

TALI FARHADIAN WEINSTEIN FOR MANHATTAN DA BUREAU OF GENDER-BASED VIOLENCE INITIATIVE

Gender-based violence – crime directed at people because of their biological sex or gender identity – remains an unacceptable crisis across the country and in New York City. This crisis reflects many failures: failure sometimes to understand the harm this violence causes; failure to listen to and respond to survivors’ voices; failure to fund fully and appreciate organizations that support and care for victims; failure to address systemic problems like poverty and racism that manifest in this kind of violence against the most vulnerable; failure to provide housing alternatives for those suffering abuse; and failure on the part of law enforcement to protect victims, hold abusers to account, and prevent further violence.

Law enforcement cannot address the crisis alone, but we must do our part and do it well. We must work alongside partners who deliver other critical services to victims across the city. We must integrate our approach to gender-based violence into our broader agenda of criminal justice reform. And we must know when to be protective and when to be progressive. This paper is the first in a series that argues how law enforcement can do its part, and sets forth a structural change at the Manhattan District Attorney’s Office that is meant to signal a shift in priority and philosophy around gender-based violence.

OVERVIEW

Gender-based violence comes in many forms: sexual assault, family and intimate partner violence, elder abuse, human trafficking, stalking, and crimes committed online. It often happens “off camera” and can be as invisible as it is common. It happens in every community and can affect anyone, but the victims of gender-based violence are overwhelmingly women and girls, particularly in the areas of sexual assault and domestic violence (DV). Shockingly, as many as one in three women have experienced contact sexual violence, physical violence, and/or stalking in their lifetimes. Approximately four in five victims of intimate partner violence are female.^{1 2 3 4 5 6}

In New York City, more than 1,700 rapes were reported in 2019 alone. Domestic violence accounts for one in every five NYC homicides and two in five felony assaults. The statistics are all the more distressing given that – according to the NYPD and national experts – domestic violence and sexual assault are significantly underreported.^{7 8 9 10}

And even when these crimes are reported, victims have told us – in many ways – that they feel let down by the criminal justice system. They are right to think combating gender-based violence has not been the priority it should be. To give just one example, the city’s Dept. of Investigation Inspector General recently found the NYPD “understaffed and under-resourced” its Special Victims Division for much of the past decade. Signals like this only further inhibit victims already reluctant to participate in the criminal justice system for other reasons: the challenge of reporting crimes committed by people they know, general distrust of law enforcement (especially in Black and other minority communities), fear their credibility or reputations will be attacked, and a culture that still sometimes shames *victims* of violence.¹¹

Gender-based violent crimes are also historically under-prosecuted. Nationally, only about nine of every 1,000 sexual assault cases are referred to prosecutors. At the Manhattan District Attorney’s Office, DV cases are assigned into a common pool of general prosecutors, not ADAs trained and dedicated exclusively to domestic violence. In 2014 DANY formed a DV Task Force, which in 2016 released recommendations to improve prosecutorial practices, but has since not issued an update on progress or outcomes.^{12 13 14}

Our failure to respond with sufficient force, commitment, and compassion to gender-based violent crime is shameful and wrong. For law enforcement, it is a dereliction of duty that leaves many New Yorkers unsafe and unable to access opportunities equally. It erodes public trust, and it exacerbates other systemic injustices. For instance, before COVID-19, domestic violence was the number one cause of homelessness in NYC, forcing 7,000 children to live in shelters every night.¹⁵

Tali is committed to transforming DANY's response to gender-based violence and to doing better. This starts with establishing a new bureau reporting directly and regularly to her: **The Bureau of Gender-Based Violence (BGBV)**. The bureau will house the Sex Crimes and Domestic Violence units, as well as the units handling human trafficking, elder abuse, stalking, and gender-based hate crimes. The BGBV units will share a mission: a sustained, focused, and expert commitment to investigation, prosecution, and reduction of this violence.

The different crimes falling under the umbrella of gender-based violence have important differences, requiring their own expertise and specific responses, including: specialized investigative and prosecutorial strategies; an understanding of the critical evidence that presents in different crimes and its handling; a familiarity with the governing legal rules and recent case law regarding different offenses; the appropriate community engagement; and more. This paper does not mean to elide these differences. ***In fact, Tali will release specific policy proposals for the Sex Crimes and the Domestic Violence Units of the BGBV.***

But Tali firmly believes there is a crisis – and failure of adequate response – in *all* gender-based violence, which must be recognized and taken on as a whole. This paper accordingly sets forth the Guiding Principles and Strategies that cut across different categories of gender-based violent crime.¹⁶

BGBV GUIDING PRINCIPLES

- Victims and survivors come first, and Tali's priority is to make sure they are able and comfortable reporting their experiences of gender-based violence.
- Investigations will take a victim-centered, offender-focused approach. During investigations, the office will take care to not traumatize victims a second time. Victims will never be treated as targets, and prosecutors will take seriously the obligation to keep victims informed and involved at every stage. When interacting with victims, prosecutors will demonstrate flexibility, sensitivity, and empathy. The office will investigate credible allegations with vigor, focusing on the offender's actions and intent – not the victim's behavior.
- Prosecutors will receive regular training in best practices, including trauma-informed interviewing, implicit bias, changing legal landscapes, the availability of survivor resources, and the needs of non-citizens.
- The office will strive to improve its handling of cases with special challenges to investigation and prosecution: drug-facilitated sexual assaults, cyber stalking, nonconsensual pornography, and other complicated cases.
- Prosecutors will approach gender-based violence with moral courage. Prosecutorial decisions must be driven by evidence, a commitment to pursuing justice in the individual case, and a commitment to securing the long-term safety of the community – not by the odds of securing a conviction. The office

will thoroughly investigate all reports, closely engage with victims, and use experts and appropriate resources to make informed decisions about how to proceed.

- Conviction rates will not be the benchmark of a good prosecutor and a successful bureau.
- BGBV office practices will be research- and data-informed.
- The bureau will be open to deploying innovative strategies that protect and prevent further violence, including community and restorative justice initiatives as alternatives to incarceration.
- The office will audit and update initiatives and procedures regularly, to reflect changing best practices, and in response to findings or recommendations of internal reviews.

BGBV PROSECUTORIAL CHALLENGES

Historically, investigation and prosecution of gender-based violent crimes have faced significant hurdles. Though these challenges are real, Tali believes none are insurmountable, and the BGBV will be equipped and committed to overcoming them.

Knowledge Gap/Data Deficit

A lack of reliable data impedes prosecution efforts in gender-based violence crimes. Public information on DANY's response to gender-based violent crimes is remarkably limited: the office does not release an annual report or publish data related to incidents reported, indictments obtained, and sentences secured, let alone more granular details about the specific crimes in question. DANY's Domestic Violence Task Force, formed in 2014, has not issued a progress report on recommendations it made in 2016.

This lack of information makes it difficult to assess accurately DANY's response to these crimes, or develop substantive plans for improvement. Increased transparency is also always essential to strengthening community confidence in the criminal justice system and especially so in the prosecution of gender-based violence, given reporting over the last few years documenting public skepticism about how these cases are handled.

Law Enforcement Underinvestment And Skepticism

Law enforcement skepticism and apathy, coupled with underinvestment in gender-based violent crime investigation, have historically hampered prosecution.

A recent investigation found the NYPD's Special Victims Division had been understaffed and under-resourced for nearly a decade, with a mere 67 detectives assigned to investigate 5,661 sex crimes, while 101 detectives investigated 282 homicides.¹⁷ The investigation also found NYPD leadership had been aware of the situation for years but ignored recommendations going back to 2010 to increase sex crimes investigators, allowing "understaffing and inexperience" to get worse. Special Victims detectives said they were instructed to "simply not investigate all misdemeanor sexual assaults."¹⁸

And, while law enforcement has noted that sexual assault and domestic violence crimes are underreported by victims, from 2014 to 2019, NYPD's failure to follow federal reporting guidelines resulted in the department itself underreporting rape incidents by 38 percent.¹⁹

In the fourth quarter of 2019, NYPD's Manhattan rape clearance rate – cases in which a suspect is arrested or identified – was 28.1 percent. In contrast, the department cleared 86.5 percent of its

Manhattan homicide cases in the same period. Manhattan's rape clearance rate is particularly disturbing as it is consistently lower than the rates in other boroughs.²⁰

Meanwhile, too often prosecutors lack the training to handle cases of gender-based violence effectively and with compassion. In Manhattan, survivors report, for instance, being aggressively interrogated by assistant district attorneys and blind-sided by their case resolutions.²¹

Victims' Distrust Of The Legal System

A lack of victim confidence in the criminal justice system also complicates investigation and prosecution. Survivors may be reluctant to report the crime and/or cooperate through what they experience as a second traumatic process, and may feel it's just not worth it given historically abysmal prosecution rates for gender-based crimes. Media coverage of DANY's failure to prosecute robustly sexual assault – from Jeffrey Epstein to Harvey Weinstein to accused serial abuser Robert Hadden – may have bolstered this belief.^{22 23 24}

The Nature Of Gender-Based Crimes

The nature of gender-based crime also complicates prosecution. The circumstances in which these crimes often occur can make establishing a clear trial narrative difficult, discouraging even prosecutors who believe the evidence and the survivor, and thwarting prosecutors insecure about their ability to present the case to a jury.

We also have to recognize and face the difficulties that present when victims know their assailants, as many victims of gender-based crimes do. Willingness to participate in prosecution may ebb. For a number of reasons, survivors may struggle to send a loved one or even a professional associate to prison or into a criminal justice system they view as unfair or racist. They may fear public scrutiny, or attention from other law enforcement actors – including federal immigration authorities. Prosecutors, in turn, may struggle to understand and explain to juries how abuse occurred inside the context of a consensual relationship – and we must make sure they are trained to do this.²⁵

BGBV STRATEGIES

Successful investigation, prosecution, and prevention of gender-based violence depends on an array of strategies, and – in keeping with the BGBV Guiding Principles – Tali is committed to pursuing all of them with vigor and adequate resources, including the deployment of the office's discretionary funds.

Community Input

We know there is widespread dissatisfaction with how gender-based violence is investigated and prosecuted in Manhattan, and what services victims are provided and how – and we need to know why. Asking this question is a critical first step to successful reform and to building trust in the criminal justice system. Tali will therefore start her tenure with a formal community survey designed to identify current system failings and successes.

- The survey will source both quantitative data and descriptive feedback, and include opportunities to propose concrete and specific changes to DANY practices.
- Tali will seek input from as many affected parties as possible besides, of course, victims – including defense counsel, convicted people, university administrators and college students, bar and nightclub operators, local advocates, and law enforcement agencies and officers.
- The survey findings, along with hard data culled with help from a BGBV analytics unit, will be used to direct office reforms.

Data Assessment

Tali will establish a BGBV data analytics department to track comprehensively all NYPD sex crimes and domestic violence reports, alongside substantive information on DANY investigations and prosecutions. This data collection effort will help accurately assess office success and facilitate adjustments to policies or procedures with documented failures.

The BGBV analytics unit will source applicable data from law enforcement, office records, and other institutions which track sexual assault and domestic violence data in Manhattan. Early efforts will focus particularly on:

- Accurately determining the current rate of case attrition – the rate at which cases are lost or dropped.
- Analyzing and synthesizing results of the community survey.
- Establishing effective measures for evaluating successes and failures on both an individual ADA and bureau-wide basis.

Ultimately, Tali's goal is to make gender-based violence data – such as the number of assaults reported to the office, indictments obtained, pleas or convictions secured, and victim and offender demographics data – available to the public.

Oversight and Measuring Success

Conviction rates cannot be the benchmark for a good prosecutor or a successful bureau. They do not always reflect difficult cases that were not charged or tried but should have been, and – particularly in the case of gender-based violence – do not reflect other issues that can influence results before a case even makes it to prosecutors.

For example, DANY's Sex Crime Unit claims an 83 percent felony conviction rate as evidence of its success. But there is a notable discrepancy between that high percentage of trial "wins" and the NYPD's previously noted much lower rape clearance rate of 28.1 percent.^{26 27}

Prosecutors should not weed out cases based on a perception they could be difficult to win. That is why Tali will develop new markers to evaluate the work of its individual ADAs, as well as new evaluation standards across DANY.

- In the Sex Crimes, Domestic Violence and other BGBV units, the community survey will be integral to what success looks like on an individual case-level. Evaluations must consider the complexity of individual cases, victim experience with the process, and alignment with broader office priorities.
- All unit programs and policies will be regularly audited and updated to reflect new research and promising developments in other jurisdictions.

Resources & Staffing

BGBV prosecutors must demonstrate a commitment and ability to litigate some of DANY's most complex and emotionally trying cases. The job requires engaging with victims and a deep understanding of the nature of gender-based violent crimes. Caseloads must be manageable given the time-intensive nature of these cases; the bureau may likely be more heavily staffed than other DANY divisions. Increasing the capacity and skill set of the bureau will require:

- **In-House Investigators.** These professionals will provide investigatory support and expertise in a range of cases, including proactive investigations of potential serial offenders, non-consensual pornography, and other crimes committed online.
 - This would include bureau-based forensic experts dedicated to analyzing and extracting cell phone and computer data crucial to stalking and non-consensual pornography cases.
- **Experts.** Qualified experts – forensic scientists, toxicologists, psychologists, and medical professionals – are central to helping explain issues to juries in complex cases and in securing convictions, and are integral to a renewed commitment to taking on difficult prosecutions.
- **Victim Advocates.** Victim advocates serve as a resource for victims, with particular focus on those who serve the city’s most vulnerable populations, including LGBTQ individuals and immigrants. Advocates will provide guidance through the criminal justice process, facilitate access to victims’ services, and participate in interviews if a victim chooses.
- **Toxicology Reports.** The BGBV will work to ensure toxicology reports are completed in tandem with all rape kits.

Training

Increasing the capabilities and skill sets of BGBV ADAs is a top priority. Prosecutors will have access to training that improves response to victims and advances the pursuit of justice and healing. This specialized education includes:

- Ongoing instruction in cognitive interviewing – to improve witness interviews.
- Cultural and gender-sensitivity training to improve attorney response to sexual assaults in the LGBTQ, Gender Nonconforming, Black, Latinx, Asian, and immigrant communities.
- Forensic Experiential Trauma Interview training.
- DV prosecutor training in proper use of the Danger Assessment Tool, which should play an integral role in helping ADAs determine how each case should be resolved.
- DV prosecutor training in methods to better recognize, investigate, and prosecute strangulation cases.
- Training in how to investigate and pursue prosecutions of stalking, cybercrime, non-consensual pornography, and digital harassment cases.

Victim Services

In New York City, other agencies, service providers, and non-governmental actors have worked hard to develop and deliver wraparound victim services alongside the criminal justice system. The office must continue to support and work in partnership with them. Meanwhile, improving DANY’s own response to such violence can never be limited to increasing the office’s investigatory and trial capacity alone. Whether or not prosecution is feasible under the New York penal law, the BGBV will serve as a resource for victims, as well as a bridge to and advocate for victim services. Tali is committed to expanding support to victims and their families, through:

- **The Manhattan Family Justice Center.** Tali’s administration will increase survivors’ access to the FJC – the multi-disciplinary service center for victims of family violence near DANY’s downtown offices. Tali will also advocate for the establishment of the borough’s second FJC in northern Manhattan, where close to half the borough’s domestic violence reports occur.
- **Witness Services Aid Unit.** Tali will grow the resources available to victims by expanding the offerings of what is currently known as the Witness Services Aid Unit to all three DANY locations. WSAU hours will be expanded to better serve individuals whose work schedules prevent them from visiting during typical 9-5 hours.
- **Staffing and Provided Services.** To provide personalized and practical services, DANY will need to meaningfully increase the number of social workers, counselors, and support staff.

- Social workers will take on an enhanced role in victim interactions, such as facilitating initial attempts to contact crime victims.
- Office staff will be trained to assist victims in signing up for NY State's Address Confidentiality Program – which allows domestic violence victims to shield their addresses from abusers – and V.I.N.E (Victim Information and Notification Everyday), which gives victims automatic notification of release dates and status of people incarcerated in city or state custody.
- DANY office staff will connect survivors to civil attorneys and government agencies who may be able to pursue remedies under human rights and other laws when criminal prosecution is not an option.

Improving Access For Historically Under-Resourced Groups

Through the BGBV, Tali will increase access and improve the experience for community members who historically have faced greater barriers to justice, including Black and Latinx people, other people of color, LGBTQ and transgender individuals, immigrants, people with disabilities, and non-native English speakers.

- **Directing Resources Where They're Most Needed.** Gender-based violence can happen anywhere and does happen everywhere. In the last few years, Manhattan's 23rd, 25th, and 32nd precincts in Harlem lead the borough in domestic violence calls, while Chinatown and some Washington Heights precincts also account for a disproportionate share of domestic violence reports.²⁸
 - Tali's administration is committed to increasing the DV-related resources available to its Harlem and Washington Heights offices.
 - She will also seek to create a dedicated in-house team that responds with the NYPD in real-time to gender-based assaults in high-DV precincts.
- **Orders of Protection.** As protective orders are a primary service for DV, sexual assault, and stalking victims, the BGBV will provide translators and counselors to guide victims through the protective order application process. Victims eager for intervention, but reluctant to involve prosecutors, may be connected with family court officials to file protective orders.
- **Creating a Culturally Competent and Empathetic Workplace.** As part of ongoing professional development, prosecutors will be trained in cultural competency to better assist Black, Asian-American, Latinx, immigrant, LGBTQ, and other victims of gender-based violence. Tali will hire people with diverse backgrounds and experiences, including survivors of sexual assault, to work throughout the office and in this bureau.
- **Reporting Mechanisms.** All victims of gender-based violence should feel comfortable reporting crimes to law enforcement, but some may be wary of reporting directly to the NYPD in light of historical mistreatment or distrust. Tali will ensure the BGBV can facilitate reporting.
- **Non-Citizens.** Immigrants, whatever their status, have a right to law enforcement protection. The Trump Administration's deportation push has made immigrants more reticent to report gender-based violence, making our communities less safe.
 - Tali is committed to doing all she can to keep ICE agents out of DANY's offices and Manhattan courthouses.
 - DANY will develop policy directing ADAs to consider immigration implications for all prosecutions and convictions, to reduce collateral immigration consequences for victims, defendants, and their families.
 - Tali's administration will encourage DANY victims' services to direct victims and their families to immigration services providers, either at the FJC or elsewhere.

Community Engagement

The district attorney has an obligation to keep the public informed about safety and prevention. In addition to its data-sharing commitment, the BGBV will develop education and training programs for communities and groups across the borough that encounter and have opportunities to prevent and report on gender-based violence – including nightlife groups, large business employers, colleges and community organizations.

The bureau also will strengthen relationships with community-based service providers and city hospital Sexual Assault Response Teams (SARTs).

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