

CITY COUNCIL
CITY OF NEW YORK

----- X

TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON COURTS AND LEGAL SERVICES JOINTLY
WITH THE COMMITTEE ON PUBLIC SAFETY

----- X

September 23, 2016
Start: 10:10 a.m.
Recess: 2:17 a.m.

HELD AT: Council Chambers - City Hall

B E F O R E: RORY I. LANCMAN
Chairperson

COUNCIL MEMBERS: Andrew Cohen
Ben Kallos
Carlos Menchaca
Paul A. Vallone
Barry S. Grodenchik

VANESSA L. GIBSON
Chairperson

COUNCIL MEMBERS: Vincent J. Gentile
Julissa Ferreras-Copeland
Jumaane D. Williams
Robert E. Cornegy, Jr.
Chaim M. Deutsch
Rafael Espinal, Jr.
Ritchie J. Torres
Steven Matteo

A P P E A R A N C E S (CONTINUED)

Elizabeth Glazer, Director
NYC Mayor's Office of Criminal Justice, MOCJ

Nicole Torres, Director
Intergovernmental Affairs
NYC Mayor's Office of Criminal Justice, MOCJ

Alex Stern, General Counsel
NYC Mayor's Office of Criminal Justice, MOCJ

Mark Dwyer, Judge
Supreme Court, Kings County, Criminal
Member, Justice Task Force

Mark Hale, Assistant District Attorney
Chief of the Conviction Review Unit
Brooklyn District Attorney's Office

Julian Bond O'Connor, Deputy Counsel
Bronx County District Attorney
Bronx County Conviction Integrity Unit

John Tankleff (sic)

John Copier (sp?)

Saul Kassin, Professor of Psychology
John Jay College of Criminal Justice

Dr. Jennifer Dysart
Associate Professor of Psychology
John Jay College

Bill Brooks, Chief of Police
Norwood, Massachusetts
President, Massachusetts Chiefs of Police Assoc.
International Assoc. Chiefs of Police

Barry Scheck
The Innocence Project

Judge Daniel Conviser

Allen Newton, Exoneree

Barry Gibbs, Exoneree

Sharonne Salaam Mother of Yusaf Salaam
Re: Central Park Five Case

Mariga Meese, (sic) Legal Director
Preventive Practices
Bronx Defenders

Yung Mi Lee, Supervising Attorney
Criminal Defense Practice
Brooklyn Defender Services

David Loft (sic), Attorney
Legal Aid Society,
Post-Convictions and Forensic Litigation

1 COMMITTEE ON COURTS AND LEGAL SERVICES JOINTLY WITH
COMMITTEE ON PUBLIC SAFETY 5

2 [sound check, pause]

3 [gavel]

4 SERGEANT-AT-ARMS: [off mic] Quiet,
5 please. Can we have it quiet, please?

6 CHAIRPERSON LANCMAN: Good morning,
7 everyone, and welcome to this joint hearing of the
8 Committees on Courts and Legal Services and Public
9 Safety. I'm Council Member Rory Lancman, Chair of
10 the Committee on Courts and Legal Services. We are
11 joined by Council Member Vanessa Gibson who is Chair
12 of the Committee on Public Safety, and Council
13 Members Jimmy Vacca, Barry Grodenchik, and Steve
14 Matteo and Carlos Menchaca. Wrongful convictions,
15 the incarceration of innocent men and women for
16 crimes they didn't commit is a serious problem in
17 America. According to the National Registry of
18 Exonerees, more than 1,700 people have been
19 exonerated since 1989, a record breaking 149
20 wrongfully imprisoned people were exonerated in the
21 United States last year after having served an
22 average of more than 14 years in prison for crimes
23 they did not commit. Here in New York, last year 17
24 people were exonerated including eight wrongful
25 convictions uncovered in Brooklyn alone. To combat

wrongful convictions, in 2010 then Chief Judge Jonathan Lippman established a task force of preeminent judges, prosecutors, defense attorneys, police leaders and other criminal justice experts charged with identifying causes and proposing solutions. New York's eye witness identification and interrogation procedures drew particular attention. Eyewitness misidentification for a witness to a crime incorrectly identified a defendant as the perpetrator is often cited as the leading cause of wrongful convictions. Some—some studies have found that eyewitness misidentifications occur in as many as 75% of all wrongful conviction. Similarly, nearly 40% of all homicide exonerees last year have confessed to crimes they didn't actually commit whether they were coerced, didn't full understand the situation or the charges, lacked the mental capacity to understand what they were confessing to or for other reasons.

In 2011, the task force recommended the adoption of standardized practices concerning the administration of eyewitness identifications founded on evidence-based practices. Specifically, favored double blind administration of identifications use of non-leading preliminary instructions for witnesses,

the preservation of photo arrays and other procedures
aimed at guaranteeing more reliable identification.

The following year in 2012, the task force
recommended mandating video recording of custodial
interrogations for certain serious crimes so that
courts, jurors, defense attorneys and prosecutors
have a full understanding of the circumstances
leading to a defendant's confession without which is
extremely difficult to accurately pass judgment on
whether the confession was voluntary and truthful.

The human and societal toll of wrongful convictions
is immense. Not only are wrongfully convicted
individuals unjustly incarcerated, often for years,
an unimaginable horror, but each wrongful conviction
means an actual perpetrator escapes justice and
remains at large to commit more crimes. New York
City does not need to wait for the State Legislature
to act. I'm going to say that again. New York City
does not need to wait for the State Legislatures to
act. The Police Department is a city agency, and its
practices are controlled by the Mayor and to a lesser
extent, the Council. The district attorneys and
public defenders are funded by the City, and we have
collaborated time and again with our court system to

improve the operations of our justice system here in the five boroughs. The time to act is now, and this hearing begins that process in earnest. Let me also add it's now 10:15 and it seems quite certain that the NYPD is not going to be joining us for this hearing. I have to say on the record that I am absolutely appalled at the Mayor's unwillingness to produce any witnesses from the Police Department to testify at today's hearing to discuss what progress, if any, the department has made in implementing the reforms called by the task force including the status of the mysterious video interrogation pilot project supposedly launched several years ago. The NYPD's refusal to engage the Council on this critical criminal justice reform issue substantially obstruct the Council's oversight responsibilities. And once again, in my view, calls into question this administration's commitment to working with the Council to achieve real criminal justice reform, and I add it bodes ill for the greater spirit of engagement, which we are led to expect would be coming from our new commissioner. With that said, we look forward to hearing valuable testimony today from those individuals and families directly impacted by

wrongful convictions from the Mayor's Office of
Criminal Justice and experts speaking to the science
behind wrongful convictions and from the bench and
bar. With that, Council Member Gibson

SERGEANT-AT-ARMS: [off mic] Quiet on the
floor please.

CHAIRPERSON GIBSON: Thank you very much
Chair Rory Lancman and good morning to each and every
one of you. Good morning to all of my colleagues.
Welcome to the City Council to our joint hearing of
the Committees on Public Safety and Courts, and Legal
Services. It's a pleasure to be here. I am Council
Member Vanessa Gibson of the 16th of the Bronx, and I
am proud to chair the Committee on Public Safety, and
I thank my colleagues for being here, and it's a
pleasure to join with Co-Chair Rory Lancman in
putting this very important hearing together. Simply
put, no one should ever have to spend a day in prison
for a crime that they did not commit. Sending a
person to prison for a crime they did not commit
represents the ultimate miscarriage of justice. Not
only does it take an innocent person's freedom, it
allows the person who actually committed the offense
to evade justice and potentially harm others. The

1 impact it has on the individual and his or her family
2 is also profound. We must do all that we can to
3 ensure that our systems are in place to prevent
4 people from being wrongfully convicted and to ensure
5 that when they are, they have a way to rectify the
6 wrong that was done to them in an expedited fashion.
7 The number of people wrongfully convicted of a crime
8 and later exonerated has risen exponentially in
9 recent years. According to the National Registry of
10 Exonerations, 2015 was a record breaking year as 149
11 individuals were exonerated in the United States, an
12 increase from 139 in 2014. Of the exonerations that
13 occurred in 2015, 18% involved a false confessions'
14 44% involved misconduct committed by government
15 officials; 44% involved misconduct committed by
16 government officials; 44% involved defendants who
17 pled guilty and 50% of those cases are categorized as
18 no crime cases. New York State identified 17
19 wrongful convictions in 2015, the second highest
20 number of wrongful convictions identified by a state
21 in that year alone. Eight of these wrongful
22 convictions were uncovered by the Conviction Review
23 Unit in Kings County in Brooklyn. On average, those
24 who were exonerated in 2015 served more than 14-1/2
25

years in prison. Nothing that we can do will give those individuals and their families those years of their life that they lost, but what we can do is use it as a lesson to make sure that innocent people are not convicted, and that systems are in place, that they are solidly in place to identify those have been wrongfully convicted as quickly as possible. While the statistics surrounding wrongful convictions are truly alarming, they do not give a clear picture of the frequency with which wrongful convictions occur. They only identify those cases that have been discovered. A report that was recently published in 2014 estimated that nearly 1 in 25 or 4.1% of defendants that are sentenced to death in the United States are later determined to be innocent. In contrast to capital cases, it is much more challenging to estimate the proportion of wrongful convictions in lower level criminal cases because they often are not the subject of post-conviction litigation. Although wrongful convictions cannot be attributed to a single factor, the cause or potential causes can be distilled a few problematic areas. The concerns most often isolated and discussed include false confessions, eyewitness identification and non-

validated or improper forensic science. Even individuals with the very best of intentions may inadvertently create a situation that causes the wrong person to become a suspect. For example, an administrator of the lineup may unknowingly inject verbal or non-verbal cues to influence the eyewitness to pick a particular participant of that lineup. Prosecutorial misconduct may also contribute or lead to inaccurate conclusions and wrongful convictions. While each area standing alone may potentially lead to a wrongful conviction, this risk is compounded when these factors occur in conjunction with one another in any particular case. At this morning's hearing I want to discuss the reasons people are wrongfully convicted; the frequency in which it is occurring; what is being done to make sure that the frequency is being reduced; preventative measures that we are taking in accounts and that efforts are undertaken to discover and overturn any wrongful convictions. This is a very, very important topic and I thank all of you for being here, many of the advocates, our civil legal service providers. We have the Administration who is here, and many of those from the impacted communities, those that feel

the brunt of a system that has wronged them. Their families are here and we know their stories have been told, and they will continue to be told because there are many stories that are similar that may not be told, that we don't read about in the paper or hear about on the news. And so, first and foremost, I want to thank those who have been exonerated for their strength coming forward telling their story, and not only that, but turning the pain that they have endured into a plan of action with a purpose because they recognize that through their story, through their testimony, they can serve a strength for someone else. And so this is very personal to many of us because any of these individuals could be one of my relatives, my uncle or brother or father. And so I want to do everything possible as a member of this body to ensure that those numbers do not rise, that we work with every stakeholder from the NYPD, our city's prosecutors, Office of Court Administration to identify ways in which we can do better. It is unacceptable that any number greater than zero is here to tell a story. These families' lives have been changed forever, and we can do nothing to give them their life back, but what we can

do is use their story, as a catalyst for change and that is what we are committed to doing. I thank Chair Lancman and all the members of the Council who are here. I want to recognize the Committee on Public Safety, our Committee Counsel Deep Ambekar; Legislative Counsel, Beth Golub; Legislative Counsel Vay Immanuel Halu (sp?); Ellen Eng from our Financial Division as well as my staff Kaitlyn O'Hagan, Dana Wax and Margaret Asamoah (sp?) and thank all of you for being here and I, too, want to echo the sentiments of my Co-Chair Rory Lancman in expressing my disappointment that the NYPD is not here. At times, your absence can sometimes speak much louder than your presence, and I think that we must do better, and we must make sure that everyone is a part of this conversation. No one is excluded when you talk about wrongful convictions. From beginning when evidence is gathered, when it goes to the prosecutor and that individual is convicted in a courtroom. Everyone has a role to play, and I cannot emphasize that enough. And so, we will move forward. We will not let any door be closed when it comes to further conversation on this issue. This is something we care very deeply about, and we will make sure that as

a Council we are doing our part to be a major component of this conversation on wrongful convictions. Too many lives have been devastated, and we are at a cross roads where we don't have time. Individuals that may be sitting in prison right now praying for a lifeline that someone hears them, and sees what they're going through, and I want them to know that justice is coming and we have got to do better to make sure that we can bring those individuals out of prison if they simply do not belong there. That is the fair thing to do, and that is the right thing to do, and so I thank all of my colleagues for being here, and I thank the staff, and I will turn this back over to my co-chair, Chair Lancman.

CHAIRPERSON LANCMAN: Thank you Council Member Gibson. Just a matter of decorum and--and order. We would appreciate it if you do not clap or boo, as the case may be. There are non-verbal ways to express your pleasure or displeasure. I've seen people like kind of wave their hands. That--that seems to be a thing, and it strikes me as a little odd, but you're welcome to that if you feel the urge. I guess you can also do thumbs down, although that's

not so nice. So I'd rather you—you not do that as well [coughs] but please don't interrupt the hearing. It just makes things go longer and—and gives us less of an opportunity to hear from our witnesses. With that, we'd like to invite—Oh, excuse me. Let me also acknowledge that Council Member Vincent Gentile from Brooklyn has joined us. With that, we'd like to hear from the Mayor's Office of Criminal Justice. Everyone who is testifying today, if we could just swear you in.

I do.

CHAIRPERSON LANCMAN: Terrific. Director Glazer. Thank you for joining us.

DIRECTOR GLAZER: Great. Thanks so much and good morning Chairs Lancman and Gibson and members of the Committees on Public Safety and Courts and Legal Services. My name is Elizabeth Glazer. I'm the Director of the Mayor's Office of Criminal Justice, and I'm joined today by my colleagues Alex Stern, General Counsel of my office and Nicole Torres who's the Director of Intergovernmental Affairs. Thanks very much for the opportunity to testify. Wrongful convictions as both Chairs have noted, are a critical matter of fairness ,and something that's

important to every New Yorker. Wrongful convictions not only irrevocably damage the lives of those who are convicted, but also permit perpetrators of the crime to go unpunished, and this compromise—compromises public safety and it erodes trust in the justice system. New York City has worked to ensure the policies related to custodial interrogations and eyewitness identification are development with the key emphasis on ensuring fairness and maximizing reliability, and I want to discuss one example of this work today. New—the New York City Police Department videotapes the interviews of every defendant arrested for indexed felony offenses, and attempts. These are commonly referred to as the seven major felonies. The offenses include murder, rape, robbery, burglary, assault, grand larceny and grand larceny auto. There are some exceptions. For example when a defendant requests a lawyer or refuses to be videotaped. In addition, detective zone captains ,these are the captains in the Detective Bureau who oversee clusters of precincts, are also give latitude to record certain misdemeanor arrests based on the circumstances, and this most often occurs with misdemeanor sex crimes. In addition,

arrests by uniform patrol for gun offenses that are being enhanced by local detective squads, are also recorded. Currently, the Police Department has 82 rooms equipped with video recording software. Each detective squad assigned to a precinct has a room equipped with the software, and all the special victim units or squads are equipped that way as well. As the Chair noted, there was a pilot project that started in 2011, and then it expanded as I've noted, and since then the department has recorded over 5,000 custodial interrogation. It's been mainly through these experiences that recording not only aids those who are innocent, but also helps the work performed by officers in preventing disputes later about how an officer conducted himself or herself, and it also increases the transparency as to what was said and done during an interrogation. While we're confident in our current policies and procedures, we understand that just one conviction of an innocent person is one too many, and we are always willing to work with our partners in the Council as well as with concerned stakeholders to ensure the fair administration of justice. So thank you for the opportunity to testify here today, and I'd be happy to answer any questions.

3 CHAIRPERSON LANCMAN: Thank you very
4 much. It is always valuable to hear your testimony.
5 We appreciate the good work that you do. All of us
6 here have worked collaboratively with you, and it's
7 no disrespect directed at you personally or your
8 office when I again reiterate that really the
9 appropriate witness for this hearing would have been
10 the NYPD. Let me try to get an understanding of the
11 scope of the videotaping of--of interrogations. I was
12 handed a patrol guide, a Detective Guide Procedure
13 No. 502-20. I think it might have come from your
14 office, and maybe the NYPD dropped it off, but it
15 seems legit, and it says under Scope--and this was
16 issued and effective February 4, 2015 that-- I'm
17 reading now. The 748th, 67th, 107th and 122nd
18 Detective Squads are currently participating in the
19 video/audio recording of Custodial Interrogation
20 Pilot Project. I understand your testimony to be
21 that--to be different in that there are 82 recording
22 rooms.

23 DIRECTOR GLAZER: Uh-huh.

24 CHAIRPERSON LANCMAN: So, could just tell
25 us definitively how many precincts or detective
squads there are in the city, and how many of those

2 have—are—are engaged in the videotaping of
3 interrogations?

4 DIRECTOR GLAZER: So there are, I
5 believe, 76 detective squads and 76 precincts. So
6 there's 75 precincts plus Central Park. Each of them
7 have a detective squad. Each of them are equipped
8 with rooms, a interview room that's equipped with the
9 software that permits them to videotape and in
10 addition there are special victim squads that also
11 have rooms that are equipped with that software.

12 CHAIRPERSON LANCMAN: So is it the case
13 that every detective squad in the city now has at
14 least the—the technical and space capacity to conduct
15 their interrogations—to—to videotape their
16 interrogations?

17 DIRECTOR GLAZER: Correct.

18 CHAIRPERSON LANCMAN: Okay. Do you know
19 why the—the Patrol Guide as of just last year 2015,
20 limits—it only identifies five detective squads?

21 DIRECTOR GLAZER: No.

22 CHAIRPERSON LANCMAN: Okay. Oh, let me
23 also mention that we've been joined by Council Member
24 Andy Cohen from the Bronx, and Paul Vallone from
25 Queens. Let's take a look at the Task Force's

recommendations, and what you can tell me about the extent to which they--the NYPD now conforms to those--those recommendations? So the Task Force it recommended that unless there was an exception, which was enunciate--enumerated in the Task Force, by the Task Force, all custodial interrogations of suspects of qualifying offenses occurring at a place of detention must be recorded. Can you tell us here today that that is the case? Do you have knowledge of that?

DIRECTOR GLAZER: So what I understand is that right now the detective squads videotape interviews with people have been arrested in the seven majors. So murder, robbery, rape, grand larceny auto, burglary, a couple of others. They also have the latitude--as a discretionary matter the zone captain can authorize videotaping and interview for particular misdemeanors. More often than not those are sex offense misdemeanors, and that's the direction now. You're--you're absolutely right that there are exceptions. Those videotaped interviews are not going to happen when the defendant asks for lawyer, when--when the defendant refuses, when equipment is broken. These are all exceptions that

were recognized by the Justice Task Force and are
sort of relatively common sense, but that's the
process now, and that's been the process since I
think around mid-2015.

CHAIRPERSON LANCMAN: So the qualifying
crimes identified by the Task Force include all A-1
non-drug felonies, all violent B felonies, codified
in Section 125 of the—the penal law, homicide and
related offenses and all violent B felonies codified
in Section 130 of the Penal Law such a s sex
offenses.

DIRECTOR GLAZER: Uh-huh.

CHAIRPERSON LANCMAN: Is that—or is the
NYPD conducting videotaped interrogation in that same
spectrum of offenses or is it different in any way?

DIRECTOR GLAZER: So, I—I will have to
get back to you with exactly what the concordance is.
So for example one of the things that Justice Task
Force did not require were property crimes. NYPD has
given the seven majors, which include some property
crimes. But I'd prefer to get back to you with what
the actual exact answer is than to try and guess
here.

2 CHAIRPERSON LANCMAN: Okay, and in terms
3 of the exceptions that were allowed under the Task
4 Force, equipment malfunction, unavailability of
5 equipment, if a suspect has asked not to be recorded.
6 Obviously when an error occurs inadvertently. Are
7 those the same exceptions that the NYPD follows?

8 DIRECTOR GLAZER: Right.

9 CHAIRPERSON LANCMAN: Are there more or
10 different exceptions?

11 DIRECTOR GLAZER: My understanding is
12 that those are the exceptions that they follow. It's
13 pretty, you know straight forward common sense
14 exceptions.

15 CHAIRPERSON LANCMAN: Okay. Let me ask
16 you about the other issue, which is the lineups and--
17 and photo arrays. I do not have any Patrol Guide. I
18 don't believe I was given the Patrol Guide section
19 on--on that. No, right? I don't have anything from
20 the NYPD at all on that. To your knowledge, and I
21 can go through, and I will go through a little bit,
22 what the Task Force has recommended in terms of
23 combatting witness misidentification, but just let's
24 start with what your general understanding of the
25 extent to which NYPD practice conforms to the Task

Force's recommendations when it comes to photos
arrays, and live lineup.

DIRECTOR GLAZER: Uh-huh. So I think
that it is consistent with those recommendations, and
with what some broad kind of national practices are
or best practices are regarding instructions to the
witness, such as things like the defendant may not be
present, and--and a few other things. I think the
sort of--the crux of where the difference is, is that
there is a recommendation by the Justice Task Force--
they have double-blinded procedures and NYPD does not
do that.

CHAIRPERSON LANCMAN: Okay, and that is,
you know, almost the whole enchilada. That's--that's
the biggest recommendation from the task force, and I
think if you stay later, you'll hear and know because
you're very well versed in these issues that that is
probably the most significant problem with lineups
and photo arrays. But why does the NYPD not conform
to the recommendations of the Task Force in that
respect, and conduct lineups and--and photo arrays
double-blind.

DIRECTOR GLAZER: So I think there are a
couple of reasons that they follow the procedure that

they have so far. One, I think that they believe that it's important in cases that there be—that for the witness to feel confident to identify and to carry through with the case, and to participate in the proceedings. The detective does form a relationship with that person, and that's an important relationship. There are instructions in the manual to ensure that there aren't inadvertent or intentional cues given by the detective to the witness. The detectives could stand behind the witness, but that's one reason. I think the other reason—well, I can't give you sort of the dimensions of this is there a concern about the resource issue of being able to—to ensure that you have a detective from another squad or from another borough that knows nothing about the case. So I think I think that's what they would—you know what their main approach is.

CHAIRPERSON LANCMAN: Well, you probably don't need a detective to run a lineup. I mean once you get to that point, it's just an administrative function. Let me ask you, do you know whether or not as the Task Force suggests that the administrator of the—the lineup of the photo array asks the witness the degree of confidence that the witness has in the

2 choice that they're making? You know, in your own
3 words, how sure are you? Is the language that's
4 recommended.

5 DIRECTOR GLAZER: My understanding is
6 that the Police Department does not ask that
7 question.

8 CHAIRPERSON LANCMAN: Okay. Do you know--
9 well, you've answered the question about double
10 blind. Do you know what the NYPD's procedures are
11 when it comes to documenting the identification
12 procedures--

13 DIRECTOR GLAZER: [interposing] Uh-huh.

14 CHAIRPERSON LANCMAN: --and--and--and the
15 identifications that are made?

16 DIRECTOR GLAZER: Yeah. So when the
17 identification is made through a photo array, there
18 are two different things that happen. One, the photo
19 array, the pictures are identified through thins PIN
20 system, Photo Imaging something--don't test me on the
21 letters, and the computer itself will keep a record
22 of what the photographs are, how long the witness
23 looked at each photograph and the detective who's in
24 the room will take notes and that is often
25 subsequently translated to a Police Department report

DD5. Similarly, when a lineup is done, the detective is there taking notes on whatever it is the witness says, and that is also often translates to again, it's a Police Department form that detectives use called the DD5, and those documents and that documentation has been given to the district attorney because those are documents that are important in discovery in the case.

CHAIRPERSON LANCMAN: Before I move on because I certainly want to give everyone an opportunity to ask their questions. The--the number of interrogations during the life of the pilot program, I think you put it about 5,000?

DIRECTOR GLAZER: Yep.

CHAIRPERSON LANCMAN: That seems like far fewer interrogations than are being conducted in New York City. Does that strike you as--as--as the math not adding up there?

DIRECTOR GLAZER: Yeah, so its--

CHAIRPERSON LANCMAN: [interposing] If, in fact, each interrogation--

DIRECTOR GLAZER: Yep.

CHAIRPERSON LANCMAN: --is being videotaped.

2 DIRECTOR GLAZER: So it's certainly a
3 much lower number than the actual number of arrests
4 for the seven majors, if that's what you're asking.
5 And my understanding is, is that when an arrest is
6 made by a patrol officer, the nature of a patrol
7 arrest is that the officer sees the incident in front
8 of them. And so, we don't have that same issue of
9 videotaped interrogation. So the 5,000 relates to
10 interviews that detectives themselves are conducting.

11 CHAIRPERSON LANCMAN: Are there
12 interviews that conducted by someone other than the
13 detective once a suspect has been brought to the
14 station?

15 DIRECTOR GLAZER: That I don't know the
16 full answer to. There are many times in which a
17 defendant is interviewed by a district attorney, and
18 many of the offices of the DA is also have videotape
19 equipment.

20 CHAIRPERSON LANCMAN: Good and lastly for
21 me one of the bills that we're putting in since your
22 office, the Mayor's Office of Criminal Justice
23 oversees the criminal justice system on behalf of the
24 Mayor, is requiring a new office to review and report
25 on the status of the NYPD and the other stakeholders

and operators in our criminal justice system. Their compliance with, their adherence to the recommendations of the Task Force on--on two issues as well, you know, the Task Force's other recommendations. While I have you here, could you think of any reason why it wouldn't make sense for MOCJ to conduct that review and--and give a report to the Council in, you know, a reasonable amount of time?

DIRECTOR GLAZER: Well, the recommendations are just that, they're recommendations. So it's not a requirement of law for the departments to adhere to them. So it's certainly something I'd be very happy to discuss with the Council and to figure out a path forward.

CHAIRPERSON LANCMAN: Uh-huh. Let me also mention that we have--we've been joined by Council Member Espinal, Rafael Espinal from Brooklyn and Jumaane Williams also for--for Brooklyn, and I--as I hand you off to my co-chair here, I assume you'll be able to get us copies of the NYPD's--the Interrogation procedures, the same way that we were given the Patrol Guide on videotaping interrogations?

DIRECTOR GLAZER: Sure.

2 CHAIRPERSON LANCMAN: Okay. Council
3 Member Gibson.

4 CHAIRPERSON GIBSON: Thank you, Chair
5 Lancman, and good morning, Ms. Glazer--

6 DIRECTOR GLAZER: [interposing] Good
7 morning Chair.

8 CHAIRPERSON GIBSON: --and members of the
9 MOCJ team. So you can imagine the awkwardness we
10 feel with having you at the table and not the NYPD.
11 So I appreciate your efforts to always come through
12 and be here even when MOCJ, you know, is a part of
13 the conversation definitely know that you've studied
14 this quite a bit, and I do know that, you know for
15 the record you are willing and committed to working
16 with us as we continue to have conversations about
17 wrongful convictions, interrogations, eye witness
18 identification and other measures, right?

19 DIRECTOR GLAZER: Absolutely.

20 CHAIRPERSON GIBSON: Okay, great. So in
21 your testimony you talked about the 82 cameras that
22 we have, the 82 rooms that are equipped with the
23 video recording devices. Out of 77 precincts, do you
24 know if there will be an increase in that? Is-is
25 every detective bureau sufficiently covered with

2 cameras, or is that a conversation we need to have
3 moving forward?

4 DIRECTOR GLAZER: So every interview room
5 now is equipped with this software and with the
6 videotape equipment as well as the Special Victims
7 Units so that is complete coverage.

8 CHAIRPERSON GIBSON: Okay, all the
9 special victims and each of their commands?

10 DIRECTOR GLAZER: Uh, right.

11 CHAIRPERSON GIBSON: Okay. Wanted to ask
12 a quick question about the general procedure. You
13 talked a little bit about it in your testimony. With
14 respect to eye witness identification procedures,
15 what is the NYPD's policy?

16 DIRECTOR GLAZER: With respect to photo
17 arrays and lineup?

18 CHAIRPERSON GIBSON: Eye witness
19 identification.

20 DIRECTOR GLAZER: Yep. So there—they
21 follow to a large degree what the national practices
22 are. So, with the photo array to ensure that you
23 have pictures that are not suggested, but are as
24 similar as possible to the—the targets picture. The—
25 the detective is instructed not to make suggestive

comments. There's an instruction both for the photo array and the lineup to instruct the witness that-- that the--the suspect may not be in either the photo array or the lineup, and then as I noted, there are sort of an array of things almost like an audit trail on the photo array that records information automatically on how--how much time a witness spends on each picture and a number of other things. Those are then ultimately turned over to the DA. That's part of the discovery to the defender, and in a lineup those same policies are applied. The only difference--obviously it's a live procedure--is that the detective who's in the room is instructed to stand behind the witness so that there can't be any inadvertent or intentional signaling.

CHAIRPERSON GIBSON: Okay, so that goes to the point that I was going to raise. Since the NYPD uses multiple types of procedures like double blind, do you know what types of circumstances they would use a particular procedure? So is there some sort of a policy that says in this circumstance you use a double blind, or is that left up to the individual detective bureau? Do you know?

3 DIRECTOR GLAZER: I'm afraid I can't
4 answer that question.

5 CHAIRPERSON GIBSON: Okay, and so, you
6 know, many of these questions obviously Chief Robert
7 Boyce, Chief of Detectives and Legal Affairs Deputy
8 Commissioner Larry Burn I know have been doing a lot
9 of this work. And so, you know, having their voice
10 at this hearing is—is very critical because we know
11 that while measures are taking place in terms of
12 conversations, interrogations are happening each and
13 every day and, you know, that's simply why we're
14 trying to derive some information so that we can
15 simply understand what's happening across our city as
16 it relates to evidence gathering and bringing
17 suspects before the Police Department. Just had
18 another question, are you aware that between photo
19 arrays and live lineups which method is more likely
20 to protect against any type of false conviction? Do
21 you know the disposition. (sic)

22 DIRECTOR GLAZER: [interposing] So
23 there's been—there's been some study on this by the
24 National Academy of Sciences and some others, and my
25 understanding is that inconclusive which one is more
accurate.

3 CHAIRPERSON GIBSON: Any other studies
4 that we're aware of?

5 DIRECTOR GLAZER: I can certainly get
6 back to you on what that is. That's the most common
7 one that I know.

8 CHAIRPERSON GIBSON: Okay. There have
9 been some other jurisdictions that have talked about
10 mandating double blind lineups and recording of
11 statements will individuals are in police custody.
12 Are you aware of any of those jurisdictions that have
13 already implemented these types of measures?

14 DIRECTOR GLAZER: There are some
15 jurisdictions [off mic] and if you want to speak, we
16 can—we can give you a list now or we can provide it
17 to you afterwards, but there are a few cities and I
18 think stats that have implemented some of these
19 recommendations.

20 CHAIRPERSON GIBSON: Okay, and Chair
21 Lancman talked about the Justice Task Force that was
22 established several years ago by Jonathan Lippman.
23 Some of those recommendations, obviously all of them
24 are very, very important, and what I wanted to
25 understand from the city's perspective since we are
one of the largest municipalities when you look at

law enforcement in this state. Is there any conversation or any efforts that we have as a city to implement those recommendations or even at a local level work with many of the experts that have already been working together and forming their own task forces. Are we going to do something as a city to develop our own working group including the NYPD?

DIRECTOR GLAZER: Uh-huh. So we sit on the Justice Task Force, which is now co-chaired by Chief Judge DiFiore.

CHAIRPERSON GIBSON: Judge DiFiore, right.

DIRECTOR GLAZER: The Police Commissioner sits on it. We also have the DAs sit on it or defenders sit on it. So we have very robust and broad representation there. We do not have separately a task force of those same city players related to implementation.

CHAIRPERSON GIBSON: So thinking about the total picture of eye witness identification, misidentification, double lineups, what is it that we believe are the most important efforts that we have identified as an administration for preventing wrongful convictions? So what are the measures that

we have identified that we need to change so that we
can prevent individuals from being wrongfully
convicted?

DIRECTOR GLAZER: So I think we can
always do better. I think we're always open to what
we should be doing better. I think right now there's
a big effort around the videotaped interrogations,
having that citywide coverage, and I think there is
always openness for thinking through whether or not
there are other things that we can change.

CHAIRPERSON GIBSON: And just another
question. Do you have any thoughts on our
prosecutors and their own offices establishing
convictions integrity units?

DIRECTOR GLAZER: So I think it's a very
necessary part of--of the administration of justice.
I think we all should be open to not just taking a
first look, but a second look to always examining
what we've done, and where things may have gone
wrong, and ensuring that that drives us forward in
making our points.

CHAIRPERSON GIBSON: Okay, I agree. I
think it's important the fact that we have testimony
and live stories of individuals that have been

exonerated. I think it propels us to absolutely make sure that within our own offices we do everything possible to make sure that we can prevent individuals from being wrongfully convicted. And I know some are looking at it from—you know, are looking at other measures, and we will hear. All of our district attorneys have been invited and, you know, staff members are present here today. So I do look forward to hearing from them as well. I think it's really important that when you look at this topic I have to emphasize how everyone has to play a role. And so, you know, the absence of the NYPD not being here is a very critical voice that's missing and so, you know, the evidence that's gathered by law enforcement it gets to the prosecutor's office to prosecute the case. It ultimately leads to the courtroom. It's a process, you know, where there are deficiencies. I think we all acknowledge that we can all do better. There are always improvements we can make, and we're all talking about human beings. I mean we all make mistakes at some point. I think it's an acknowledgement that we have to work together and that all of the pieces—I call them ingredients. All of these ingredients have to work together because if

there's one that falters, I think it, you know, is a blemish on the entire system. And so, you know, through this hearing I certainly look to get more information especially from the impact of community. But I am absolutely going on record making my voice heard that this is a conversation that we will continue, and the NYPD will be here. Because interrogations are taking place, we have some of the Patrol Guide procedures, but we need much more. I think, you know, many of the advocates have had conversations many, many times with the NYPD about their procedures, but we don't have anything tangible to see. And do I think it's important, you know, with your work with the NYPD and your role that, you know, that message is coming across from our perspective that it's important that we make sure that they're here and that they are part of the conversation. One last question I have before I turn it back over to my chair and other members of the committee is do you think there's anything that we as a City Council can do? We've got some pieces of legislation proposed. My chair and myself are former legislators in the State. So we work very closely with the State Legislature. But is there anything

2 else that we as a Council can do to support the
3 efforts of the administration in preventing wrongful
4 convictions? You love my little questions, right?
5 [laughter] I know.

6 DIRECTOR GLAZER: That's an important
7 question and that's something that I want to give a
8 thoughtful answer to, and so I'd like a chance to
9 think that out and to get back to you.

10 CHAIRPERSON GIBSON: Okay. Thank you
11 very much. Thank you, Liz, and the Chair Lancman.

12 CHAIRPERSON LANCMAN: [coughs] Thank
13 you. Let me also recognized that we've been joined
14 by Council Member Ritchie Torres from the Bronx. Our
15 first question is from Council Member—a series of
16 questions from Council Member Jimma Vacca, and we'll
17 put—put seven minutes up on there.

18 COUNCIL MEMBER VACCA: How many minutes?

19 DIRECTOR GLAZER: Seven.

20 COUNCIL MEMBER VACCA: Oh, seven, I
21 thought—I can't believe it.

22 CHAIRPERSON LANCMAN: You're not required
23 to use all seven.

24 COUNCIL MEMBER VACA: Oh, no, no, no,
25 I'll do my best to use a little less. Let me ask you

1 COMMITTEE ON COURTS AND LEGAL SERVICES JOINTLY WITH
COMMITTEE ON PUBLIC SAFETY 40

2 something. We're talking about this issue of
3 wrongful conviction, and I'm concerned, too. I'm
4 concerned about tracking, not only wrongful
5 convictions, I'd like to see someone in our city
6 track the recidivism. Who tracks recidivism because
7 I'm--

8 DIRECTOR GLAZER: [interposing] Well, I
9 have good news for you.

10 COUNCIL MEMBER VACCA: Yeah, give-give me
11 news.

12 DIRECTOR GLAZER: So if you go to our
13 website there's something called DART. It's a very
14 cool program.

15 COUNCIL MEMBER VACCA: D-A-R-T?

16 DIRECTOR GLAZER: D-A-R-T.

17 COUNCIL MEMBER VACCA: Yes.

18 DIRECTOR GLAZER: And you can yourself
19 check for all kinds of different groups. You can do
20 it by age. You can do it by offense. You can do it
21 by arrest, by conviction to determine what the
22 recidivism rates are depending what group you're
23 interested in, what period of time you're interested
24 in. What people are recidivating with, et cetera.

25

2 COUNCIL MEMBER VACCA: So that would give
3 me an idea of categories of recidivism, and frequency
4 of recidivism generically.

5 DIRECTOR GLAZER: Correct.

6 COUNCIL MEMBER VACCA: What are we doing
7 in the city about recidivism. There is not a day
8 that goes by that I read the newspaper and I see
9 people committing major crimes who have rap sheets
10 longer than this desk, and there is something falling
11 apart be it in the DA's offices or with our judges
12 that is endangering people in this city, and I'
13 thinking of crime victims who don't see a perpetrator
14 go to jail until he ultimately commits the most
15 heinous or crimes, and that's not right, and we have
16 to speak to this in this Council. Fourteen
17 offenses, 25 offenses. You read about it and it's
18 matter of fact, next day next story. Move on. I
19 don't accept it.

20 DIRECTOR GLAZER: So there are a couple
21 of things that I would say to that. One is that we
22 have what I believe is a deficient bail law, and
23 under the New York State's Bail Law, judges are only
24 allowed to consider risk of flight, not danger to the
25 community. This is different from 44 other states

2 and from the federal system in which both of those
3 problems, both risk of flight and danger to the
4 community is considered. So that's something that
5 Judge Lippman put a bill before the Legislature and
6 before he stepped down as Chief Judge. The Mayor
7 worked with the Legislature last year to introduce
8 another bill, but that's--that's an important
9 deficiency. The second thing is--

10 COUNCIL MEMBER VACCA: [interposing] I'm
11 sorry to interrupt you.

12 DIRECTOR GLAZER: Yep.

13 COUNCIL MEMBER VACCA: Can you please get
14 me those bill numbers? Are they pending in Albany
15 now or must they be reintroduced in the new session?

16 DIRECTOR GLAZER: I'd be happy to get you
17 the bill numbers.

18 COUNCIL MEMBER VACCA: Get me the bill
19 number because I'm sure the Council will want to
20 consider a resolution supporting something like that.
21 I'm sure some will buy, but I think most would.

22 DIRECTOR GLAZER: I think the second
23 thing that people don't talk about very much is the
24 issue around sealed cases. So that often times--and
25 sealing is an incredibly important piece to predict--

to protect people who are young when they committed crimes, and deserve a second chance to ensure that people aren't unfairly tagged with offenses that they've been acquitted of, but there is a very high use of sealing in a whole array of cases. That means that often when a judge had a defendant in front of them, they will not actually have the full picture of the conduct of that defendants, but only what appears on their rap sheet. So there is an information gap as well.

COUNCIL MEMBER VACCA: How could a judge decide a case of a violent person not knowing the previous history? How could that history not be made available to a judge? You mean we have judges sitting here in this city in a vacuum? They only have one case, the case that's brought before them, and they don't know the history?

DIRECTOR GLAZER: They know the history, but they may not know the full history.

COUNCIL MEMBER VACCA: How? How is that possible? What is your office going to do about that? What are we going to do about that?

3 DIRECTOR GLAZER: There are laws that--
4 that govern the sealing issues, and there's also
5 local practice.

6 COUNCIL MEMBER VACCA: Well, local
7 practice is something I think we can change, and if
8 there are laws, I think the Mayor and the Council
9 have to come together with a crime package to protect
10 the victims of crimes and law-and law abiding people.
11 How could a judge sit there in a vacuum, and not know
12 the full magnitude of the case that's before him, and
13 the possible danger that the individual poses to
14 society?

15 DIRECTOR GLAZER: Is that a question
16 seeing information from me or--?

17 COUNCIL MEMBER VACCA: I'm seeking--no,
18 I'm seeking--I'm--I'm seeking--every year we go to
19 Albany. We have a legislative package in the
20 Council. The Mayor has a legislative package. I'm
21 saying that your office as a mayoral agency needs to
22 bring this to the attention of the Mayor and he needs
23 to include this in a legislative package to Albany if
24 indeed it's a state issue, which it appears to me to
25 be. If it's a City Council issue that we can
resolve--resolve legislatively here, I'm willing to

sponsor whatever legislation is needed because that's
a major problem.

DIRECTOR GLAZER: I'd be happy to talk to
you about this.

COUNCIL MEMBER VACCA: I want to talk to
you further. I'm trying to raise a voice for people
who are voiceless namely people are victims of crime,
and I'm trying to say to you that have many victims
of crime--as you know, I'm sure--who have their lives
changed forever based on someone who goes to a judge
who says the only thing I can give you is a sentence
based on whether or not you're going to fly--have
flight or not, or I gave the guy a sentence and
didn't know that he had history of--of this and of
that. I didn't know. This is not what most people
think about when they--I think it's an eye--it's--
it's an eye opener that we have these gaps. So I'd
like to work with your office. I'd like those bill
numbers. I'd like to know how I can help. I want to
have conversations with you and I'm--I'm very
interested in this recidivism issues--issue, and I'm
glad I raised it. I learned a lot today myself.
Thank you.

2 CHAIRPERSON LANCMAN: [coughs] Thank
3 you. Next, we'll hear questions from Council Member
4 Andy Cohen from the Bronx.

5 COUNCIL MEMBER COHEN: Thank you, Chair
6 Lancman. I'll be brie. One, I just wanted to let
7 Council Member Vacca know that I apparently have a
8 bill that would track recidivism in relation to a
9 diversion program. So I'm hoping that we'll get a
10 hearing on that some time soon. Two, I-I really do.
11 I-I don't know what the background is of how or why
12 the NYPD is not here, but I have to admit I am
13 baffled by their absence, and it seems that they're-
14 in the size of the force that we have that somebody
15 could come in and shed some light on the procedures.
16 And I-and I really just have a question in relation
17 to the double blind identification project. (sic) Is-
18 is it-do you have a position? Do you believe that
19 that is a best practice to use double blinds?

20 DIRECTOR GLAZER: I think in a perfect
21 world of infinite resources there are a lot of
22 things-a lot of advantages, and a lot of reasons to
23 use double blinds. I also think that there are a lot
24 there safeguards that are in the system right now,
25

but I think it's something that's worthy of
discussion.

COUNCIL MEMBER COHEN: I mean it seems to
me that the resources should not be such an
overwhelming barrier that we cannot come up with a
way to conduct double blind lineups and photo arrays
in way that is not, you know, that--that we have the
resources at the moment, and--and what's at stake. I
really think that we should try to commit the time
and a way to do that. So thank you very much.

CHAIRPERSON LANCMAN: Thank you. Council
Member Jumaane Williams.

COUNCIL MEMBER WILLIAMS: Thank you very
much, Mr. Chair, Madam Chair, Panel. I first want to
add onto my colleagues that kind of pushed slightly
in a--in a different way what my colleague Council
Member Vacca was talking about. Of course, you have
to have--we want to make sure that people who should
be in jail, they need a time out, they absolutely get
it. But often times we speak for victims without
really having their voice heard. So I just wanted to
refer the panel and my colleagues to the first ever
national survey on victims and how they view their
safety--how they view the criminal justice system by

the Alliance and Safety and Justice. They did have these national surveys, some very interesting findings. One of the most interesting one was two out of three victims do not receive help following an incident, and those who do are far more likely to receive it from family or friends than the criminal justice system. So they actually didn't believe that there was any follow up that was then pushed to them. A lot of the other findings and I'm glad I have seven minutes, and I have used some of it. A lot of the findings push back on the inherent knee-jerk reaction force of their punishment. So by 2 to 1 margins, victims prefer that the victims, that the criminal justice system focus more on rehabilitation for people who commit crimes than punishing them. By a 15 to 1 margin, victims prefer to increase investments in schools and education over more investments in prisons and jails. By a ten to one victims prefer to increase investments in job creation. By seven to One victims increase investment in mental health over more investments in prisons and jail. Six in ten victims prefer shorter prison sentences and more spending on prevention and rehabilitation to prison sentences that keep people

incarcerated for as long as possible. Three in one victims prefer holding people accountable from options beyond prison such as rehabilitation mental health treatment, drug treatment and community supervision or community service. Three to one victims believe that a prison makes people more likely to commit crimes than rehabilitation. Seven to one victims prefer increased investments in crime prevention, and programs for outreach use over more investments in prisons and jails, and by four to one victims preferred increased investments in drug treatment. By two to one victims preferred increased investment in substance use supervision such as probation over investments in prisons and jails. I think that is key because we often speak to victims without allowing them to speak for themselves. And so what this survey actually pointed out was that they don't want necessarily prison. They want the crime not to happen any more, and they want it not to happen to someone else or to themselves. Often times our knee-jerk reaction is a longer prison sentence, a mandatory prison sentence. They don't necessarily change behavior, and they don't necessarily help the victim. What they really want is for this not to

happen again. So I just want to make sure I put that
on record, and hopefully this will--

DIRECTOR GLAZER: [interposing] That is
exactly right. We have to start way, way before
anybody touches the criminal justice system. We have
to thank very hard about what the actual use is of
mandatory sentences, about the criminogenic effect of
jail in many instances. About whether or not the
length of our prison sentences are really justified
for any purpose at all, and we have to think about
jail and prison as the last resort. And that's very
much the focus of what this administration is doing
in this city in trying to reduce the Riker's
population, and trying to lighten the touch as much
as possible for that and how we use enforcement.

COUNCIL MEMBER WILLIAMS: Thank you.
Also, thank you for being here. I know you do good
work on this. I just want to lend my voice to--as a
council member and part of the body, I'm insulted
that the NYPD is not here. I understand that there
are staff from the DA, and a number of DAs will be
here. I'm not sure how we had this conversation
without them. I think that they absolutely should
have been here and had this conversation. I think it

is disrespectful to the body, to this committee and to the chair. I hope we have a hearing on this again, and if they refuse to, we should exercise our right to subpoena them there because this is too important for them to be able to elected not to be part of this conversation, and on the record. I do have one question, and in my county Dave Thompson I think had done a very good job particularly on getting innocent people out of prison. Has anything that he has done led to any changes system wide?

DIRECTOR GLAZER: So I think one of the things that he has done is that both and DA Vance who have the Conviction Integrity Units that that has become an important part of everyday business for a DA's office to sort of take a second look rather than a first look. So DA Clark has now started a Conviction Integrity Unit as well. So I think that kind of systemic change has been important. I'm not aware, but I could be wrong as to whether or not there are particular procedures or recommendations that have come out of his series of cases that—that he's advocating be applied system wide.

COUNCIL MEMBER WILLIAMS: Well, that was my question. System wide, is it—is the NYPD, I don't

know if you know, or just in general changing,
viewing what's happening in the wrongful convictions
that we have identified have they translated that
into changing anything recently?

DIRECTOR GLAZER: I think that each of
these cases has a post-action review, for lack of a
better term, to try and really go through molecularly
as to what happened in each case, and to try and fix
in the system where-how we interview witnesses, how
we collect evidence, but I can't give you all the
detail on that.

COUNCIL MEMBER WILLIAMS: Okay, and
that's probably NYPD and the DA should be here as
well. Just the last question. Is someone keeping
statistics on these wrongful convictions demographics
breakdown? Are we keeping this so we can see if-if
there is some kind of pattern, and do we have a
statistical analysis of how many wrongful convictions
are kind of-wrongful convictions are occurring?

DIRECTOR GLAZER: So I think the
Innocence Project does give that. We as a city do
not.

COUNCIL MEMBER WILLIAMS: I think
personally we probably should so that we can review

it. So hopefully, we will move forward. I'm running out of time so thank you very much again for the work that you're doing, and to you Madam Chair and Mr. Chair.

CHAIRPERSON LANCMAN: Thank you very much. Let me also recognize we've been joined by Council Member Robert Cornegy from Brooklyn. Anyone else on the panel have questions for Director Glazer? No. Well, thank you very much for your testimony this morning, and as they say in the business we look forward to continuing this conversation, and this time we really mean it.

DIRECTOR GLAZER: As do I.

CHAIRPERSON LANCMAN: Thank you.

DIRECTOR GLAZER: Thank you.

CHAIRPERSON LANCMAN: Thank you very much. [pause] Alright, alright, good morning, so next we're going to invite Judge Mark Dwyer to come and give testimony as I'm sure he will inform us. He is a member of the Justice Task Force. Yes, please. [background comments, pause] Alright, good morning, Judge. If you don't mind, we can swear the witness. Do you swear or affirm the testimony you're about to

2 give is the truth, the whole truth and nothing but
3 the truth.

4 JUDGE DWYER: [off mic] I do.

5 CHAIRPERSON LANCMAN: Thank you very
6 much.

7 JUDGE DWYER: [off mic]

8 CHAIRPERSON LANCMAN: I know the tables
9 have turned. Just hit the button, sir.

10 JUDGE DWYER: Okay. Let me thank you
11 first for inviting the Task Force to make comments.
12 My introduction to the Task Force can be much shorter
13 than it would have been given the kind comments that
14 the council members have made so far about our work
15 and our reports. As you know, Chief Judge Lippman
16 set us up because of his concern about wrongful
17 convictions and Judge-Judge DiFiore who, of course,
18 is now the Chief Judge, shares this enthusiasm for
19 checking into the reasons for wrongful convictions.
20 She, in fact, was co-chair of the Task Force before
21 she became a judge. Let me first say that we are
22 interested in your notion that New York City can do
23 things if Albany won't. There any number of our
24 recommendations that could be implemented city wide
25 even if there my be a log jamb on the issues in

Albany. In particular as to statements, of course, the need for video recording seems apparent to almost everybody, and even beyond the seven serious areas of crime that Ms. Glazer talked about, I see no reason why other felonies should not also have statements recorded. Our recommendations, of course, focused on the most serious felonies, the violence and A felonies as a good starting point. But once you've got the equipment there if a detective isn't in with a-the violent felon, there's no reason why he shouldn't be under the C violent felon because the room is there. It also has always startled me that law enforcement is reluctant to video tape these statements. I was doing a suppression hearing yesterday in which the police did not record the statement. This was from 2013, and it was on a C violent felon. The district attorney then got the defendant to continue talking in ECAB down here on Center Street, and the video of the confession is extremely enlightening to me for the issues I have to decide at the suppression hearing, and if the case goes to trial, it will have the defendant convicted in ten seconds. And why that does no appeal to law enforcement as a very worthwhile investment I don't

1 know. Once can speculate that some old fashioned
2 detectives may not want to have their methods on
3 video as it might embarrass them, but that's what the
4 video idea is all about. It's the make sure that
5 confessions are taken fairly in ways that won't
6 embarrass anybody. So that there won't be wrongful
7 convictions because of our closed (sic) statements.
8 As to identification, whereas you know, we've also
9 made recommendations. The Police Department and law
10 enforcement in general do acknowledge that double
11 blind is the best way to go. I don't understand the
12 resource objection. Double blinding a lineup is
13 totally in expensive. It doesn't have to involve a
14 detective, although a different detective from the
15 squad could certainly be found who doesn't know which
16 person arrested is the suspect. Or, you could have a
17 law student intern trained to do what has to be done,
18 a volunteer law student intern for that matter. All
19 you do is walk in and read the same questions and
20 make the same comments that the detective on the
21 case would make, and--

23 CHAIRPERSON LANCMAN: [interposing] Is
24 there--is there a detective still involved whether
25 it's just--?

JUDGE DWYER: That's correct. You just read the form, and you have to be trained so that if the witness says can they all stand up, you know what to do, or could they all stand or come forward, you know what you have to do, but this is all very simple. And just to have the detective standing behind the witness doesn't take care of the problem in its entirety because even a comment the detective makes like good job or thank you so much, can give away that the detective thinks that the correct identification has been made, which can dramatically affect the witnesses' testimony in a subsequent proceeding. I also note that the question about confidence level seems important. For a long time, identification experts said that the information about confidence level is totally irrelevant. There is no correspondence they thought between level of confidence and accuracy of identification. But more recently it's been discovered that if you break it down, it can have great significance. People who are nine out of ten sure, might be 90% correct to make up the numbers, since I don't remember them exactly. People who are three out of ten sure might be 30% correct. As long as you're getting confidence at the

first identification. Everybody agrees still that confidence at later identifications is influenced by, among other things, the first identification and doesn't have value. But that first identification be it photo or in person, the confidence level is very important, and it would be a definite help at trials both for the innocent and for the prosecutors of the guilty to have that first ID confidence level known about. And do it would be helpful if the Police Department would do something about that. I also don't know why identification proceedings can't be recorded to make especially if they're not double blind to make sure that whatever hints are given are available for everybody to take a look at and even, of course, to have the line up photographed on video would give you a much better idea about whether it's suggested than the simple photographs that we get now. So there are a number of things that can be done to ensure that these important law enforcement tools are not misused so that the innocent are convicted. I also would like to say that we've made recommendations about DNA, which would help not exonerate the innocent, but once again convict the guilty. We've advocated expanding the DNA database.

We've advocated better checks on DNA labs, and we've advocated more rights to post-conviction review even after some guilty pleas of those who have been convicted. Some of those things are doubtless state responsibilities more than city responsibilities. But even as an OCME is a ward of the city basically. An OCME could be subjected to more oversight than it is. I would finally like to say that Assembly Bill 07029 was not passed. That incorporated a task force recommendations as to identifications and statements, and I would hope that if the Council was thinking about sending a message to Albany it might send a message that 07029 should be resuscitated. Thank you.

CHAIRPERSON LANCMAN: Thank you very much. So the million dollar question that I have to ask because you're a sitting judge--

JUDGE DWYER: [interposing] Yes, sir.

CHAIRPERSON LANCMAN: --for trying cases. You're hearing [coughs] motions to suppress confessions and other evidence. In-in your direct day-to-day observation, do you see that the City of New York that the Police Department is video taping

the confessions and--and the interrogations? Are you--
are you seeing that?

JUDGE DWYER: It's hard for me to give
you an answer that's up to date because by the time
the case comes to trial, especially in a serious
case, any confessions were taken two years before.
The case that I was talking about I may have
mentioned was a 2013 arrest where the police did not
videotape the confessions with the DA's office,
videotape the second version of the confession. By
the way, the attack at trial is certain to be on the
behavior of the detectives at the first confession
supposedly softening up the defendants for the second
confession. That may be true or false, but if the
first one had videoed, the jury would know one way or
the other. But I can't tell you what's happening in
2016.

CHAIRPERSON LANCMAN: Right. [coughs] But
in the time frame the cases that you're seeing these
would be what, 2013, 2014 and 2012?

JUDGE DWYER: Yes, and it would be 2015
especially from the first half of the year, and I
have to say I haven't seen too many recorded police

interrogations, but again that's kind of dated
information.

CHAIRPERSON LANCMAN: Right, and just
the--the challenge for you as a judge [coughs] in
trying to adjudicate claims of the false confession.
There's a movie of the confession, et cetera. In
the absence of videotaped testimony, is it anything
by the he said/she said?

JUDGE DWYER: Obviously, there will be
other evidence in the case and some persuasive, some
circumstantial and not necessarily persuasive. So
the absence of the video only leads to he said/she
said as to the video--sorry--as to the confession
itself. But needless to say, a confession can be
incredibly important, and yes in large part it's he
said/she said as to how the confession was taken, and
some judges may presume the confessions are fine if
the police officer gets up and says so. And if a
defendant gets on the stand and says I was under
pressure, the defendant comes with the baggage of
being accused of a serious crime and perhaps having a
record, and judges tend to credit the cops, hopefully
correctly, but there tends to be a presumption that

way. It would be much better if they were
videotaped.

CHAIRPERSON LANCMAN: And just I asked
about videotaping--videotaped confession and
interrogations. What are you seeing in terms of the
Task Force's recommendation--recommendations regarding
lineups, photo arrays? Are--are any of those--are you
seeing any of those recommendations, you know,
playing out in--in cases before you?

JUDGE DWYER: The Police Department I
think does double blinds some lineups now. I've been
at meetings where law enforcement officials have told
us about how they've issued these best--best practice
guidelines and they're training officers, and that's
going to have some effect. I again can't tell you in
2016 how much effect it's had. I've certainly seen
lots of lineups for photo arrays that were not double
blind, but the cases are a little old now.

CHAIRPERSON LANCMAN: Uh-huh. Okay.
Council Member Gibson, do you have any questions?

CHAIRPERSON GIBSON: Thank you, Judge. I
think you said everything that we thought you would
say, and you made it sound so simple, but yet so
difficult to implement. The fact that you are part

of the Justice Task Force, a sitting judge and I'm assuming you're New York County?

JUDGE DWYER: Yes, I am at the moment.

CHAIRPERSON GIBSON: Okay, and you see a subset of cases in New York County. I'm just wondering like have you had any conversations within the Task Force or in general with your fellow colleagues and some of the other counties in the city in relation to this topic?

JUDGE DWYER: Well, I've spent most of my time in Brooklyn, actually--

CHAIRPERSON GIBSON: [interposing] Okay

JUDGE DWYER: --over four years of my six and a half, and I didn't notice any particular different in Brooklyn except that given that that was past, it was even less likely that these procedures would have been implemented when I saw Brooklyn cases. But I certainly haven't seen any dramatic difference on these fronts between Brooklyn and Manhattan, and other individuals I talk from throughout the city don't suggest to me that there's any difference, and we have one police department. And while I'm sure every precinct is difference, the overall conduct I think is pretty consistent.

2 CHAIRPERSON GIBSON: I agree and I think
3 yes we--while we have one police department, I think
4 many in some cases it's dependent upon that
5 individual and how they interpret the procedure, and
6 a lot of it can be an individual's judgement and
7 decision in terms of how a lot of the procedures are
8 actually implement as it relates to interrogations
9 and eyewitness procedures.

10 JUDGE DWYER: Which is why cameras are so
11 helpful.

12 CHAIRPERSON GIBSON: Absolutely. They
13 are mediators. They're good mediators that capture
14 everything from no one's perspective. I call them
15 neutral observers and a very big fan of cameras
16 because I think you know, many instances every
17 individual's behavior usually changes when they're
18 being videotapes, and that's on all sides. Just one
19 question moving forward, and I appreciate your
20 remarks about the city of New York and what we can do
21 as an agency as an administration absent of any
22 stalemate. I'll be light with my words. Any
23 stalemate in Albany, which tends to happen at times
24 when you talk about, you know, police reform and
25 other measures reforming our court. Very challenging

to get a lot of those measures passed in Albany, but we certainly never give up. Of the Task Force's recommendations, you've outline many of the items that we can implement as a City Council as a s city. Is there anything else that's not on the Task Force in terms of recommendations that you would like us to consider as a Council?

JUDGE DWYER: Well, I don't know to what extent you could impact on the discovery practices of the local DAs. They vary dramatically from county to county. Some counties play it very close to the vest, and will turn over what they have to turn over even if it's thousands of pages about a day and a half before jury selection begins. Some counties will start dealing out at arraignment and continue dealing it out liberally throughout the proceedings. So that the defense has a chance to accommodate to the information. Perhaps plead guilty quickly, investigate defenses that might be revealed by it, talk to witnesses and basically even the scaled a bit if they do go to trial. So anything we could do to promote discovery reform, which Albany so far will not do, would be a very positive thing.

2 CHAIRPERSON GIBSON: Yeah, I thought
3 about the Discovery of—for Justice, the group that
4 has been working with the Legislature. Many of them
5 come out of my county in the Bronx in terms of
6 discovery and what we can do. I appreciate that, and
7 certainly, you know, talk to my colleagues and find
8 out what we can do, but I appreciate your
9 thoughtfulness and certainly your continued
10 recommendations will be helpful for us moving
11 forward.

12 JUDGE DWYER: And we will continue to
13 make recommendations.

14 CHAIRPERSON GIBSON: Thank you very much.
15 We expect that. Thank you very much.

16 JUDGE DWYER: Thank you.

17 CHAIRPERSON LANCMAN: Thank you, Judge.
18 I know that Council Member Andy Cohen has questions.

19 COUNCIL MEMBER COHEN: Thank you, Chair.
20 I—I just wanted to clarify your testimony so I
21 understood exactly. Did you say that it is your
22 experience that NYPD is using double blind lineups in
23 consideration of this reform?

24 JUDGE DWYER: Well, I know that the
25 people who tell the NYPD what the best practices are

2 have endorsed double blind lineups. What they are
3 actually doing at the precinct in 2016 about what
4 they've been told to do, is a little bit, of course,
5 beyond my knowledge.

6 COUNCIL MEMBER COHEN: Oh, okay. I
7 understand that. Thank you very much for your
8 testimony, judge.

9 JUDGE DWYER: Sure.

10 CHAIRPERSON LANCMAN: Well, thank you
11 very much for coming here. We always value our
12 collaboration with the Office of Court Administration
13 and your testimony has been very, very helpful.

14 JUDGE DWYER: Well, thank you very much
15 for having us.

16 CHAIRPERSON LANCMAN: Thank you.

17 JUDGE DWYER: Uh-huh.

18 CHAIRPERSON LANCMAN: Next, we'll hear
19 from representatives of the Brooklyn District
20 Attorney Office and the Bronx District Attorney's
21 Office. This is two days in a row for Vaessa and me
22 with the Bronx District Attorney's Office. Yesterday
23 we had the pleasure of attending the opening of the
24 Special Unit at--at Rikers Island where DA Clark is
25 going to have a permanent presence, which is

2 something we—we advocated for, and—and helped fund.

3 So it's very, very nice. [pause]

4 [coughs] Good morning.

5 CHAIRPERSON LANCMAN: Good morning. If
6 you would raise your right hand, I can swear you in
7 and get down to business. Do you—are you testifying,
8 sir?

9 MALE SPEAKER: [off mic] yes.

10 CHAIRPERSON LANCMAN: Do you swear or
11 affirm that the testimony you're about to give is the
12 truth, the whole truth and nothing but the truth?

13 Yes.

14 CHAIRPERSON LANCMAN: Thank you.
15 Welcome. Please identify yourselves, and if we can—if
16 the sergeant-at-arms could put seven minutes on the
17 clock for—for them, that would be terrific.

18 MARK HALE: Yes, my name is Mark Hale.
19 I'm Assistant District Attorney in Brooklyn at the
20 Brooklyn District Attorney's Office and I currently
21 serve as the Chief of the Conviction Review Unit
22 within the office.

23 JULIAN BOND O'CONNOR: [off mic] Julian
24 O'Connor—[on mic] There we go. Julian Bond
25 O'Connor, Deputy Counsel to the District Attorney of

2 Bronx County, and I am the Executive member that
3 oversees the Conviction Integrity Unit in the Bronx.

4 CHAIRPERSON LANCMAN: Okay, well one of
5 you go first and then we'll just trade off.

6 MARK HALE: Sure. First of all, I want
7 to thank the--the Committee on Courts and Legal
8 Services and the Committee on Public Safety for
9 giving the Brooklyn District Attorney's Office the
10 opportunity to submit this testimony regarding
11 wrongful convictions, and the function of the
12 Brooklyn Conviction Review Unit. I thank you on
13 behalf of myself and of the District Attorney, Mr.
14 Thompson. Brooklyn's Conviction Review Unit [coughs]
15 has since 2014 emerged as a model for the country,
16 and has been recognized by the National Registry of
17 Exonerations as one of three similar internal units
18 responsible for three-quarters of the exonerations
19 nationwide. Last year the Brooklyn District
20 Attorney's Office posted an unprecedented wrongful
21 conviction summit in which the district attorneys and
22 criminal justice organizations from all over the
23 country including the states of Georgia, Illinois,
24 Texas, California, Arizona and I might add the
25 federal representatives from the District of Columbia

came to discuss best practices regarding the implementation of review units and ways to prevent wrongful convictions in the future. Since 2014, reinvestigations have led Brooklyn's criminal or excuse me Conviction Review Unit to join in support of the defendant's motion to vacate a conviction judgment or support in the interest of justice with dismissal charges in 21 cases of wrongful convictions. The unit conducts fair and thorough investigations of possible wrongful convictions and homicides, non-homicide felony cases including robbery, arson, burglary and other felonies. Cases involving actual innocence are our priority. However, we do recognize that in certain cases there are due process violations, which can lead to the corruption of the jury's verdict and mandate vacating of the case. Therefore the unit examines cases of serious due process violations as well where not to complying to actual innocence, factual innocence. At presenting the unit has accepted over 150 cases for full review, and has made a determination in 72 case. Out of those 72, of course, came the 21 exonerations. Now, previously, this was a small unit of only two assistant district attorneys, but now the Conviction

Review Unit is now—and my testimony here says one of the largest. I can say from—from my own experience the largest dedicated prosecutor led unit in the country, a staff of nine veteran--

CHAIRPERSON LANCMAN: [interposing] In—
in fairness Ken's predecessor gave him a lot of material to work with.

MARK HALE: He gave us a start.

CHAIRPERSON LANCMAN: He gave us a lot of material to work with.

MARK HALE: A fair enough comment, sir.
So we have the largest staff in the country in terms of looking at this, and—and that staff does labor intensive work of reviewing those cases. They're often decades old. They take a lot of gathering of—of information that is scattered hither and yon, and often difficult to locate ,and it takes us out of state on many occasions to locate witnesses from cases that again are many, many years old. The success of Brooklyn's Conviction Review Unit has been driven I believe by a change in what we call the ethos. It's changed in the prosecutorial culture that is not purposed on preserving a guilty verdict, but rather on doing justice in all cases. This

requires a commitment of significant resources to ensure that the Conviction Review Unit is not just a passing fancy or a novelty, but is a permanent component of our office as this and similar units help to restore confidence in the criminal justice system, and advance the goal of public safety.

Brooklyn's Conviction Review Unit I believe stands out for its level of cooperation between reviewing prosecutors and defense attorneys whether they are involved as--as private defense attorneys or involved in one of the units and its organizations as well as its hybrid model of review. In reviewing cases of possible wrongful convictions, we have replaced the traditional adversarial relationship between prosecution and defense with a joint search for the truth. Both parties enter into a mutual cooperation agreement that allows both sides to share information and without fear that the information will be exploited by either. Further, our unit uses both an internal and external review process whereby an Independent Review Panel comprised of three seasoned attorneys with no fiduciary relationship to the district attorney's office, does an independent review of each case following a recommendation report

by the Conviction Review Unit. Independent Review Panel reviews the investigation findings of the unit and often does further fact finding before making an independent recommendation to the district attorney. The district attorney makes the final decision based upon both the recommendations of the Conviction Review Unit, and the Independent Review Panel. Now our investigations have revealed that many varying factors have contributed to the wrongful convictions cleared by the unit including ineffective assistance of defense counsel, false confessions, unreliable witnesses, faulty scientific evidence and failures of police investigations, and prosecution disclosures. With the top-down commitment to ensuring that wrongful convictions did not occur, the Brooklyn District Attorney's Office is committed to training all of our prosecutors regarding lessons learned from past miscarriages of justice, and ensuring that a thorough review of each case is done by a supervisor before proceeding to trial. Our prosecutors are reminded of the immense level of responsibility. They have to do justice at all times as well as the discretionary power that each and every one of them hold, and understand that the

wrongful conviction of an innocent person not only does damage to that individual, but also severely undermines the integrity of our entire criminal justice system. Conviction review units play an essential role in the prosecutor's office and furthers our duty to do justice. I might add to that end we have tried to be of assistance to other units around the country in terms of--of offices around the country in terms of forming such units, and offering any assistance we can, and we continue to cooperate with those units. I know that my friend here that when they were making the transition, that they sought our help, and--and I hope that what--what we gave them was--was helpful in terms of--of their efforts. You know with Council's support we will continue to build a--a robust unit. We will continue it as a permanent features that works in the pursuit of justice for all of the individuals in Brooklyn.

JULIAN BOND O'CONNOR: On behalf of the Bronx DA's Office, I would like to thank the New York City Council for this opportunity to provide information concerning the mission, staffing, sources of cases, standard review, and transparency in

reporting for the Bronx DA's Conviction Integrity Unit. In the first few months of taking office, District Attorney Clark created the-the Conviction Integrity Unit, the unit which is dedicated to improving the quality and integrity of prosecutions throughout the Bronx has two important functions. First, the reviews post-judgment claims of actual innocence and wrongful conviction in our most serious cases. The review is generally fact based and extrajudicial. When appropriate the unit thoroughly re-investigates a case, and in select cases where there's been a comprehensive reinvestigation the unit in conjunction with some of the most experienced and skilled assistants throughout the office will make a recommendation to the DA as to where the conviction should stand. Second, the purview of the Conviction Integrity Unit extends forward to policy and best practices. The Conviction Integrity Unit reviews cases in which the office has identified an error, even those under the legal standard or harmless error, and attempts to determine what caused the error in the particular case. Further, the unit assesses whether there are discernible patterns in errors or types of errors. In this regard, the unit

endeavors to understand the environmental, procedural
supervisory, systemic or other circumstances
contributed to the outcome. Additionally, the unit
works closely with executive staff, the file counsel,
supervisors, the Legal Training Unit and the Best
Practices Committee of the Professional
Responsibility Bureau to help implement and follow
best practices in current investigations and
prosecution of cases. And to ensure compliance with
all legal and ethical obligations. The unit also
participates in a variety of training programs within
the office, and meets with representatives of-of the
prosecuting offices as noted by the Brooklyn DA's
office, along with innocence organizations and
members of the Defense Bar to discuss ways that we
can improve the accuracy and quality of convictions.
The Conviction Integrity Unit has a potent full-time
staff including three seasoned attorneys. The Chief
of the unit is a career prosecutor with more than 28
years of litigation experience in the Manhattan DA's
Office. The other two lawyers have a combined total
of 40 years of experience representing indigent
clients as criminal defense attorneys through
organizations like the Legal Aid Society, the Office

of the Appellate Defenders and the Neighborhood
Defender Service of Harlem. Both have worked
extensively on exoneration and actual innocence
cases. The unit has available to it, detective
investigators, and detectives from the NYPD DA Squad
and is in the process of hiring a full-time detective
investigator who will work exclusively for the
Conviction Integrity Unit. The unit reports to me
as deputy counsel, and in this regard, it operates
independently from other investigations and
litigation bureaus in the office. In addition,
because all three lawyers come to the unit from
outside the Bronx DA's Office, they're able to
conduct their investigations and reviews without any
pre-existing royalties or bias. The unit accepts
cases for review from a wide variety of sources.
These include individual defendants and pro se
applications, innocence organizations, the Defense
Bar, state and federal prosecutors and internal audit
where we may find misconduct from law enforcement or
counsel under the directive of General Counsel, the
police, the courts or the press. The unit strives to
be inclusive and will consider reviewing a case so
long as the following criteria are met: The

conviction was secured in the Bronx by the Bronx DA's Office. The conviction was for a serious violent felony crime. The defendant is alive. The defendant claims that either (a) he's actually or she is actually innocent of a crime, or any related offense; or (b) there was a serious error that significantly undermines the confidence in the correctness of the conviction. The defendant also identified concrete evidence supporting his or her claim that can be investigated and verified. Furthermore, to ensure that the unit is able to review the greatest number of cases, the following factors will not automatically disqualify a case from consideration. The fact that a defendant pleaded guilty, the defendant did not maintain his innocence from the start. The fact that supporting the defendant's claims are—were either known to him or could have been known or discovered by him or by his attorney with due diligence at the time of the—the trial or the plea. Defendant is no longer incarcerated although cases involving incarcerated defendants will be given priority. The defendant is not willing to be interviewed by the unit, or waive attorney-client

privilege. The defendant has previously applied for review within the unit.

So while these factors will preclude review--they will not preclude review. They will have to be taken in consideration and weighed against the strength of the evidence supporting the defendant's claim. The Conviction Integrity Unit will recommend to the DA to vacate a conviction when the totality of the evidence established is clearly and convincingly that the defendant is actually innocent or (b) one or more serious significant errors undermines the confidence in the correction of the conviction, or if the totality of the circumstances lead to the conclusion that the conviction was wrongful, and the interest of justice are best served by vacating the judgment. As for transparency, a defendant applies for--to the Conviction Integrity Unit, the unit will notify him or his lawyer in a timely fashion when the case has been--when a decision in a case has been reached and action taken, the defendant will be notified. In addition, the unit will produce a yearly report outlining the number of applications that were submitted, the number of cases which resulted in a

formal re-investigation and the number of cases in which the DA either agreed to vacate, dismiss charges or try a case or stand by a conviction. Since the inception of the unit in April of this year, the Conviction Integrity Unit has handle a total of 43 cases. In one case, the unit conducted a reinvestigation and recommended that the DA agree to vacate the murder conviction. Additionally, the unit has reviewed and declined to conduct reinvestigations in 20 cases. Currently, the unit is comprehensively [bell] reinvestigating at least five cases, and as to the remaining cases, we are still gathering materials and assessing whether a full-scale investigation is warranted. Thank you.

CHAIRPERSON LANCMAN: [coughs] Terrific. Thank you very much. I'll just mention that we've been joined by Council Member Chaim Deutsch of Brooklyn. So, I want to focus on the issue of videotaped interrogations and witness identification. I understand from testimony from Brooklyn that false confessions and unreliable witnesses are two of the factors that have popped up quite a bit in your review of-of potential wrongful convictions. What is your experience today with the practice of the NYPD

2 when it comes to videotaping of interrogations of-of
3 cases that you're seeing that are being prosecuted in
4 Brooklyn?

5 MARK HALE: Well, in-in terms of the
6 cases that we in terms of the Conviction Review Unit
7 we're looking at.

8 CHAIRPERSON LANCMAN: No, I understand
9 those are older cases.

10 MARK HALE: They're old cases, but in
11 they're in the portal. (sic)

12 CHAIRPERSON LANCMAN: [interposing] But
13 what can you testify about the current status of-
14 because we've heard different things about the
15 current state of videotaping of interrogations.

16 MARK HALE: Well, understandably since
17 I'm not in that group, I-I don't-I don't have an
18 answer for you in terms of Brooklyn's current
19 experience with the-the number of frequency of video
20 taped confessions. I can tell you that since it is a
21 major issue among many of the cases that we are
22 looking at and reviewing, and exonerating, it-it is
23 often times a point of contention about [coughs] what
24 to believe in terms of the testimony concerning the
25 circumstances of a con-of confession that-that

1 obviously would be alleviated were, in fact, it-it
2 was completely videotaped. That is you wouldn't have
3 to be taking out one party or the other's word for
4 what happened. It wouldn't be a swearing contest to
5 say I-I read him Miranda. No, you didn't him
6 Miranda. It wouldn't be a swearing contest to he
7 beat it out of me. No I didn't beat it out of you.
8 It wouldn't be a swearing contest as he promised me
9 the sun and the moon and the stars, and the other
10 that no, you know, he just came out with it.
11 Obviously it would be a-a lot easier in my job in
12 terms of-of reviewing cases were that-there was that
13 kind of videotaped record.

15 CHAIRPERSON LANCMAN: On the issue of
16 witness identification, the kind of reforms that the
17 Task Force, which at least according to MOCJ, the
18 NYPD is not even today adhering to double blind-the
19 double blind process for example.

20 MARK HALE: Well, the-the-the eyewitness
21 when you're-when you're looking at-at eyewitness
22 testimony, you're trying to determine the reliability
23 of it, and--and frankly a lot of these cases that-
24 that we're talking about that-that I'm reviewing,
25 we're looking at the general reliability of the

witnesses. You know we talk about the parameters of—
of looking at our cases. We're not talking about
just looking at newly discovered evidence, we're
talking about reviewing the evidence that was in
there, and it is not always the case that you will be
able to tell concerning the accuracy of a lineup and
the way a lineup was conducted. You won't be able to
tell the—the—the accuracy of—of the identification.
Very much so you would have to look at this—the
circumstances of the actual observation, the actual
observation of the incident that is more critical in
determining the accuracy or whatever lineup
identification came afterwards than the actual pro-
cedure of the lineup.

CHAIRPERSON LANCMAN: And from the
perspective of—of the Bronx I mean what role do you
see the—the—the false confessions and
misidentification playing in convictions that you are
seeing they're wrongly—wrongly obtained?

JULIAN BOND O'CONNOR: Well, when I look
at the current caseload that we had, and again it's
only been 42 cases under our review so far, I would
say that we have not had applications that were based
on false confessions in that group of 42. And again,

as the cases that we're looking at are often 20 years or more old, their practices in regards to videotaped confessions are not in step with whatever is going in NYPD today. When you talk about eye witness identification or the, you know, double blind lineups, I-I can tell you that one of the issues that play in many of the cases that we're evaluating has to do with, you know, stranger identification. So, that is something that has come to play a large part of the reviews within the Conviction Integrity Unit.

CHAIRPERSON LANCMAN: Let-let me just say this and then I want to give the other folks an opportunity to ask questions. The work that both of you are doing I-I would assume that the observations that you're making about the causes of the-the wrongful convictions in the cases you're-you're investigating and making decisions on, are-are you-are you sharing this with the rest of your respective offices, and are the assistant district attorneys in- in your offices demanding from the police and from their own investigations [coughs] certain standards and certain practices that would assure them that the convictions they're obtaining today, are not 15, 20

years from now going to be overturned in some future wrongful conviction unit?

JULIAN BOND O'CONNOR: I think in the limited timeframe that we've had in the Bronx we vacated one conviction and, you know, in doing so we performed a root cause analysis and we vacated that conviction on the basis of ineffective assistance of trial counsel. So it wasn't an error that largely fell upon the office itself, but even in evaluating what the office could have done better, there could have been efforts by our office to make an internal decision as to when a case comes in we would look at it and say, hey, every allegation of the alibi, the best practice here even though the case seemingly seemed as if the alibi defense wasn't strong, should be investigated with a level of vigor that wasn't done at the time of that initial--that initial case came in. So there was a lesson that came out of it, and that was something that was shared throughout the office, and it's something that's built into the training for young assistants going forward.

CHAIRPERSON LANCMAN: Okay, Mr. Hale.

MARK HALE: Yeah, in terms--in terms of Brooklyn, you know, in identifying what some of the

factors were that led to-to wrongful convictions in terms of like I said generally speaking false confessions are erroneous identification, and a poor and worthy witness or bad scientific evidence, the real actual cause is that the-the-in the evaluation of the cases that there was not rigorous evaluation of all those factors in the case, and so the discretion to bring charges to maintain charges to continue to defend the-the convictions after the chargers were sustained by a trial jury was, in fact, faulty. So what we are really looking at in terms of our training is-is making our-our prosecutors much more rigorous about their evaluation of these cases and trying to determine what exactly do they have confidence in the evidence that they are presenting to a jury and asking the jury to rely upon it beyond a reasonable doubt to convict. And that is where we're trying to-and this is in addition to just, you know, general training about the ethics of-of prosecution. We're talking about the nuts and bolts of the practicality. Not just gathering evidence that makes you win, but gathering evidence, which you have confidence will be justice.

3 CHAIRPERSON LANCMAN: Well, let me ask
4 you. You in particular from your approach as the-
5 the-the Conviction Integrity Unit, see the importance
6 of videotaped confessions, and where you assign that
7 important relative to other people I don't know, but
8 there is some importance to it. You know the Task
9 Force recommendations that-that confessions or
10 interrogations be videotaped. Would you agree that
11 if a case is brought to the district attorney's
12 office, and there is a confession and it is not
13 videotaped or-at all or it's not videotaped in
14 conformance with the Task Force's recommendations,
15 that that this a red flag that at least merits
16 further inquiry from your office as to whether or not
17 this confession or this lineup or this, you know,
18 photo identification is legit?

19 MARK HALE: It should definitely enter
20 into the-the totality of the circumstances when you
21 are evaluating the strength of the case, and-and
22 deciding whether to-to bring or maintain the charges,
23 that there's-there's no question about that. Is it a
24 disqualifying factor? Not necessarily, and I think
25 you have to look at again the totality of the
circumstances and the thoroughness of the

investigation. And-and, you know, it-it is easy to-
to pinpoint these things and say well, it's-it's
somebody's fault, and ultimately if you're talking
about the fault, you can't necessarily ascribe to the
police because the police can-can conduct
investigations and they can make arrests. But the
only way that that-that whatever they do equals a
convictions is by the actions of the prosecutor. So
it's really-I'll be honest-it's on the prosecutors to
which evidence that they will accept as the basis
for-for their prosecution and-and perhaps the
conviction, and whether they have confidence in that,
and-and certainly you would look at the circumstances
of-of-of a-a-a confession, and the-there's no doubt
that you would want to have any evidence, which-which
removes doubt, as it were, in-in pursuing your-your-
your case and if, in fact, it showed the perhaps you
should not pursue the case, then you want to have
that information, too.

CHAIRPERSON LANCMAN: Okay, Council
Member Gibson.

CHAIRPERSON GIBSON: Good afternoon,
gentlemen.

MARK HALE: Than you.

3 CHAIRPERSON GIBSON: Thank you so much
4 for being here. I certainly want to thank your
5 respective district attorneys, DA Ken Thompson and DA
6 Darcel Clark, and I appreciate your presence here,
7 and certainly your testimony and, you know, being
8 that DA Clark is one of our freshman DAs, I want to
9 thank DA Thompson and his staff for helping with her
10 transition, and even with establishing the Conviction
11 Integrity Unit, just several months old, she's
12 already vacated one of her first cases of an
13 individual exonerated for a murder conviction. So, I
14 want to thank both of you, and thank your principal
15 for helping the Bronx District Attorney with a smooth
16 transition. I just had a couple of questions, and a
17 lot of it you really outlined in both of your
18 testimonies. I wanted to find out with both of your
19 units in reviewing any cases that come, you know,
20 that you're looking at, what is the look back? ADA
21 O'Connor, you talked about 20 years. So do you guy
22 look at every single case that's been prosecuted in
23 the office, or is there a timeframe that you
24 identify?

25 JULIAN BOND O'CONNOR: Well, our current
procedure is that anyone that had a case within the

office that wants to apply for review can apply for review. So when we came in, there was an application that was made by various pro se defendants, and we had innocence organizations, and also members of the private bar who came to us almost in the postures of a-a 440, which is a post-conviction motion, but with papers detailing all of the evidence that they have accumulated that they believe establishes either actual innocence or a wrongful conviction. So we took those cases and we just went through them one by one, and as we have, as I said before, a staff. In the beginning it was two attorneys, but now it's three going through those applications, and looking at it as a tiered process. There are some that screened initially, and they didn't lay grounds where you could actually investigate or verify the facts that they have articulated. There was another pool where we were able to get the files, look at the transcript from top to bottom and start a lower level investigation, and then decide if they were going onto a further investigation where we're actually sending out officers on the ground level to reinvestigate the case in full. So I think that's what the process looks like, and as I said, our cases

came from—they came from the—the defendant's
themselves and either through organizations or
members of the private bar.

CHAIRPERSON GIBSON: So you mentioned
that they would have to apply for a review. So are
there any instances like that. Is there an approval
process to get to that? Is there like a burden that
has to be met in order for the review to happen or
begin?

JULIAN BOND O'CONNOR: And when they make
their application, you know, we've laid out kind of
the fact or not the facts that we want, but the
requirements for review.

CHAIRPERSON GIBSON: Factors, right.

JULIAN BOND O'CONNOR: And generally, if
it's a pro se litigant, you know, we will in writing
correspond with them to lay out the things that we
would need to further review their case. But when
it's us—when there's counsel assigned, the process is
a little bit smoother because generally they provide
the materials almost in the form of the 440 motion
materials that we could then review to get a—a fresh
start at a looking at person's conviction.

2 CHAIRPERSON GIBSON: Okay, and you also
3 talked about an internal audit. So is that a
4 separate process from those individuals that actually
5 put forth the application for review, or you also
6 have an internal audit process as well?

7 JULIAN BOND O'CONNOR: Yes. So, the
8 post-conviction is reviewed as they, you know, kind
9 of like the back end of the conviction integrity
10 work, but on the—you know, on the front end looking
11 at things prospectively, we started a Professional
12 Responsibility Bureau, and that person in conjunction
13 with our Conviction Integrity Unit is going—will go
14 through the cases that have either gone through
15 appeals or cases where there have been allegations of
16 wrongful convictions, and start to look for patterns
17 internally. And then from that review, part of the
18 process for us to pull out what lessons there are to
19 improve the practice within our office.

20 CHAIRPERSON GIBSON: Okay, you mentioned
21 professional responsibility review. Is that a unit
22 or a subunit under the--?

23 JULIAN BOND O'CONNOR: It's a—it's a
24 separate bureau that's newly formed, and it's really,
25 to deal with matters of, you know, ethics and best

practices, and training for the entire office,
because often times, you know, you'll hear that there
have been allegations that a--let's say a prosecutor
didn't turn over discovery in a timely manner, and
it--and it resulted in a disastrous outcome for an
individual. We're building into our office a
mechanism to deal with those claims. So that we can
either, if necessary, institute an internal
discipline reported outside of the organization to
the Disciplinary Committee or use it as a training
opportunity for the entire office.

CHAIRPERSON GIBSON: Okay, and also in
your testimony, you described five different factors
and criteria that needs to be met in order for the
unit to be inclusive and consider reviewing a case.

JULIAN BOND O'CONNOR: Yes.

CHAIRPERSON GIBSON: In each case does
all five criteria have to be met in order for that
review to happen?

JULIAN BOND O'CONNOR: No, we're--we're--
we're flexible--

CHAIRPERSON GIBSON: [interposing] Okay.

JULIAN BOND O'CONNOR: --in what we will
need in order to review a case, but I think just

outlining those five factors gives us a good starting point.

CHAIRPERSON GIBSON: Okay, that makes sense.

JULIAN BOND O'CONNOR: And I wanted to ask and in—in particular I mean DA Thompson has been hiring a lot of staff and DA Clark is now hiring, with all of the incoming ADAs to their staff, is there any part of the training—I think you talked a little bit about it, ADA Hale, is there any part of the component of orientation or training for new ADAs that focuses on preventing wrongful convictions? Any curriculum?

MARK HALE: Yes, there is [coughs].

CHAIRPERSON GIBSON: Okay.

MARK HALE: In fact, I—I—I address the incoming ADAs and—and—and speak to them very strongly about the factors that—that—that end up in wrongful convictions and, of course, they're just starting out. They don't necessarily understand all the ins and outs of trial work as—as it progresses, but there's a strong emphasis that—that, you know, about this—this change in attitude, this change in ethos that—that, you know, our job is now—and—and this is

1 sometimes difficult because people that—that get
2 attracted to—to our line of work are highly
3 competitive people. Trial work is a highly
4 competitive environment, and competitive people if—if
5 that's their background, if that's what they want to
6 do, the desire often is to—to win more times than you
7 lose, but that's why you get into this sort of thing.
8 But the idea that—that it is—it is engrained from the
9 very beginning that the—that the prosecutor's job is—
10 is not just to secure convictions. It's not just to
11 win. It's not just to count wins and losses, but
12 it's to do justice, and that sometimes justice is
13 dismissing the case. Sometimes justice is not
14 bringing the case. Sometimes justice is losing the
15 case in front of the jury because that's the way it
16 should be. So, you know, it—the idea, what we're
17 trying to engrain is not just the idea that you—you
18 ethically practice it as a—a prosecutor. Whether you
19 prosecute with the right goal in mind, and that's to
20 do justice always, and justice does not often equate
21 to just wins and losses. Now to that end, you know,
22 prosecutor's offices generally are, and you hear this
23 every time the election cycle comes up because, you
24 know, what's your conviction rate? What's your
25

conviction rate? You know, your conviction rate is not a rate at which you're doing justice. It's—it's sort of an artificial thing. It—it doesn't tell you how good a job you're doing in terms of justice. So, I—I think the emphasis that we try to—to support among other things, the evaluation of cases, the fair evaluation of cases, the—the enforcement of ethical obligations is—is the very idea that there are goals through all of those things is to do justice, and justice does not always equate to just winning.

CHAIRPERSON GIBSON: Uh-huh. I just have one final question before we get to other colleagues. Wanted to find out with both of your units the relationship that your staff and team have with the defense team. So the defense attorneys that are coming forth doing the application for review of their clients' cases what is that relationship like and do you have any best practices or any recommendations that you could share that have been helpful, or even some, you know, deficiency that you may identify where we could improve that process?

MARK HALE: Well, we—we invite obviously the defense counsel, if—if there is one to—to meet with us directly. We at that time lay out what—what

we intend to do in terms of our investigation. We invite them to enter into a cooperative-cooperative agreement in terms of that investigation. Now, that includes give and take on both sides in which we will share with them everything that we generate during the course of our investigation. In return, they will share with us everything they have generated during the course of their investigation, and the investigation going forward in some situations we will have both my prosecutor and the defense attorneys sitting down and interviewing a witness. If-if that is at all practical, we will be doing it jointly. Now, the idea behind that is-is that-that rather than the traditional adversarial process and-and listen the traditional adversarial process has-has built up years and years and years of adversarial distrust. You know, we're trying to break down that wall by doing this. The idea that two cooperative investigations. There are-one cooperative investigation is better than-than two parallel investigations that may be working in different directions. It's all part of the idea I think that when-when we do this is-is to-to try to install among the-the petitioners and-and the-the defense bar that

we can, in fact, be trusted that we are serious about this self-examination that we are interested in doing justice, and not just maintaining our convictions. You know, there—and that flies in the face of a lot of history in terms of when these cases were—were appealed and when they were—went through various post-conviction motions that it was an adversarial process in—in which, you know, we were going to uphold the conviction. No matter what, they were going to try and overturn the conviction no matter what. This is again outside of that area. This is actually judicial. So we'd like there to be an atmosphere that we're all on the same page, and that we want to get to the same place even though we might ultimately not agree one with another, so that at least we've—we've done a thorough and open investigation that—that leads our ultimate decision to be one that—that does justice.

CHAIRPERSON GIBSON: Right. Well, thank you so much, and I appreciate both of your district attorneys and their efforts to really continue the conversations. Your offices have the ability to really give many individuals and their families hope for a new life, and really for a better opportunity,

a system that may have wronged them, and they now have a chance of restoration, and so I can't emphasize that enough that, you know, you play a major role in this conversation, and I really hope that, you know, moving forward we continue to have a dialogue and conversation especially around the investigations of law enforcement, technology, science training, interrogations, eye witness. I mean everything. This is the information that's gathered for your offices to prosecute. So I appreciate the presence and the leadership of both DA Thompson and DA Clark. It's not easy to have some of these very delicate conversations, but they have to happen, and the fact that we exonerees here with us today we know that conversation must continue. So I appreciate your work. I applaud both of your offices, and look forward to working with you moving forward ,and please as we get to budget, let us know what we can do to further support your effort. That's always an ongoing conversation. Your principals know that I will always be supportive of any effort to make sure that we can reduce any likelihood of wrongful convictions in this city. So thank you so much.

MARK HALE: Well, just-just to that end,
I-I would say that the-the-the major-the major way,
and which you talked in-in the opening about this
about the number of exonerations having increase.
And that doesn't mean that suddenly there's more
wrongful convictions. That just means that there's
more people looking for them, and in order to look
for them and-and really do a complete job on this,
and-and one of the things that I think makes what
we're doing in Brooklyn special and what-what Mr.
Thompson was committed to is throwing the-the-the
resources at it. The-the number of people and-and
the-the number of-of-the expenditures that we can
make to get to the bottom of all these things, and-
and I think that is probably, you know, the most
important thing is not that you can possibly
eliminate or correct all the past wrongful
convictions, but if you're not looking for them and
you're not looking for them with the-with the-the-the
proper resources, you never will find them and you
never will correct them.

CHAIRPERSON LANCMAN: Council member Andy
Cohen.

2 COUNCIL MEMBER COHEN: Thank you, Chair.

3 I—I do want to echo the comments of Chair Gibson. I
4 think both of your offices are really to be commended
5 for coming here today, and testifying. I think that
6 that really speaks to the commitment of—of both of
7 your offices in this area. So I'm—I'm very
8 appreciate of that. I thought the testimony was very
9 candid, and I found that to be very helpful. I—I
10 know DA Clark and I'm a big fan already, and—and I
11 followed DA Thompson's commitment in this area in the
12 media. So again, I think both of your offices are
13 really to be commended on—on this. But I—I am
14 curious, and again about this—about this double blind
15 identification. Is it—it is the opinion of your
16 offices. I mean I don't know if there's a stated
17 policy, but is it—is it your opinion that—that it is
18 the best practice to use double blind lineups and
19 photo arrays?

20 MARK HALE: I don't know that we have an
21 opinion on that—on that yet. It's—it's one of these
22 thing I—I think that the—I was going to say the jury
23 is still out. That's probably the wrong thing to
24 say, but it is still something that is under
25 examination as to whether it—it is most effective

not-not just in terms of-of-of police procedure, but whether it-it, in fact, is-is functional. I-I am concerned about, you know, how we balance the confidence level with the burden of proof. In other words, if somebody says I'm 95% certain this is person, okay that-that's great, and most groups will say that means they're pretty certain. But where does fall into-to admittedly our-our-our amorphous sort of standard of beyond a reasonable doubt. I-I mean where-where does it fit in with that, and-and I think that in consideration of these sort of things that there has to be a lot more thought given to exactly how it comports with the burden of proof, and what you have to prove or not prove before a jury. Because you can sit there and say that any level of-of indecision be it one percent, be it five percent is something that's--

COUNCIL MEMBER COHEN: [interposing]
Yeah, but I think you're referring to the level of confidence of whereas--

MARK HALE: [interposing] Sure.

COUNCIL MEMBER COHEN: --and there's--
there's really no-there's no risk of contamination if the person conducting the--

2 MARK HALE: [interposing] No, understand-
3 understandably, understandably, and like I said,
4 these are all things that are still being looked at,
5 and I don't know that--that--that Brooklyn has a
6 position on that yet, and I--I think that--that this is
7 still something that's being looked on--looked at.

8 JULIAN BOND O'CONNOR: In the Bronx, I
9 can tell you that we have not, you know, crafted a
10 position on double blind lineups, and I can't comment
11 on the resources available to NYPD to--to make that
12 happen, but just in a practical consideration, you
13 know, one could look at it and say well, would it
14 hurt. And so from that perspective, I don't know
15 that it would hurt cases, and I don't know the
16 practical realities of making it happen, but the
17 office has not taken a position on it.

18 COUNCIL MEMBER COHEN: I would encourage
19 both of your offices to maybe consider taking a
20 position on it because I think that, you know, your--
21 both offices are leaders on this in the city, and I
22 think that really there's an opportunity to be heard
23 there, and I think that it would have a lot of
24 credibility. Ms. Shockley, (sic) I'm going to ask
25 questions about your units. I don't know if it's

critical or not, but I don't know how widespread conviction review units are across, you know, across the city, across the state and across the country, and that's my first question, and the--what about the use of--of third parties to review convictions. I mean ultimately it's still the DA reviewing their own convictions and, in fact, I was not really sure I understood the testimony from the Bronx DA's Office about in addition because all three lawyers come from units outside of the district attorney's office. Where--where do they come from.

JULIAN BOND O'CONNOR: So to--to make that point a little bit more clear, normally when you've seen Conviction Integrity Units they've been senior trial assistants or appellate lawyers within a district attorney office who worked inside of that office in a unit dedicated to reviewing cases of wrongful conviction or actual innocence. What we've done that's been a little bit different is our unit has been formed by attorneys. One attorney came from the Manhattan DA's office. Another attorney came from the Office of the Appellate Defender, and another attorney who has done post-conviction work who I think was Deputy Chief at OAD for awhile as

2 well, came to our office to work on those conviction
3 review matters. So this is one of the few times
4 where you have defense attorneys actually reviewing
5 conviction integrity cases within the office of the
6 DA, and you have someone who is a lifetime prosecutor
7 who's not from that office. So it really preserves
8 the sense of independence where they're not worried
9 about what the colleagues or the culture inside the
10 office would view of them because there is the idea
11 that anybody who is working on conviction integrity
12 matters is kind of like, you know, an IAB in the
13 Police Department.

14 COUNCIL MEMBER COHEN: So I-it's your-
15 your-your testimony that because they don't-the
16 people in this unit don't have a relationship with
17 the other ADAs because they-they didn't come from
18 there, but they're not going to feel bad about
19 overturning the convictions of one of their
20 colleagues?

21 JULIAN BOND O'CONNOR: Well, I think
22 it's-it's not only-it doesn't speak to the culture of
23 within the office, but if-if I was a defendant, if I
24 was someone who's making an application to this
25 office, and I knew someone was a defense attorney

2 like Barry Scheck was now reviewing my claim of
3 actual innocence, that means something to me. Thank
4 you.

5 COUNCIL MEMBER COHEN: Thank you, Chair.

6 CHAIRPERSON LANCMAN: Yeah, Council
7 Member Chaim Deutsch.

8 COUNCIL MEMBER DEUTSCH: Thank you.
9 Yeah, so my question is is there a—are there—is there
10 a re-examination process to review a case after a
11 person was—is arrested, and if it was a lawful
12 arrest? So before it gets to any type of conviction
13 or not, is there a process that someone can come to
14 the district attorney's office to re-examine and
15 review a case that where she feels like that it was
16 unlawful arrest?

17 MARK HALE: Are you talking about a
18 wrongful arrest or an arrest that resulted in a
19 conviction or a pending case.

20 COUNCIL MEMBER DEUTSCH: Well, okay, so I
21 have a constituent that came into my office about a
22 week ago, and he feels like—he—he feels—he was
23 arrested, and it wasn't—it was an arrest that needed—
24 needed to be reviewed because he feels like it's—it
25 was an unlawful—unlawful arrest, not by an officer.

2 Not by saying that the officer did it unlawfully, but
3 their evidence, there wasn't enough evidence he feels
4 that--that he could be innocent because there were no
5 cameras, there was--there was no cameras there, and it
6 was the complainant's word against his word.

7 MARK HALE: Uh-huh.

8 COUNCIL MEMBER DEUTSCH: So in that case
9 there was an arrest made, but he feels like that he
10 shouldn't-- He went to court six times already, and
11 it was postponed six times, and he feels that he's
12 innocent. So, he did go through the district
13 attorney's office--

14 MARK HALE: [interposing] Yes.

15 COUNCIL MEMBER DEUTSCH: --and usually, a
16 person like that that they would go back to the--to
17 the police precinct or the district attorney or
18 anyone else, people would tell him go--go speak to the
19 judge. So is there a process that's someone--a review
20 process that someone can go back to the district
21 attorney and say listen I feel I'm really innocent.
22 This case was--was postponed already six times, and I
23 have been here six times, and--and had this case
24 reviewed, and if you do have that process, who--and
25

this distract attorney--this is in Brooklyn--can he or
she contact?

MARK HALE: And--and this person is
represented by counsel?

COUNCIL MEMBER DEUTSCH: Yes.

MARK HALE: That's what the attorney is
there for. The attorney should approach the district
attorney's office if they feel the group (sic) was
insufficient, and that the--the assistant who is
handling the case will discuss it, and they will run
it by a supervisor, and they'll whether it's a case
that they should maintain or not maintain. I just
caution you because we get petitions all the time
from people that are claiming that they are innocent
or that the evidence is deficient. That is not
always necessarily the case and, in fact, the--the
whole process of trying the case is to determine the
reliability of the evidence, and to see whether it's--
it's sufficient to prove guilt or it's insufficient
to prove guilt. Now, as a threshold--as a threshold,
prosecutors look at any case, and they should either
be evaluating it saying is this a case that I believe
in? Is this a case that I believe proves guilt
beyond a reasonable doubt? Is this a case that I

should keep an maintain? Even if the police have faded with it, should I keep on going with it? Should I keep ongoing with these charges? In that regard, once the case has started, the defendant, the person that's been arrested, they—they get an attorney. It becomes that attorney's job at that point to be mouthpiece. The—the litigant should never, never, never go directly to the district attorney.

JULIAN BOND O'CONNOR: And the district attorney cannot talk to that defendant while that person is represented without the lawyer present because that would run afoul of that person's Constitutional rights. So if—if that individual is interested in talking to the district attorney, or the assigned ADA in that office, he or she would have to come with their attorney, and that attorney would have to advise them or walk them through the process of sitting down and having that conversation with the district attorney's office about their case.

MARK HALE: But the person—the person the attorney would go to would be the assistant that was handling the case.

2 COUNCIL MEMBER DEUTSCH: So he request,
3 the Legal Aid? He has the Legal Aid?

4 MARK HALE: Who's Legal Aid lawyer? The
5 Legal Aid lawyer can go to the prosecutor and say,
6 hey, I need you to talk about this. Do you think
7 this, that and the other thing?

8 COUNCIL MEMBER DEUTSCH: They would have
9 access to go to the--to the district attorney and to
10 sit down and review the case with them?

11 MARK HALE: Right, which--which--which may
12 or may or not happen, but, you know, that--that's--
13 that's why the--that's why the attorney is there.

14 COUNCIL MEMBER DEUTSCH: So, so that's my
15 question. So, it may or may not happen. So is there
16 any part in the district attorney's office that if a
17 counsel would like to meet with someone at the
18 district attorney's office to review a case, that
19 that should happen before it may go to a conviction,
20 and then be going to go back to the hearing today,
21 and say that this conviction was--needed to be
22 reviewed. It was an unlawful conviction or whatever
23 the case is. So is there anyone in the district
24 attorney's office that if counsel requests to meet
25 someone in the district attorney's office to review a

2 case, that someone has already gone down six times
3 before and it was postponed.

4 JULIAN BOND O'CONNOR: I think—I think
5 the heart of your matter requires that the defense
6 attorney, whether it's Legal Aid or—or a private
7 person she needs to make a meeting with the assigned
8 assistant on that constituent's case. Those two have
9 to have a conversation that's not important on the
10 record in order for that person to really flesh out
11 what his client is articulating that could be the
12 grounds to establish the innocence of that person,
13 and then that [bell] assistant can make a
14 determination about the case going forward.

15 COUNCIL MEMBER DEUTSCH: Okay, if that
16 doesn't happen, is there an oversight within the
17 district attorney's office that he could call or she
18 could call and say listen I want—

19 JULIAN BOND O'CONNOR: [interposing] It
20 would be the supervisor of that individual assistant.
21 That would be the oversight.

22 COUNCIL MEMBER DEUTSCH: Alright.

23 JULIAN BOND O'CONNOR: Okay.

24 COUNCIL MEMBER DEUTSCH: Alright, thank
25 you.

2 COUNCIL MEMBER COHEN: Thank you very
3 much. Thank you for sharing your testimony with us,
4 and for taking the time to be here. Thank you.

5 MARK HALE: Thank you.

6 COUNCIL MEMBER COHEN: Alright, next we
7 will have the Innocence Project including two
8 individuals who were wrongfully convicted. So,
9 Barry, you and your folks are up. I have Dr.
10 Jennifer Barashek, Dr. Jennifer Dysart? Come up.
11 Chief William Brooks of the Norwood Police
12 Department; Dr. Saul Kassin of John College Criminal
13 Justice; John Tankleff (sic) and Johnny Copier.
14 [pause] And can you just make sure everybody has got
15 a chair? Can you just make sure everybody's got a
16 chair. Thank you very much. Plenty room. Everyone
17 gets a seat at the table. We've just got to squish
18 you there. Sir, just give them one of these real
19 chairs. We're getting a real chair. [pause]
20 Alright, let's get sworn and get down to business. Do
21 you swear or affirm that the testimony you're about
22 to give is the truth, the whole truth, and nothing
23 but the truth.

24 PANEL MEMBERS: I do.
25

2 CHAIRPERSON LANCMAN: Terrific. I know
3 that two-[pause] Sorry. I know that two of our
4 exonerees have--have got to run. So if that's
5 alright, they'll do their thing, and then Barry,
6 we'll--we'll go to you. How is that?

7 [off mic]

8 CHAIRPERSON LANCMAN: Hit the button.

9 MALE SPEAKER: I'm the least important.
10 I thin that the experts that we've brought in here,
11 the leading experts in the country in the area of
12 false confessions and eyewitness. You should hear
13 from them. So I'll be the last. Terrific. Okay.
14 So Mr. John Copier (sp?) Good. Thank you, and let's
15 do five minutes on the clock.

16 JOHN COPIER: Thank you very much for
17 allowing me to speak today. When I was 18 years old,
18 I was arrested, taken to a police precinct and
19 basically physically beaten by detectives to make a
20 false confession. I did 25 years out of that when I
21 was 18 due to failure of investigation. Back then,
22 if anyone would have investigated my case, this
23 probably would have never happened. But more so,
24 more importantly why I'm here today is because if
25 there as any cameras available back then to see the

behavior of what was taking place with this
detective, I would have never made that false
confession especially when he was threatening to kill
me. Now, the reason why I feel this is so important
is because it's just not about having a camera
filming during the interrogation. For me, I believe
it—it all started throughout the behavior process or
the training process of how police officers come to
think about it. Because if you change their mindset,
you change their behavior, and if you change their
behavior, you change the result of what took place
for me 25 years ago. So that needs to change, but
more importantly, I'm requesting, that I truly
believe that one camera in an interrogation is not
going to stop this because it's easy for a detective
to just take an individual to another room, beat him
up over there, and bring him back to the
interrogation and put him front of a camera, and then
still him say what he wants to say. For me, I
believe it's more important that you place cameras
all over the police precincts in every precinct in
New York City because that's going to change every
police officer and detective behavior on how they're
going to conduct themselves. So out of public

safety, out of fairness, when we had Mayor Giuliani in office he constituted to give police officer 72 hours before they can make a statement. All I'm saying out of fairness is that either you give everyone in New York City the same availability and given them 72 hours to have an attorney before they can give a statement, or you take that completely away and make it fair between officers and citizens or you put cameras in every single room. Because I think that speaks volumes to society where you're saying that police officers are gods. They can do whatever they want, and they can get away with whatever they want. I'm not saying that all police officers are bad because I have friends that are police officers, but the--the ones that indulge in this type of behavior is not right, and that's why I'm here today. I'm just beseeching and imploring for anyone of you that you're seriously going to consider this, and take this seriously out of fairness. This is something that needs to be constituted. Thank you very much.

CHAIRPERSON LANCMAN: Thank you. Mr. Tanco.

JUAN TANKLEFF: Thank you Council Members
for having me here today, and giving me the
opportunity to testify. I served 6,338 days for a
crime that I did not commit. My case was through
Suffolk County and in 1988 Suffolk County actually
had a policy and procedure in place where they could
have electronically recorded the interview and the
interrogation. They chose not to. In 2008, I was
exonerated ,and 2008 was the first time I had an
opportunity to testify about mandatory electronic
recording of interviews and interrogations, which was
before then Senator Eric Schneiderman when he held
wrongful conviction hearings up in Harlem.
Unfortunately, that was not the first time, but I'm
hoping today will be the last time I ever have to
testify about the need for electronic recording of
interview interrogations. Quite often throughout the
day, I've heard the NYPD isn't here. I can answer
that question pretty simply. They're afraid of your
questions. They don't want to be put under oath.
They don't want the truth to come out, and they don't
want a policy or recording interviews and
interrogations put in place, and it's pretty simple.
A few years ago I was at the New York City Bar

Association where a detective union representative said, We don't want the interrogations videotaped because we don't want suspects to know what's going on in that room. I think the more important question is if you're not doing anything wrong, what are you afraid of? You know, as the chief can I think verify because I've heard him speak before, law enforcement agencies around the country when they implement this program, initially disfavored ,but in the end there's probably a 99% favorable rating. It protects everyone involved. I've also heard that it costs too much. Is almost 17-1/2 years of my life not worth a simple recording? It could have been audio recording. It could have been a videotape recording and a report. What frustrates me is that a few years ago the Queens County DA's Office implemented- I think it's called the QCBA Program where they started conducting interviews pre-indictments where they were getting statements from suspects. And I find it very interesting that they were able to come up with the resources, and implement a policy to record these pre-indictment questioning, but they couldn't implement it for interviews and interrogations. Why is it today that in 2016 in the State of New York, in

the City of New York we still don't have mandatory reporting of interviews and interrogations. We know it's effective. We know it protects innocent people. We know it also saves money, and for those politicians who say it costs money, no it actually saves money in the end, and it's about time that everyone including the NYPD, the DA's offices takes a step back and says this is the right thing to do. And just as a side note since we are on the record here, Judge Dwyer was an assistant DA about six or seven years ago, and Touro Law School held an event on wrongful convictions where my case was discussed, and he was talking about wrongful convictions back then. So I do give him a lot of credit for implementing, and trying to make some changes for the system, and I thank you again for the opportunity to testify, and I look forward to this being the last time I testify before any hearing, the New York State Assembly, the New York State Senate with counsel, and we make significant changes.

CHAIRPERSON LANCMAN: Amen. So, among the—the four experts, the experts whoever wishes to go first. Thank you both very much.

SAUL KASSIN: Hi. My name is Saul Kassin. I'm distinguished professor of Psychology at John Jay College of Criminal Justice. Thank you for the opportunity to be here and speak. I'd like to say that-and-and I think this is important. I don't think we've even scratched the surface to the problem of false confessions of what it entails. Every story of a false confession is not just a story that gets at the question of why in God's name did an innocent person confess to a crime he or she didn't commit? It's a second story, and the second storyline is how come the prosecutor, the judge, the jury the Appeals Court all missed it? And that's an important part of really a single story. I'd like to say first that there is an extensive now scientific literature on the psychology of confessions. That literature tells us that confessions, false confessions occur on a regular basis that there are actually three types of false confessions. This is not one complicated story, but three sets of complicated stories. That there are discernible risk factor that we know are associated with an increased likelihood of false confession, and finally that once a false confession is taken, the case is closed and nobody really can

1 tell the difference between a good confession and one
2 that isn't. And it's with that that I want to say
3 first of all that it's important to recognize false
4 confessions are a problem throughout human history.
5 Everywhere in the world where criminal justice
6 records are kept throughout human history false
7 confessions have been a problem, and New York City is
8 not exception. If you look at the Innocence Project
9 database, false confessions now account for 30% of
10 the wrongful convictions in the DNA database. If you
11 look within that database at homicide cases alone,
12 that number jumps to over 60%, and you see that same
13 pattern in the National Registry of Exonerations.
14 That is not a coincidence. Homicide detectives are
15 trained differently from everybody else. Those were
16 a different level of interrogation. Those in
17 particular need to get recorded. New York City is no
18 exception. There is an historic and continuing
19 problem of false confessions in this city. Always
20 has been, and just to give a sense of the continuity
21 of this problem, let me point first to a case, a very
22 well known case in 1964 about a guy by the name of
23 George Whitmore who was picked up in Brooklyn for a
24 high profile set of murders known as the Career Girl
25

1 Murders. He was interrogated for 26 hours. That
2 interrogation resulted in a detailed, exquisitely
3 detailed spot on accurate detail 61-page account of
4 those crimes. He turned out to be innocent. He was
5 in Wildwood, New Jersey that day watching Martin
6 Luther King's I Have a Dream speech, ironically. He
7 was innocent, but that confession that was taken
8 turned out to be so important both because of how it
9 was taken and the fact that it produced a litany of
10 details spot on about the case. But the U.S. Supreme
11 Court in Miranda, it's a landmark rule and in 1966
12 cited that case as a shining example of coercive
13 police interrogation. That case come out of
14 Brooklyn. Skip ahead 25 years later and we run into
15 the Central Park--literally 25 years--and we run into
16 the Central Park Jogger case. What is shocking about
17 that case is not that the five kids were interrogated
18 for 14 to 30 hours, but if you look at the
19 confessions that were produced, and by the way, this
20 case illustrates something very important about New
21 York City confessions. The confessions ever since
22 the 1980s are on tape. The interrogations that
23 preceded and produced those confessions are not.
24 That should be troubling in and of itself. If you
25

look at those joggers tapes, what you would see of these innocent boys is you would see Corey Wise, not just making an admission of guilt, but you would see him apologizing and expressing remorse and saying this was my first rape and it's going to be my last. You would see Kevin Richardson literally getting out of his chair, standing up and physically re-enacting how he participated in a crime he had nothing to do with. That is the problem with false confessions. So now, let's fast forward from the jogger case 1989 another 25 years. A young—a young man from Denmark, a smart student, interning as a—as a—as a teacher at a preschool. His name Malty (sic) Thompson, is brought in for questioning based on a tip that turned out not to be critical—credible. He's brought in for questioning and he ends up confessing to a sex offense, a serious sex offense and sent to Rikers Island as a result. The hours of interrogation in which that statement was produced were not on camera. The confession that was taken subsequent to those hours was on camera. In the end there was no credible evidence that any of this happened. The chargers were dropped. He's currently suing the city. Again, 25 years later. The problem with all

of this, and what they tell us is not just their—are those—is that my time?

CHAIRPERSON LANCMAN: No.

SAUL KASSIN: Okay—is-is not just that there is the problem that there are tactics that can be used to get innocent people, and I don't just mean vulnerable innocent people. I mean people who are sitting around in this room to confess to crimes they didn't commit. But the statements ultimately taken, those false statements ultimately taken contain often exquisite details about the crime that only the—on the perpetrator could have known. Ninety—here's a statistic—and again I refer to a lot of research—95% of known proven false confessions of innocent people who have no involvement, contains facts about the crime that were absolutely accurate and that were not in the public domain. When a jury looks to evaluate a confession, they're not just looking to look at the amount of pressure brought to bear on a suspect. They're also looking to answer the question, If he didn't do it, how did he know those things? Well, if you watch the tape, you'd know how he knew those things, and that is the—I think an even more important reason for the video taping requirement.

1 Finally, I think it's important to state that every
2 false confession is not just an admission of guilt,
3 but a story. This is what I did. This is how I did
4 it. This is why I did it. I'm so sorry I did it. I
5 won't ever do it again. That is s the, you know,
6 physical re-enactments. There are often physical or
7 hand drawn maps of the crime scene. That is the
8 sight and the sound of a false confession, and that
9 is why when researchers go to see whether or not
10 judges, juries, lay people in general can tell the
11 difference between a true confession or false, the
12 answer is they can't. I've done those studies. The
13 not that that you—that you walk around thinking I'd
14 know a false confession if I saw one. No you
15 wouldn't, and we've got the data to prove it.
16 Finally, I just want to say there has been a wave of
17 reform. What we're talking about today is not new.
18 It's not theory. It's not speculation. There are
19 now 22 states plus the District of Columbia that
20 mandates the recording of interrogations. Mandates.
21 There are hundreds of local jurisdictions that do it
22 voluntarily. In 2014, after years and years of
23 resistance, the federal government requires now that
24 the FBI do the same. I don't—I won't even talk about
25

China in 2015 as a matter of national policy deciding they're going to record interrogations, but we are laggards to China. This wave of reform is important. I appeared before that Justice Task Force, and let me read specifically what that Task Force recommended. In 2012, the New York State Justice Task Force was emphatic, "Task Force ultimately determined that electronic recording of interrogations was simply too critical to identify false confessions and preventing wrongful convictions to recommend as a voluntary rather than mandatory reform." The Task Force recommended making it mandatory. Now, I heard today that NYPD is fully on board. Well, if they're fully on board then mandate it, and nobody gets--nobody gets short changed. The research shows there are no drawbacks to taping, only advantages. Interviews, thousands of interviews across the country in police departments where they have gone to a video recording requirement, sometimes kicking and screaming, and this is published research, published surveys, published interviews. It shows that they unanimously adopt and embrace the process once they go there. There are no losers. This is a win, win, win and again if what I heard correctly earlier in the

morning that NYPD is on board, then by all means I hear no reason not to mandate it. And I say that because over the last two or three years since the task force nothing has changed. There are high profile cases, one in particular that is back in trial on a recharge, the most important cold case in New York history involving the abduction of Etan Patz. There was a case where detectives picked up an individuals with a 70 IQ and a history of mental health problems, interrogated him for hours to confession. The confessions are on tape. The interrogations are not. That was post-Task Force, the biggest case in New York City history with a vulnerable suspect. That is post-Task Force.

CHAIRPERSON LANCMAN: Alright. Sorry, I just want to give other folks an opportunity-

SAUL KASSIN: [interposing] Yes.

CHAIRPERSON LANCMAN: --to testify and then we want to definitely ask you some questions.

SAUL KASSIN: I will close.

CHAIRPERSON LANCMAN: Terrific.

SAUL KASSIN: I'd be happy to and open for it. I-I think it's time to get past the lip service. I think it's time to get past the so-called

pilot studies. I think it's time to get past the
excuses. There's no evidence what-whatsoever that
there are drawbacks, limitations, handicaps. Police
departments that go to it love it. All of our
neighboring states, New Jersey, Connecticut, Vermont
already have mandated the practice. There are only
advantages. I think it is time to do that justice
once and for all. Thank you.

DR. JENNIFER DYSART: Thank you for your
time and attention to this—these very matters that
affect your constituents very deeply. My name is Dr.
Jennifer Dysart. I'm an Associate Professor of
Psychology at John Jay College where I have been for
the last ten years, and I've also been studying
eyewitness identification research for nearly 20
years. I'm here today to speak with you about the
importance of eyewitness mistaken identification and
its role in wrongful conviction, and how the
implementation of simple—and you will hear this from
Chief Wilson in a few moments—simple procedural
changes can significantly reduce the likelihood of a
mistaken identification and the subsequent wrongful
convictions that often follow those. As we've heard
today, eyewitness mistaken identification is the

leading contributing factor to wrongful conviction in the United States with nearly three-quarters of the DNA exoneration cases involving at least one mistaken identification. In fact, some of those cases have five eyewitnesses all of whom felt were mistaken. I the last--over the last 40 years scientists, which I think is critical, and a missing component quite frankly to much of what we've heard today, scientists have done the work and investigated the many causes of wrongful conviction and mistake identification. I'm going to talk about two of those today. I did limit my comments to just a few minutes, and so I'll-- I'll focus on two that I think are most important, and that have been the subject of most of the testimony here today and that is, of course, double blind administration and the recording of witness confidence. The most critical--the most critical--I cannot emphasize that too much--practice, the best practice is double blind administration for the prevention of wrongful identification, and this is, of course, just to clarify. This is when the individuals who are conducting the identification procedure do not know who the suspect is, or they cannot see which images or which people the witness

1 is looking at a particular time, and we refer to that
2 as a blinded identification procedure. This best
3 practice eliminates any possibility whatsoever that
4 the law enforcement officer or person administering
5 the procedure could have influenced the witness in
6 any way. This is a great procedure for law
7 enforcement, a great procedure for prosecutors as it
8 completely eliminates the defense strategy and—and
9 trial strategy and tactic that oh, how do we know why
10 the witness picked my client? Maybe it's because
11 they made a suggestions, but this really is an
12 identification change that is good for law
13 enforcement and prosecutors. Double blind
14 administration is standard practice in other fields
15 such as medicine and pharmaceutical research, and it
16 is not because not because we don't trust doctors and
17 nurses to collect that kind of research. It's because
18 we need to ensure the integrity of the results, and
19 the integrity of the outcome in very important
20 research and—and outcomes that can affect our health
21 and life. If we eliminate any of this expectation,
22 essentially the lineup administrator has by keeping
23 them blind, we can also ensure the integrity of the
24 identification outcome, which is critical. In this
25

field, it's very important to also keep in mind that doctors and nurses are human, and humans come to decision making tasks with biases, confirmation bias I was expecting Dr. Kassin to speak about. And law enforcement officers also being human bring to the identification process their biases and preconceived release as well. But we know that double blind administration actually increases the probative value of the evidence. So not only does it maintain the integrity, it makes the actual evidence that is viewed by judges and jurors more likely to be accurate. It is more a precedent. The second critical best practice is the recording of a witness' level of confidence immediately after they have made the identification decision, and the reason why this is so critically important is that decades of scientific research have show that a witness' level of confidence can easily be influenced after their identification decision. But by the time they testify at trial, nearly all witnesses are absolutely certain that the person sitting at defense counsel is the person who they saw commit the crime. This is critical because triers of fact rely heavily on eyewitness confidence to help them determine if the

witness was accurate. But if all witnesses at trial are absolutely certain, how can triers of fact use certainty in order to help them make their decision? If all witnesses are confident does that mean all witnesses who testify are accurate? Certainly, that cannot be the case. So at this juncture we have to learn from DNA exonerations, and we know from those cases that many of the witnesses [bell] in DNA exoneration cases were initially not certain about their identification decision. And if that uncertainty had been paid more attention to perhaps those individuals would not be wrongfully convicted. There are many other—many other best practices reforms, some that are specific to New York City that really the committee should also address. There are unique issues with live identification procedures. The mentally ill suspect might behave differently than the off duty police officer or the person arriving for their shift who acts as lineup for them. Recording of identification procedures are absolutely critical. Picking of fillers that match the witnesses' description, not what the suspect looks like. Decades of research have told us this, and yet that's not followed here in New York. Post--

2 CHAIRPERSON LANCMAN: [interposing] Just
3 say that last one again.

4 DR. JENNIFER DYSART: Sure. If the
5 picking-picking of fillers that match the witness'
6 description. So if I give a particular description
7 of someone that I viewed, law enforcement should use
8 that description to go find fillers to fill out the
9 photo array or the live identification procedure.
10 That is the best practice recommended by scientists.

11 CHAIRPERSON LANCMAN: As opposed to what?

12 DR. JENNIFER DYSART: Taking a photograph
13 or the person, going to a homeless shelter and
14 looking for four of five people who look like the
15 guy.

16 CHAIRPERSON LANCMAN: Okay, I don't
17 understand why there's a difference to that. I'll-
18 I'll ask that we get the question.

19 DR. JENNIFER DYSART: Absolutely. I-I
20 want to have you consider that. I'm almost finished.
21 In particular in New York City two problematic areas
22 are mug shot searching. When I travel the country
23 and lecture and educate judges and-and law
24 enforcement [coughs] that are shocked, shocked,
25 shocked that New York City still uses this system.

They have a catch unit here in New York that specific for this, and that's essentially the witness comes in and looks through thousands of photographs until they finally find someone who looks close enough, and says I think that's the person. It's—it's the equivalent of an all suspect identification procedure, which clearly would be prohibitive based on best practices. And finally show-ups and drive-arounds. Show up is the apprehension of a potential suspect where the witness is then usually brought to that individual who is usually presented in handcuffs, or the drive-around where the witness is put in the back seat of a police car and driven around a neighborhood until they finally see someone who they think might be the perpetrator. These are two procedures that are used rarely in other jurisdictions around the country, and although the Justice Task Force mentioned training on show-ups, they mentioned no best practices on show-up identification procedures. There are no less than five eyewitness experts right up the road at John Jay College of Criminal Justice who study this, and we avail ourselves to this committee, to New York City to educate and train on these factors. We are—we are here and ready to help.

3 CHAIRPERSON LANCMAN: Thank you very
4 much. Sir.

5 CHIEF BILL BROOKS: God afternoon. Thank
6 you for having me. My name is Bill Brooks. I'm the
7 Chief of Police in Norwood, Massachusetts. I've been
8 a policeman for 39 years. I'm the President of the
9 Massachusetts Chiefs of Police Association and I
10 serve on the Executive Committee at the International
11 Association of Chiefs of Police. I'm here to talk a
12 little about the experiences in Massachusetts. We
13 have been [coughs] excuse me—both reforms have been
14 in place in Massachusetts [coughs] since 2004. When
15 Professor Kassin talks about people kicking and
16 screaming, I was one of the kickers and screamers. I
17 have been trained not to record interviews, but only
18 to record the confessions, and when I first heard
19 about the eyewitness identification reforms, I didn't
20 like the sound it. [coghs] But I thin the key was
21 that I was I was able to attend training, and now
22 looking back I would not do it any other way. Let me
23 just talk just briefly about recordings, and then
24 I'll get to eyewitness identification. As I said,
25 they have been widespread and more or less mandated
by a jury instruction in Massachusetts for the last

12 years. They're in place at--they're in department
like the Boston PD and small departments of only 10
or 12 officers. We record interrogations on all
offenses, and I know that the--that the risk of
lengthy incarceration for wrongful conviction is
greatest in--in serious crimes particularly violent
crimes, but we record interrogations on all offense,
shoplifting, domestic assault and battery, really
everything. Once you've got the rooms set up, why
not flip a switch and say you're being recorded, read
the person their rights and attempt to take a
statement. It's also very good training for police
officers of all ranks to do that. They get in the
habit of it, and we just record everything. We found
that the recording removes any doubt about exactly
what was said. It obviates the need for extensive
note taking by detectives. You really don't have to
take notes. You have a video recording. Detectives
can go back later and review the video, and analyze
it for exactly what was said, and supervisors can
review it for training and policy issues as well. It
protects officers from allegations that they were
abusive towards prisoners or that they used unlawful
techniques. And quite frankly, one of the benefits is

that our detectives spend less time on the stand they used to in confession cases. Now, motions to suppress are all about the points of law. Judges literally begin the hearing by saying has everybody seen the video? Counselor, what's your point, and the detectives don't end up on the stand. They used to spend hours on the stand looking at notes and trying to remember what was said in the room, and now that's all gone away. In short, again, we've been doing that for 12 years, and I would not do it any other way. In 2004, I attended a training on eyewitness identification reform, and again I didn't like the idea of it. I particularly didn't like the idea of blind administration. I had been a detective sergeant for 14 years. I worked hard to develop a good rapport with crime victims and witnesses, and I thought that asking somebody who didn't know anything about the case to show my photo array would be a bad idea, but we came up with a procedure that--I'll talk about in just a minute--that's made it work flawlessly. Now, I think it makes great sense, and again I'd never go back. I'm the academy instructor. So when the reforms came around, I began to teach it in Massachusetts. I spoke at a couple of national

police conferences, and the Innocence Project since then has asked me to teach it around the country, and present it in 23 states. Two years ago, I actually did a presentation at the NYPD Academy. I've also presented to the second largest municipal Police Department in the country, the Chicago PD. They might be second to you in size, but they're ahead of you in crime rates, but they have-they have adopted these procedures as well. In 2014, I was asked to sit on a committee at the National Academy of Sciences. They produced a report called *Identifying the Culprit*, and it's available to you online or I can-I can get it to you. Despite its length, it really narrows down for me to basically five practices that the-that our committee recommended. Number one that all police officers be trained in eyewitness identification. In Massachusetts now, every single police recruit going through the academy receives a half a day block on eyewitness identification reform, and not just the practices that have been discussed today, but the problems with eyewitness memory, the task of recognizing stranger you met only once is a difficult task anyway, and all recruits receive a half a day of training in that-

that instructions be given to every witness. Most importantly that the offender may or may or may not be in the photo array lineup. The third recommendation is blind or double blind procedures. The fourth is confidence statements, which Dr. Dysart just talked about. I shuffle back to it in a minute, and redo audio and video and record the showing all photo arrays, and it became a seamless process. We just used the interview rooms that are already set up for interrogations. Again, we flip the switch, tell the person that they're being recorded, and we show the photo array in an interview room. The way we do blind administration is we—we only use patrol officers. Our detectives almost never show photo arrays any more. [bell] We've designed a system whereby, and when I mentioned before—before and the previous speaker did as well, the detective is actually in the room and reads the instructions to the witness, introduces the patrol officer who is going to show the photos, but he leaves the room when the photos are in play. So the detective reads the instructions. Like I said, introduces the—the officer and then says I'll be right outside, and when the detective has left does the patrol officer show

the array. The officer has no idea which photograph is the suspect. He simply administers the array. If an identification is made, he immediately asks the question that Dr. Dysart just spoke of right at the point of identification how certain are you? Tell me how confident you are. They do write it on the form, although now that we video record it, we actually have this—didn't see that process. When we're all done we send the witness home. The detective and officer don't even discuss what occurred in the presence of the witness. They send the witness home. So, I—I just think that as Dr. Dysart mentioned the blind administration is—is important. It is not a resource issue. Departments in Massachusetts they only have ten officers do it. In my department there's 60 that does it. The Boston PD does it in—in all of their cases. When I was at the NYPD Academy, a major case detective came up to me at the—at the end and introduced himself and said, you know, we can do all this, and there's no reason we shouldn't. He has since passed away. I never got a chance to follow up with him but, you know, eyewitness identification reform I don't think we'll eliminate all wrongful convictions or all mistakes by

2 witnesses, but it will ensure that if those errors
3 occur that there's nothing the police could have done
4 to avoid them.

5 CHAIRPERSON LANCMAN: Okay, I--could--do
6 you want to wrap up [coughs] because I want to hear
7 from Barry and we want to do questions.

8 CHIEF BILL BROOKS: Okay.

9 CHAIRPERSON LANCMAN: You good?

10 BARRY SCHECK: Yeah, I mean--

11 CHAIRPERSON LANCMAN: Chief, you're good?

12 CHIEF BILL BROOKS: I'm good. I was just
13 going to say that I'm available to the NYPD to--to
14 assist further whether it's policy or training, I've
15 already been through the Academy once, and I'll be
16 happy to assist if there is anything you requested of
17 me.

18 CHAIRPERSON LANCMAN: With only the last
19 chief with a Boston accent who sat in that chair had
20 such an open view, we might [laughter] we might have
21 a different experience. Mr. Sheck.

22 BARRY SCHECK: Well, very briefly because
23 these are really the experts, and I'd love for you to
24 ask them questions, but thank you for holding this
25 hearing. It's really critical and important. We

have been involved in all efforts in this state to bring about this reform for close to 15, 16 years, and what you've done today and what you can do very simply you can change the entire complexion of what's going on in Albany and certainly in this city.

Number one, as you heard, unfortunately from Elizabeth Glazer and not from the New York City Police Department, but I read their statement. They say they're videotaping interrogations. I quite agree with you, Councilman, that the number of 5,000 since 2011 doesn't make any sense if they're really doing it, but the point is they say they have all these rooms outfitted. They say they're doing it. Why don't we just get them in there to give us the numbers, number one. Number two, the simplest and best way to make sure that they're doing it, and--and to get it done is simply to pass a bill saying this is required. It's certainly within your control.

Nobody is saying that you can make the courts do anything if they don't do the video taping, but believe me if you just issue that requirement, right, the people that can do it up in Albany are going to follow suit, right? And so that would be the number one best thing to do, and as soon as you introduce

that bill, you bet they'll be in here testifying, and we'll find out if they can really do it. And in fairness if they can't do it, right, and they really don't have the resources, then they should come to you and say here's what we need. We can do X number of felonies. You know, we can do seven now. We can do nine later because of what Dwyer said is certainly the case, why not do more? And I think even Elizabeth indicated that. So, get them in here, pass that bill number one. Number two, on eyewitness identification reform, it is really important. Judge Dwyer said it, Dr. Dysart just said it. You want to get the confident state of the witness at the time of the identification. Now, maybe reasonable people can differ as to whether you say tell me your level of certainty in your own words, but everybody believe me and even the district attorneys everybody in this debate believes that a confident statement after a double blind procedure or a blinded procedures as it's sometimes called is the—is—is a very important measure, and it would change the way all identification cases in the State of—the City of New York and the State of New York are done. But what you can do make this happen and eliminate all the

arguments is audiotape or videotape the photo array procedure and/or the lineup. That is what was suggested by the National Academy of Science, and that's what you've heard is done in the all these jurisdictions and by the way, the MPTC and New York State recommends that as a best practice for every law enforcement entity in the state, and the one that's been holding it up is the New York City Police Department because they say we can't do that. Well, I may judge why they think they can't do it, but a lot of us think they can do it, but let's work with them. If you pass legislation saying that they ought to do a blind or double blind, and by the way, blinded means that it would be a procedure that Chief Brooks I think pioneered where you would show them an array, and the officer even wouldn't know who the suspect was or shuffling it. (sic) And-but certainly audio taping I really stress this. Audiotaping or videotaping that identification procedure requiring that could also help brake the log jamb in Albany on this issues. And then finally, what is very important because all the learning from the scientists they will tell you that what we do in New York City with the so-called PIM system or the CATCH

Unit where we're just trolling for identifications, is a really bad idea. Talking about that Police Commissioner who had that Boston accent, right, who I've known for a long time. So at least I could walk into the offices and say, you know, this doesn't make any sense, and he actually understood the science of that, and so one of the very simple things to do is if you're talking about numbers, the New York City Police Department should come forward in terms [bell] of the PIM system, and actually keep track of how many times witnesses are identifying fillers, or identifying people I should say. They're not fillers, but identifying people all of who have, you know, prior arrests. They all appear on the screen. How many times the witnesses came in and identified somebody and it didn't lead to an arrest, right, and how many times they found that out. Because I think if they start keeping track of those numbers, all the learning all the science on this will indicate to them that it's not a brilliant idea, and what would be much better frankly is to develop some evidence before you put somebody in a photo array or a lineup because then you're more likely to get correct identifications as opposed to incorrect

1 identifications. And that's not just what the
2 scientists say as Chief Brooks I'm sure will tell you
3 and we all know from our work across the country
4 that's what everyone in this field believes except in
5 this city, and it's amazing [laughs] that this is
6 going on here. So thank you again, and I want to
7 just put in a word from my friends from the Bronx and
8 from Brooklyn about the Conviction Integrity Units.
9 They're just--they're following really good practices,
10 and yes I have a conflict because I work with them,
11 but the truth is I want to be on the record saying
12 that those best practices they described, they're
13 really good and good leadership for the country.

15 CHAIRPERSON LANCMAN: Terrific. I'm--I'm
16 not going to get in the weeds with you on that
17 different--someone smarter than me will just explain
18 it to me and we'll do it off line. Honestly, the
19 only question I have because your--your testimony is
20 so cogent and powerful and--and--and clear to me. Is--
21 do any of you have direct knowledge of--of what New
22 York City is--is really doing or not doing
23 particularly when it comes to the videotaping because
24 Director Glazer testified that they're doing it. I'm
25 not sure that--she said herself she knew direct

knowledge. The numbers don't really add up at least the two of you in the Center there are New York City based and, you know, you will—I don't know how many, you know, run of the mill New York cases you take in, the more the merrier, but like are—are—is New York City doing these videotaping of interrogations or—or you're not seeing it?

BARRY SCHECK: I don't—I don't know. The—the answers I don't know, but I do know that since the Task Force made its very strong recommendation, I have not discerned a change. When that case of the-of the man from Denmark came up, he was picked up very, very early in the morning and interrogated for seven or eight hours. He was then taken in form a confession. The confession, of course, was propped up on camera. The preceding hours during which time he was lied to about evidence and other tactics use. That was not on camera, and I do know that—and what is arguably the most important cold case in New York City history came along 30 some years later, and NYPD went out to New Jersey to pick up their—their suspect who had a history of mental illness and a very low IQ in a state, New Jersey that requires the recording of interrogations, and they

took him into a station that was equipped for the recording of interrogations. They did not and that, too, is post-Task Force. So all I have are a couple of anecdotes in instances, more recently instances where I would have expected a tape, and it wasn't forthcoming. I—I can tell you that--that I've taken tours of the precincts where they initially set these up and I've seen it so I know that they can do it. They should be doing it, but as Saul mentioned, it's not just those two cases. There have been other high profile cases where even district attorneys were involve where they knew the rules, and yet they did not do the videotaping of the initial interrogation as to Miranda Warrants. So the real answer to this is that you should pass a bill in New York City just saying this is required. Give them exception that they think they need that sound even remotely reasonable. This is our experience in other states across the country. What's going to happen, as Chief Brooks will tell you, is that soon they're going to want to do it everywhere in more cases, and what Judge Dwyer—I think it was Judge Dwyer said well maybe it's because there's some old time detectives. They'll want to see their methods. You know, like

Superwitz and NYPD Blue or something tuning up the witness or whatever, but it's—it's wrong headed because as Saul will tell you, and Bill as well, you know, we need these videotapes to train people on how to do the interviewing correctly. So, the mandate, you passing the mandate is critical. I can tell you that when the City Council passed a mandate through the New York City Crime Lab, the OCME, to do a root cause analysis every time there was a non-conformity, and to get assistance from medical institutions in the city on how to do it. That had a huge because, you know, until recently I was sitting on the New York, you know, Forensic Science Commission, and we looked at everything, right, that came in. So that made a big difference. Alright, so this haring and your action sooner rather than later in order to affect the Albany legislation to mandate the videotaping of interrogation in those classes of cases where they say they're doing it and believe me I think you'll hear from them as soon as you introduce that bill, and to provide resources and mandate that they do double blind ID procedures and photo arrays and/or lineups, or at the very least they audio tape the—these procedures, and certainly

videotape live lineups. If you just started requiring that, and introduce legislation to require that, then you'll--then people will actually come here and talk to you about what they're doing.

DR. JENNIFER DYSART: Can I answer on eyewitness. I'll be very quick on eyewitness identification. So photo arrays sometimes are done at the--the precincts and sometimes they're done out in the field at a person's place of employment or home. I--my colleagues and I have never seen a--a videotaped photo array process with the NYPD. Live identification procedures, which are because of the strange New York rule that hopefully will go away sometime, that in essence they're all conducted obviously at a police precinct. So they have the capability of doing a video, and so what I'm saying that there are unique problems associated with putting a person standing there with other individuals. If that person has any drug addiction, mental health issues, et cetera, they've been, you know, held for two days and they're going through withdrawal, you going to see a difference in that person's behavior other than the other fillers in--in the room. I've yet to see or hear of any of those

procedures being videotaped. What happens is a photo—a photograph is taking of the live lineup, but then how years later can anyone decide whether or not that was a fair live identification procedure if the person started sweating, if the person started shaking, if some other issue has—arose in those procedures? I've never seen it, and the hair went up on the back of my neck a little bit earlier when Ms. Glazer testified and said that well, you know, these are just guidelines. You know, they're just recommendations. That's disturbing.

CHAIRPERSON LANCMAN: Council Member Gibson.

CHAIRPERSON GIBSON: Thank you. I'm just going through your testimony and you explain a lot and I appreciate all of the work that you all have done on this issue, and I think, you know, sometimes we have to continue the work, recognizing that there's always light at the end of the tunnel, and we have the greatest law enforcement agency in the country, and yet when you look at technology and science, we're still far behind the time, and it's not acceptable. And, you know, I applaud the work you're doing, and I encourage you to continue to work

with us because we will continue to gain ground and, you know, make much more progress. Twenty-two other states in this nation, and yet New York, you know, falls far behind, and that just simply is not right. I think, you know, I've said this earlier today that, you know, this is a topic that's very sensitive and, you know, I see the faces of the individuals that have been impacted, and, you know, they propel me. They give me strength to keep fighting the good fight because I know that there are many others that come from our community that could easily be in their situation as well. And so I think it's important that we never lose sight of the goal, and sometimes politics has to play its role especially in Albany as many of you know. But that shouldn't stop us from the city to do the work that is necessary when it comes to mandating. And then I think we just simply don't have data. We know that the Police Department has said that they're videotaping interrogations, but we haven't seen evidence to support that. And so in light of that I think, you know, if you don't see something you're just going by someone's verbal statements, then you really, you know, have to take them at their word, and that isn't good enough in

1 this case. It's just not sufficient, and so I just
2 want to commit to all of you that we will be working
3 together on legislation and all the conversation
4 about this procedure because it's really, really
5 important to make sure that we can implement as many
6 best practices as we can. Barry, you talked a little
7 bit about the Conviction Integrity Units and, you
8 know, that's something obviously that we talked about
9 some times. The DA's, some are implementing that and
10 you feel very confident that that is a good part of
11 this conversation when you're talking about reform,
12 right?
13

14 BARRY SCHECK: Oh, absolutely. It really
15 began in 2007 in Dallas, Texas was the first major
16 one, and then we had a lot of--

17 CHAIRPERSON GIBSON: [interposing] Texas
18 of all places.

19 BARRY SCHECK: Well, there are more
20 exonerations in Dallas than most states--

21 CHAIRPERSON GIBSON: I know.

22 BARRY SCHECK: --and it spread. There
23 are very--it--it remains in very good hands in Dallas,
24 and I've got a good one in Harris County, San Antonio
25 and Tarrant County and Fort Worth. The new district

attorney coming in in Chicago I believe is going to follow the best practices that you heard that Darcel Clark is implementing in the Bronx, and that certainly Ken Thompson is taking to a new level in Brooklyn. And so I think that this is something that hopefully can be done well across the country. There are also some Conviction Integrity Units that are conviction integrity or conviction review in name only that--that have not done a very good job at all, and the problem there is that when you promise that you're really going to make review and you're really going to look at old convictions, and make them right, and then you're-- It's really just a fashion accessory or a piece of propaganda. That hurts everything enormously, and we had that problem in Chicago, and there's going to be an election where I hope--I can't election year. I'm a non-profit, but I think that there's a good chance that we'll have one there, and Cleveland as well. So, there have been some problematic places that are not really doing it, but you did hear today from two places that are, I think that Judge Clark, as you heard from Julian, it's very--it's really important to have a defense person because of the cognitive bias problems

involved in the conviction integrity review. And Mark Hale would be the first to tell that Ron Sullivan, who helped him start the unit, who was—ran a public defender office and was a public defender in the District of Columbia, and teachers at Harvard now, was of tremendous value at the beginning. Some of the people in the Independent Review Board are defense people, and I think it's very important that Judge Clark picked two individuals that were defense lawyers to help do that review. Because if you're going to get to the point where you're having this non-adversarial joint search for the truth that Mark describer, and I can tell you that we've done that. You really need to make this a cooperative process, and I—I think the City should take advantage of these people at John Bay—John Jay. You're looking at two people that everyone in the country would acknowledge as the leading scientists in the field of interrogation and eye witness reform and experimental psychology. I mean why—why—why won't they work with them and do studies with them. They should.

CHAIRPERSON GIBSON: Right and I know Chief you talked a little bit about the training that the Innocence Project held a few years ago that

relates to eyewitness identification reform. The DAs talked about the curriculum for new incoming ADAs and how that is incorporated in, you know, the curriculum itself. How important is training the officers, the recruits for prosecutors? I mean at this point I mean I think everyone should have a general understanding of what reforms. We're talking about and that really be incorporated in the basic training for all public servants. Wouldn't you agree?

CHIEF BROOKS: I couldn't agree more.

CHAIRPERSON GIBSON: Okay.

CHIEF BROOKS: And I recommended that the state take that mandate that all recruits receive their training, and—and last actually every single police officer in the whole Commonwealth of Massachusetts of received a half a day of training. You can—you can teach somebody how to show a photo array in 15 or 20 minutes, but only when you get the background of how difficult it is to remember—to remember faces, and all of the—the factors that go into whether that identification is going to be reliable or not. You get—you get better judgement and you get better decision making by the officers. You get more education better decision making by

prosecutors. Everybody understands a little bit more about the concept and that. I—I think our training—you can't just do policy. You have to do policy and training.

CHAIRPERSON GIBSON: And then how often are officers during annual training, let's say there's new technology, new scientific data that we discover. Are any of those nuances incorporated in the curriculum for annual training for officers that are already in the department and then also for the incoming recruits as well? How does that work?

CHIEF BROOKS: Massachusetts has a system whereby a state agency mandates that every police officer gets 40 hours of in-service training every year. So it kind of depends on what's happened in the previous year, but any time there's a change whether it's case law or the development of science or our new procedures.

CHAIRPERSON GIBSON: New legislation, right.

CHIEF BROOKS: It's—it's added to the training from the upcoming year.

CHAIRPERSON GIBSON: Okay, thank you.

CHAIRPERSON LANCMAN: Councilman Cohen.

2 COUNCIL MEMBER COHEN: Thank you, Chair.

3 I really do have to say that this hearing has been
4 fascinating. I mean one of the--it's eye opening.

5 I'm a--I was a civil practitioner before I came to the
6 Council. So I'm not particularly familiar with
7 criminal practice but--

8 CHIEF BROOKS: [interposing] But you had--
9 you went to Bergen Law School.

10 COUNCIL MEMBER COHEN: I did go to a very
11 good law school. Thank you very much. [laughs]

12 CHIEF BROOKS: I'll get them later.

13 COUNCIL MEMBER COHEN: But I am really--
14 it's very eye opening to me to find that but somehow
15 it seems that New York City maybe because I'm a--a
16 cocky New Yorker that it would be at the--at the
17 forefront of some of these things, and it is very
18 disheartening to hear how--how behind we are in some
19 in some of these practices, and I think the testimony
20 of this panel in particular put it--in--in stark
21 belief. I had a question that I think that maybe the
22 professor from John Jay sort of answer it I that I
23 was wondering what--what was the benefit of recording
24 the double blind IDs if there's--if--it as the other
25 testimony if there's no risk of condemnation, why do

2 we need to record? But it—I think in your testimony
3 it sort of said that there are other factors. Could
4 you just expand on that a little bit?

5 DR. JENNIFER DYSART: Sure, other factors
6 that you might want to consider. Sure. So in
7 particular post-identification feedback is one of the
8 most critical elements that you want to make sure
9 that this is—statements are not made to the witness
10 after they've made their identification. We know
11 from wrongful conviction cases where sometimes a
12 witness, you know, what did they say to you after you
13 made the identification? And the witness said well
14 all the officers clapped in the room. So we call
15 that post-identification feedback and what we—what we
16 know now that—that it does some of the most rigorous
17 science in this field is that not only does it—

18 COUNCIL MEMBER COHEN: [interposing]
19 That—that wouldn't be a risk in a double blind.

20 DR. JENNIFER DYSART: In double blind it
21 still could be if the witness didn't know that it was
22 double blind, and you said to the witness like good
23 job, excellent, you know, thank you so much for
24 coming down. If the witness believed that I had
25 knowledge--

2 COUNCIL MEMBER COHEN: [interposing] Oh,
3 alright.

4 DR. JENNIFER DYSART: --about who the
5 suspect was, then obviously that could still
6 influence things.

7 COUNCIL MEMBER COHEN: [interposing] So
8 even-even though it wasn't an attempt to--

9 DR. JENNIFER DYSART: Absolutely. It was
10 just-you're being friendly but how-how would the
11 witness have known. So any policy has to also state
12 the witness must be informed like they do in
13 Massachusetts, but this is a double blind procedure,
14 so the witness isn't looking for cues from the
15 detective during the procedure. But not only does
16 it-this-this kind of pat on the back as I give my-my
17 other-my colleague. Not only does it make witnesses
18 more confident, it actually makes them believe that
19 they had a better opportunity to view the criminal
20 perpetrator to begin with. So when-unfortunately,
21 we're stuck with Manson v. Braithwaite from 1977,
22 which the United States Supreme Court tells in order
23 to-tells-tells judges and-and jurors in order to
24 evaluate the likely reliability of eyewitness
25 testimony, which should you rely on? And this-and

the court in 1977 said, well, you should use witness confidence. Were they paying attention? Did they get a good view and a couple of other things. And unfortunately, what we know now is when I pat, you know, my colleague on the back and say good job, he thinks he got a better view. He thinks he was paying more attention. So, in fact, the more suggestion that law enforcement used in getting an identification the greater the witness will rock. (sic) So it's the complete opposite, the complete opposite. There's no way that a witness would ever fail an independent source hearing at, you know, pre-trial. The witness will look like the most fabulous witness ever, and this gets us to the discussion about what about the in court identification? In other states, Connecticut and Massachusetts are dealing very specifically. If double blind administration wasn't used, if the witness was presented with an identification procedure where the suspect stood out, what and--and the court throws it out. What happens then to the in-court ID and two recent decisions basically say no in-court ID. It's revolutionary, and so it's going to force law enforcement to follow the rules because it's

essentially an exclusionary rule. There really are
amazing things happening other states.

CHIEF BROOKS: There's--there's a lot of
benefits to law enforcement to recording the
identification procedures with either video or
certain--certainly audio. When you ask for a level of
confidence, right or even if the witness says I think
it's number two, right, that's one thing, but if a
witness says, I think it's number 2, right. There's
a big difference. Now, you--you don't reflect that
unless you have a recording, and you hear it. One of
the things again when law enforcement starts to
record these things, the eyewitness experts will tell
you that ordinarily the witness is usually making the
right identification. It's what they call a pop-out,
right, and they just take a look and go oh, my God,
it's--you know, and they point an that's extremely
effective evidence for the prosecution's case. On
the other hand if you see somebody the experts will
tell you , and there's data on this, that is looking
and looking and looking for two, three, four minutes,
you, you know, a jury will have and experts have real
warning signs go up. You know, warning bells go off
that maybe this person didn't get such a good

2 opportunity to look or maybe is not making a reliable
3 identification. So there's a lot to video and
4 audiotaping that. It's important reform.

5 COUNCIL MEMBER COHEN: Thank you, Chair.

6 CHAIRPERSON LANCMAN: Thank you very,
7 very much.

8 CHIEF BROOKS: Thank you. Thanks so much
9 for this hearing.

10 CHAIRPERSON LANCMAN: Is Judge Conviser
11 here?

12 JUDGE CONVISER: Here.

13 CHAIRPERSON LANCMAN: Come on down.
14 [background comments, pause] Judge, good afternoon.
15 Thank you for coming down. If we could just swear
16 you in. Do you swear or affirm that the testimony
17 you're about to give today is the truth, the whole
18 truth and nothing but the truth?

19 JUDGE CONVISER: I do.

20 CHAIRPERSON LANCMAN: Thank you very
21 much. [pause]

22 JUDGE CONVISER: Up, oh, okay. I'm also
23 the Chair of the Office Court Administration's
24 Criminal Law Advisory Committee, but I'm not
25 appearing here today on behalf of OCA or the

committee but just offer some personal thoughts about
custodial interrogations. I strongly support
requiring that all custodial interrogations of
criminal defendants be recorded, and I'll take a few
minute today not as academic expert like the ones you
just heard, but just to give you my perspective as a
trial judge as to why I think this is so important.
We confront custodial interrogations in trials, but
also in pre-trial hearings, and I'm going to focus my
remarks today about the hearings. Whenever a
defendant is subject to a custodial interrogation by
the police or by a prosecutor, he or she has the
right to have the legality of that procedure assessed
by the court in a pre-trial hearing at which the
defendant moves to have any statement that he or she
has made determined inadmissible because it was
unlawfully obtained, and then we have to decide
whether or not that confession or that statement was
lawfully obtained. Custodial interrogations
generally occur in two settings. First, there are
interviews by detectives at police precincts
following an arrest, and second there are videotaped
interviews by assistant district attorneys after the
initial police interrogation. In my anecdotal

experience in Manhattan interviews by police
detectives are not generally recorded either by audio
or videotape, although I have to say I'm probably six
months or a year or year and a half behind because
those interrogations don't get to me for an
assessment for some time after they're made. The
interviews by the assistant district attorneys when
they are conducted are generally recorded. Now when
the interrogations are not recorded, we as the judges
must decide whether those interrogations were lawful
primarily by listening to the testimony off police
officers. Usually one police officer. The police
officer will testify under oath and be subject to
cross-examination, but there will usually be a little
corroboration evidence of the details of what
occurred. There will usually be a form, which the
defendant has initialed and signed waiving his
Miranda Rights. Sometimes the defendant will make a
written statement, which is available to the court to
show what he said or she said, and sometimes the
police officer will have notes memorializing what
occurred. In almost all cases, however, there's no
corroborating evidence of the vast majority of what
happened of the precise give and take of the

questions and answers of the facial expressions, the arm movements, the tone or the level of voices of the specific promises or factual statements the detective has made. We as judges are left to determine precisely what questions were asked, what the conditions were in the interview room, how long the interview took place. Were there any threats or improper promises were made, and any other information based on the testimony usually of one police officer. And the problem is that that testimony is not necessarily reliable. I think that most police officers who testify in suppression hearings attempt to do so truthfully, but memory is fallible obviously, and it's often selective. Suppression hearings often occur immediately before a trial. A police officer testifying in a suppression hearing usually does so six months, a year or longer after the interrogation has taken place. And while being arrested and interrogated might be a very memorable experience for a criminal defendant, for police detectives, the interviews are a routine part of their daily lives. Police officers often don't remember the details of what occurred during these interviews. They must resort to descriptions of what

they usually do rather than offering a firm recollection of what actually happened. Thus, for example in response to a question about whether a defendant was handcuffed to a bar in the room during an interview, a detective might say his normal practice is not to do so. It's also natural in the counseling and extended conversation, which is not being recorded, for a detective to recount that conversation in the most positive light even if the detective is not attempting to be deceptive. Thus, I suspect interrogations often become less confrontational or threatening when they're focused to memory a year later. The problem for as judges is that each of these details matter. To the extent we're not getting accurate information about what happened, our suppression rulings are suffering. A different problem arises when the initial police interrogation is not recorded, but the subsequent interrogation by the assistant district attorney is recorded. I work with the Manhattan District Attorney's Office, and it's a well-run professional organization. Videotaped interviews by assistant district attorneys invariably feature articulate careful non-threatening assistance or scrupulous in

ensuring that interrogations are not only conducted lawfully, but in a manner which is unlikely to offend the jury. The problem is that the jury and the judge don't see the questioning, which preceded the district attorney's interview. We don't see the station house interrogation, and that's not to say that the station house interrogation featured improper conduct necessarily, but it might feature conduct that was more objectionable to juries than the district attorney's interview. For example, police officers might use deception into interrogations in a wide variety of ways. In my experience recorded interviews by district attorneys don't feature such methods, but they don't have to. By the time the defendant is interviewed on videotape by the prosecutor, he will have often already provided inculpatory information to the police. I-I heard that bell going off. Do you want me to just stop or no? Okay. The videotaped interrogations that are conducted by the district attorney's office in my experience also don't show the interrogators. They only show the defendants. Thus, even with respect to these interviews, the jury does not get the full picture. I'll make two final points about

1 suppression hearings. Although the use of—although
2 the relative burdens of the people in the defense and
3 suppression hearings is a complicated issue, the
4 people must prove a defendant's statement was
5 voluntary in a suppression hearing beyond a
6 reasonable doubt. That's a high standard obviously.
7 Judges, however, have a natural reluctance I think to
8 suppress evidence. It's our duty to protect the
9 defendant's constitutional and statutory rights, but
10 we also want to further the truth seeking process.
11 And so when a police officer testifies that a
12 defendant has admitted to the commission of a
13 horrific crime, a judge might be reluctant to
14 suppress that evidence even if the police officer
15 can't remember every salient detail about the
16 interrogation or appears to be filling in the blanks
17 in some parts of his or her testimony. And the
18 police officers and the assistant district attorneys
19 also know that, of course. They know that those
20 incentives operate on us. The final point is that
21 the legality of the vast majority of custodial
22 interrogations are never tested even in the four
23 (sic) hearings I've described, and that's because
24 most cases are resolved by plea bargains, and plea
25

bargains usually occur before the hearing takes place. Thus in most cases where interviews are not recorded, the police and the prosecutor will never have to testify under oath about the inter--about how the interrogation took place. The legality of the interview will never be tested by a judge. The ultimate point, of course, is that the bulk of these problems be remedied by recording every custodial interrogation from beginning to end, and I commend your efforts to try to see if we can accomplish that more thoroughly and--and widely than we do now. Thank you. I'm happy to answer questions if you'd like.

CHAIRPERSON LANCMAN: Yes, thank you very much for--for being here and for your patience and particularly for your insight into how difficult it is for judges to evaluate the validity of these confessions without--without videotaped evidence. Now, I just would like to get your--your observation as you [coughs] you handle these cases. How often do you see where there is a confession that has been videotaped, and I know that your window--I think I understand it is--is--by the time you're hearing cases today, the confession--reported confession is six months old, three years old?

2 JUDGE CONVISER: Six months, a year, a
3 year and a half. It takes a long time for these
4 cases to get to the hearing and process.

5 CHAIRPERSON LANCMAN: So tell us what
6 you're seeing--

7 JUDGE CONVISER: [interposing] Right.

8 CHAIRPERSON LANCMAN: --out there in the
9 real world. Can you see evidence--

10 JUDGE CONVISER: [interposing] Yes.

11 CHAIRPERSON LANCMAN: --of the NYPD
12 routinely, let alone uni-universally recording these
13 interrogations or confessions?

14 JUDGE CONVISER: I'm seeing it rarely by
15 the NYPD. I'm seeing it routinely by the District
16 Attorney's Office, but that's the problem. I mean I
17 would say that that's a different problem that no
18 recording, which is you get the station house
19 interrogation. You don't have a recording of that.
20 Then you get the district attorney's interview after
21 which the de-where the defendant has already made the
22 inculpatory statements to the police and when you
23 watch these district attorneys interviews there are--
24 these are very capable assistants. They have a
25 conversation that lasts about 45 minutes with the-

2 with the defendant, and it's a very rational,
3 reasonable give and take. You don't see pressure.
4 You don't see deception. You don't see anything
5 that's offensive, and the problem is you don't see
6 what happened before, and by the time they get to the
7 DA's office and are interviewed by this assistant
8 district attorney who is normally scrupulous, and-and
9 these are very good assistants usually, about doing
10 this lawfully, and not only lawfully, but in a way
11 that really makes a good presentation. The defendant
12 has already made the inculpatory statements to the
13 police. Now, we don't—we don't see what goes on in
14 the station house. That's the problem I think.

15 CHAIRPERSON LANCMAN: How often do you
16 see issues with lineups, photo arrays that sort of
17 thing and what's your comfort level as a policy
18 matter with the way that you see they're being
19 conduct?

20 JUDGE CONVISER: Well, I—I think you
21 know, listening to these experts testify what's so
22 striking about it is that if you compare the science
23 on eyewitness identifications, I mean you compare the
24 legal standards that we use and the methods that we
25 use they're very out of date with the science. You

1 know, we—we don't see these identifications
2 procedures recorded. They're not usually done
3 through a double blind—double blind process. We
4 don't really have authority to require them to be
5 done through a double blind process. The—the
6 scientific knowledge that these experts are aware of
7 are not necessarily reflected in the—in the case law
8 from the federal and the state courts. So we're sort
9 of lagging behind the science and the methods that we
10 could be using to ensure that eyewitness
11 identifications are done more accurately. And
12 obviously, as you know, they are the most common
13 source of conviction of innocent people is mistaken
14 eyewitness identification, and I think we're making
15 advances in that respect particularly through the
16 increasing use of expert witnesses on—on
17 identification, which is more and more being used in
18 our courts. But I think we're still lagging behind
19 in terms of using the science and the best methods
20 when we make these assessments of eyewitness
21 identifications.
22

23 CHAIRPERSON LANCMAN: Thank you very much
24 for your testimony . Very helpful.

25 JUDGE CONVISER: Thank you.

2 CHAIRPERSON LANCMAN: Next, we're going
3 to hear from some folks who were victims of being
4 wrongfully convicted. Judge, if you could just—I want
5 to—Judge.

6 JUDGE CONVISER: Yes.

7 CHAIRPERSON LANCMAN: I just want to grab
8 you for a second. So don't—don't run out. We want
9 to hear their personal testimony and their—their
10 personal experiences. Shabakah Shaku, Howard Newton,
11 Lonnie Soury, Sharonne Salaam. I know her son was a
12 victim, and Barry Gibbs. If you could come on up and
13 find a seat, we'll swear you in, and hear what you
14 have to say. [background comments] I think
15 Margarite testified or spoke very eloquently at the
16 press conference earlier. We're going to do three
17 minutes on the—on the clock, and it looks like we're
18 a little short. It might be that—that some folks
19 have to leave. I'm sorry for that. [background
20 comments, pause] You're good? Okay, good. We're
21 going to raise our right hand. Do you swear—your
22 right hand. You don't. Okay, fine, but you'll
23 answer my questions. Do you swear or affirm the
24 testimony you're about to give is the truth, the
25 whole truth and nothing but the truth?

3 ALLEN NEWTON: Yes.

4 CHAIRPERSON LANCMAN: Thank you very
5 much. Who would like to get us started.

6 ALLEN NEWTON: good afternoon. My name
7 is Allen Newton. In 1985, I was wrongfully convicted
8 of rape, robbery and assault in the Bronx. I spent
9 21 years in prison for a crime that I did not commit
10 based on the victims' misidentifying me as the
11 perpetrator. There were many things that was wrong
12 with my case and the way the police conducted the
13 eyewitness identification procedure. First,
14 investigators went to the hospital while the victim
15 was still recovering from surgery, and showed her
16 nearly 200 photographs for the two days until she
17 selected my photo. Then police picked up the victim
18 from the hospital, brought her to the precinct to
19 view a live lineup where she picked me out again.
20 Finally, at my trial, there was another in-court
21 identification of myself. It sounds very convincing
22 to a jury when a defendant picks a defendant out in
23 court. They say this is the person who committed the
24 crime. I was convicted despite my fiancé and her
25 daughter corroborating my alibi of being in a
different county in 1984 watching Ghost Busters. I-I

first requested testing in 1988, three years after I was convicted. A Bronx Supreme Court Judge granted the testing. What happened? The evidence disappeared after that. Six years later when the DNA Bill was passed in New York State, I was the first one to put in for testing. The police claimed they couldn't find the evidence now. Finally, in 2005, five weeks after the Innocence Project with my family the rape kit was located, tested and proved my innocence. Exoneration was the first step of rebuilding my life. I had to readjust to a world. I had been away for—for two decades. This meant rebuilding relationships with family and friends, getting a job to support myself, and just learning how to recover from the trauma that was two—two decades in the making. I tried to make a lot of positive experiences from this. Nevertheless, since my release, I started on a non-profit called AFCER (sic), Advocates for Change and Exoneree Rights with another—another exoneree. I went back to school. I got my bachelor's degree, and I'm still working to support the network of exonerees. I was working with CUNY's Black Male Initiative, a program to raise retention in graduation rates for underserved

communities. Finally, when it comes to speaking about wrongful convictions, there's a lot of science behind this testimony, and like one of the witnesses testified, Jennifer from CUNY was talking about how the police are so reluctant to implement a lot of these changes, and what Barry Scheck said is even more profound. We need to just pass the law, and then let the Police Department [bell] deal with the repercussions after the fact because one of the things I know and understand they are not—they are not conducting double blind lineups, and they are not interrogating people the way they're supposed to be because all the testimony will show only the confession is on tape, nothing else. Thank your for this opportunity, and hopefully a law can be passed because I've been home ten years. Barry has been home ten years. So we still got many of them that's still coming home, and we're the lucky ones. We're the lucky ones whose evidence was able to be found because I believe I can really say my DNA evidence was found ten years ago. And I don't believe New York City has produced any more DNA evidence since my case, and part of the problem is I went to trial. I was awarded \$18 million in a civil judgment. Now

think about this. I was awarded \$18 million in a civil judgment. I had more rights extended to me in my civil trial than in my criminal trial. Thank you.

CHAIRPERSON LANCMAN: Thank you. Mr. Salaam, you're up. Okay.

BARRY GIBBS: Good afternoon, Council. I want to thank you for listening, and my name is Barry Gibbs. I did 19 years for a crime I didn't commit for murder, and had there been cameras during the investigation and, you know, there were—there were around. The officer tried to beat a confession out of me. I'm a Vietnam veteran. I know what it is to feel pain. I know that it is to suffer, but I never thought that the criminal justice system would let me down. I worked in the Post Office for 19 years, and I got picked out of a lineup, and I had asked the officer because I never had any problems with officers, I says, do you believe that the eyewitness you have is reputable. Now, I was feeding off of how the officer was to me before he beat me, and then afterwards, I was told there's an eyewitness and I said how reputable is he? He says he's very reputable, but you might stand in a—in a lineup, and I says well, if you think he's reputable. He tells

me he's an ex MP Marine. I says well if you think he's reputable, then I think he's reputable, and I stood in that lineup, and I wasn't in that lineup for more than a minute, and I got picked out of the lineup. I got sentenced to 20 to life, and I did 19 years. Had there—had there been cameras in the vicinity of I believe the whole precinct, and when the man was speaking earlier, he said they should have cameras all around the precinct. That's what they should have because they could take you from one room and put you into another room, and interrogate you in the other room, and then bring it back to the original room that they started from. So I just want to bring it out that there—there is need for changes, and people have suffered. I lost my mother, my father. I lost my son. I lost my whole family over this, and right now I celebrate my 11th anniversary this month the 29th in a few days, and it's good to be free. It's good to be alive, and I want to thank you for listening.

CHAIRPERSON LANCMAN: Thank you for sharing your experience. Ms. Salaam.

SHARONNE SALAAM: Well, I'm here. I'm Sharonne Salaam, and I'm the mother of Yusaf Salaam,

one of the kids that was robbed in the Central Park
Five case. This started for me in 1989. Before
that, I was just like every other person with a great
deal of respect for law enforcement, and the judicial
system. I never thought that there were people who
were actually in jail who were innocent. I was one
of those people that was walking around obviously in
a daze. When my son, who was 15 at the time, was
arrested, it was total shock. In living through it,
as a parent I went through all kinds of stuff.
People were spitting at me at the street, calling me
all kind of names, telling me what they was going to
for me if they caught me somewhere, and it was going
to be worse than what had happened to the white woman
that my son had raped. We went through a living
hell. My children, the ones who had not been
convicted were also going through a process where
they were being threatened in the schools, threatened
in homes, threatened at the street. There were
people who crossed the streets when they saw us
coming not wanting to be contaminated. This was
happening to us in a spectrum that was similar to
what they talked about in terms of wanting this
justice, and wanting these things videotaped from

beginning to end, but it was also in a race hate environment that stoke the fire. And when you look at these issues in regard to videotaped confession and justice for people who have been wrongfully incarcerated and justice for people who have not been incarcerated yet. You have to also look at well how are you going to train these policemen to be color blind? Because the majority of the police—people who you're looking at are people that look like me who might be darker than me. Who might have braided hair, hair that's not combed, the people who we feel are less than, or should I say deserving of what they get because that's what people told me. My son was too good to be at a place called Harlem Valley getting three square meals a day for what he did. Even after the conviction was overturned, it continued: They must have did something, and it's continuing on until this day. When I think of my son and my family and—and I have to say well, gee, a lot of people who go through this process acceptance of innocence after you've been exonerated is one of those things that people accept and they move on. Here, I am years later, 20 some odd years later going on 30 years later, and they're still talking about

1 how they did something. When I went into that DA
2 precinct, and Elizabeth Lattera (sp?) and Linda
3 Fasteen (sp?) hustled me off to a back room. They
4 knew my child was 15 because I told them. I told
5 them I did not give them permission to talk to him.
6 I told them I wanted him to have a lawyer. They set
7 me in a back room in that police precinct. I didn't
8 know where my child was. I didn't know if he was
9 alive or dead. I wondered while I was in that back
10 room had they hung him yet. This was what was going
11 through my mind as a mother, and every mother who
12 goes through these things she might not necessarily
13 be thinking have they hung him yet, but she's
14 thinking something similar. If they had had video
15 cameras going when I walked into the precinct, all of
16 this stuff wouldn't have happened. If they had
17 videotapes where my child was, this stuff wouldn't
18 happen because they knew how old my child was. They
19 knew they did not have permission, and they knew they
20 didn't have the right. But one other thing they knew
21 more than anything else was that the law was on their
22 side, and the law was on their side because they
23 could do this type of stuff to people in a closed
24 room. And when they go and they sit before a judge,

and in my case they picked the judge, but it wouldn't have mattered even if they hadn't picked the judge. But when they go and sit before the judge, and they—they come in, and the law professionals in their suits with their badges and all that kind of stuff on, who are they going to believe? Me? No, they're going to believe the law professional because why would they lie? Why would they not uphold the truth? Why? It's for the same reason these police are not here today. They don't want to change in their modus operandi. They want business to go on as usual. They want to continue doing whatever it is they're doing with this cloak so that they can say wow, we arrested so many people today. We did it. We did it, and they were all guilty because very few people want to believe that we are living in the United States of America, and there are innocent people in jail.

CHAIRPERSON LANCMAN: Thank you all. The three of you I really couldn't even imagine what you've been through, and I'm sure it's not easy to talk about it, and you've been here all day.

SHARONNE SALAAM: It's not. It's not easy.

2 CHAIRPERSON LANCMAN: From this morning
3 the actual pain, it's—you could point—you can see it
4 and you can feel it, and you've been here all day.
5 Speaking for myself and I know for the rest of the
6 people who have been here, we come in and out because
7 there are other hearings going on, and people have
8 other responsibilities. We are here to try to make a
9 change to the way business is done in New York City
10 [coughs] and you have our commitment that we're going
11 to continue to keep trying to achieve that. It may
12 not be the last time. You know, I—I noted Mr.
13 Tankleff earlier said he hopes that this is the last
14 time he has to come out and testify to it.

15 SHARONNE SALAAM: I know.

16 CHAIRPERSON LANCMAN: It may not be, but
17 we're going to keep fighting, and—and Barry, I think
18 left, but Barry had mentioned legislation, which
19 would mandate the videotaping of interrogations and
20 confessions, and that is being—that is being drafted,
21 but this—this is helping us move forward very much.

22 SHARONNE SALAAM: And I really hope that
23 it makes some type—type of a substantial change
24 because I was here back in what, 2002, when Council
25 Member at that time, Perkins--

2 CHAIRPERSON LANCMAN: [interposing] Uh-
3 huh.

4 SHARONNE SALAAM: --was talking about the
5 same issue.

6 CHAIRPERSON LANCMAN: So, it's
7 interesting that--

8 SHARONNE SALAAM: [interposing] on civil.

9 CHAIRPERSON LANCMAN: --that you mentioned
10 it. You have an excellent memory. It's actually his
11 legislation--

12 SHARONNE SALAAM: [interposing] Yes.

13 CHAIRPERSON LANCMAN: --which had expired
14 when he left the City Council--

15 SHARONNE SALAAM: [interposing] Uh-huh.

16 CHAIRPERSON LANCMAN: --which is being
17 revised.

18 SHARONNE SALAAM: Yes, and I believe it's
19 up in the Assembly, and it's still waiting after all
20 of these years, but one thing that I do want to say
21 and the only thing that's going to make his
22 legislation or anyone else's legislation work in my
23 opinion is that there is some sort of accountability
24 that the law enforcement personnel take for not
25 uphold the law. As long as they can just get away

with a slap on the wrist, it's never going to end no matter how many videotapes you get, but it can be a beginning, but who wants to be in the beginning of a 10, 15, 20, 30, 40-year battle to get out of jail?

CHAIRPERSON LANCMAN: Thank you all for--

ALLEN NEWTON: [interposing] Can I make one--?

CHAIRPERSON LANCMAN: Oh, yes.

ALLEN NEWTON: Can I make one statement? Unlike Mary, I wish I could be here again because I understand one thing: So as the time change, the law must change. We cannot live with laws for 60 or 70 years ago. So times dictate what must happen, and times will dictate the law needs changing sometimes, and hopefully, you know, the legislative bodies around the country, they'll, you know, take advantage of that and, you know, like we had some experts here from John Jay. Believe you me, if it was about prosecuting, the Police Department would be here. They know they're experts, but because it's about wrongful convictions and about mistakes that made sometime by law enforcement, they choose not to be here. Instead of, you know, best practices help everybody up because if you have the whole confession

2 and the whole interrogation being videotaped, they
3 don't have to be questioned about the things they may
4 have done, but thank you, and hopefully things will
5 change.

6 CHAIRPERSON LANCMAN: Thank you.

7 ALLEN NEWTON: Good.

8 CHAIRPERSON LANCMAN: Okay, thank you
9 very, very much. Our last panel, our last very
10 patient panel is the folks from the legal services
11 providers, Brooklyn Defender Services, Bronx
12 Defenders, and Legal Aid with Trifecta.

13 [background comment, pause]

14 CHAIRPERSON LANCMAN: Okay. Good
15 afternoon. Let's swear everyone in. Do you swear or
16 affirm that the testimony you're about to give is the
17 truth, the whole truth and nothing but the truth?

18 Yes.

19 CHAIRPERSON LANCMAN: Welcome. From left
20 to right. Go.

21 MARIKA MEIS: Marika Meis (sp?). I am the
22 Legal Director. I'm the Director of the Preventive
23 Practices at the Bronx Defenders. So I think you've
24 heard a lot about the need for recording. I just
25 wanted to give you a little bit of the picture of

what we've got now, and what it's like to actually
experience that.

CHAIRPERSON LANCMAN: Yeah, that-that
would be helpful[coughs] because you all on the
ground.

MARIKA MEIS: Okay.

CHAIRPERSON LANCMAN: So if you could tell
us what's real out there, we-it's important that we
videotape--

MARIKA MEIS: [interposing] Right, so--

CHAIRPERSON LANCMAN: --interrogations.
We get it.

MARIKA MEIS: So, despite all these
recommendations, what the practice is for us in terms
of interrogations is that right now my office has 800
felony cases that have been pending for over a year.
So those are all post-indictment cases mostly. We
have 15 cases in which the interrogation was
recorded, and those are largely in homicide and sex
cases, and couple other violent felonies. And in the
years preceding the recent past three or four years,
we had a total of I think six or seven. So even
though you have these pilot projects that NYPD
implemented in 2010 and expanded in 2013, that's a

2 very small number of cases where the interrogation is
3 recorded.

4 CHAIRPERSON LANCMAN: And--and in the
5 remaining 785 cases there--there were interro--they
6 were, in fact, interrogations but they just weren't
7 recorded?

8 MARIKA MEIS: There aren't statements in
9 each and every one of those cases, but in cases where
10 there are statements, we may--we only get the end
11 product. We get the results, the confession without
12 the process of what might have been--

13 CHAIRPERSON LANCMAN: [interposing] And--
14 and by statement you mean they're in the precinct
15 being questioned by detectives?

16 MARIKA MEIS: Right.

17 CHAIRPERSON LANCMAN: That is--that is not
18 a--not a statement they made on the street when they
19 got picked up. You mean--

20 MARIKA MEIS: [interposing] Right.

21 CHAIRPERSON LANCMAN: --like the product
22 of some interview?

23 MARIKA MEIS: Right, they're--what we know
24 from the interrogations we received is that they look
25 so different from what police testify to when they

2 take the stand at a suppression hearing. So they'll
3 say something like I had a brief conversation with
4 your client at the end of which the statement was
5 memorialized into this confession, and then here it
6 is or play the recorded interview back.

7 CHAIRPERSON LANCMAN: Let-let me just ask
8 you directly.

9 MARIKA MEIS: Yes.

10 CHAIRPERSON LANCMAN: So you have about
11 800 felony cases that are-that are pending?

12 MARIKA MEIS: Right.

13 CHAIRPERSON LANCMAN: Okay. Could you,
14 you know, go back to your office and-and-and quantify
15 for us of the 800 cases, X are the-in-in X number of
16 these cases, there is the kind of
17 statement/confession which ought to have been
18 videotaped if the NYPD was following the-the
19 procedures that they-Ms. Glazer today claimed that
20 they follow. Can-can you do that for us?

21 MARIKA MEIS: I could try. I don't know
22 how accurate it would be because of the way we track
23 our cases internally, but I certainly try. So that's
24 that--

2 CHAIRPERSON LANCMAN: [interposing]
3 that's the smoking gun, though.

4 MARIKA MEIS: Yes, right.

5 CHAIRPERSON LANCMAN: I need that.

6 MARIKA MEIS: Right, and--

7 CHAIRPERSON LANCMAN: We need that.

8 MARIKA MEIS: And the--the seven offenses
9 that they've identified are not the ones in which
10 we're always seeing these interrogations either.

11 CHAIRPERSON LANCMAN: We--we--we need each
12 of you to go back to your offices, and--and--and do
13 that. That's the smoking gun. [bell] Because--
14 because, you know, Ms. Glazer can come here and say
15 whatever she says. You're the ones who tell us no
16 that's--that's not the case, and here's the--there's
17 200 cases where we've got to statement that our
18 clients supposedly made after questioning, and
19 there's no videotape. So I'm sorry to interrupt you
20 but--

21 MARIKA MEIS: Yeah, that's okay. So I
22 mean you got the idea that this is a very small
23 portion, and the contrast between just--even if
24 there's no bad faith, the function of human memory we
25 have this-- Police officers aren't able to remember

the details of what happened, and the details are what matter. So for us to be effective representatives on behalf of our clients, for us to be able to hire the experts that call to ask us to say is this a false confession? Can you testify? We need the actual process, the interrogation, the hours long event that leads to the actual videotaped confession for us to have any ability to do that. So, it's absolutely necessary. Recording is the only real answer. I submitted in-in-in addition to my testimony some examples of what a cop's testimony looks at a suppression hearing versus what an expert from a recorded interrogation looks like. So when officers say things like it was just a brief conversation, I didn't use any coercive techniques, well, that's just not borne out by the videos we have. Which show extensive processes that are long and involved instead of this sort of sanitized statement that is ultimately shown to a judge or a jury.

CHAIRPERSON LANCMAN: When do you get the video?

MARIKA MEIS: We get the video from the Office or the District Attorney.

2 CHAIRPERSON LANCMAN: So when?

3 MARIKA MEIS: All the time

4 CHAIRPERSON LANCMAN: When in the case?

5 MARIKA MEIS: It varies. To be honest,
6 we've had one case in which it was precluded for
7 failure to timely turn it over. For the most part,
8 it's post-indictment, but sometime into the case. So
9 for us aside from wrongful convictions, for us to
10 also take pleas, advise our clients, prepare a
11 defense, the whole system would work better if we got
12 this promptly.

13 CHAIRPERSON LANCMAN: I don't want to
14 turn this into a hearing at this point no less on
15 open file, discovery, et cetera, but do the discovery
16 rules govern when you're supposed to get these
17 statements? No?

18 MARIKA MEIS: I mean to the extent that
19 it's covered by 240-20 which is a statement made by
20 our client conceivably, but no, not-not really.

21 CHAIRPERSON LANCMAN: Okay.

22 MARIKA MEIS: And then just briefly on
23 the ID stuff. Even though we have to do some reform
24 now where they're starting to turn over and/or
25 preserve the photo manager system. You've heard some

testimony about that. You know that is the PIM system. So that records not only the description a law enforcement officer puts in, and the ultimate number of photos that are generated, but also the length of time a witness spends looking at it. So we're now starting to see that be turned over, which is an improvement. But I agree with all the other people who have spoken today that the entire proceeding itself needs to be recorded because there are little nuances and things that are lost. Officers aren't taking notes. They will bring those notes over if they are taking notes. So they're able to sort of insulate and--and protect the process still absent recording, and the best practices are not being implemented at all. We've never seen a recorded identification proceeding, and officers routinely say they are--aren't aware or have not been trained in any of those best practices. So the continued reluctance on the part of NYPD to follow these practices that all the expects and everyone across the nation agrees are necessary is just ongoing.

CHAIRPERSON LANCMAN: Got it. Thank you.
Ma'am.

YUNG MI LEE My name is Yung Mi Lee. I'm
a Supervising Attorney in the Criminal Defense
Practice of Brooklyn Defender Services. I just want
to touch upon a couple of things that were said by
ADA Hale as well as Judge Dwyer. So ADA Hale had
mentioned that one of the main reasons why there are
wrongful convictions is because of ineffective
counsel. Well, the way to address that is to provide
us with discovery because while BDS agrees that we
need better practices, evidence-based procedures,
it's all useless unless the defense attorney gets
that discovery, and Judge Dwyer in his earlier
testimony also I think emphasized the importance of
that. And, I want to give you an example of a case
that we had very recently, which we've been the
effective counsel beneath their effective
investigations. There was an ID procedure, and the
lack of discovery in this case. So our client was
charged with attempted murder of two different
individual, and in this particular case the DA's
office chose not to give us discovery. So, our
client as incarcerated for 1-1/2 years. On the eve
of trial we got what our lawyers call the discovery
dump. So the Friday before trial, we received the

discovery package. In that huge discovery package,
the lawyer saw that the two shooting victims were
shown a photo array, and the first shooting victim
could not identify our client. The second one said I
think it's him. It looks like him. To make matters
worse, our client in that photo array was not even a
suspect. He was just a filler. This is a one-
witness ID case with no confession, no other
witnesses. The very next day a lineup was conducted,
and sure enough there was a positive identification.
Now, even with a double blind lineup, without--clearly
the taint from the photo array, and if we had not
received--received that discovery, it wouldn't have
matter even if--even if we had the double blind
lineup. What makes--what the case even worse is that
within that discovery the ballistics showed that the
bullet had been dis--had been discharged from a gun
that was involved in another shooting close to--close
enough in time where the--the lawyers would have
wanted to investigate that other shooting because in
that [bell] other shooting, our client was not a
suspect. Again, other people were involved in that
shooting. So this is a case where a client has spent
a year 1-1/2 in jail waiting for trial. Our lawyers

really had nothing to prepare for. There was no way they could have conducted an effective investigation until they received that discovery. Fortunately, for us, the judge agreed that we needed to conduct a further investigation, which then again delayed the trial. But this is just an example of why discovery—discovery reform has to go hand-in-hand with any reforms, and identification procedures, and interrogation recording. Without discovery reform it is useless to have evidence-based practices go into effect.

CHAIRPERSON LANCMAN: Thank you. Sir.

DAVID LOFT[off mic} I'm David Loft.

CHAIRPERSON LANCMAN: You are literally the Marianna Rivera of this hearing.

DAVID LOFT: So I'll try my best to be as brief as she usually was. So David Loft, Legal Aid Society, Attorney charged with Post-Convictions and Forensic Litigation. Just to piggyback on what Yun Lee said, the discovery rights in New York are essentially trial-based rights, and so you have this whole idea of a trial dump where you don't get police reports, or witness statements until trial. We're in a plea based system, and 95% of the cases plead out,

and so what that means is in the 95% of the cases the attorneys are flying blind. We don't have police reports. You don't know where--where to begin investigations. You don't know where to subpoena witnesses. For cases where you have stranger where the--the name isn't even disclosed in this county and Manhattan. If there--and if we are a trial based system, also the wrongful convictions are going to come--a--a plea based system, most of the wrongful convictions are going to come from people who pled guilty to crimes they hadn't committed. It's very similar I guess to a lot of talk about, you know, why people confess to crimes they didn't do. I can--I can assure you--I've practiced 26 years--people plead guilty to things they don't do. Without more robust discovery practice, we're not going to help them meet that. I also believe with everything that was said about the need to record interrogations, I can't remember, but it's a very long-winded story about a client that was recently exonerated by Legal Aid Society, Vanessa Gathers with the help of the Brooklyn Conviction Integrity Unit it had all the all the hallmarks there. You know, she was lied to and so they had forensic evidence against her. She was

1 promised she would be able to go home. She was
2 threatened with the perils of women's prison, et
3 cetera, et cetera. The point being that she would
4 have never been convicted that recording been done,
5 and right now the facts of recording throughout the
6 borough is a mess. I've talked to borough heads in
7 Brooklyn, in Queens and in Manhattan. I've gotten
8 different answers each place. One place they record
9 interrogations for sex offenses. One places it's
10 some murder case. Another borough has never seen a
11 statement recorded in their entirety. It's great
12 that they—they claim that in 5,000 cases they record
13 interrogations. We have about 23–230,000 cases a
14 year. So, it, you know, you need to mandate it.
15 Otherwise we're just not going to have information
16 about what goes on in the interrogation room, and why
17 people like Vanessa—Vanessa Gathers, who's a 29-year-
18 old woman who's never—who was 39 at the time and
19 never been involved with the law before, and
20 wrongfully confessed to something and spending the
21 next 20 years of her life in prison. This is
22 critical. The final thing I will say, and it hasn't
23 been covered today, but I saw Dysart here talking
24 about [bell] eyewitness identification, and she was
25

very informative to you about what the issues are in
eyewitness identification. She knows more than I'll
be able—I'd be able to explain to you in the zero
seconds I have left. But New York courts have this
corroboration requirement where it allows judges not
to allow defense counsel to produce eyewitness
experts at trials where eyewitness identification is
a critical part of the testimony. And so what
happens is you may have this shaky eyewitness
testimony with some other evidence corroborating it,
and you have that, you know, big moment at trial.
And that scene I'll never forget their faces. We
will have an expert to contextualize that, and
evidence that is saying that every brick is—every
brick is not a wall. Identification testimony is one
brick. It needs to be litigated fully without regard
to whether there is any corroborating evidence.
Otherwise, you can still no matter whether you have
the best practices, if you don't have an expert at
the table come in and contextualize it, you're going
to wind up with faulty--

CHAIRPERSON LANCMAN: [interposing] And
what's some--

DAVID LOFT: --evidence.

3 CHAIRPERSON LANCMAN: How-how does the
4 judiciary view that kind of expert testimony? Is
5 that now accepted?

6 DAVID LOFT: It's-it's accepted as a-an
7 area where you can bring in an eyewitness, but it's
8 discretionary as to whether the defense can bring him
9 in if there's other corroborating evidence. So if
10 you have someone who has falsely confessed to
11 something that would be corroborating evidence. And
12 so you wouldn't be able to bring in the items to
13 identify-you might not be able to bring in the
14 experts to identify items, and so then--

15 CHAIRPERSON LANCMAN: [interposing] And
16 are-are courts letting you bring in experts to talk
17 about why someone might confess falsely?

18 DAVID LOFT: That's a little more
19 tenuous, but again that's also an abuse of discretion
20 standard, and the courts can deny it. So I think the
21 language needs to be firmed up about, you know, if-if
22 it's important enough where we-we can-we need to
23 record the interrogation, if it's important enough
24 where we need to bring-bring in-where we need to have
25 best practices for eyewitness identification, and if
experts are the ones who are informing us why, they

3 should be--there should be--there should do--defense
4 counsel should be allowed to bring in those witness,
5 and it should be an abuse of discretion not to allow
6 them to bring them rather than, you know, sort of
7 going the other way.

8 CHAIRPERSON LANCMAN: Got it. Thank you
9 very much. We really appreciate it. [gavel] That
10 concludes our hearing.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date September 26, 2016