



**New York Board of Correction**

**Special Hearing:  
Compliance by the Department of Correction with Minimum  
Standards Relating to the Prison Rape Elimination Act**

**April 23, 2019**

**Testimony of The Legal Aid Society Prisoners' Rights Project**

Presented by:

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MEMBERS OF THE BOARD AND STAFF:

My name is Kayla Simpson, and I am a Staff Attorney at The Legal Aid Society's Prisoners' Rights Project.

You just heard about Cleary's client, J.G.

In many ways, his experiences are what too many people in DOC go through. Ironically, in a couple of ways he had it better.

He had it better because he had able representation in his civil suit against the City. PRP met J.G. only a couple months after his abuse when he reported it, and we placed his case with Cleary.

J.G. also had it "better," so to speak, because his allegations were actually credited by DOI. We all know that the rates of substantiation are less than 1% in DOC. So that was pretty extraordinary too.

But it didn't matter. Nothing has happened to the officer in the more than two years that have gone by since DOI substantiated J.G.'s report of abuse, and it is extremely unlikely anything ever will. By the time DOC ever tries to discipline the officer—if they ever do—so much time will have elapsed that memories will have faded and witnesses and other victims from that housing unit will be lost.

This officer subjected a gender non-conforming gay man to more than 15 incidents of sexual touching in one month while he was confined in Protective Custody—Protective Custody that purportedly exists to keep him safe. The officer didn't just harm J.G.; he also abused other vulnerable persons housed on this unit while other staff and supervisors either willfully allowed it to happen or were just oblivious to the fact that it was going on.

The officer is still on the DOC payroll: he was paid \$62,247 taxpayer dollars in 2018. And over three years since the abuse occurred, it is not clear whether DOC is going to be able to discipline him.

When something like this can happen, how can anyone say that the systems required by the BOC standards actually work to protect people in custody from abuse?

Can anyone really believe that there are adequate systems of supervision or accountability?

That's why I'm up here today, and why we requested this hearing.

We are genuinely glad to hear of improvements—improvements in staffing levels, improvements in backlog, improvements in reporting—all of those things are positive.

But we cannot lose sight of the goal Chapter 5 of the Board's Minimum Standards. The goal is "Elimination of Sexual Abuse and Sexual Harassment in Correctional Facilities." These requirements in the Standards are important metrics to try and capture whether there is a system

in place to work toward that goal—but they are *part of a means to an end*, they are not the end themselves.

Because we need to acknowledge that there is a problem with sexual abuse and harassment in our City jails. Advocate after advocate in this room can tell you the stories we have heard from our clients and their families. Yet we have only eight substantiations from 2017 and 2018.

Does anyone really believe that there were only eight cases of sexual abuse or harassment in the city jails in that two year period? We know the national rate of sexual assault or harassment exceeds that significantly.

Does anyone really believe that officers don't know when their supervisors will come do rounds through the housing units? From what we read in the Board report from yesterday, captains aren't even necessarily touring once an 8-hour shift. And the Board's audit of the rounding logbooks indicated that in 38% of those audited cases, the supervisor walked in, signed the logbook, and walked out. Didn't walk around the housing area, didn't engage with the incarcerated people, didn't actually round. And if a Captain has just come by, an officer who wants to abuse someone in custody knows that Captain is not coming back for a good long while. Does that seem like supervision that deters sexual abuse or harassment?

And the Board's audit shows us the same concerning problems with investigations. Are they interviewing people in the housing area, where staff or other incarcerated people can hear them, or where it's obvious to everyone that a PREA interview is taking place? Are investigators adequately attempting to preserve crime scenes and physical evidence? How are they weighing who's credible when weighing the word of their coworkers against the word of our clients? And not surprisingly, in 70 percent of the cases, BOC had no idea how decisions about whether to substantiate were made, although it certainly sounds like DOC was quick to jump to a conclusion that a case was unfounded when there was no reason to think that it couldn't have happened.

We keep talking about substantiation rates because there is a fundamental problem in the culture at DOC: there's no accountability and staff knows it. People do not believe they will get caught, and if they are caught, they don't believe investigators will substantiate, and if investigators do substantiate, they don't believe DOC will remove them from employment and they don't believe district attorney's offices will prosecute. If what happened to J.G. is any indication, they are right. How can we blame our clients when they tell us that they don't want to report because "there's no point"?

We need to not just be interested in checking boxes. Talked to the incarcerated person? Check. "Reviewed video?" Check. One round per shift conducted? Check. Signed a logbook? Check. We don't need checked boxes. We need to eliminate sexual abuse and harassment in correctional facilities, or at the very least, we must deter and discipline it.

We just learned that DOI made recommendations to DOC in 2017 that DOC has rejected due to administrative convenience and cost. These recommendations make sense—video footage should have to be kept for a year, incarcerated women should have to be escorted by a male and female officer, and exit interviews should be conducted by trained professionals so DOC can find out what is really going on inside their jails. DOC shouldn't be able to get away with

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ignoring these reasonable recommendations. With all of the well-documented problems that DOC has had in implementing the PREA standards, administrative convenience and cost are not acceptable reasons to ignore recommendations from DOI. Respectfully, the Board should not be satisfied with these results.

We thank the Board very much for all its work in this area. We ask for even more vigilant oversight—oversight that must continue well beyond this hearing, because these issues with PREA compliance are not going away.