick him up because of the Family Court warrant. Yet DOC staff unlawfully sent our client to Rikers rather than to an appropriate ACS-operated juvenile facility because they had already created a DOC card (literally a handwritten index card filled out at arraignments) erroneously ordering D to be held in DOC custody. Our client came back to court on Monday morning, where the Judge clarified once again that the child should not be in DOC custody because he only had a Family Court hold. Yet DOC sent our client back to Rikers Island. D's attorney called the DOC transport office when she learned he was back at Rikers, but DOC still refused to send the child to ACS custody because their computer system indicated an erroneous DOC hold and DOC staff stated that they did not know how to send the child to ACS custody. After extraordinary advocacy by our client's attorney including a new appearance in court the next day, ACS finally picked up D from the courthouse on Tuesday. **Thus, D spent six days on Rikers Island, rather than in an age-appropriate juvenile facility, despite criminal court judges consistently informing DOC and the prosecutor that our client was only detained under a family court warrant and DOC did not have the authority to detain him.**

BDS sees these issues in our practice every day. As these examples illustrate, RAP sheet errors have severe consequences for our clients and are extremely difficult if not impossible to fix without the assistance of a professional advocate.

BDS's RAP Sheet Cleanup Project

Last year BDS created the RAP Sheet Cleanup Project. We utilize the assistance of Brooklyn Law School students to put in the legwork in the courts to obtain documents and transcripts, correct the issues with clerks, and then file documents with the Division of Criminal Justice Services to ensure that the RAP sheets reflect the corrected record. **It takes BDS staff, with the assistance of law student interns, anywhere from 2-14 hours, depending on the location of the prior case(s) or arrest(s), to cleanup a single RAP sheet.**

BDS has assisted over 70 of our clients in correcting errors in their records since the inception of the RAP Sheet Cleanup Project. Currently we do this with no dedicated budget. This means that, while the Brooklyn law students are on summer vacation, we do not have the internal capacity to help our clients clear their records as we do during the school year. In the future, we hope to obtain funding to allow us to ensure that no BDS client walks away from his or her court-involvement with any errors on their criminal record.

Other Policy Recommendations

1. City Council should pass a law requiring the NYPD to correct erroneous warrants in their internal database and mandating compensation to victims who are unlawfully stopped or imprisoned because of the erroneous warrant;
2. City Council should support statewide legislation to allow people free access to their criminal histories (RAP sheets);
3. City Council should fund organizations like BDS that assist client in accessing and clearing up RAP sheet errors.

Thank you for your consideration of my comments. Please do not hesitate to reach out to me with any questions about these or other issues at (718) 254-0700 (ext. 380) or wcaines@bds.org.