



**BROOKLYN
DEFENDER
SERVICES**

December 10, 2020

Mayor Bill de Blasio
Office of the Mayor, City Hall
New York, New York

Speaker Corey Johnson
New York City Council
253 Broadway, 10th Floor
New York, New York

District Attorney Darcel Clark
Office of the Bronx District Attorney
198 E. 161st Street
Bronx, New York

District Attorney Eric Gonzalez
Office of the Kings County District Attorney
350 Jay Street
Brooklyn, NY

District Attorney Melinda Katz
Office of the Queens County District
Attorney
125-01 Queens Boulevard
Kew Gardens, NY

District Attorney Michael McMahon
Office of the Richmond County District
Attorney
126 Stuyvesant Place
Staten Island, New York

District Attorney Cy Vance
Office of the New York County District
Attorney
One Hogan Place
New York, New York

Commissioner Dermot Shea
New York City Police Department
1 Police Plaza
New York, New York

Sent Via Email

Dear Mayor de Blasio, Speaker Johnson, District Attorneys, and Commissioner Shea,

As the Executive Director of Brooklyn Defender Services (BDS), I am writing regarding the article detailing horrific abuses by the NYPD Vice Squad published by ProPublica on December 7th, titled "[NYPD Cops Cash In on Sex Trade Arrests With Little Evidence, While Black and Brown New Yorkers Pay the Price.](#)"

The harm caused by the targeted enforcement of outdated, paternalistic and racist laws by the NYPD Vice Squad has been mired in corruption, sexual misconduct, and gross abuses of New Yorkers for decades. The Women's Defense Project at BDS has arisen in response to the highly traumatic nature of the experience of our clients facing these charges. Our responsive legal representation on behalf of cisgender and transgender women who are charged with crimes in Brooklyn focuses on defending them in the criminal cases as well as the related consequences

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that often arise from these charges. We are also committed to bringing to light the harm of police enforcement policies and the abusive practices of NYPD officers who are tasked with enforcing the laws against sex work. We regularly represent people who are required to appear in the Human Trafficking Intervention Court, where we represent sex workers and victims of trafficking who have come in contact with the criminal legal system. We have represented thousands of people who have been charged with both sale and purchase-side crimes related to sex work.

Historically as well as in recent years, the targets of policing have disproportionately been Black, brown, immigrant, low-income, LGBTQIA+, and other politically disenfranchised people. Multiple institutions, from criminal courts to the Administration for Children's Services (ACS), to immigration enforcement, work separately and in tandem to control and punish these same groups. It is within this historical and intersectional context that the Vice Squad and its abhorrent practices exist. The abuses detailed in this article are not unique to Vice, but the unit exemplifies the most destructive tendencies of policing.

Senior Attorney Jillian Modzeleski, who is quoted in this article, has extensive experience with the sham charges, exploitation of victims, and lasting trauma inflicted by members of the Vice Squad. Among many disturbing examples of misconduct, the article details the abuse of a woman, represented by Ms. Modzeleski, at the hands of an undercover Vice Squad officer known as UC-157 and more broadly highlights an exploitative, abusive, racist, and unaccountable unit that operates with impunity within the NYPD. The stories shared in this article are not outliers; rather, they are representative of what we know to be true of the culture and operations of NYPD Vice. As confirmed by the experiences of people we represent and by the article itself, many people who have suffered at the hands of NYPD Vice will not come forward for fear of reprisal and humiliation by the Department. There are an unknowable number of victims of Vice Squad abuses.

Ending the harms perpetrated by NYPD Vice is a clear issue of both gender and racial justice. People targeted for arrest for sex work are overwhelmingly transgender and cisgender women, and are almost exclusively Black, Brown and Asian New Yorkers; in the last four years, 89% of the 1,800 people charged with prostitution and 93% of the 3,000 people accused of trying to buy sex were non-white.

With this reporting and our vast experience representing individuals ensnared in Vice operations in mind, we make the following recommendations.

I. Abolish the NYPD Vice Squad.

For many years, community members and advocates have called for the abolition of the Vice Squad and for an end to the criminalization of sex workers. This new reporting both highlights the known abusive practices and culture of NYPD Vice and makes additional disclosures about the behavior of these officers -- many of whom operate, like the undercover officer known only as UC-157, under cover of anonymity -- that make it impossible to justify this unit's continued existence.

Among other revelations, the ProPublica story details what we know to be commonplace and systematic behavior within the Vice Squad, such as arresting and charging people even when they have not agreed to sexual conduct or coercing individuals into agreeing to sexual conduct only to charge them with crimes. In the case of the woman represented by BDS, officers created an audio recording that was concealed from our office. This recording, shared with ProPublica by an anonymous source, reveals a male officer repeatedly seeking entrance into the woman's home and demanding sex. She tells him "no" at least a dozen times while her children audibly cry in the background. Eventually, she relents and allows him into her apartment only after he continuously increased the amount he was offering and refused to leave. After being pressured to let him inside and repeatedly denying his requests for sex, she was charged with a crime, causing far more harm to the woman, her children and the community than the act of forced acquiescence on her part.

Not only do Vice Squad officers manufacture crimes to justify arrests, but they inflict lasting trauma on the people they target and often on their loved ones and communities. Many of these cases result in ACS involvement and the separation of families -- a practice causing well-documented and lasting trauma to both caregivers and children. As a result of the arrest in this story, the woman's children were removed from her care for two months. We represent dozens of people who are ensnared in deportation proceedings, housing instability, and other serious consequences including loss of custody of their children as a result of their arrests by Vice. In addition to these consequences, targeted people are humiliated, violated, and dragged through the criminal legal system after being victimized by officers.

What happened to our client is disturbing but not uncommon. Her story, captured on audio recording, comports with what we see every day in our cases. The recording described in the article, which captures an aggressive and exploitative arrest tactic as well as police-inflicted family trauma, is considered emblematic, justifiable, and acceptable Vice Squad conduct to NYPD officers and their superiors. The article also indicates that Department officials encourage officers to engage in harmful behavior and that officers who oversee or participate in these operations are promoted through the ranks.

These abuses are consistent with the accounts we hear from people we represent and are not limited to isolated problematic officers or incidents. We are aware of other shocking but routine abuses by Vice. For example, officers use their personal cell phones to take photographs intended to humiliate their victims, such as was the case of the woman in the article who was arrested and photographed while naked. They rape people, including by demanding sex under threat of arrest. A person can be charged with a crime as soon as they verbally agree to exchange a sexual act for some benefit, but officers often wait until the people they target undress or perform sex acts before they initiate the arrest. They work at dance clubs while off-duty and feed information to the Department for enforcement. They engage in sex with targets under the guise of intimate relationships prior to orchestrating operations against them. They target people who are not involved in sex work and entrap them with methods similar to those detailed in this story. Put simply, the Vice Squad embodies a culture and belief system that cannot be reformed.

Vice Squad policing also routinely results in less extreme but very real harm. The article details the arrests of people for behavior such as asking for directions or rebuffing an undercover's offer

of sex, which are common experiences that we see in our representation. These false arrests result in a person becoming ensnared in the criminal legal system while facing publicly available, sex work related charges, which can impact their lives in many ways. In addition, the undercover nature of these operations -- which involve officers affirmatively lying to, tricking and entrapping people -- causes residents of neighborhoods that are targeted by these officers to develop a sense of distrust of everyone. This dynamic was described in the article by a man arrested for asking two undercover officers who flagged him down if they needed help. "When I see people on the street, asking for a jump or whatever, I just keep going," he said, "Can you imagine if it was really two girls on the corner waving for help? You just lost one guy who would stop."

The myriad abuses by the Vice Squad are not a problem that can be fixed by shuffling or renaming the squad within the Department. The Vice Squad must be disbanded entirely. The mission of their unit, to target poor people of color and transgender and cisgender women, create crimes, lie to people to entrap them, and exploit people who are helplessly within their custody, is a false mission causing irreparable harm and must be ended entirely and finally.

II. Fire the individual officers implicated in misconduct.

In addition to eliminating the Vice Squad, the Mayor and Commissioner should immediately fire and District Attorneys should bring criminal charges against all officers implicated in the misconduct that abounds within the unit. Officers such as UC-157 have committed rape while employed by the NYPD. Officers have fabricated charges. Others have withheld evidence. Some have humiliated people in custody and others have quietly allowed their colleagues to perpetrate harm. Settlements borne by the people of New York City have been paid to some victims of these officers, while others remain too afraid or humiliated to publicly share their stories.

In addition to these public complaints, advocates and defenders have brought these abuses to the attention of authorities repeatedly prior to the publication of this article. The Inspector General has been conducting an investigation into the unit based on accounts of abuse. As mentioned in ProPublica's reporting, Ms. Modzeleski filed a motion detailing UC-157's history of misconduct, making Judges and the District Attorney aware of the nature of his conduct. The credibility and practices of the Vice Squad have been challenged in court numerous times. Even with all these efforts to hold these officers accountable, they have been able to continue their abuses with impunity, exercise power over New Yorkers, provide sworn testimony, and bring new cases for prosecution.

There can be no further delay in a comprehensive investigation of each and every member of the unit and a reckoning with the harms that they have committed. There must be consequences for the criminal acts of violence, perjury and violations of codes of conduct or the law. If and where this independent investigation reveals misconduct, which we know from our own experience and the experience of our clients to be widespread and systematic, each member implicated, including prior members, should be fired or held accountable and those results should be released to the public.

III. Decriminalize sex work by ending police enforcement.

While the Mayor and other officials appear to have called for reform of NYPD policies regarding sex work, there are serious concerns about the way in which any reduction in enforcement is taking place. First, the use of the “Nordic Model,” which decriminalizes the sale of sexual services while continuing to criminalize the promotion and purchase of services, perpetuates the same abuses and racial disparities that occur under the current policies.¹ While we welcome the end of enforcement against sex workers, our experience—backed by the information and anecdotes in this article—shows that abusive, coercive, racist, and classist policing persist in operations to ensnare so-called “johns” and “promoters” of sex work.

The Nordic Model in practice is not a just or equitable alternative to sex work enforcement; in fact, the current operations of Vice and its myriad harms reflect implementation of this model—the NYPD shifted its focus to purchase-side enforcement in 2017. True and full decriminalization of sex work for consenting adults is imperative.

The Nordic Model's goal is not to increase safety of sex workers as full decriminalization aims to, but rather to abolish sex work as a whole. The Nordic model views sex work as inherently coercive and harmful, and seeks to address this by criminalizing its purchase. However, in doing so, this model both takes away the agency of sex workers and forces sex workers to bear the brunt of its impact. By criminalizing the purchase of sex, the Nordic model fosters the proliferation of unsafe working conditions for sex workers. Sex workers are forced to work in more remote and isolated areas because clients fear being caught and arrested by police.²

Furthermore, law enforcement’s distinction between people who engage in sex work and people who organize and profit from—or “promote”—it is a false binary, as the same people are arrested for either charge. As we see in our defense of people charged with these crimes, the people who organize sex work are often sex workers, and it is long past time we dispel the myth that people arrested on prostitution charges, nearly all of whom are Black, Latinx and Asian transgender and cisgender women, are “rescued” by police officers and benefit from being arrested and prosecuted or placed into court-ordered diversion programs. Moreover, the Nordic Model stigmatizes and criminalizes many parts of the sex work industry and continues to put people who engage in sex work at grave risk. Contact with the NYPD Vice Squad only compounds harm and does nothing to address it.

This reporting, as well as our representation of people charged with purchase-side offenses, shows that these purchase-side arrests are also racist, classist, and harmful. Most of the people charged with crimes under the Nordic Model are overwhelmingly Black and brown cisgender men even though they are not the vast majority of consumers of sexual services. The targeted people of color are entrapped under false pretenses, and are charged with crimes manufactured from planning to enforcement by the NYPD. Sex work should be entirely decriminalized, and all people who carry the burdens of sex work related records should have their convictions vacated.

¹ 93% of the 3,000 people accused of trying to buy sex were non-white according to ProPublica’s data analysis.

² *Why Sex Work Should Be Decriminalized*, Human Rights Watch <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized>

IV. Initiate an independent investigation into the existence and dissemination of recordings made by NYPD members during Vice Squad operations.

A major revelation in this reporting was the existence of previously secret recordings made by the NYPD during Vice operations. The audio recording of the specific case in the ProPublica coverage was not shared with our office, nor were we made aware that these recordings were ever created by the unit in the course of our representation of people charged with crimes by Vice. This fact alone demands an immediate independent investigation.

Although the NYPD in this article defended the secrecy surrounding its operations and recordings as protecting its “tradecraft,” they are actually defending the Department’s violation of the law, which requires them to disclose all recordings. To conceal evidence is a serious and illegal breach by the NYPD that demands immediate action, including the firing of officers who failed to turn them over and/or created these recordings for their personal purposes. NYPD should work with the offices of New York’s District Attorneys to assure dismissal of cases where tapes existed but were not revealed to the prosecution or the defense in both current and past charges. The impact of a criminal conviction on a person’s life never ends— neither should the obligation to rectify this wrong.

We do not know how or why the recordings are being made, whether they are being shared internally, whether they are preserved, whether this issue extends beyond Vice operations to other units, or how many recordings exist. We know from our handling of certain sex work-related cases that officers sometimes take “unofficial” photographs and videos of their victims with their personal cell phones, further breaching the privacy and personhood of victims. Whether these recordings are made as part of regular police procedure or not, they constitute evidence in the cases the NYPD brings and it is illegal to conceal them.

This reporting also raised questions as to the practices of District Attorney offices in New York City. Brooklyn DA Spokesperson Oren Yaniv told ProPublica that his office was unaware of the recordings until he was asked about them by the reporter earlier this year. It is unclear whether the DA’s office contacted the NYPD or whether they provided an explanation, but Mr. Yaniv indicated that his office now receives recordings in some cases. He states, “We sometimes use and disclose them in cases we prosecute — those against pimps and traffickers. As in every case, if the police account raises questions or if we receive any information alleging problems with the arrest, we investigate further.”

In New York, pursuant to both case law and statutory discovery laws, what the State is required to turn over to the defense is not limited to information they plan to introduce at trial, nor is it dependent on the type of crime alleged. Any case where a recording was made and was not turned over to the defense represents a breach of law and duty by State actors, whether they are prosecutors or the NYPD.

There must be an immediate, independent investigation into the creation of these tapes. Any case where such a recording was made and not turned over should result in immediate dismissals for ongoing cases and vacating convictions in cases that have been resolved.

V. Publicly support the Walking While Trans Ban repeal, Resolution 1444-2020, and the CCRB’s proposed rules to allow independent investigations into sexual abuse and misconduct claims.

We support the repeal of Walking While Trans Ban (A.654/S.2253), which would remove certain legal avenues for NYPD harassment of people based on their gender identity, sexual orientation, or profession. New York Penal Law Statute 240.37 is commonly referred to as the “walking while trans” ban or “stop-and-frisk for women” due to the biases in enforcement. This statute allows police to interpret innocuous, lawful behavior—including waving at a person in a vehicle or “attempt[ing] to engage passers-by in conversation”—as cause to stop, frisk, and arrest people.

Since its enactment, the statute has disproportionately been used to profile and arrest Black and Latinx transgender and cisgender women and LGBTQ people. Repealing NYPL 240.37 is a racial justice issue and a gender justice issue – but it is also a New York City issue. In 2019, over 75 percent of arrests for loitering for the purpose of prostitution came from Queens and Brooklyn alone. Many of these arrests were made by the Vice Squad.

BDS supports City Council Resolution 1444-2020, which calls on the New York State Legislature to pass, and the Governor to sign, a bill to amend the criminal procedure law to allow convictions for Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37) to be sealed and have the law apply retroactively.

Current State law allows all “violations,” which is a designation for a conviction that does not rise to the level of a misdemeanor or felony, to be sealed, except Loitering for the Purpose of Engaging in a Prostitution Offense (PL § 240.37). While this is not officially a criminal conviction, the fact that it appears on a person’s record imposes life-long, detrimental effects — limiting access to employment and educational opportunities, financial resources, and housing. A record can also result in severe immigration consequences, including the threat of deportation and the inability to adjust immigration status or become a citizen. Passing a law to amend the sealing provision will allow people who have been criminalized under NYPL 240.37 over the last 44 years to move forward without the burden of a publicly available record.

BDS also urges all officials to support the proposed rules to expand the scope of the NYC Civilian Complaint Review Board investigatory powers to include sexual offenses by officers. In light of this reporting and our experience with countless cases of sexual abuse by the police, it is imperative that victims have somewhere to turn other than the Department itself to report sexual misconduct by members of the NYPD.

VI. Vacate prior convictions in cases brought for prosecution by UC-157 and other officers from the Vice Squad.

In 2009, New York became the first state in the country to allow courts to clear prostitution-related convictions from the criminal record of a trafficking victim. This groundbreaking legislation was passed by a legislature that understands traffickers compel victims to engage in criminalized behavior. The ProPublica article elucidated the similarly extreme efforts by Vice

officers to coerce people into accepting the exchange of sex for money. As such, victims of the NYPD's coercive practices should be entitled to the same relief that the legislature extended to victims of trafficking in 2009.

In addition, the decriminalization of all sex-work related crimes must include a provision for all previous convictions to be vacated and sealed. The enforcement of these cases is racist and classist, targeting people of color in low-income communities. Prostitution-related offenses are considered crimes of "moral turpitude," which means that immigrant New Yorkers with sex work related charges may be at risk of deportation or ineligible to adjust their immigration status, which is particularly devastating given the disparate enforcement by Vice against immigrants. These offenses are also highly stigmatizing and carry lifelong detrimental effects.

The horrific abuses by Vice and the concealing of evidence demands major citywide investigations and exonerations. In the case of notorious and disgraced former NYPD member Louis Scarcella, the Brooklyn District Attorney's Office is in the process of reviewing cases where he was involved in procuring convictions. The true scope of his harm remains unknown, even 20 years after his retirement. A similar but broader effort should be undertaken to investigate any and all cases impacted by the officers on the Vice Squad. Many of these officers have worked in multiple boroughs and handled cases with other units, necessitating a citywide effort. The delays and denials of justice for Scarcella's victims despite ample evidence of his abuses during his NYPD tenure demonstrate the risk of viewing misconduct in individual cases as occurring in a vacuum. The same mistakes should not be made here.

The City's District Attorneys are now aware that the NYPD has been creating and withholding evidence in these cases for an unknown period of time. This fact, along with Mr. Yaniv's comments regarding disclosures prior to the article's publication, demand immediate investigation into the practices surrounding the creation and disclosure of evidence by police and prosecutors in all five boroughs, the disclosure of all evidence to defense teams, and the reopening of cases, vacatur, and dismissals in all cases where such evidence was not turned over.

VII. Identify the officers implicated in abusive policing by name.

One way to hold officers to account is to create a public record of their wrongdoings. This makes it possible for civilians to identify the officers who have harmed them, for defenders to challenge their credibility in court, and to remove the cover of anonymity that allows officers such as UC-157 to abuse people with impunity without affecting his personal reputation or credibility. The NYPD should identify the officers implicated in abusive practices by name to create such a public record and make restitution and accountability possible. Furthermore, the NYPD's practice of reassigning officers accused of serious misconduct to new stations within the Department shields them from their serious past misconduct. Publicly releasing the identity of officers also prevents them from getting a new job in another jurisdiction without the knowledge of the unsuspecting residents of that community.

We specifically demand that the NYPD identify UC-157 by name as a first step to demonstrating some semblance of accountability from the Department against his many despicable abuses. UC-

157 has operated in the shadows of sex work enforcement while amassing countless victims of his sexually exploitative and self-serving conduct.

However, as detailed in this reporting, our experience with these cases, and in previous testimony of many victims of NYPD Vice enforcement, UC-157's behavior and that of others is representative of a unit that exists in opposition to the stated values of a progressive city and victimizes people who are often politically disenfranchised and vulnerable.

VIII. Initiate an independent investigation.

There should also be an independent investigation into the practices of the Vice Squad and the Department's practices that have allowed for this conduct to persist, as well as a public report regarding these findings that includes the names of implicated officers. In April 2019, Assembly Member Dan Quart, Senator Jessica Ramos, former Council Member and Congressman-Elect Ritchie Torres, and Assembly Member Ron Kim wrote a letter to the Commissioner of the Department of Investigation and the Inspector General of the New York Police Department calling for an independent investigation into the NYPD Vice Squad and for reporting on the squad's practices, guidelines and structure. The legislators spoke to "not only a culture of corruption and misconduct, but a consistent exploitation, endangerment, and victimization of sex workers by the NYPD." This investigation is long overdue.

IX. Shrink the NYPD's budget.

This report delves into the NYPD practice of bilking exorbitant overtime pay and the manufactured end-of-shift arrests that make it possible. This is not a problem unique to the Vice Squad, but the issues with this practice are clearly reflected in the types of arrests brought by the unit and the attitudes toward overtime expressed by current and former NYPD officers in ProPublica's reporting. In the article, 18 current and former NYPD officers confirmed that "overtime pay has motivated them for years."

This type of financial incentive further dehumanizes the people targeted by Vice operations. According to one former NYPD member quoted in the article, "The more bodies you put in the van, the more overtime there was." As defenders, we see this mentality play out through the arrest of desperate people entrapped by undercover cops. We represent hungry people who are offered food, homeless people who are offered shelter, and people struggling with substance use offered drugs by officers, supposedly in exchange for sex. We see raids in immigrant communities, fabricated crimes, and arrests for agreements made under duress. The allowance of overtime feeds this horrible cycle which abuses fellow residents of this city while exploiting public dollars for personal gain.

The NYPD overtime pay policy, in addition to encouraging officers to make sham arrests, balloons the already inflated NYPD budget. On top of a roughly \$11 billion police budget, the City budgets for \$600 million in annual police overtime, which is often exceeded by 20% or more. While serious cuts to the police budget are long overdue, the single act of eliminating overtime in the budget and enforcing this limitation would allow for reallocation of this

enormous sum to serving NYC residents struggling with poverty and cuts to public services, a much more appropriate use of taxes paid by NYC residents.

The Vice Squad has been continually funded through salaries, resources, and overtime while inflicting gender-based and racist violence in New York City since before the Stonewall Rebellion of 1969. In addition to the misconduct by Vice Squad officers, the standard operations of the unit are harmful and abusive. To the extent there is any value in pursuing investigations into trafficking, Vice's role is redundant given the overlapping directives of other units within the NYPD. It is insulting and, moreover, dangerous to ask the people of New York to continue to fund the Vice Squad. These funds should be reallocated to community initiatives that actually serve the needs of this City.

The actions of the NYPD reflect a culture of dehumanization and abuse in pursuit of criminal charges as well as the Department-sanctioned sexual gratification of individual officers through rape, harassment, and exploitation. The City is spending enormous resources and inflicting significant harm in the name of "vice" enforcement, and this must end.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Schreibersdorf". The signature is fluid and cursive, with a small mark above the final letter.

Lisa Schreibersdorf
Executive Director
Brooklyn Defender Services