

Perspective

The Daily Abuse of Women at Rikers

BY MITCHELL A. LOWENTHAL

Daily, guards sexually abuse women at New York City's Rikers Island jails. Even if, as recommended by the Lippman Commission, those jails are torn down and replaced, that will take at least 10 years. Reforms are needed now.

Only women are housed in Rikers Island's Rose M. Singer Center jail. Yet, men guard them. This practice is condemned by a clear consensus of corrections experts. One leading expert (Tim Ryan), who recently submitted a report in a lawsuit brought by two women who said they were repeatedly raped by an RMSC guard, explained that, *for years*, nationally accepted corrections practices have prohibited female inmates from being supervised by male guards—unless female guards accompany them. That rule is also mandated by New York law and the Prison Rape Elimination Act of 2003 (PREA). RMSC thus operates in a recklessly dangerous—and illegal—manner. Not surprisingly, staff-on-inmate sexual abuse at RMSC is astoundingly high; according to a 2013 DOJ study, 5.9 percent of inmates annually reported being sexually abused by guards; three times the national average. With 6,600 women housed at RMSC each year, that is more than one act of sexual abuse every day.

Worse, staff-on-inmate rape is notoriously underreported. At RMSC, inmates



Rikers Island jail complex

are deterred by reporting systems that either do not work, are not anonymous, or both. A consulting firm retained by the Department of Correction (the Moss Group) concluded in June 2015 that detainees had few methods to report abuse, and that the primary ones did not work, relayed a consistent busy signal, rang to answering machines that provided no advice, and/or were not confidential. Eighteen months later, when Ryan inspected RMSC, he found the conditions materially unchanged. Moss Group investigators also found widespread fear of retaliation against anyone reporting sexual misconduct, and concluded there was a “strong and culturally ingrained code

of silence.” Ryan concluded that the City’s practices showed a “callous disregard for legal requirements and correctional professionalism and demonstrate deliberate indifference by the City to the sexual safety and well-being of the female detainees.” His publicly available report explains, in detail, why.

Those RMSC women able to navigate the system and with the fortitude to report their abuse are often retaliated against; their victimizers are virtually never punished. Of 56 investigations of staff-on-inmate sexual abuse between 2011 and 2013, only three (5 percent) were substantiated; between one-third and one-half the national substantiation rate. Recently, one woman (Jacqueline

Healy) reported an abusive guard (Jose Cosme), and coupled that report with physical evidence—she sent clothes with Cosme’s DNA outside of the jail, so that she would have physical evidence to corroborate her allegations. Even with this unassailable physical evidence, Cosme was offered a plea agreement limiting his punishment to probation. He, at least, was fired. Not so for the guard (Benny Santiago) who was accused of raping the two women in our case; he remains a correction officer, continues to accrue his pension, and has never been disciplined despite having been alleged to have had sex with nearly 10 RMSC women over an eight year period, including one a confidential informant reported he impregnated.

Sadly, the problems are getting worse. In fiscal year 2015 there were 131 allegations of staff-on-inmate sexual abuse. For 2016, the number jumped to 321.

Only once did the City even investigate allegations made against Santiago. That investigation was itself a travesty. Concerned she would not be believed, the victim, Jane Doe 2, wiped Santiago’s semen on her pants. But unlike Healy, Jane Doe 2 did not send her pants outside the jail for safekeeping. When the Department of Investigation seized them from her cell, it—shockingly—never prepared a chain of custody. No one involved could explain what happened to the pants until they were sent to the NYPD evidence room four days later. When the Office of the Chief Medical Examiner eventually tested them, it found no semen. But when the pants were tested by a nationally recognized lab as part of our lawsuit, that lab found DNA from one male all over the pants, including the crotch. In light of that finding (which neither the City

nor Santiago contested) and the failure to create a chain of custody (which the City also conceded), our expert concluded that the pants had been tampered with: The semen was washed off them before they were sent to the OCME. Further, Jane Doe 2 testified that she and Santiago were together, in the middle of the night, repeatedly. DOI’s report, written by the investigator who delivered the tampered-with pants to the NYPD, said video evidence did not confirm that damning evidence. But under cross-examination he admitted to never having reviewed the video evidence, which the City destroyed (along with other material evidence) before we could see it.

The sham Santiago investigation is not an outlier. Missing information tainted the conclusions of nearly every investigation the Moss Group reviewed. Abusive guards were not even interviewed; Santiago’s interview lasted all of five minutes. Based upon his denials, and the absence of semen on Jane Doe 2’s tampered-with pants, the DOI stopped investigating. Still, it did not transfer the case to the Investigations Division of the DOC for more than a year. By the time the DOC ID assigned an investigator, the 18 month limitations period for administrative punishment expired. Even then, the DOI refused to provide the DOC with its Santiago file. DOC ID then closed the case against Santiago, blaming that result on the running of the limitations period and DOI’s refusal to provide the full case file. Both reasons had nothing to do with whether Santiago was a sexual predator; they were solely the result of DOI’s investigative misconduct, for which no one has been disciplined.

The indifference to RMSC victims continued even after our two clients filed suit. False reasons were concocted to refuse information requests, the City fought tooth and nail to withhold

relevant evidence (including the depositions of the DOI and DOC commissioners, who were both involved with the Santiago case), and only on the eve of trial did the City offer an acceptable monetary compensation to the two victimized women, but conditioned it on dismissal of the class claim—which solely sought institutional reform of RMSC—ending our ability in that litigation to help other RMSC sexual abuse victims.

Sadly, the problems are getting worse. In fiscal year 2015 there were 131 allegations of staff-on-inmate sexual abuse. For 2016, the number jumped to 321. Of those 450 allegations, only one was substantiated. Just one. This is shocking statistic bluntly explains why RMSC correction officers have little to fear from raping inmates, and why sexual abuse is so prevalent there. While the DOC touts new guidelines and recent PREA training for guards, words are meaningless unless there is sure and meaningful punishment for their violation. The mayor must soon appoint a new DOC commissioner. Unlike the prior one, the new commissioner must commit to be physically present on Rikers Island, and have a concrete plan to root out the unconstitutional practices that now, and for far too long, describe it. The mayor must also clean up the DOI and its investigators, who, for years, have reliably failed to find rampant rape and sexual abuse at RMSC.

MITCHELL A. LOWENTHAL is a senior counsel at Cleary Gottlieb Steen & Hamilton, which, along with The Legal Aid Society, were co-counsel in the lawsuit brought by the two women against Mr. Santiago and the City, discussed herein.