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DRAFT

Investigation and Review of the Federal Bureau of Prisons' Custody, Care, and Supervision of Jeffrey Epstein at the Metropolitan Correctional Center in New York, New York



March 2023

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The Material Handler said the SHU was not his regular post and he had not attended SHU training, but he had worked in the SHU approximately 10 to 20 times. According to the Material Handler, on August 9 he reported for a voluntary overtime shift from 12:00 a.m. to 8:00 a.m. and then worked his regular 8:00 a.m. to 4:00 p.m. shift in the warehouse. At some point during the day shift, the Day Watch Operations Lieutenant called and asked the Material Handler if he could work overtime in the SHU, and he agreed. The Material Handler said he worked the 4:00 p.m. to 12:00 a.m. shift in the SHU with the Evening Watch SHU Officer in Charge and Noel. The Material Handler told the OIG that he felt pressured to work the third shift, which resulted in him working 24 hours straight, from 12:00 a.m. on August 9 through 12:00 a.m. on August 10. After the Evening Watch SHU Officer in Charge left at 10:00 p.m., the Material Handler and Noel were the only employees working in the SHU from 10:00 p.m. to 12:00 a.m. The Material Handler recalled that Epstein came back to the SHU from meeting with his attorneys at approximately 8:00 p.m., which was later than the rest of the inmates, and was returned to his cell on L Tier. After the Material Handler and Noel gave Epstein his food, the Material Handler said they left the L Tier area. The Material Handler said Epstein was alone in his cell, but he was unaware that Epstein needed a cellmate.

The Material Handler said he did not recall seeing the Unit Manager or Epstein in the shower area on the night of August 9, and did not have any knowledge or information regarding a phone call made by Epstein that night.

2. The 10:00 p.m. SHU Count on August 9

At the time of the 10:00 p.m. count, all inmates in the MCC New York SHU, including Epstein, were locked in their cells for the night. At or around that time, the two officers assigned to the SHU were responsible for conducting the 10:00 p.m. stand up count. At 10:00 p.m. on August 9, the two assigned SHU officers were [REDACTED] and the Material Handler. Through review and analysis of the SHU security camera video, witness statements, and BOP records, the OIG determined that MCC New York staff did not perform the 10:00 p.m. count in the SHU.³⁴ Nonetheless, [REDACTED] and the Material Handler completed and signed the 10:00 p.m. SHU count slip. The 10:00 p.m. SHU count slip listed the total number of inmates as "73 + 1." According to the MCC New York master count sheet for the 10:00 p.m. count on August 9, 2019, all units had verbally reported their inmate counts to the Control Center by 10:30 p.m.³⁵ At approximately 10:36 p.m., the Control Center completed all paperwork and officially cleared the 10:00 p.m. institutional count.

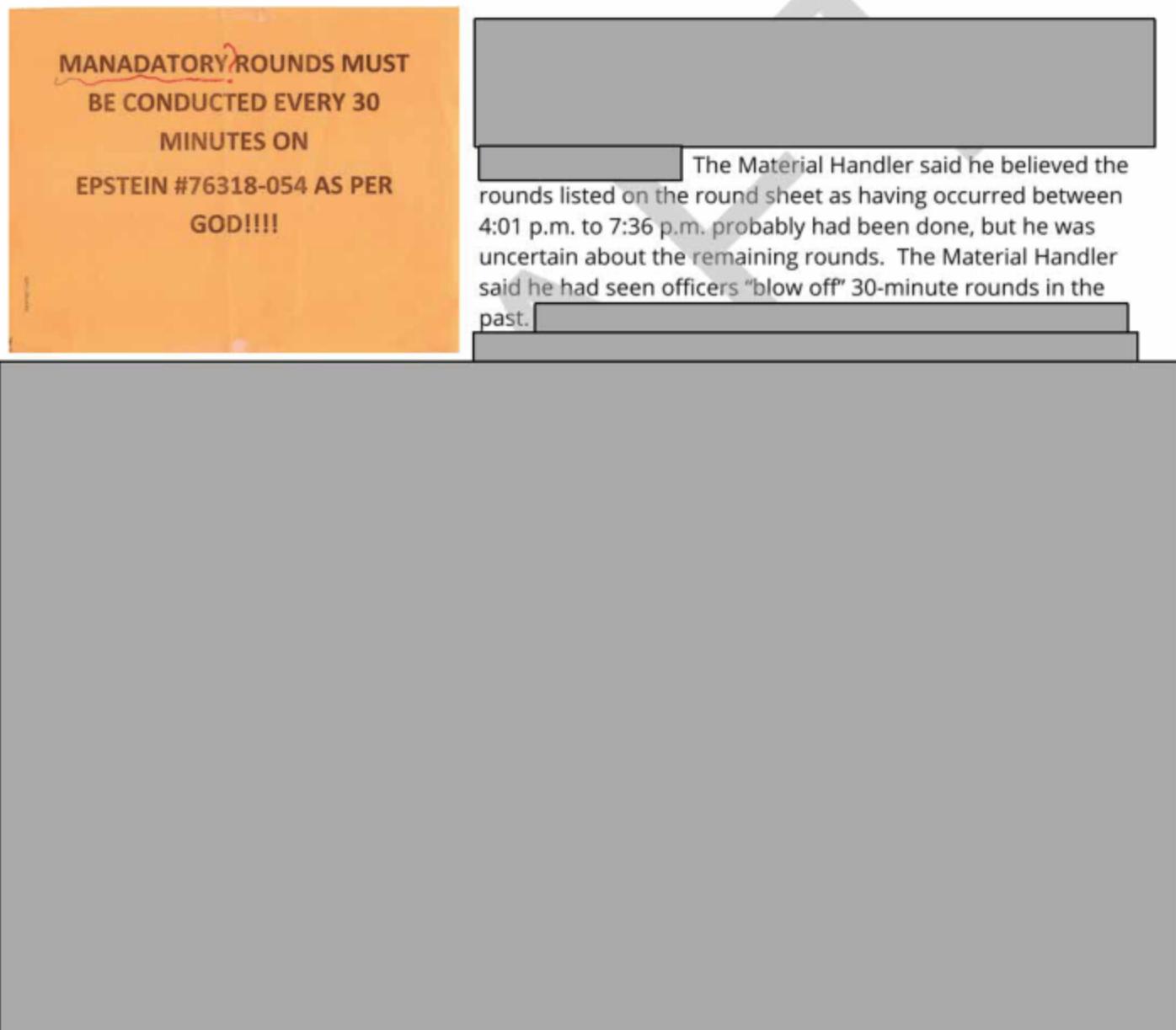
The Material Handler said he was present at the time of the 10:00 p.m. count, but that the count was not conducted because everyone was tired. The Material Handler noted that on August 9, he had worked an overtime shift from 12:00 a.m. until 8:00 a.m., his regular shift from 8:00 a.m. to 4:00 p.m., followed by his SHU overtime shift from 4:00 p.m. to midnight. Thus, at the time of the 10:00 p.m. count, he had worked 22 consecutive hours at MCC New York. The Material Handler verified that he and Noel signed the 10:00 p.m. count slip, and believed that Noel called the Control Center with their count numbers. He did not know why the count slip listed "73 + 1".

³⁴ The quality of the SHU video footage was poor. Therefore, in conjunction with reviewing the video, the OIG analyzed witness statements and BOP records to better determine what the video depicted.

³⁵ The official name for the document used to record an institutional count is "Bureau of Prisons Count Sheet."



Figure 5.2: Sign Created by the Day Watch SHU Officer in Charge



1. Failure to Conduct Rounds and Inmate Counts in the SHU

Federal regulations require that employees “use official time in an honest effort to perform official duties.”⁶⁵ Additionally, BOP standards of conduct required that employees “[c]onduct themselves in a manner that fosters respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government.”⁶⁶ Because “[i]nattention to duty in a correctional environment can result in escapes, assaults, and other incidents,” BOP standards of conduct also require employees “to remain fully alert and attentive during duty hours.” BOP policy also requires “[c]ontinuous inmate accountability,” which is accomplished through rounds and inmate counts.⁶⁷ Among other things, rounds and inmate counts enable staff to observe inmates and ensure that they are safe and secure in their cells and are in good health.

BOP policy and MCC New York SHU Post Orders set out the requirements for these inmate accountability measures, specifying that correctional staff must conduct rounds on an irregular schedule at least twice each hour, no more than 40 minutes apart. BOP policy and MCC New York SHU Post Orders further specify that at least two MCC New York SHU staff members must conduct inmate counts at 12:00 a.m., 3:00 a.m., 5:00 a.m., 4:00 p.m., and 10:00 p.m. daily, and also at 10:00 a.m. on weekends and federal holidays.

The OIG’s investigation and review revealed that an inmate (Inmate 4) was internally transferred from the SHU to Receiving and Discharge at approximately 3:15 p.m. on August 9, 2019; however, this inmate transfer was not documented until approximately 12:35 a.m. on August 10, 2019. Based on this internal transfer, BOP records, and witness statements, the OIG determined that the 4:00 p.m. and 10:00 p.m. SHU inmate counts on August 9 were erroneous. In addition, the OIG reviewed the available SHU security camera video, which did not show correctional officers walking up or down the stairs leading to the various SHU tiers during the count times, a process that is necessary to conduct an accurate count of inmates.⁶⁸ During their OIG interviews, [REDACTED] the Material Handler [REDACTED] [REDACTED] each admitted that they did not conduct all of the mandatory rounds and inmate counts in the SHU on the evening of August 9 and the morning of August 10. [REDACTED] The OIG did not credit [REDACTED] statement based on: [REDACTED]

⁶⁵ 5 C.F.R. § 2635.705(a); see also 5 C.F.R. § 2635.101(b)(5).

⁶⁶ BOP Program Statement 3420.11.

⁶⁷ BOP Program Statement 5500.14.

⁶⁸ As discussed in Chapter 5, OIG found that the security camera video was of low quality. Therefore, the OIG analyzed the video in conjunction with BOP records and witness statements regarding the personnel in the SHU and their activities.

[REDACTED] and (4) the Material Handler's statement to the OIG that no one conducted the 10:00 p.m. count because everyone was tired.

Instead of performing the required duties to account for inmate whereabouts and wellbeing, the OIG found that officers assigned to the SHU on August 9 and 10, including the Material Handler, [REDACTED] primarily remained seated in the SHU Officers' Station—sometimes without moving for a period of time, suggesting that they were asleep—and conducted a variety of internet searches on MCC New York computers. [REDACTED] The OIG's analysis of the SHU security camera video revealed that after approximately 10:40 p.m., no Correctional Officer entered Epstein's tier in the SHU until just before 6:30 a.m. [REDACTED]

[REDACTED]
The OIG investigation and review concluded that [REDACTED] the Material Handler, [REDACTED] failed to conduct the mandatory rounds and inmate counts during their respective shifts in the MCC New York SHU on August 9 and 10, 2019, and that their actions constituted violations of 5 C.F.R. §§ 2635.101(b)(5) and 2635.705(a), BOP Program Statements 3420.11 and 5500.14, and MCC New York SHU Post Orders.

2. False Statements and Lack of Candor

The OIG's investigation and review found that on August 9 and 10, 2019 [REDACTED] the Material Handler, [REDACTED] made false statements when they falsified BOP records by attesting that they had completed the mandatory rounds and inmate counts when, in fact, they had not.

Federal law provides that "whoever, in any matter within the jurisdiction of the executive...branch of the Government of the United States, knowingly and willfully...makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry" has violated 18 U.S.C. § 1001(a)(3).

As discussed above, the OIG found that [REDACTED] the Material Handler, [REDACTED] failed to conduct all of the mandatory rounds and inmate counts. As part of each institutional inmate count, BOP policy and MCC New York SHU Post Orders require two correctional officers to conduct each count and memorialize the number of inmates in the SHU on an official MCC New York form, often called a count slip.⁶⁹ On the count slip, both correctional officers are required to fill in the date and time the count had been performed, write the total number of inmates physically present in the unit counted, and then sign the count slip. Once the correctional officers complete and sign the count slips, the count slips are then collected and delivered to the MCC New York Control Center. Officers assigned to the Control Center are responsible for comparing the count slips from each housing unit to the institution's overall inmate count sheet to ensure that each inmate was accounted for.⁷⁰ Only after all the count slips have been collected from each housing unit, and the numbers on the count slips had been matched to the

⁶⁹ This BOP form is officially entitled "Metropolitan Correctional Center; New York, New York; Official Count Slip."

⁷⁰ The official name for the document used to record an institutional count is "Bureau of Prisons Count Sheet."

institution's overall inmate count sheet, could the institutional count be deemed "cleared" or completed.

[REDACTED] the Material Handler, [REDACTED] each prepared and/or signed a false count slip to create the impression that they had fulfilled their inmate accountability responsibilities when, in fact, they had not.⁷¹ These individuals admitted to the OIG that instead of performing their assigned duties, they pre-filled the count slips with the number of inmates they believed were in the SHU based on what officers from the previous shift had told them and signed off on the documents knowing that they falsely attested to having completed the counts. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] The U.S. Attorney's Office of the Southern District of New York declined prosecution for [REDACTED] and the Material Handler.

The OIG investigation has found that [REDACTED] the Material Handler, [REDACTED] knowingly and willingly falsified BOP records in violation of federal law by attesting that they had completed the mandatory rounds and inmate counts on the evening of August 9, 2019, and morning of August 10, 2019.

Additionally, as noted above, BOP policy requires employees to cooperate fully with an official investigation and truthfully respond to questions. [REDACTED]

3. Poor Judgment Regarding the Use of Overtime

The Material Handler told the OIG that on August 9 he reported for a voluntary overtime shift from 12:00 a.m. to 8:00 a.m. and then worked his regular 8:00 a.m. to 4:00 p.m. shift in the warehouse. [REDACTED]

⁷¹ [REDACTED] and the Material Handler signed the 10:00 p.m. count slip; [REDACTED]

⁷² This BOP form is officially entitled "MCC New York, Special Housing Unit, 30 Minute Check Sheet."

⁷³ BOP and Council of Prison Locals, Master Agreement, July 21, 2014–July 20, 2021 (extended until 2026).

[REDACTED] The Material Handler told the OIG that he felt pressured to work the third shift, which resulted in him working 24 hours straight, from 12:00 a.m. on August 9 through 12:00 a.m. on August 10. As discussed previously, the Material Handler admitted to the OIG that on the evening of August 9, during his third shift which he worked in the SHU, he did not conduct the mandatory inmate counts and rounds because he was too tired.

⁷⁴ BOP Program Statement 5270.11.

6. The BOP should develop and implement a plan to address staffing shortages at its prisons.

Since at least 2015, the OIG has repeatedly found the need for BOP to address staffing shortages, including medical staffing shortages.⁸⁴ This investigation and review revealed the direct impact of staffing deficiencies on inmate safety. For example, the Material Handler worked three consecutive shifts—24 hours straight—on August 9, 2019, which was certainly a contributory cause to the lack of adequate means of accounting for inmate location and wellbeing in the SHU. The Material Handler told the OIG that no one did the 10:00 p.m. SHU inmate count because they were tired.

⁸⁴