

Elizabeth Cumming

Testimony to the Review Panel on Jail Rape

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Thank you for the opportunity to speak before this panel. My name is Elizabeth Cumming and I am a civil rights attorney in New Orleans. In 2006, I began working with the Orleans Parish Prison Reform Coalition (OPPRC), a coalition dedicated to reducing the massive size of the jail, improving jail conditions and practices to make it a safer place for those who are held there and working there. In my work with OPPRC, I collected information on jail funding structures, population demographics, and tracked the deaths occurring in the jail. I also met with members of the city council to push efforts to increase the transparency of the jail funding and budgetary processes.

In 2008, I received an Equal Justice Works Fellowship to advocate for access to healthcare for people with infectious diseases held at Orleans Parish Prison (OPP). Though, the focus of the fellowship was on infectious disease, the horrific conditions at the jail, and a number of deaths caused by the breakdown in the delivery of medical and mental health care services led to an expanded focus on access to medical care in general for people at the jail. In the course of that work, I met with and received letters from hundreds of people held at OPP, some of whom began to confide in me that they had witnessed or had themselves been victims of sexual assault while being housed at the various facilities that comprise OPP. I began compiling these reports and sending them to the Department of Justice Civil Rights Division Special Litigation Unit, which completed an investigation of the jail and a CRIPA letter in September 2009.

I am currently in private practice, with the bulk of my practice consisting of litigating Section 1983 claims arising out of the myriad constitutional rights deprivations that occur in the jail. I have continued to track reports of violence and sexual assault, and I continue to work with the Department of Justice to support and push forward its current work towards a Consent Decree to govern OPP. If a consent decree is not forthcoming soon – and it has been over two years since the Department’s findings of broad-scale unconstitutional conditions with no improvement in conditions or operations – the Department must institute litigation.

Orleans Parish Prison is a sprawling complex of six facilities, Old Parish Prison, House of Detention (HOD), the Tents, Conchetta, and Templeman V. Until recently, all women held at OPP were held in the South White Street facility, which has been closed down in part due to the poor condition of that building. In the last six months, the women have been moved to the Templeman V complex, which also houses federal detainees, state prisoners in pre-release status, and juveniles charged as adults. OPP houses approximately 2,500 inmates, some of whom are

state Department of Corrections (DOC) prisoners sentenced to lengthy terms of incarceration, some are pre-trial for higher level felonies, but most are being held for low level non-violent felonies or misdemeanors and probation violations. New Orleans can boast the highest per-capita jail detention rate in the country. This distinction is born, in part, from the peculiar mechanisms that fund the jail. A forty year old consent decree, with no active substantive component, authorizes the sheriff to charge the city for each day he holds a person in OPP. This per diem funding structure allows the sheriff's office to create a budgetary black hole, receiving money from the city with functionally no oversight or line item accounting required and incentivizes the sheriff to keep OPPs population high, even while the office is in a state of financial crisis. The per diem funding structure, and the enormous jail population that flows from it, all create the foundation for the jail's rampant sexual assault and violence rate.

Despite the enormous population size of the jail, the Sheriff cannot, or does not, employ sufficient numbers of line deputies to ensure the safety of the people detained in the jail. According to a National Institute of Corrections (NIC) report done in 2008, "staffing issues were pervasive and most serious... actual staffing levels are so far below planned staffing levels that required and critical important duties such as inmate welfare (or security) rounds cannot be completed in many cases." In the three years since the NIC report, nothing has changed. I still receive weekly reports of violent attacks that occurred in the frequent hours long absences of deputies from the tiers.

The dangers created by the staffing failures are compounded by failures to appropriately classify prisoners. The current classification system fails to take into account previous convictions, previous histories of violence, age, residence, or body mass index. Instead, the classification system is reliant almost entirely on bond amount. However, even this rudimentary classification is often ignored because of space constraints in the various facilities. Inmates are placed wherever space can be found, even if it is a mattress on the floor of HOD. When breaking down the narratives of violence and sexual assault that haunt OPP, the staffing and classification problems are perhaps the most significant factors contributing directly to an environment that allows for the rampant sexual assault and violence levels we see at the jail.

Perhaps less direct, but still significant contributors to OPP's sexual assault and violence levels, are the significant barriers to reporting unsafe conditions, harassment and sexual assaults. OPPs grievance system is essentially nonexistent. Few grievances are ever even acknowledged and even fewer are responded to appropriately. The failures of the grievance system make it difficult for people held at OPP to report unsafe housing assignments, threats, harassment, or other behaviors that may ultimately escalate to rape. When rapes do occur, the failures of the grievance system and the lack of staff supervision can mean that the rape will go unreported for days, even when the survivor is looking for a way to report the rape or to be moved to protective custody. In addition, total lack of private visitation for attorneys and clients and limited family

visit hours create yet another barrier to reporting unsafe environments and sexual assaults to a trusted advocate or family member. When I first began working with people held at OPP, I recall, vividly, attempting to have a conversation with a woman who had just received the news that she was HIV positive. We were attempting to have a conversation about her diagnosis while shouting through a plexi-glass divider in a room filled with other prisoners, lawyers, and probation officers. On another occasion, I was attempting to speak with a man about a severe beating he had received only days before, again in a virtually public space and through a plexi-glass divider. All of the occasions on which I have attempted to hold whispered conversations with clients about profoundly traumatic events are too numerous to list in this forum, but suffice it to say, that the atrocious and unconstitutional visiting conditions at OPP create a substantial chilling effect on the reporting of sexual assault or violence.

Investigative failures and lack of medical and mental health support all create a hostile environment for survivors of sexual assaults and perpetuate a culture in which sexual assault is accepted as a necessary part of incarceration.

All of these factors contributed to the experiences of the people who have been victims of sexual assault at OPP. One young man who was at particular risk of experiencing sexual violence confided in me that while he was being held at the HOD, he was jumped by four other prisoners. He was badly beaten and lost consciousness. During this entire incident, no deputy came down the tier. When he regained consciousness, he attempted to call for help from the deputy. Despite his screams and the screams of other prisoners calling for help for this young man, no deputy came down the tier until the deputy had to perform a routine task. The young man was taken to the hospital where medical examination revealed that he had not only been beaten, but also sexually assaulted. He reported that the investigative unit took his bloody clothes, but no prosecution was undertaken.

This young man's experience is one out of many. Prisoners at HOD describe other prisoners "popping locks" to get out of their cells and attacking and sexually assaulting other prisoners. Among juveniles charged as adults held at Templeman V, the level of sexual assault has created a crisis. Another young man, held at Templeman V, was beaten and sexually assaulted so brutally he had to be sent to the hospital to recover. He was assaulted by a group of prisoners who had beaten another prisoner just a few months before.

In addition, to these reports from prisoners, the New Orleans *Times-Picayune* reported last week that an Orleans Parish Sheriff's Deputy had been charged with kidnapping and raping a prisoner at the jail. These allegations have just come to light, and more detail has yet to emerge. However, they raise significant and troubling questions about the role deputies take in fostering a culture tolerant of sexual assault.

There are broad corrections lessons that can be taken away from the catastrophic failures in OPPs daily operation that created the environment in which these horrific experiences became possible.

First, transparency and oversight are essential for any corrections institution. OPP is, in part, the deformed result of a forty-year experiment in jail self-governance. The city must retake control of its jail. The first mechanism to do so is to fund the jail through a performance-based general fund budgeting process, in order to ensure adequate oversight and transparency. In addition, moving away from the per diem structures and other prisoner based revenue frees all criminal justice stakeholders to consider and implement alternatives to detention, without having that discussion muddied by concerns about cutting off revenue sources. Preventing sexual assaults in a corrections setting is significantly easier if fewer people are in the jail. We have to begin to disincentivize unnecessary detention in New Orleans.

Second, an appropriate classification protocol must be in place, based on relevant criteria such as history of violence, proclivity towards violence, history of incarceration, age, body mass index, current and previous charges. A meaningful classification protocol is essential to prevent the victimization of vulnerable populations

Third, appropriate staffing at levels commensurate with the number of people held at OPP. In an impoverished city like New Orleans, that means a reduction of the number of people held at OPP so that the city can afford appropriate staffing.

OPP is in such a state of crisis that we, in New Orleans, are forced to rely on the Department of Justice Civil Rights Division to help us rebuild a fundamentally broken system. The level of sexual assaults and violence present in the jail are symptoms of this system's profound dysfunction. The mission of preventing sexual assault is essentially intertwined with the mission to create responsible and humane jail systems.