

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC HOUSING JOINTLY WITH
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS

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HELD AT: 250 Broadway - Committee Rm.
16th Fl.

B E F O R E: RITCHIE J. TORRES
Chairperson

VINCENT J. GENTILE
Chairperson

COUNCIL MEMBERS: Rosie Mendez
James G. Van Bramer
Vanessa L. Gibson
Donovan J. Richards
Laurie A. Cumbo
Rafael Salamanca, Jr.
Daniel Dromm
Costa G. Constantinides
Chaim M. Deutsch
Rory I. Lancman
Helen K. Rosenthal
Bill Perkins

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

Dan Hafetz, Senior Advisor to General Counsel
New York City Housing Authority, NYCHA

David Farber, General Counsel
Executive Vice President for Legal Affairs
New York City Housing Authority, NYCHA

Girard Nelson Vice President
Public Safety
New York City Housing Authority, NYCHA

Howard Gottesman, Deputy Inspector
New York Police Department, NYPD

Margaret diZerega Project Director
Vera Institute of Justice

Alison Wilkey, Policy Director
Prisoner Reentry Institute

Runa Rajagopal, Managing Director
Civil Action Practice
Bronx Defenders

Maria Lopez
NYCHA Resident

Lucy Newman, Attorney
Legal Aid Society

Charles Nunez
Youth Represents Community Advocate

Sergio Jimenez
Brooklyn Defender Services

Ariana Marmora, Staff Attorney
MFY Legal Services

Lauren Macuno (sp?) Deputy Director of Housing
Legal Services NYC

Sebastian Solomon, Director
New York Policy
Legal Action Center

Francine Retovacus(sp?) Student
John Jay College of Criminal Justice
Member Community Development Project,
Urban Justice Center

Jenna Chacon, Student
John Jay College of Criminal Justice
Intern, Community Development Project
Urban Justice Center

[sound check, pause] [gavel]

CHAIRPERSON TORRES: The hearing is coming to order. Good morning, everyone. I'm City Councilman Ritchie Torres, and I Chair the Committee on Public Housing. I'm honored to co-chair this joint hearing with Council Member Vincent Gentile who chairs the Committee on Oversight and Investigations, and I'm also proud to be joined by the Majority Leader Jimmy Van Bramer, Council Member Vanessa Gibson, and Council Member Donovan Richards. We are here to conduct an oversight hearing on a scathing DOI report examining NYCHA's use of permanent exclusion. We will also be hearing a bill, Intro 1207 sponsored by Council Member Vanessa Gibson, which will require NYCHA to make publicly available online and submit to the Mayor and the Council quarterly reports regarding persons who have been permanently excluded from public housing. Permanent exclusion is as complicated a subject as it is controversial. In laying the groundwork the hearing, I spoke extensively with the Commissioner for the Department of Investigations, the General Counsel for the New York City Housing Authority, and a range of advocates and lawyers who have devoted considerable

1 time and energy to the subject of permanent
2 exclusion. The preparation of the committee has been
3 deeply informed by their invaluable insights, and I
4 for one owe a huge debt of gratitude to all of them
5 for generously sharing their time and input. I want
6 to particularly thank the DOI Commissioner, who had
7 several meetings with me, and spent hours guiding me
8 as well as committee staff for the nuances of the
9 report, and making himself so readily available. The
10 DOI Commissioner has reiterated to me on several
11 occasions that he takes seriously his reporting
12 obligations to the City Council. I wish the DOI's
13 Commissioner's commitment to reporting to the City
14 Council was shared by the New York City Housing
15 Authority's Chairperson, who couldn't be bothered to
16 show up to a City Council hearing. If I were the
17 NYCHA Chairperson, and the city's chief dog-watch dog
18 for corruption and mismanagement accused me of
19 endangering the safety of my residents, I would be
20 front and center in responding to those charges
21 rather than shrinking from the City Council hearing,
22 and hiding behind subordination. Now, permanent
23 exclusion has long been the subject of controversy
24 and criticism. There are advocates who assert that
25

1 permanent exclusion per se causes more harm than
2 good, and serves no public policy objectives.
3 Permanent exclusion these critics charge has no
4 empirical basis as a public safety remedy. It
5 eviscerates due process, it imposes the burden the of
6 homelessness without the benefit of public safety and
7 more aggressive practice of permanent exclusion of
8 the kind that DOI envisions would represent a break
9 with the prevailing trend for criminal justice
10 reforms. Even though the concept of permanent
11 exclusion as a public safety remedy is indeed
12 controversial. It is worth noting that neither NYCHA
13 nor DOI is contesting the underlying merits of
14 permanent exclusion. The disagreement between the
15 two agencies lies instead around how to best apply
16 it. The public safety value of permanent exclusion
17 is taken as a given within DOI, NYCHA, the NYPD and
18 the rest of the law enforcement community. A violent
19 crime remains a persistent challenge in public
20 housing. The latest data from the NYPD shows that the
21 violent crime rate is substantially higher in public
22 housing than it is in the city at large. Even though
23 NYCHA houses 5% of the city's population, public
24 housing is the setting for 19% of all shootings, 14%

1 of all murders, 13% of all rapes, 11% of felony
2 assaults and 7% of robberies, but we also know that
3 small subset of the population drives a
4 disproportionate share of violent crime. Almost all
5 residents of public housing are law abiding citizens.
6 Only a few are true drivers of violent crime. The
7 question for us to consider is whether permanent
8 exclusion can serve as precision tool for rooting out
9 the drivers of violent crime, or is permanent
10 exclusion an inherently blunt instrument that
11 produces far more instability than it prevents. Is
12 it a blunt instrument that causes homelessness at a
13 time when the city can least afford it? Though NYCHA
14 has concerns about an over-zealous use of permanent
15 exclusion, and the role it could play in breaking
16 apart families and swelling the rents of the
17 homeless. DOI has responded that if NYCHA was so
18 concerned about homelessness, why is the Housing
19 Authority far more aggressive at evicting law abiding
20 families who struggle to pay their rent, than
21 evicting households that harbor violent criminals.
22 According to statistics provided by DOI, NYCHA is 20
23 times more likely to evict a family for non-payment
24 of rent than for violating a permanent exclusion
25

1 agreement. In 2014, 466 residents were evicted for
2 non-payment of rent compared to 14 residents for non-
3 desirability. In 2015, 204 residents were evicted
4 for non-payment compared to 10 residents for non-
5 desirability. In 2016, 246 residents were evicted
6 for non-payment of rent compared to 12 residents for
7 non-desirability, and I'm fully aware of the
8 objections to permanent exclusion. The criticism
9 that permanent exclusion is little more than an
10 attempt at circumventing due process, or the
11 criticism that permanent exclusion is at best an
12 ineffective and at worst a counter-productive as a
13 public safety remedy. And even though these
14 objections should not be taken lightly—lightly, the
15 hearing will focus not on the philosophical or
16 empirical merits of permanent exclusion per se, but
17 rather on two overarching operational questions:
18 When should NYCHA apply permanent exclusion and when
19 should NYCHA enforce a permanent exclusion to the
20 point of terminating a tenancy? DOI's report offers
21 us one set of answers to these questions. We will
22 now hear a distinct set of answers from the New York
23 City Housing Authority, but before we do, I will the
24

1 floor over to Council Member Vincent Gentile for an
2 opening statement.
3

4 CHAIRPERSON GENTILE: Thank you—thank you
5 Councilman Torres, Chairman of our Public Housing. I
6 am Councilman Vincent Gentile, Chair of the Committee
7 on Oversight and Investigation. I am joined today,
8 as I said, by Council Member Ritchie Torres, chair of
9 the Committee on Public Housing and my colleagues,
10 members of the O&I committee. I don't see any
11 members at the moment of the O&I committee, but
12 they're on their way. Guaranteed they're on their
13 way. We are here today to examine a recent
14 Department of Investigation report on the New York
15 Housing Authority's policies and practices regarding
16 the eviction, and permanent exclusion of residents as
17 a result of criminal conduct. The DOI investigation
18 uncovered potentially serious deficiencies in NYCHA
19 practice that allowed dangerous individuals to remain
20 in public housing despite evidence that these
21 residents presented an increased risk of violence to
22 the community. Specifically, the DOI Report
23 presented a detailed case study examining serious
24 incidents of violence by NYCHA residents in which
25 NYCHA in DOI's judgment improperly declined to pursue

1 household eviction or failed to sufficiently enforce
2 permanent exclusion orders, thereby rendering such
3 agreements toothless and ineffective measures of
4 deterring the presence of excluded individuals in
5 NYCHA apartments. A sampling of the cases examined
6 by DOI reflect what may be a dangerous pattern of
7 NYCHA's unwillingness to aggressively pursue
8 evictions, downsize household apartments or enforce
9 permanent exclusion agreements. Alternatively, the
10 examples highlighted by DOA-DOI, might be exceptional
11 outliers to an otherwise effective approach by NYCHA
12 in which the authority attempts to engage in case-by-
13 case decision making that embodies the uneven-
14 unenviable and difficult task of predicting future
15 risk of violence while balancing public safety
16 considerations and their legitimate value of
17 maintaining family stability where appropriate. I
18 look forward along with Councilman Torres and this
19 committee to hearing testimony today from NYCHA
20 regarding its relevant policies and how the Authority
21 plans to continue to improve its practices to ensure
22 safe public housing environments for all residents.
23 Additionally, I'm interested in hearing the voice of
24 housing advocates and-and directly impacted people
25

1 who I anticipate will provide valuable insight into
2 the human impact of how NYCHA responds to criminal
3 conduct of residents, and potentially challenge some
4 of the underlying methodology of the DOI
5 investigation. With that, I think we can begin.

6
7 CHAIRPERSON TORRES: Actually, I do want
8 to afford Council Member Gibson the opportunity to-

9 CHAIRPERSON GENTILE: [interposing] Oh,
10 I'm sorry.

11 CHAIRPERSON TORRES: --say a words
12 regarding the bill.

13 COUNCIL MEMBER GIBSON: Thank you very
14 much. Good morning everyone. Good morning
15 colleagues. Thank you, Chair Torres and Chair
16 Gentile. Good morning to the Administration. I am
17 Council Member Vanessa Gibson of the 16th District in
18 the Bronx, and I'd like to thank our fellow co-chairs
19 for convening today's very important hearing on
20 permanent exclusion and certainly for including Intro
21 1207 in this discussion, which I'm very proud to
22 prime sponsor. Permanent exclusions are a
23 particularly complex issue, which we all know. While
24 many of us do not want dangerous or potentially
25 dangerous individuals living in our communities, we

1 know that every person excluded is a person who will
2 likely at least temporarily become a part of the
3 growing homeless population we have in our city. We
4 also know that despite our best efforts as a city,
5 young men and women in low-income communities and
6 communities of color are still being convicted of
7 low-level non-violent quality of life and drug
8 offenses. A conviction triggers the permanent
9 exclusion process, but is it always the most just
10 course of action? Intro 1207 before the committees
11 today intends to shed light on what is still an
12 opaque process. This legislation would require the
13 New York City Housing Authority to publish quarterly
14 reports on the demographics of those excluded and
15 what behavior led to the exclusion including drug
16 use, domestic violence, and offsite criminal
17 behavior. In addition to bringing much needed
18 transparency to the process, the data collected by
19 Intro 1207 could and should inform future discussions
20 on public safety in the Housing Authority. Finally,
21 I am very interested in hearing from the
22 Administration, and many of our advocates and
23 interested stakeholders about the utility of
24 expanding Intro 1207 to require NYCHA reports on the
25

1
2 number of exclusions that were a result of agreements
3 that were made with family members versus the number
4 that were adjudicated through the formal exclusionary
5 process. I thank Chair Torres and Chair Gentile for
6 having this hearing today, and certainly on behalf of
7 all of the residents I represent at NYCHA in
8 Claremont, in Webster and Forest and McKinley and
9 Gouverneur and Sedgwick House all of my developments.
10 I certainly am looking forward to today's hearing so
11 we can ultimately continue to achieve public safety
12 in all of our public housing Authority developments
13 across this city. Thank you again, chairs, and I
14 look forward to today's hearing.

15 CHAIRPERSON TORRES: Thank you, Council
16 Member Gibson. With that said, I will call up the
17 first-first panel. We have David Farber, who's the
18 General Counsel for the New York City Housing
19 Authority. We have Dan Hafetz from the General
20 Counsel's Office from the New York City Housing
21 Authority. We have Girard Nelson who is the VP for
22 Safety at the New York City Housing Authority, and
23 then--

24 HOWARD GOTTESMAN: [off mic] Deputy
25 Inspector Howard Gottesman--

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2 CHAIRPERSON TORRES: Thank you.

3 HOWARD GOTTESMAN: --NYPD.

4 CHAIRPERSON TORRES: Thank you. Thank
5 you. The floor is yours.

6 DAN HAFETZ: Chairs Ritchie Torres and
7 Vincent Gentile, members of the committee [coughs]--

8 CHAIRPERSON TORRES: We'll ask him to
9 swear you in before we proceed so--

10 DAN HAFETZ: Sure.

11 LEGAL COUNSEL: Can you raise your right
12 hand. Do swear to tell the truth and the whole
13 truth, and nothing but the truth before this this
14 committee today?

15 DAN HAFETZ: Yes.

16 CHAIRPERSON TORRES: You may proceed.

17 DAN HAFETZ: Chairs Ritchie Torres and
18 Vincent Gentile and members of the committee on
19 Public Housing and Oversight Investigations, and
20 other distinguished members of the City Council.
21 Good morning. I am Dan Hafetz, Senior Advisor to the
22 General Counsel of the New York City Housing
23 Authority. Joining me today are David Farber,
24 NYCHA's Executive Vice President for Legal Affairs
25 and General Counsel, and Girard Nelson, Vice

1 President for Public Safety. We're also joined by
2 Deputy Inspector Howard Gottesman from the NYPD.
3 Under the leadership of Chair Olatoye and through a
4 long-term strategic plan, Next Generation NYCHA, we
5 are changing the way we do business to created safe
6 and clean-safe, clean and connected communities that
7 all New Yorkers deserve. Thank you for this
8 opportunity to discuss NYCHA's permanent exclusion
9 policies, which are designed to ensure the safety and
10 wellbeing of residents while promoting stable and
11 healthy communities. Since we last spoke with the
12 Council, NYCHA has made considerable progress in its
13 approach to this complex issue. The safety of
14 residents remains our top priority, and we've been
15 working with a variety of partners including the
16 NYPD, the Mayor's Office of Criminal Justice,
17 residents and criminal justice experts to create
18 policies that keep residents secure while helping
19 ensure that our city's most vulnerable families have
20 a home that they can afford. Permanent exclusion is
21 a strategy used by NYCHA to promote the safety and
22 security of its residents. Permanent exclusion
23 happens when NYCHA brings [pause] a termination of
24 tenancy action against a NYCHA tenant for dangerous
25

1 conduct that violates the tenant's lease agreement.

2 Instead of terminating the lease, which would mean

3 evicting the whole family, NYCHA can save the

4 resident's tenancy by excluding only the dangerous

5 person. An excluded person is barred from residing

6 in or visiting the apartment as long as permanent

7 exclusion is in place. Permanent exclusion arose for

8 federal litigation in the 1970s when NYCHA was

9 criticized for evicting too many families. Permanent

10 exclusion enables NYCHA to remove individuals who

11 threaten the safety of the community while protecting

12 the tenancy of innocent family members who are not

13 involved in any wrongdoing. Often times, we are

14 saving the tenancy of grandmothers, seniors, children

15 and people with disabilities, families who would

16 likely be homeless if it were not for public housing.

17 We evaluate each case individually looking at all the

18 facts and evidence to assess the risk to the

19 community. From the information that we have at our

20 disposal to the evidence we gather from our own

21 rigorous investigations. When the head of household

22 is a dangerous person, NYCHA seeks eviction. If the

23 head of household is not the person involved in the

24 offense, we believe that permanent exclusion is the

1 best and most sensible remedy for the safety of
2 residents and the stability of the community. For
3 instance, we use permanent exclusion to save the
4 tenancy of a grandmother who's in her 70s living at
5 Patterson Houses, whose grandson, a 29-year-old
6 unauthorized occupant was indicted as part of the
7 federal gang takedown in 2015. Permanent exclusion
8 is not permanent. Tenants can apply to have it
9 lifted, which I'll discuss later in my testimony.
10 It's enforced through unannounced visits by trained
11 NYCHA staff to apartments where individuals have been
12 excluded. If the exclusion is violated, we open a
13 case against the tenant.
14

15 Lasts year NYCHA developed a plan to
16 improved the permanent exclusion process based on
17 recommendations that the Department of Investigation
18 made previously, and our own assessment of the need
19 to modernize our process. To that end, NYCHA led the
20 development of the digital databased shared by the
21 Authority the Police Department that ensures NYCHA
22 gets accurate, comprehensive information on criminal
23 cases from the NYPD quickly. A progress and
24 information sharing was noted in DOI's report last
25 month. We also worked with the NYPD to create

1 criteria for high priority cases concerning violence
2 such as murder, sex crimes, robberies, assaults and
3 crimes involving guns. High priority means moving
4 cases faster and usually within 60 days, although all
5 investigations of dangerous offenses are a priority
6 to NYCHA and are generally handled within several
7 months. These enhancements enable us to focused our
8 resources on addressing dangerous offenses more
9 efficiently. In the year following the DOI's 2015
10 Report, the NYPD sent 80% more cases essentially to
11 the NYCHA Law Department. A quarter of the cases
12 received since the 2015 report were designated as
13 high priority, which we handled aggressively leading
14 to more permanent exclusions than in non-high
15 priority cases. Throughout the past two years, we
16 worked with a range of partners to an unprecedented
17 degree to craft new permanent exclusion policies
18 informed by social science and data. Our new
19 guidelines clearly spell out for residents and staff
20 when NYCHA will pursue permanent exclusion, and how
21 it can be lifted. There are several key
22 improvements. We developed clear written guidelines
23 for when permanent exclusion can be lifted. There
24 are now two paths for this: Evidence of changed
25

1
2 circumstances such as participation in rehabilitative
3 program, and a certain period of crime through time,
4 demonstrating that the individual is no longer a risk
5 to the community. With our stakeholders we developed
6 a new user friendly application for lifting the
7 permanent exclusion. The form is online and
8 submission will become available through our website
9 and self-serve kiosk at our Property Management
10 offices. By simplifying this process and lifting
11 exclusions that are no longer warranted, we can focus
12 our limited resources on those who present a danger
13 to the community rather than those who do not. We
14 are developing clear written guidelines on when
15 permanent exclusion is sought. Violent crimes are
16 prioritized for exclusion and NYCHA staff now have
17 guidance on the kinds of offenses that are likely to
18 present a risk of future harm to the community, as
19 well as the factors that may mitigate the risk. This
20 guidance is based on the latest research, but every
21 case that comes across our desk is assessed
22 individually. We started an educational outreach
23 campaign to better familiarize the community with
24 these policies and guidelines. We already met with
25 the Presidents of NYCHA's Resident Associations as

1 well as our Leadership Councils to discuss these
2 changes and get their input, and there will be
3 targeted outreach at developments with a high number
4 of permanent exclusions. New and new and revised
5 communication materials including FAQs and posters
6 are part of the education campaign, and can viewed on
7 our website. We will train NYCHA case handlers on
8 the new policy and procedures, and on implicit bias.
9 It will bring in on experts on risk assessment, risk
10 mitigation and criminal justice reform. We already
11 released some of our new policy new forms and
12 policies, and more will be available in the coming
13 months. In addition to in addition to publishing the
14 permanent exclusion policies for the first time, we
15 are publishing an annual report on our website that
16 will provide statistics on the number of
17 investigations of dangerous conduct reopened.
18 Permanent exclusions, terminations and dispositions
19 from our administrative process, the number of
20 applications to lift permanent exclusions and the
21 number approved. In order to evaluate this issue from
22 every angle and create a new approach that best
23 serves the community, we developed these new policies
24 and the associated forms and communication materials
25

1 in collaboration with our stakeholders from residents
2 to advocates. For instance, the Vera Institute of
3 Justice and John Jay College Professor Fritz Umbach
4 released a report this past February that outlined a
5 host of recommended changes to our policies and
6 procedures based on extensive review of our practices
7 and significant engagement with us. This report and
8 its recommendations are vital to grounding our
9 practice in the best of research, risk and
10 rehabilitation. We're bringing virtually all of
11 these recommendations to fruition. Over the past two
12 years, we also met extensively with residents
13 including victims and formerly incarcerated, the
14 Citywide Council of Presidents and the Youth
15 Leadership Councils. Legal and community advocates
16 and the NYPD, DOI, prosecutors offices, MOCJ, the
17 Department of Probation and the Department of
18 Corrections.

19
20 I'd now like to make a few points about
21 the DOI's recent report, which received significant
22 attention a few weeks ago. First, we object to the
23 notion that NYCHA is harboring criminals. That is
24 simply not true. Second, these cases are not as
25 simple as the report would suggest. They require a

1 fair and effective approach. Third, the report
2 assumes that evicting an entire—entire innocent and
3 vulnerable family promotes safety. We reject this
4 premise. Finally, the report suggests that there is
5 a tremendous problem. However, the reality is that
6 the vast majority of NYCHA residents are not involved
7 in wrongdoing. To suggest otherwise, unfairly
8 stigmatizes the entire public housing community,
9 which is overwhelming—overwhelmingly a community of
10 hard working families, the backbone of the city.
11 Here are the facts that disprove DOI's claim that
12 NYCHA allows criminals to reside in public housing.
13 In over 5,000 visits to apartments during the period
14 covered by the DOI report, NYCHA found approximately
15 130 violations of permanent exclusion, 57 of which
16 have reached outcomes that we can share. Of those,
17 20 were withdrawn for good reasons: The permanent
18 exclusion had been lifted, the tenant was deceased or
19 the offender was incarcerated or the inspectors were
20 refused access by a visiting relative who didn't know
21 they were supposed to let our investigators in. Of
22 the violations where the excluded person was actually
23 found in the apartment, 16% of the cases resulted in
24 termination or the tenant moving out. For nearly all
25

1 of the other cases, we continued the permanent
2 exclusion for good reasons such as the fact that the
3 family had serious vulnerabilities and the excluded
4 person posed—and the excluded person posed little
5 threat to the community, or there was long history of
6 compliance with the exclusion. So eviction based on
7 one violation would have been unwarranted. For
8 example, there was a case of a very old tenants of
9 Redfern in her 70s whose son was excluded 20 years
10 ago. Her son picked up her medication because she
11 was recuperating from surgery, and the elevator was
12 out of service for re—for rehabilitation, which we
13 confirmed. But take the case of a 61-year-old tenant
14 with disabilities who lives with two disabled sons
15 and a disabled granddaughter Lafayette Gardens. The
16 excluded person came to the apartment uninvited and
17 the tenant tried to get him to leave. In light of
18 the circumstances, NYCHA decided to give her another
19 chance. In many of its examples, the report
20 concludes that NYCHA should have evicted an entire
21 family and that NYCHA had the evidence to prove the
22 violations of permanent exclusion. This is not
23 accurate. In many cases cited in the report, the
24 offender provided a NYCHA address, but we didn't find
25

1 sufficient evidence that the offender was actually
2 living at NYCHA, or we found evidence indicating that
3 the offender was living somewhere else. For
4 instance, the registered sex offender cited in the
5 report listed an old NYCHA address with the State Sex
6 Offender Registry. Upon investigating, we found no
7 evidence he was living there. Instead, we found
8 evidence that he was living somewhere else.
9
10 Ultimately, we are guided by our responsibilities as
11 a landlord, a provider of affordable housing to the
12 city's neediest and most vulnerable families. It
13 would be irresponsible and unconscionable to evict
14 innocent grandmothers and children—and children for
15 the bad acts of friends or family, and doing so would
16 often put them on the street or in a shelter. To
17 illustrate, the report suggested that we should have
18 evicted a 27-year-old and her two children ages 7 and
19 1 because her partner, an unauthorized occupant was
20 charged with felony gun possession. This we believe
21 would not solve the root problem of crime in the
22 destabilized communities rather than strengthen.

23 That said, we acknowledge that there are
24 areas when we can do better. In addition to the
25 efforts I described to create a smarter, more

1 efficient and more transparent process that
2 identifies the highest priority cases. We are
3 reviewing our policies and procedures to see where we
4 should act more aggressively on permanent exclusion
5 violations, and we agree with several of the DOI's
6 reports or their recommendations. When residents
7 fail to show up for a hearing, and seek to reopen
8 their default, we should contest these applications
9 more often and more systematically when warranted by
10 the evidence. When feasible and appropriate, we can
11 do better in requiring tenants to transfer. For
12 example, when members of the household are involved
13 with a local gang. We will provide more training for
14 our investigators. For example, in tactical safety
15 and de-escalation strategies. [pause]

17 Creating safe and secure communities
18 requires a holistic approach with a focus beyond
19 exclusions and evictions. Our permanent exclusion
20 policies were developed as part of a comprehensive
21 strategy that includes a host of other safety
22 measures. Thanks to support from the Mayor, City
23 Council and Manhattan District Attorney's Office, we
24 have invested more than \$130 million over the past
25 three years on critical infrastructure upgrades at

1 our developments installing enhanced front entrance
2 security systems, and over 4,700 exterior safety
3 lights, and bringing our total number of security
4 cameras to more than 13,800. We launched a Public
5 Safety Advisory Committee that enables residents,
6 staff, the NYPD and other partners to collaborate on
7 creating safer communities. The Mayor's Action Plan
8 for Neighborhood Safety brings together more than 10
9 city agencies with community groups and non-profits
10 to reduce crime at 15 NYCHA developments through a
11 variety of initiatives. Through our Family Re-Entry
12 Program, we are working to stabilize families and
13 communities and reduce recidivism by providing people
14 with histories of justice involvement with the
15 support and stable housing they need to succeed. Our
16 mission is to provide safe, decent and affordable
17 housing that offers a vital pathway to opportunity
18 for low-income New Yorkers. For many families NYCHA
19 is the difference between housing stability and
20 homelessness. We are neither law enforcement nor the
21 Criminal Justice System, but a landlord that must
22 manage the balance of determining when eviction makes
23 sense, and when it does more harm than good to the
24 community and the city at large. We're making good
25

1 strides. Through enhanced collaboration with the
2 NYPD and clear guidelines, we're moving faster to
3 exclude dangerous individuals. By getting smarter
4 about who needs to be excluded and working to lift
5 the exclusions of those who don't pose a threat,
6 we're promoting stability and directing our resources
7 where they're needed most. There are no simple easy
8 solutions here, but we will continue to work with
9 residents, the NYPD, DOI, MOCJ, City Council, experts
10 and advocates to establish the best and most
11 reasonable approach for the community. Thank you for
12 your support as we strive to fulfill our Next
13 Generation NYCHA vision of safe, clean and connected
14 communities. We're happy to answer any questions you
15 may have.
16

17 CHAIRPERSON TORRES: Thank you, Mr.
18 Hafetz. So I want to start with those two
19 overarching questions of when to apply for exclusion
20 and the question of when to enforce permanent
21 exclusion to the point of eviction. And on the first
22 question there seems to be a consensus that as a
23 general rule NYCHA should pursue eviction-exclusion
24 rather than eviction in the first instance, exclusion
25 of one or a few members of the household rather than

1 eviction of the whole household. But the DOI asserts
2 that there should be an exception to the rule.

3 According to DOI, in cases where the leaseholder knew
4 or should have known that the serious offender in
5 question posed a public safety risk. DOI recommends
6 that NYCHA prioritize eviction over exclusion. Do
7 you agree with DOI's analysis, and if you disagree,
8 what—what is the right standard for determining when
9 to pursue exclusion?
10

11 DAN HAFETZ: We—we disagree with DOI's
12 analysis. You know, again safety is our—our top most
13 concern. So what we have to do in each and every
14 case is we have to conduct a risk assessment. There
15 are basically three things that we need to—to show
16 and to prove in our cases. We need to prove that the
17 offense was actually committed. We need to prove
18 that the offender is connected to the apartment, and
19 we need to—and we assess the—the tenant of record,
20 the head of household's involvement in the offense.
21 Where there is no connection to the apartment, we
22 can't move forward on a case. So if the offender
23 provides an address at arrest, that is not enough
24 evidence to move forward on a case, which threatens
25 eviction of the entire household. When the tenant is

1 not involved in the crime, and there are cases where
2 the tenant is involved, and we move forward on those
3 cases, and we move forward aggressively. When the
4 tenant is not involved, and our assessment is that
5 eviction is not the right remedy. The best way to
6 advance public safety is to—is a targeted approach
7 would remove the dangerous person.

9 CHAIRPERSON TORRES: So what do you make
10 of the DOI's standard of know or should have known
11 that an offender posed a public safety risk?

12 DAN HAFETZ: I thin that there's—I think
13 there might be--

14 CHAIRPERSON TORRES: The DOI is
15 suggesting that even if the head of household was not
16 directly involved in the criminal activity that
17 knowledge of the criminal activity or knowledge of a
18 serious public safety risk should suffice to justify
19 an eviction. How do you respond to that?

20 DAN HAFETZ: All of these cases have to
21 be assessed individually. I think what we see in the
22 report is that there's a leap from the face of the
23 criminal changes. So someone was arrested for, you
24 know, possession of a gun, and the leap is from that
25 to the conclusion that the tenant knew or should have

1 known, and that is not always the case. There are
2 case where the tenant knew or should have know, and
3 is complicit. So if there is a drug operation
4 operating out of the apartment, and the tenant is
5 turning a blind eye, and allowing people to come to
6 the apartment to purchase drugs, that is something
7 that we would—that we would move on for eviction.

9 CHAIRPERSON TORRES: I'm not sure how
10 that is inconsistent with DOI's finding. [pause]

11 DAVID FARBER: Good morning.

12 CHAIRPERSON TORRES: Yeah.

13 DAVID FARBER: David Farber, General
14 Counsel of NYCHA. Just to—I'd like to add—to add to
15 what Dan was saying more specifically knew or should
16 have known, the consequences of moving to evict means
17 that you are making a decision that a person should
18 no longer have the right to remain in their home. In
19 many cases we're talking about parents with siblings
20 who've lived in this home for many years. That is
21 not a decision that we should take lightly. Simply
22 to say because other people knew or even should have
23 known, in many cases, most cases that is simply not
24 enough. We are looking to remove the person who is
25 engaged in criminal activity, the person—that is the

1 person who likely to present a risk to NYCHA and
2 NYCHA--
3

4 CHAIRPERSON TORRES: [interposing] And
5 that--that seems to be inconsistent with the answer
6 you just gave. You just said that if there was a
7 drug operation in the apartment, and even if the
8 tenant or the head of household was not directly
9 involved, if you knew about it, then you should be
10 held accountable in my-- So, I'm not clear. What
11 now?

12 DAN HAFETZ: So he's giving a very
13 specific example where the tenant is allowing the
14 apartment to be used right? That is--that is
15 categorically different that a situation where
16 someone was arrested for possession of a gun, and the
17 accusations are such that the tenant knew or should
18 have known that the individual was arrested with a
19 gun. And, what the General Counsel, the General
20 Counsel just made very clear is when we look at the
21 whole situation, and we look at the whole picture of
22 the family, what interest would it advance evicting
23 that person, the--the grandmother, the mother in many
24 situations for--for the possession of the--of a--a very
25

1 dangerous weapon when simply removing the person
2 would suffice.

3
4 CHAIRPERSON TORRES: Well, it seems to me
5 that DOI based on my conversations with the
6 Commissioner that he agrees with the individualized
7 approach judging each case by its own set of
8 circumstances, and hat he would agree that pursuing
9 exclusion in the place of eviction is why there's
10 general proposition, but could you imagine a
11 circumstance in which eviction might actually be the
12 best approach rather than exclusion depending
13 whether—whether the tenant know or should have know?

14 DAN HAFETZ: Yea, there are situations
15 where eviction is the right approach. I think--

16 CHAIRPERSON TORRES: [interposing] Even
17 if there's no direct involvement in the criminal
18 activity?

19 DAN HAFETZ: No, that's—that's—that's not
20 what I'm—that's not what I'm suggesting. The vast
21 majority of our residents are, as you said, law
22 abiding, not involved in any crime. The vast, vast
23 majority of the cases we receive where we're alerted
24 about dangerous individuals in public housing, the
25

1 tenant is not involved. The cases where the tenant
2 is involved, we move forward in those cases.
3

4 CHAIRPERSON TORRES: Yeah, everyone
5 agrees that if there's direct involvement, you don't
6 really need exclusion. At that point, you can pursue
7 eviction, right? But in cases where there is no
8 involvement, but knowledge of criminal activity, DOI
9 seems to be suggesting in some of those cases NYCHA
10 should opt for eviction in the place of exclusion.

11 DAN HAFETZ: So--

12 CHAIRPERSON TORRES: [interposing] I'm
13 not clear how you--where you disagree with that
14 analysis.

15 DAN HAFETZ: So the example I gave in my
16 testimony of you know, 70 something year-old
17 grandmother who's grandson was arrested for
18 involvement in a gang. So the suggestion there would
19 have been perhaps, and I'm not saying even in that
20 case that we--that she knew or that she should have
21 known, or that we could even prove that because we
22 would have to be able to prove that. But the
23 suggestion that let's say we could prove that that--
24 she knew that her son was involved in a gang that
25 evicting here would have been the right solution we

1 disagree with. And so that's when we say case-by-
2 case we have to look at all of that. So we will
3 assess can we even prove the known or should have
4 known, and if we can, that sill may not suffice, you
5 know, given the really important interests that are
6 at stake, making someone homeless who is extremely
7 vulnerable.
8

9 CHAIRPERSON TORRES: Because let's
10 stipulate you can prove, could you imagine obviously
11 this could have been a case of the grandmother, but
12 can you imagine a set of circumstances in which it
13 would be justifiable for NYCHA to evict given the
14 tenant's knowledge of criminal activity?

15 DAN HAFETZ: Again, we have to—it is—
16 these risks—we conduct a risk assessment. So the
17 risk assessment is--

18 CHAIRPERSON TORRES: You—you made that
19 clear enough.

20 DAN HAFETZ: Yeah, no, so the risk
21 assessment is—what is the likelihood that—that
22 exclusion will be sufficient to removing the
23 dangerous person from public housing, and removing
24 the threat to public housing? That's part of it. So
25 if we are—if—if we are confident that the exclusion

1 is sufficient, then there—we would not need to move
2 forward. We're talking about—I think when we—the
3 example I gave earlier of—of drug dealing when the
4 tenant is—is really—is the known and should have
5 known really means involvement, involvement in the
6 crime. That is something that we--

8 CHAIRPERSON TORRES: [interposing] Okay,
9 so that's what I want to—so your standard is
10 involvement that absent involvement that they—we
11 should pursue it exclusion—in the place of eviction.
12 I just want to understand what NYCHA's standard is
13 for deciding when to.

14 DAVID FARBER: I think—I think the point
15 that we're trying to make here is that these are
16 case-by-case analyses, and I understand that you're—
17 you're—you're asking us to lay out a more specific,
18 precise maybe a set of—of standards and guideline,
19 but I think it's—it's—it's important to recognize
20 that the way these cases work is that you—you must
21 consider it on a case-by-case basis, and I think what
22 DOI—even though DOI does—says that they also
23 undertake a case-by-case analysis, that they often
24 come out more aggressively as to eviction that we
25 believe is appropriate given all the circumstances.

1 There are a range of factors and issues, and
2 standards about knowledge. You should have known.
3 If you knew, what did you know? You know what—those
4 are—those are very—those are very specific details
5 that we consider. I think it's important to come
6 back to the main point, which is that this is a case-
7 by-case analysis. There are many considerations,
8 there are many factors. We have to consider both
9 criminal issues and also the homelessness issues, the
10 family issues, impacts on innocent members of the
11 family. That's how we do it.

13 CHAIRPERSON TORRES: Well, if you're the
14 head of household then you have a member of a
15 household who commits a serious crime or a violent
16 crime, my understanding is you could face one of five
17 possible consequences, right? You either—there's
18 eviction, exclusion, probation, withdrawal of the
19 charges, and then—and then downsizing. So DOI says in
20 the situation where there lease holder had no
21 participation in or knowledge of the crime and where
22 the crime is connected to a street crew or a gang
23 based in a specific housing development of a specific
24 neighborhood, do I recommend the use of downsizing?
25 DOI seems to view downsizing as a means of mitigating

1 or eliminating the public safety risk without causing
2 the head of household to become homeless. Do you
3 agree with that conception of downsizing without use
4 of downsizing?
5

6 DAN HAFETZ: Yes, we do and part of the
7 stipulation of agreement in permanent exclusion cases
8 is the tenant agrees to downsize. I think what we can
9 do better at NYCHA is assessing when we should be
10 exercising that in a more rigorous way so that there
11 is -there is more follow through. In the situations
12 where, you know, downsizing would have an impact on
13 reducing the likelihood that the dangerous person
14 could return, but we add that there are other
15 considerations. If a family has been in the
16 development for, you know, decades this is where
17 their social network exists. Children are enrolled
18 at school there. Simply uprooting them from the
19 development while it may potentially reduce the risk
20 that the-the dangerous person returns, there is
21 significant cost for that. So that-those are the
22 considerations that we look at. We're conducting a
23 review about how we both, you know, can tighten our
24 process for follow-through, but also, you know, more
25

1 systematically examine those considerations so that
2 we're making the right decision.

3
4 CHAIRPERSON TORRES: And if the tenant is
5 eligible for downsizing for the—the public rate for
6 safety reasons that will be laid out, what priority
7 would the tenant enjoy in the transfer of those?

8 DAN HAFETZ: So, in a—in a system where
9 there are about 24 priorities, this would be second
10 priority. So, it's, you know, essentially right
11 sizing is—is the second. It's after habitability
12 with the apartment whether the apartment is no longer
13 habitable.

14 CHAIRPERSON TORRES: This would be
15 second--

16 DAN HAFETZ: This would be--

17 CHAIRPERSON TORRES: --after
18 habitability?

19 DAN HAFETZ: Yep.

20 CHAIRPERSON TORRES: This is higher than
21 domestic violence?

22 DAVID FARBER: It is. It is. Part it is—
23 this is part of—there's essentially two groups of
24 priorities. There's the highest priority what we call
25 T-Zone and there's a range of subsets of that

1 priority. This is one of those priorities. Then
2 there's a—the lesser set of priorities for—so for
3 instance typical right sizing, downsizing or—
4 seeking a smaller apartment or higher apartment, but
5 this—this issue falls in the group of the highest
6 priority transfers. And so, we have to balance these
7 transfer needs with other very important transfer
8 needs. So, again, a multitude of factors.

10 CHAIRPERSON TORRES: So it falls within
11 the same category as domestic violence? Is that what
12 we heard?

13 DAVID FARBER: Yes.

14 CHAIRPERSON TORRES: But what are—what
15 are the—what others—what are the cases that fall
16 within T-Zone? Just first.

17 DAVID FARBER: I—I'm not familiar with the
18 other, the other categories. We can get back to you
19 on that.

20 CHAIRPERSON TORRES: And do you know the
21 number of tenants that have been transferred for
22 public safety reasons relating to permanent exclusion
23 to provide an alternative to permanent exclusion?

24 DAVID FARBER: We'll have to get back to
25 you with those numbers?

1
2 CHAIRPERSON TORRES: Now, on the second
3 question of when to enforce permanent exclusion to
4 the point of eviction, according to DOI, in cases
5 where the leaseholder is repeatedly and willfully
6 harboring a serious offender in violation of a
7 permanent exclusion agreement, NYCHA should pursue
8 termination cases right to the hearing stage rather
9 than left to settle those cases with a new permanent
10 exclusion agreement or probation. Suppose if there
11 is a tenant who's repeatedly violating a permanent
12 exclusion agreement with impunity, at what point do
13 you decide to enforce the agreement to the point of
14 terminating the tenancy?

15 DAN HAFETZ: So I think that—I think it's
16 important to observe that the violations where the
17 offender comes back to the apartment are rare, and
18 the violations where the offender comes back to the
19 apartment, and it's more than the first violation or
20 even rarer. So in those limited situations where is
21 an egregious violation, we would agree that, you
22 know, that we need to more strongly enforce the
23 permanent exclusion. Still, everything is case-by-
24 case. So we have to look at the risk of the offender
25 coming back. You have to look at the seriousness of

1 their crime and the offense that they committed, they
2 danger that they posed to the community. You have to
3 look at the family situation and the vulnerabilities.
4 We also have to look at the history, you know, we
5 look at the history of the compliance with the
6 permanent exclusion.
7

8 CHAIRPERSON TORRES: The DOI is claiming
9 that NYCHA's enforcement is so lackadaisical that it
10 renders permanent exclusion ineffective as a public
11 safety remedy.

12 DAN HAFETZ: So DOI overstates the
13 problem. What they regard as a violation of
14 permanent exclusion is not actually a violation or
15 one that we could prove. So for example, if there's
16 a permanent exclusion in place and the individual
17 gives the address at arrest, that doesn't mean the
18 individual is actually living there. People live
19 transient lives. They need—they need an address that
20 they can put down at certain times. That doesn't
21 actually mean the person there—lives there. There's
22 an example in the report of a registered sex
23 offender, which I mentioned in my testimony, who
24 provides that information to—provided the—the
25 tenant's address to—the State Sex Offender Registry.

1 There was no evidence that the tenant—that this
2 individual was actually living there or visiting or
3 violating the permanent exclusion. In fact, there
4 was contrary evidence that he was living somewhere
5 else. So I think what happens in the DOI report is
6 that it starts—they—they pile up allegations. They
7 pile up arrests—the address given at arrest, and then
8 they turn that into the suggestion that there are
9 these more, you know, rampant or egregious violation
10 of permanent exclusion and that's not the case.
11

12 These are—are rare.

13 CHAIRPERSON TORRES: Yeah, and I think
14 what we need to do in some cases because if there are
15 facts that are missing from the examples cited in the
16 report, I think it would be helpful to hear those
17 facts. But I DO—DOI so for our point is that if the
18 enforcement works when the threat of eviction is
19 credible, right, and I—how—how many tenants have been
20 evicted as a result of repeat violations of permanent
21 exclusion agreements?

22 DAN HAFETZ: So in a—a sample that we
23 looked at last year that covered the same period
24 were—that DOI looked at so there were 130 violations
25 of permanent exclusion. There were about 57 where

1 the person was actually found in the apartment. So,
2 that's the 57 that we really should focus on. Of
3 those 57—I'm sorry, there were 37 where the person
4 was actually found in the apartment. So of those 37,
5 16% were brought to eviction or the tenant moved out.
6

7 CHAIRPERSON TORRES: And that number is--

8 DAN HAFETZ: That number is 6 out of 37.

9 CHAIRPERSON TORRES: Six out of them
10 over-over the course of what period of time?

11 DAN HAFETZ: From January through October
12 or through-through September.

13 CHAIRPERSON TORRES: Okay, now-now DOH
14 pro-DOI provided the Public Housing Committee with
15 some numbers in the range of 12, 14, 10. Are those
16 consistent with your numbers or--?

17 DAN HAFETZ: Those numbers are what's--
18 what is correct about those numbers is-is that there
19 were at least that many, but those-it's incorrect
20 because it does not take in the whole picture. So,
21 when we-essentially it's a coding issue. When we
22 evict families, we first bring an administrative
23 action. So it is reporting that there were, you
24 know, 16 resulting from administrative action, but
25 the next step is to go to Housing Court where we

1 actually have to bring a holdover proceeding. That's
2 the bulk of our terminations for non-desirability for
3 exactly what we're talking about here are reported in
4 that category. So it is a gross misunder—it's a
5 gross underestimate of—of what we're actually doing.

7 CHAIRPERSON TORRES: I'm sorry. I'm not
8 following why it is.

9 DAN HAFETZ: Because it's just—it's—
10 they're just not reported, and they're reported
11 elsewhere in other statistics. So for example in
12 2016 through November, there were 261 evictions in
13 the—what we call the licensee holdover category. So
14 this is very technical, but I think what we can do is
15 a better job of, you know, providing more accurate
16 metrics on the kinds of cases that we bring to
17 eviction and the reasons why. So in that 261
18 licensee holdover evictions, include all of our
19 evictions that result from a case that begins
20 administratively, the non-desirability case. So it
21 is well more than 16. There were 103 terminations
22 last year for non-desirability.

23 CHAIRPERSON TORRES: 103:

24 DAN HAFETZ: Correct.

1
2 CHAIRPERSON TORRES: Okay, so okay. I
3 want to look at one of the cases that DOI cites in
4 the report. Page 15. Christopher Jones and it's a
5 case regarding the enforcement rather than the
6 application of permanent exclusion. Christopher
7 Jones lived in Van Dyke house. Raised by his mother,
8 a 43-year-old Tanya Jones. In 2006 at age 16,
9 Christopher assaulted a man on a subway and pled
10 guilty to a C felony robbery charge. In 2007, at age
11 17 Christopher shot a woman at Van Dykes Houses and
12 received a 3-1/2 year prison term. In 2010, NYCHA
13 settled the first case against Tanya Jones with the
14 permanent exclusion of Christopher from the
15 apartment. In 2012, NYCHA investigators found
16 Christopher in the apartment, and so NYCHA brought a
17 second tenancy termination action against Ms. Jones.
18 In February 2014, Christopher threatened his
19 girlfriend with a gun and choked her until she passed
20 out in Ms. Jones' apartment. He pled guilty to
21 criminal possession of a weapon and received an order
22 of protection. In July 2014, Christopher was found
23 in Ms. Jones' apartment violating the Order of
24 Protection, which led him to plead guilty to
25 attempted assault. In 2000—in October 2014,

1 Christopher was arrested twice in two days for
2 assault, possession of a weapon and unauthorized use
3 of a vehicle. Even though Christopher had not--had
4 not only been found but arrested repeatedly in in Ms.
5 Jones' apartment, and even though his parole officer
6 saw him in the apartment on 18 occasions, in 2015,
7 NYCHA chose not to terminate the tenancy of Ms.
8 Jones, but rather to settle the second case with
9 probation. In July 2015, Christopher was arrested on
10 federal bank fraud and conspiracy charges. In
11 December 2015, Christopher was arrested again for
12 possession of a loaded firearm, and he revealed to
13 the NYPD that he resided in Ms. Jones' apartment. He
14 was sentenced to four years for bank fraud and 2 to 4
15 years for the weapons charge. In 2015, instead of
16 proceeding with eviction, NYCHA withdrew the third
17 tenancy termination action. Are those--were those
18 facts as represented by DOI accurate?

19
20 DAN HAFETZ: I can't attest to each and
21 every one of the--

22 CHAIRPERSON TORRES: [interposing] Okay.

23 DAN HAFETZ: --facts that were--that were
24 mentioned. I, you know, first want to say that this
25

1 was, you know, obviously--this a--a serious case. This
2 is one that we take very seriously.
3

4 CHAIRPERSON TORRES: And it's worth
5 noting this a rare case. This is not--

6 DAN HAFETZ: This is--

7 CHAIRPERSON TORRES: --unrepresentative of
8 most cases, but that even--but I think the rare cases
9 matter to DOI and I'd be curious to hear your
10 analysis of it.

11 DAN HAFETZ: Yeah, absolutely. So, I
12 think is a case where you, you know, you list arrests
13 and--and convictions and it begins to suggest that
14 this--this family has just got to go. But when you
15 actually look at this case, it is more complicated
16 than DOI lets on. So the woman who would have been
17 evicted this mother of two disabled children did not
18 want this person coming back, and to have evicted her
19 we conclude--I and I sat down with the attorney who
20 handled this case. This attorney is a former Housing
21 Bureau police officer. She comes in every--to work
22 every day. Safety is her foremost concern, the
23 safety of our residents. She takes this extremely
24 serious--seriously and I asked her. I said, you know,
25 what was it about this case? Why did we not evict

1 the family? And she said, for me it was the kids.
2
3 To have evicted this woman, you know, with two
4 disabled children would have been—it would have gone
5 too far. And we, you know, I think it's also worth
6 noting that in this case, that some of the offenses
7 that he was arrested for were people who were inside
8 the apartment being victimized. So, it's—you have to
9 step back and say what would eviction accomplish, and
10 it was our conclusion that a violence eviction was
11 not the right solution.

12 CHAIRPERSON TORRES: Alright, and you
13 concluded that she was in some sense a victim of
14 domestic violence or--

15 DAN HAFETZ: But--

16 CHAIRPERSON TORRES: --it sounds like the
17 son was in her apartment against her will. Was she
18 in fear of it?

19 DAN HAFETZ: Well, the--yes, the--the son
20 was--this individual was coming back to the apartment
21 and, you know, against her--against her will.

22 CHAIRPERSON TORRES: Right, so I--is
23 NYCHA's position that is that even if the excluded
24 member is repeatedly returning to the apartment,
25 there is reason believe that there might be some kind

1 of domestic abuse or domestic violence that that
2 might be an extenuating enough circumstance to?

3
4 DAN HAFETZ: Well, we wouldn't evict a-I
5 mean we-we wouldn't evict a family where the-the
6 tenant is the victim of domestic violence, and on the
7 basis of the conduct of the person who's committing
8 it.

9 CHAIRPERSON TORRES: And would you
10 consider this case one of those cases?

11 DAN HAFETZ: This-this case is for-this
12 case is more complicated. The person who was-who was
13 assaulted was not a tenant of record, was not-and was
14 not on the lease, was--was unauthorized.

15 CHAIRPERSON TORRES: I'm sorry, the
16 tenant who was?

17 DAN HAFETZ: Was not-was not the tenant,
18 was not so-

19 DAVID FARBER: I think so-so-I think to
20 your point, this is an example of a case where the
21 tenant wanted the person to not return to the
22 apartment, and made efforts to do that, and clearly
23 would be limited in her ability to keep the person
24 out. So, if we evict the tenant and her disabled
25 children-

CHAIRPERSON TORRES: [interposing] Yes.

DAVID FARBER: --then we are exacerbating, you know, the challenges that she's already facing in her life. Can we lay out hard and fast rules about when we should evict or not, when--when it's gone too far, when we have to address the criminal presence, the return of the--the occasional return of the criminal offender. When that becomes paramount to the family's situation, we can't lay out hard and fast rules. I think this is--this discussion of one case is illustrative of the kinds of discussion that we could have on many of the cases in the DOI report. Things are just not as simple as they would appear to be.

CHAIRPERSON TORRES: Yeah, although I wonder because it seems like you grapple with the human consequences of evicting a whole family from public housing, but one could argue that that's an argument against permanent exclusions in general. It's as if--if--one could argue that there's never a circumstance in which--unless short of that head of household participating criminal activity directly, our public housing is full of sympathetic cases about grandmothers and mothers with children or disable

1 children who would otherwise be homeless without
2 public housing, and that's the vast majority of case
3 in public housing. So, why even have permanent
4 exclusions in the first place if the consequences of
5 enforcing that are too inhumane?
6

7 DAN HAFETZ: Well, I think the reason we
8 have it is because of those situations, because, you
9 know, it's the rare example whether the tenant is
10 involved. Our foremost responsibility is promoting
11 the safety of our tenants. That means that if
12 someone is dangerous and is a threat to the NYCHA
13 community, they are not allowed back in that
14 apartment. So that is why we take a measured
15 unlimited approach. Now, yes, tenants are exposed to
16 the threat of eviction if they violate that, but the
17 evidence shows that the vast, vast majority of
18 permanent exclusion orders are complied with. The
19 fact that we very, very rarely find someone in the
20 apartment, it shows that the program is measured and
21 it works.

22 CHAIRPERSON TORRES: How do you measure
23 compliance?

24 DAN HAFETZ: We conduct unannounced
25 visits of apartments that are subject to permanent

1 exclusion. Conducted over 5,000 last year, and if
2 the individual is found in the apartment, you know,
3 they violated. So they fact that, you know, in 37
4 cases out of 5,000 visits someone was found in the
5 apartment. I think, yeah, are there—is it acceptable
6 that--

8 CHAIRPERSON TORRES: [interposing] How
9 many—how many open cases of permanent exclusion do
10 you have?

11 DAN HAFETZ: How many? We have about
12 3,800.

13 CHAIRPERSON TORRES: 3,800 and how many
14 people are investigating those cases?

15 DAN HAFETZ: We have a team of about--

16 CHAIRPERSON TORRES: DOI claims five. Is
17 that accurate or--?

18 DAN HAFETZ: Yeah, we have five
19 individuals doing the actual apartment inspections.
20 Now, 3,800 individual who were subject--

21 CHAIRPERSON TORRES: [interposing] That's
22 quite a bit for five people.

23 DAN HAFETZ: 3,800. No many of the
24 people who are excluded are incarcerated. We're not
25 going to their apartment. We don't need to go to

1 their apartment during the term—the term of
2 incarceration. It is unnecessary for the tenant to
3 allow us in, and it's unnecessary for reasons--

4 CHAIRPERSON TORRES: [interposing] So
5 what—what percentage of those cases have no
6 incarcerated excluded member?
7

8 DAN HAFETZ: I'd have to get the exact—
9 get back to you with the exact number.

10 CHAIRPERSON TORRES: Are—are there cases
11 where you have multiple permanent exclusion
12 agreements relating to one excluded member? If they
13 violate the first one do you go for a new permanent
14 exclusion agreement? Do you extend the existing one?

15 DAN HAFETZ: So, I—I just want to
16 clarify.

17 CHAIRPERSON TORRES: Yeah.

18 DAN HAFETZ: Are you saying that an
19 individual is excluded from multiple apartments or
20 there is one apartment--

21 CHAIRPERSON TORRES: [interposing] For
22 one house, and suppose I'm a tenant and I violate
23 that first time, do you--[background comments]—do you
24 extend it. What's—what's the terminology that you
25 use here?

1
2 DAN HAFETZ: We would if we decided not
3 to move forward on eviction if someone violated the
4 permanent exclusion, we would continue the exclusion.
5 That would be the—that would be the settlement if we
6 chose to settle.

7 CHAIRPERSON TORRES: Okay, are you
8 measuring—so but does your understanding of
9 compliance include the continuation of a permanent
10 exclusion that might have formerly violated?

11 DAN HAFETZ: Yes, because it would—if
12 we're--

13 CHAIRPERSON TORRES: But I think DOI
14 would say that's an odd way to measure compliance,
15 and so if—if I violated an agreement on three
16 occasions, then I'm complying on—I appear to be
17 complying on the fourth occasion, can that be
18 regarded as compliance?

19 DAN HAFETZ: I think if we decided to not
20 move forward on eviction, that would be based on the
21 fact that the individual has a high rate of history
22 of compliance. As some of the examples in the
23 report, there were ten years of compliance with the
24 order, and there was the one offense since the person
25 came to provide medicine for—for family. They even

1 came back, you know, for some—for some other reason.

2 Yeah, I think it's appropriate to—if that family then
3 continues to comply, I think that's appropriate to
4 say that the family is overall in compliance.
5

6 DAVID FARBER: And to speak—to speak to
7 this more generally, so DOI would say that if the
8 person returns to the apartment and we don't evict
9 the family, then we are not doing any compliance and
10 there is no consequence of returning of—of a
11 violation. Well, that is simply incorrect because
12 again, as we've been talking about the way this
13 program works is that I a case-by-case analysis a
14 variety of factors both to begin an eviction—an
15 inclusion in the first place and then to decide upon
16 consequences for violation of an exclusion. One of
17 the factors would be whether the person had been
18 found to be in violation of exclusion one or more
19 times so that if we found them to be in violation
20 even though we continue the exclusion, rather than
21 evicting the family, then that becomes a factor in
22 further enforcement of the permanent exclusion
23 violations. So, it's not—so—so it does matter. So it
24 does matter. So our--
25

1
2 CHAIRPERSON TORRES: [interposing] Well,
3 here's the concern I have is that whenever you have
4 especially senior citizens or mothers or children
5 evicting a household causes an immense amount of
6 instability. It's deeply destabilizing. It swells
7 the ranks of the homeless, right? So, if-if-if given
8 those consequences, why have permanent exclusion at
9 all? I mean DOI is advocating a more aggressive
10 enforcement of permanent exclusion, the advocates I
11 think many of them would prefer to eliminate it
12 altogether. It seems like NYCHA wants to maintain
13 permanent exclusion in theory, but refuses to enforce
14 it in practice. Like there's an underlying
15 incoherence to your position as far as I can tell?

16 DAN HAFETZ: Council Member, I-I
17 disagree. I think the position is actually quite
18 coherent. I think what we're saying-I think what
19 you're suggesting is that because there's the threat
20 of eviction that means that it is inherently unfair
21 and that we're evicting far more people. I think
22 this is a sensible approach. This is an approach
23 that is targeting and removes a dangerous person and
24 it works by, you know. Is-is one violation of the
25 permanent exclusion agree. You know, any-any

1 violations that a person comes back to us those are
2 absolutely serious--so--so the 37 times where the
3 individual was found the apartment out of over 5,000
4 visits, those are serious. Now, is eviction the right
5 answer in all those cases? It is not and that's why--

6
7 CHAIRPERSON TORRES: [interposing] Is
8 eviction of a mother with children ever the right
9 answer?

10 DAN HAFETZ: When--well, I'm not saying
11 that that that--I'm not saying that it is.

12 CHAIRPERSON TORRES: Because if your
13 answer is now, then we should examine the underlying
14 policy.

15 DAN HAFETZ: Well--

16 CHAIRPERSON TORRES: Right?

17 DAVID FARBER: Well, so--so let me speak to
18 that. So--so the first question is if--if we can show
19 that there's dangerous offenders in NYCHA apartments,
20 should we do something or should we do nothing?
21 Right? Our answer is we should do something. We
22 should not evict the entire family. That's not the
23 appropriate remedy, but we should not do nothing.
24 What we should do is what we are doing. We should
25

1 exclude the offender. That's the first question.

2 The second question is--

3
4 CHAIRPERSON TORRES: [interposing]

5 Although I--although before we get there, what DOI is
6 suggesting is that for an exclusion to mean something
7 there needs to be teeth to the enforcement. That's
8 what they're saying right?

9 DAVID FARBER: So that's the second part
10 of my answer. So first, does it make sense to
11 exclude? Yes. Second is it working? Our answer is
12 absolutely. If we did 5,000 inspections and we only
13 found 37 examples of people having returned to the
14 apartment, not necessarily living there--

15 CHAIRPERSON TORRES: [interposing]

16 There's--there's been five inspectors.

17 DAVID FARBER: --but 5,000 inspections,
18 right? The--the important question is not how many
19 inspectors but how many inspections are they doing?
20 They're doing 5,000 inspections. Out of 5,000, they
21 only found 37, examples of someone. That means that
22 it is working. People who are removed from their
23 apartments are not coming back. So the policy makes
24 sense, number one and number two, it's working.

1
2 CHAIRPERSON TORRES: Yeah, although I can
3 tell you that I'm not sure that NYCHA actually knows
4 what's going on in its own apartments. I mean do you
5 know the number of tenants who were unauthorized
6 residents or no?

7 DAVID FARBER: I don't.

8 CHAIRPERSON TORRES: You don't know?

9 DAVID FARBER: I don't--well, I don't have
10 that information now. Yes, and that's--that's a
11 challenging number, but again when people go to--

12 CHAIRPERSON TORRES: [interposing] I want
13 to go back to my question that you did not answer.
14 Can you imagine a circumstance in which evicting a
15 mother with children is justifiable, and if you can't
16 answer--if you can't think of those circumstances I
17 think there has to be an examination of the policy
18 itself.

19 DAN HAFETZ: I would hypothetically if
20 there was a history of egregious violations to the
21 point where it showed essentially contempt of the
22 exclusion or just egregious violation of the
23 exclusions, tenants showed that there was no
24 likelihood that they were going to keep this person
25 out and the person was dangerous. The exclusion was

1 recent or there were seriously, you know, offense for
2 recent, then potentially yes. But, you know, the six
3 cases where the—the family was evicted, I—I—I don't
4 have the statistics on what the family composition
5 was in those cases. But we have to, yes, I think
6 what we—what we're saying is we—we—we work with
7 families and we work with the information that we
8 have to make really smart and sensible solutions. I
9 think to suggest that the—that the only way to
10 enforce permanent exclusion is—is by evicting I think
11 that's not correct. I think the fact that we do
12 visits is an enforcement strategy. That means that
13 fam—families don't want—they don't want to jeopardize
14 their tenancy, and so when our inspector—so the fact
15 that we're coming and checking encourages compliance,
16 and it deters many—the vast—vast majority of people
17 from allowing someone to come back.

19 CHAIRPERSON TORRES: And I want to hand
20 it over to—but just to play devil's advocate I think
21 what DOI is suggesting is not that eviction is the
22 only means of enforcement, right, but you're
23 leveraging the threat of eviction to force
24 compliance. But if that threat is not credible, I
25 mean what incentive do residents have to comply with

1 permanent exclusion. That—that is my understanding
2 of DOI's argument. I don't know if you want to—
3 otherwise I can—
4

5 DAN HAFETZ: No, that's okay.

6 CHAIRPERSON TORRES: Okay, Vinny.

7 CHAIRPERSON GENTILE: Thank you. Thank
8 you, Chairman Torres. We've been joined today by
9 additional Council Members, Council Members Rosie
10 Mendez, and Council Member Chaim Deutsch. Thank you
11 all for being here. I wanted to just follow up on
12 some of the issues that were discussed. On—on the
13 issue of—of known-knew or should have known about
14 eviction proceedings. You said I think that Mr.
15 Hafetz you said that—that involvement of the lease
16 holder is a factor. Am I correct about that?

17 DAN HAFETZ: That's correct.

18 CHAIRPERSON GENTILE: Okay, so—but you
19 also talked about whether or not a leaseholder was
20 doing something out of fear or intimidation. So is
21 that a factor also?

22 DAN HAFETZ: Doing something out of
23 intimidation meaning allowing someone to occupy the
24 apartment?
25

1
2 CHAIRPERSON GENTILE: Correct, or-or to
3 occupy the apartment or to actually have some
4 involvement in the criminal activity going forward?

5 DAN HAFETZ: Yes, that-that-that is
6 absolutely a consideration.

7 CHAIRPERSON GENTILE: So, if-if a
8 leaseholder out of fear either allowed the person who
9 was permanently excluded to be there or even more so
10 out of fear and intimidation actually in some way, I
11 don't know in what way, but in some way participated
12 because of the fear of the person in the-in the
13 apartment, how would you approach those situations?

14 DAN HAFETZ: So in a situation where
15 let's say there's, you know, a drug operation running
16 out of an apartment and the tenant of record is the
17 mother, elderly and the-the family is essentially
18 threatening her safety if she takes any steps to try
19 to interfere with the operation. That's absolutely
20 something that we would consider. I think that's,
21 you know, it falls into the known or should have
22 known category, but it doesn't fall-it doesn't meet
23 our-our standard of fairness to, you know, to
24 attribute the blame to this person who is themselves
25 a victim and, you know, their safety is put at risk

1 by this operation taking place there. That's—we
2 would not agree with an approach that would penalize
3 that person.
4

5 CHAIRPERSON GENTILE: So at that point
6 what recommendation do you make to a hearing officer?

7 DAN HAFETZ: So in that—that is the
8 perfect situation for permanent exclusion and that
9 is, you know, I mentioned before that in many
10 situations the families actually want this person
11 excluded. They might not have the—the standing in
12 their household to, you know, to—to keep this person
13 from coming—from coming back or to tell them to
14 leave, and so what it allows the family to say look
15 it's NYCHA. NYCHA is saying that you cannot come
16 back, and we have situations where family are saying,
17 you know, will they—will they thank us? Will they
18 appreciate the fact that we're doing—that we're doing
19 this and we're not just holding them responsible
20 because we know we they know that we're—that we're
21 involved. And we work with—and in situations like
22 that we work very closely with our partners at NYPD.
23 So it's—when I say that, you know, permanent
24 exclusion is not a panacea, if we find out about, you
25 know, ongoing criminal activity in an apartment,

1 that's—that's a situation we refer to NYPD. So they
2 can also, you know, take appropriate enforcement.
3

4 CHAIRPERSON GENTILE: So—so there would
5 be a—a continuing investigation in other words for
6 NYPD?

7 DAN HAFETZ: Correct.

8 CHAIRPERSON GENTILE: Okay. One of the
9 recommendations that were made in the DOI report was
10 to have a relocation of families to units that are
11 far from the location of where the activity was
12 happening particularly when it's gang violence
13 involved. Have you agreed to do those types of
14 relocations?

15 DAN HAFETZ: Yes, we have. We—we already
16 do, and we already require that when a—a family is—
17 when the exclusion of the offender, the dangerous
18 person would make them under-occupied, we would—we
19 have them agree that they—to downsize. Now--

20 CHAIRPERSON GENTILE: [interposing]
21 That's downsizing, but that's not relocating?

22 DAN HAFETZ: It's relocating. Yeah, no—
23 we would also right, it's—we would also where they,
24 you know, where they're victimized absolutely.

1 That's, you know, that's-that's something I would
2 transfer for.
3

4 CHAIRPERSON GENTILE: And-and you're
5 doing that now?

6 DAN HAFETZ: Yes.

7 CHAIRPERSON GENTILE: Because that's in
8 the recommendation of the DOI. I think it's number 6
9 of 7.

10 DAVID FARBER: Again, I-I think that-so
11 that is-so we have that right in the stipulations,
12 right. So when someone enters into a stipulation, we
13 in the stipulation we have the right in the right
14 circumstances to require the family to relocate upon
15 a violation of exclusion. This again-once again goes
16 to the issue of consideration of-of all the
17 circumstances. If you begin just by looking at the
18 criminal-the-the danger issue, the person-if an
19 offender returns to the apartment and they say well,
20 we don't want to happen any more, we'll just send the
21 family across the borough, problem solved, right.
22 But what we're saying is that analysis that DOI did
23 it came in there. You have to do more analysis, more
24 thinking. You have to take into more factors. So
25 you send the family away, the person doesn't come

1 back to the apartment, but this is the family that
2 lived in that development 20 or 30 years maybe have
3 little kids who go to school. Maybe they're senior
4 citizens who go to the senior citizen center. Maybe
5 there's people who have doctors nearby. So what
6 we're saying it's a tool--that relocation is a tool
7 to be exercised in appropriate circumstances, but we
8 have to consider the totality of the circumstances.

10 CHAIRPERSON GENTILE: So it is one of the
11 tools that you do use currently?

12 DAN HAFETZ: Correct.

13 CHAIRPERSON GENTILE: Okay. When--when
14 these hearings go forward and you bring these whether
15 it's a permanent exclusion, whether it's an eviction
16 proceeding, what--what due process protections are
17 afforded to tenants during those hearings?

18 DAN HAFETZ: So the due process
19 protections for tenants for the whole process are
20 quite extensive. It's imposed by Federal Consent
21 Pleas, which NYCHA has entered into in the past. So,
22 it begins with--all these cases begin with the
23 requirement that the tenant be called into--at the
24 development to have an interface with--with housing
25 staff where they're confronted with the charges.

1 They have the ability to respond. The next step is
2 the case is then sent to the NYCHA Law Department
3 where we, you know, review any information—any more
4 information that's provided by the development, and
5 then we will, you know, formally charge the tenant,
6 and then come in for a hearing at—at NYCHA. So
7 actually I just said they come for a hearing. What--
8 what I really meant to say is the first step when
9 they come to 250 Broadway to the Administrative
10 Hearing Office is they have an informal conference
11 with our staff, and after that informal conference,
12 we might decide to offer a stipulation of permanent
13 exclusion, and or we might decide to proceed with the
14 case, and then it would go before a hearing office.

16 CHAIRPERSON GENTILE: Do you—do you
17 afford the tenant's counsel?

18 DAN HAFETZ: Tenants have the right to
19 counsel. We currently—and we inform them of that
20 right.

21 CHAIRPERSON GENTILE: You inform them,
22 but you don't afford them?

23 DAN HAFETZ: We don't provide it
24 ourselves. What we do is we have a—a list of
25 providers, a free or low-cost opportunities for

1
2 counsel that's provided at the hearing office in this
3 building on the second floor. One of the things, and
4 we've spent--so we've spent--I just want to tell you we
5 worked the last two years very closely with--with
6 various stakeholders including legal service
7 providers, and the Vera Institute of Justice to
8 invite, you know, to find improvements for process.
9 So one of the things that we're working towards is
10 trying to improve the access to counsel. So that
11 might be, you know, more than just providing a list
12 from the Hearing Office, doing more targeted
13 outreach, but we're working with them, you know, to
14 identify that. We're not trying to get over on
15 anybody on any one of these cases. It's, you know,
16 right to counsel is--is important. We recognize that
17 importance. We just want to make the right
18 decisions.

19 CHAIRPERSON GENTILE: So--so do you have
20 any data that shows what percentage of hearings
21 actually--tenants actually have counsel?

22 DAN HAFETZ: We don't track that data
23 currently.

24 CHAIRPERSON GENTILE: So, you--you don't
25 know? You don't have any idea?

1
2 DAN HAFETZ: We have, you know, we would
3 have the anecdotal information, but I don't have, you
4 know, formal statistics on that.

5 CHAIRPERSON GENTILE: So when—when you're
6 at the hearing stage, and you're before a hearing
7 officer, I guess it's called a judge, does that
8 officer or that judge have at their disposal the
9 panoply of remedies in this situation just regardless
10 of what you are asking for, does the judge have the
11 ability to impose any of the remedies available?

12 DAN HAFETZ: They do. They have—they
13 have generally four options. It is termination of
14 tenancy is one option. They can permanently exclude
15 the—the, you know, offending person. They can find
16 that the tenant is, you know, eligible, and which
17 means the case is dismissed—dismissed and withdrawn
18 or they can put the tenant on probation.

19 CHAIRPERSON GENTILE: So given that
20 position of a—of a hearing officer in that situation
21 where they could determine what the remedy should be.
22 Shouldn't the evaluation then of the evidence in any
23 particular case best be left to the hearing officer
24 rather than have NYCHA decide in their sole
25

1 discretion what should go forward and—and what
2 shouldn't?

3
4 DAN HAFETZ: So, Council Member, I think
5 it's a really—I think it's a really good question. I
6 think we have to examine our, you know, the fact that
7 when we put a case before a hearing office, the
8 hearing officer can find that the tenant should be—
9 should be terminated, right? So if we believe that
10 the correct—the correct remedy, the right remedy is
11 permanent exclusion based on our assessment, that's
12 one of the reasons why we enter into a stipulation.
13 The other dynamic is that what gives NYCHA the
14 ability to conduct the permanent exclusion
15 inspections is that the—the tenant agrees to it via
16 the stipulation. If the case goes before a hearing
17 office, and the hearing officer decides to
18 permanently exclude the dangerous person, we don't
19 have the ability to inspect that apartment.

20 CHAIRPERSON GENTILE: You—you're saying
21 that the hearing officer—if the hearing officer
22 orders a permanent exclusion you don't have the
23 ability to—to inspect that apartment?

24
25

1
2 DAN HAFETZ: No, we don't. It's only by
3 agreement where the tenant agrees with us to exclude
4 the dangerous member, the--the dangerous person.

5 CHAIRPERSON GENTILE: So how--how are
6 those permanent exclusions enforced by--if they're
7 issued by--by a court, but the hearing officer?

8 DAN HAFETZ: Well, I mean while we don't
9 do--while we don't do inspections of the inspections
10 of the apartment if there's any reports of criminal
11 wrongdoing by that person in the apartment that's
12 something that we would investigate. If the person--
13 the excluded person is arrested in the apartment--
14 this happens from time to time. Where there's a
15 search warrant, the search warrant is executed in the
16 apartment, and the excluded person is found in there,
17 that would be, you know, a violation. So we're not
18 without--we're not without all of our tools, but, you
19 know, it is, you know, the inspections are an
20 important tool.

21 CHAIRPERSON GENTILE: So back in 2016,
22 and it--your--your statistics show that of all of our--
23 your total investigation in cases that you--you
24 brought in 2016, 49% of the cases were closed without
25 action. That's almost half the number. Can you

1 discuss how that—how—how you had 49% of your cases
2 being closed without action?
3

4 DAN HAFETZ: Sure, absolutely. So, we
5 would not proceed a case for a variety of reasons.
6 The first and foremost is if we already have an
7 active case against the tenancy, we would not open a
8 new case. What we would do is we would amend any
9 charges that we have against the tenant. So, if
10 there already are charges of, you know, of dangerous
11 criminal conduct, and there is a new case that comes
12 forward, then we would add that. So I think that's
13 a—that's a, you know, a pretty significant number
14 within that 49%. But the rest of it is really just
15 it's—it's our analysis to—that's essentially
16 threefold. It is the tenant is the individual who's
17 arrested connected to the tenancy. Often times we
18 are not able to establish that. The only information
19 that the person lives or visited there is the fact
20 that he gave that information at arrest, which we
21 know is by itself not reliable. Solely not
22 sufficient. If the crime wasn't serious or if the
23 crime was on the face of it looks more serious, but
24 then we investigate and we determine that the
25 individual's involvement was—was very low, ore there

1 are other kind of mitigating circumstances, then we
2 would not—we would not proceed, and then we—we have
3 to be able to prove it. So we have to make sure that
4 there is evidence that the individual actually
5 committed the crime.

6
7 CHAIRPERSON GENTILE: What's—what's the
8 standard proof that you use?

9 DAN HAFETZ: It's preponderance of the
10 evidence.

11 CHAIRPERSON GENTILE: So, those 49%
12 include on-site and off-site situations and arrests
13 that you—you investigate?

14 DAN HAFETZ: Yeah, I mean we investigate
15 all information that comes to our attention whether
16 it is referred by the NYPD or whether it's
17 information that we gather on our own. We
18 investigate every single case. It includes—the vast
19 majority is, you know, is—is on campus arrests.

20 CHAIRPERSON GENTILE: So, now, in terms
21 of NYPD reporting to you, it is arrests of those 16
22 years or older. Am I correct that—that get reported
23 to you?

24 DAN HAFETZ: Correct. It could be—that's
25 it would be 16 years or older.

1
2 CHAIRPERSON GENTILE: Okay, so with the-
3 with the recent Raise the Age Legislation that was
4 passed in Albany, will your reporting statistics from
5 the NYPD change?

6 DAN HAFETZ: [pause] Yeah, I—we have to
7 examine that further.

8 CHAIRPERSON GENTILE: Because those
9 other—those cases now 16, 17-year-old will be going
10 to the Family Court or to this new Youth Court,
11 right? So, the question becomes it's not quote,
12 unquote "a criminal matter" so to speak. So you
13 haven't determined whether that qualified under your
14 procedure?

15 DAVID FARBER: They—I'll just say your-
16 your comments really make sense. It's—it's—it's a
17 very new change from the state. We are—we will be
18 looking into it quickly.

19 CHAIRPERSON GENTILE: Okay. So there
20 will be a policy decision I would assume very, very
21 quickly because—because it has—it's—it was part of
22 the state budget and signed by the—by the governor.

23 DAVID FARBER: Right, I—I would say even-
24 even more than a policy decision I think we will—we
25 will look at what the law [coughing] what the law

1 dictates, and if-if that's the things that the law
2 dictates, then certainly we'll be implementing that.

3
4 CHAIRPERSON GENTILE: So, if there's
5 someone who's younger than 16 not arrested, but
6 creating some kind of havoc in the-in-in-in a
7 building, and you get complaints from-from tenants in
8 the building about someone who may be 15 years old
9 who's crating some havoc, what-what if any actions do
10 you take at that point?

11 DAN HAFETZ: So in a situation like that,
12 if we were alerted to-to that we would obviously
13 engage with the NYPD. We would, you know, refer the
14 matter to them. We'd also work-we also would make a
15 referral to family services to see what, you know,
16 kind of supports or-or referrals they-they might need
17 to make to support the family.

18 CHAIRPERSON GENTILE: Okay, but you-you
19 don't bring any proceedings in-in that regard?

20 DAN HAFETZ: We would-if there's a, you
21 know, if there's a situation where someone is, you
22 know, creating a danger to the health and safety of
23 our residents, we would investigate it, and we would
24 determine if we would need to bring enforcement
25 action.

CHAIRPERSON GENTILE: Okay, so the—just
the age alone of the individual is not necessarily
dispositive of whether you would bring a proceeding?

DAN HAFETZ: That's correct. What I will
say is that it's—what the remedy that is often, you
know, in such—what—these—these cases are very rare.
The remedy that we would use often is, you know,
probation of the tenancy. We would not be evicting
the family or, you know, excluding them over a young
person.

CHAIRPERSON GENTILE: You wouldn't
exclude [coughs] you would exclude a 14-year-old,
you're saying, right?

DAN HAFETZ: No, we would not.

CHAIRPERSON GENTILE: Okay, so now in—in
December 2015 when there was hearing on—on this
particular topic, you testify or NYCHA testified that
it was not limiting permanent exclusion to the most
violent offenders. Is—is that still the case?

DAN HAFETZ: I'm sorry. Can you repeat
the question?

CHAIRPERSON GENTILE: Yes, in—in 2015,
when NYCHA testified at a hearing like this--

DAN HAFETZ: Uh-huh.

1
2 CHAIRPERSON GENTILE: --the testimony was
3 that you were not limiting permanent exclusion to the
4 most violent offenders. I would imagine that meant
5 you were also including misdemeanors.

6 DAN HAFETZ: So that's correct. So, we--
7 and--and we spoke about this here today. So if
8 someone--we look at the offense and we look at the
9 offender. So if there is--if someone--the highest
10 priority for us are individuals who committed of acts
11 of violence. In those cases, the fastest. If an
12 individual is engaged in drug dealing, that's
13 something that we that take extremely seriously. It
14 poses a serious threat to the health and safety of a
15 resident, and so we investigate everyone one of those
16 cases. Now, in some misdemeanor cases, what may
17 happen is a search warrant is executed in an
18 apartment, and the target, you know, the targets of
19 the search warrant are arrested and other people are
20 arrested and maybe charged with a misdemeanor because
21 of the weight of drugs, for example, that are found
22 on them are smaller. We investigate that case, and
23 if we determine that the person has a very violent
24 record, has a history that suggest that they're very
25 dangerous, we end their involvement in the drug

1 operation even though, you know, technically the
2 arrest charge may have appeared to be lower, we-
3 that's an assessment that we make.

4
5 DAVID FARBER: So I think that—and again
6 more generally what we've doing over the last couple
7 of years, right, is taking a deep dive into this
8 program. It's what the charged me to do with Chief
9 Nelson and in partnership with NYPD is saying what-
10 what are we doing right? What are we doing wrong?
11 What could we do better? One of the things that
12 we've done is we've sharpened our focus so that we
13 are just so to make sure that this is about
14 identifying persons who are dangerous and pose a
15 danger to the NYCHA community and focusing and
16 targeting out efforts on those people. So to the
17 extent that two years ago we said we weren't always
18 looking at those factors, today that's what we're
19 doing.

20 CHAIRPERSON GENTILE: So, you're—you're
21 refining you policy from two years ago?

22 DAVID FARBER: Yes, yes.

23 CHAIRPERSON GENTILE: So in the case of
24 assault in the third degree, which is s misdemeanor,
25 or in the case of sexual misconduct, which is a

1 misdemeanor, would you look at those situations as
2 grounds for moving forward?
3

4 DAN HAFETZ: We look at those situations
5 as grounds for moving forward, and if our
6 investigation suggest that the facts are—that the
7 arrest charge does not give an accurate picture of
8 the conduct or the individual's history, then we
9 would, you know, consider moving forward.

10 CHAIRPERSON GENTILE: On—on—if the top
11 charge was the misdemeanor?

12 DAN HAFETZ: If the top charge on—on this
13 incident at arrest it would be the basis for opening
14 an investigation into—into the case.

15 CHAIRPERSON GENTILE: How do you respond
16 to DOI's criticism that—that the residents of NYCHA
17 are 20 times more likely to be evicted for non-
18 payment than for—for having felons in—violating
19 permanent exclusions?

20 DAN HAFETZ: I think that is inaccurate.
21 This is something we were discussing before that in
22 about 103 cases last year, there were 103
23 terminations for—for non-desirability. I think the
24 number that Council Member Torres provided before was
25 16, 16 is—is a gross underestimate. We take it

1 really seriously. I think what, you know, the
2 concern we have with that statement is—is that it's,
3 you know, it—it's as if it suggests that the, you
4 know, there—it overstates the problem of criminality
5 among—our tenants are responsible for. It suggests
6 that, you know, more of our tenants are—are criminals
7 or dangerous than they actually are. We—we reject
8 that assertion. The vast—vast majority of tenants as
9 Council Member Torres said are law abiding. So I
10 think what the numbers, you know, the actual numbers
11 do reflect is that we take—we take crime very
12 seriously, but the tenants—our heads of household,
13 our tenants are not the criminal wrongdoers.

15 CHAIRPERSON GENTILE: I know, I—I think
16 the point that we're making, though, is that the same
17 considerations that you use in a permanent exclusion
18 situation you seem not to use when you do an eviction
19 based on non-payment of rent.

20 DAVID FARBER: We absolutely do. Our—our
21 not—our—our evictions for non-payment of rent first
22 the numbers have been shrinking, right, because we've
23 been doing more for that. We've been—we've taken—we
24 take the circumstances into consideration. We
25 provide—we try to connect families to financial

1 assistance. We try to connect—we connect families to
2 HRA to determine whether there is financial support
3 that they could get to pay their rent. We—we rarely—
4 we rarely evict tenants for non-payment of rent, and
5 we rarely evict tenants for—for permanent exclusion.
6 Statistics can be misleading. In each case, the
7 numbers are small. What's important—the reason that
8 permanent exclusion numbers are even smaller is
9 because our tenants, as Dan said, sour tenants are
10 overwhelmingly law abiding, hard working persons and
11 there are just—there are very few cases of criminal
12 activity. That is why we have very few cases that
13 result in eviction for criminal activity. That—
14 that's the answer. In either case, the numbers are
15 very small—9—300 evictions for non-payment of rent to
16 date, out of 178,000 units at NYCHA, and both—in—in
17 all cases—in both these categories. We're just
18 talking small numbers.

19
20 CHAIRPERSON GENTILE: Okay, and I have
21 two more questions, and then I'll throw it to the—to
22 our colleagues here who have been waiting. I want to
23 go back to some of the examples that Councilman
24 Torres brought one example of a case that DOI used.
25 I want to bring up another one. It is on page 10 of

1 the DOI Report, and it recounts the case of a woman
2 named Yvonne, who is the leaseholder in an apartment
3 and for years her brother and her uncle both
4 unauthorized occupants committed serious violent
5 crimes including multiple homicides while ultimately
6 residing in the public housing unit. NYCHA
7 ultimately chose not to pursue eviction or downsizing
8 or relocation in these cases, and this was gone on
9 over series of years. It's more detailed in—in—in
10 page 10 of the DOI Report, but I think you've read
11 it, so you know what I'm speaking of. Can you
12 comment on this case, and—and why after repeated—
13 repeated series of violent crimes by not one but two
14 unauthorized people in that apartment that no
15 proceedings—there were no—no eviction proceedings,
16 downsizing or relocation.

18 DAN HAFETZ: So without going into all
19 the details of that case, what I can say is that this
20 case was illustrative of some of the other examples
21 in the DOI Report where the evidence that the claim
22 that we have that claims that the person was there
23 and present in violation of permanent exclusion is
24 overstated. So, you know, again as I—you know, I had
25 mentioned earlier, sometimes the only evidence that

1 suggests that there's a violation of exclusion is
2 that the--the offender, the dangerous person has given
3 that address at arrest. This someone who is not a
4 part of our proceedings. We bring our actions
5 against the tenant. So the--this--this, you know,
6 unfortunately this happens all the time where the
7 people report an address at NYCHA and are not
8 actually there, and I know they know. (sic)

10 CHAIRPERSON GENTILE: So you're saying
11 your investigation showed that Yvonne's brother and
12 uncle were not actually in--in that apartment?

13 DAN HAFETZ: We, yeah, we did not have
14 sufficient evidence to--to prove that he was actually
15 there and visiting. We actually had contradictory
16 evidence that he was living elsewhere.

17 CHAIRPERSON GENTILE: Okay, so that is a
18 misleading example. You're--you're claiming that's a
19 misleading example of DOI's part?

20 DAN HAFETZ: Yeah, I--well, but what I'm--
21 I'm suggesting is I think the--in looking at this with
22 our investigators and with our team is that there--
23 there are more facts that--that we had at our disposal
24 that we, you know, had to give credibility to, and
25 that some of the information that's asserted in here

1 is kind of an overstatement of—of the validity and—
2 and the value of the information.
3

4 CHAIRPERSON GENTILE: Okay, let me just
5 follow up just with one or two questions on the
6 investigators. You have 5,000 cases. You have five
7 investigators doing—looking at 5,000 permanent
8 exclusion situations. Anyone looking at those
9 numbers realizes that you're not, you don't have
10 sufficient resources to—to handle 5,000
11 investigations with five investigators.

12 DAVID FARBER: So certainly resources are
13 always a—always—always a factor of consideration. So
14 we have—we've actually have both. We've added one
15 investigator since or in the last year and a half.

16 CHAIRPERSON GENTILE: So now you have
17 six?

18 DAVID FARBER: So we have six yes I think.
19 Yes, six, that's correct and 5,000 yes, and we—and
20 we—and significantly when we had a couple of
21 investigators leave, we replaced them, which, you
22 know, that—was that an additional resource? No, but
23 in a time of demanding allocation of resources at
24 NYCHA right, where we have deeper and deeper pro-
25 rations even maintaining our level of resources on

1 this--on this effort is an important decision that
2 we're making. Also, we have added a housing
3 assistant to support the investigators, and very
4 significantly one of our most--my most senior people
5 at the--in the Law Department I've moved from another
6 areas, created a new position in this area so that
7 she can lead and better coordinate the investigators'
8 work with the attorney work. That position did not
9 exist. So we are finding way to even with small
10 numbers--a relatively small number of increases to
11 substantially improve the effectiveness and
12 efficiency of the unit. We're also doing that with
13 technology. Not just with the information sharing
14 that we're doing with NYPD, but we have the
15 technology now where the NYPD cases that come in
16 through their database automatically get converted
17 into our system by technology. So we don't have to do
18 data entry or scanning. So we're finding ways--

19
20 CHAIRPERSON GENTILE: [interposing] I
21 understand.

22 DAVID FARBER: --to do more with--

23 CHAIRPERSON GENTILE: [interposing]

24 Right.

25 DAVID FARBER: --the resources.

CHAIRPERSON GENTILE: But even with six investigators everyone realizes that those investigation on permanent exclusions will probably take a long time be realized. Are there other mechanisms for enforcing exclusions other than conducting a raid on an apartment visits?

DAN HAFETZ: So as we discussed before, if we are alerted by the NYPD that the excluded person was found in the apartment so for examples was arrested there, executed a search warrant there, then that's information that we would use to substantiate that there was a violation? I think it's also important to note that we've, you know, recently this--this past week after, you know, two years of work on this issue have unveiled a new application for lifting permanent exclusion. It's more than just the form. This reflects, you know, two years worth of work, intensive work with the Vera Institute of Justice, John Jay, a host of organizations across the city, our resident leaders to improve the application process for lifting permanent exclusions, which I know in this context because I think what--what we expect to see is that with more applications, with better information, you know, tenants providing us

1 better information, we'll probably see more
2 exclusions removed over the years, which will enable
3 us to focus our resources even more intensively on-on
4 the apartments that are the highest priority.
5

6 CHAIRPERSON GENTILE: Now, just with-with
7 the-with the field investigators themselves, do you-
8 you have any concern for their safety when they are
9 conducting these apartment visits?

10 DAN HAFETZ: We don't. This-these
11 investigators have been conducting these inspections
12 for decades? I've gone out with the inspectors to-
13 on-on inspections of apartments. I think what's
14 really important to note is that these are-these
15 individuals are trained. They have decades of
16 experience. There are a couple of staff who are
17 former police officers. So they're bringing, you
18 know, they're bringing their expertise both on safety
19 and then also on, you know, engaging with residents,
20 and they're, you know, they're providing, you know,
21 the training-a lot of the training and the support
22 for-for our staff to, you know, conduct these
23 inspections in a way that for the vast majority of
24 people who are complying with permanent exclusion
25

1 are, you know, as little—as least invasive as
2 possible while not creating a further risk of safety.

3
4 CHAIRPERSON GENTILE: So you disagree
5 with the DOI recommendations that they—that activity
6 be given to a law enforcement unit or that the
7 investigators be better protected with—with whatever
8 it is that they—they—they should—should have?

9 DAN HAFETZ: We disagree with the
10 recommendation. Our foremost concern is both the
11 safety of our staff, and the safety of our residents.
12 Our analysis is that introducing law enforcement or
13 armed people into these inspections will potentially
14 make them less safe, and also could—could harm the
15 compliance right, and—and—and could deter people from
16 agreeing to exclude the dangerous person because they
17 don't want law enforcement coming into their homes
18 on, you know, regular unannounced visits to—to
19 inspect their entire household.

20 CHAIRPERSON GENTILE: Okay, I'm going to
21 wrap up here. I just want to make mention that
22 apparently DOI is tracking this hearing, and now they
23 have sent a message saying that anything, that any
24 data that they put in their report you had the
25 opportunity or review and discuss with them before.

1 So if anything here is said to be misleading, they
2 take—they take an except—exception to the fact that
3 they gave misleading information because their—all
4 the information was given to you and you had the
5 opportunity to respond before it was published.

7 DAN HAFETZ: Council Member, we—we
8 appreciate that. We took significant time over the
9 course of their investigation and they provided us
10 with information about cases to respond to that, to
11 provide them with information. I think we actually
12 did a—a very good job of trying to explain to them
13 the considerations that go into these cases. You
14 know, unfortunately in—in many instances, those
15 considerations were simply not taken into account.

16 CHAIRPERSON GENTILE: Thank you.

17 CHAIRPERSON TORRES: Yes, I just want to
18 reiterate that we are surveillance at the City
19 Council—the Pubic Housing Commissioner. [laughs]
20 Before I head to the next question, I do have a
21 question about you're hopeful that more people will
22 apply to lift the permanent exclusions. I have a
23 theory that the reason many people are not aware that
24 you can lift permanent exclusions is because you
25 called them permanent exclusions. [laughter] And

1 so, it shocks me that in your two or three-year
2 analysis it never occurred to NYCHA to change the
3 name.
4

5 DAN HAFETZ: So that, Council Member,
6 respectfully, that is something that we considered
7 and, in fact, the first—when I came onto the job two
8 years ago, my first question was if they can lift it,
9 why is it even called permanent exclusion.

10 CHAIRPERSON TORRES: Besides the
11 name(sic)?

12 DAN HAFETZ: Right. SO there's a good
13 reason for that. When we initiated—when this
14 litigation was settled in the 1970s, it was actually
15 at the request of advocates that we call it permanent
16 exclusion, and here's the reason why. The concern
17 among advocates was that if it was not called
18 permanent exclusion and it's called exclusion only,
19 and the tenant also is put on probation, that tenants
20 would be confused, and they would think that a
21 probation, which would last a year or two years would
22 be conterminous the exclusion and that the exclusion
23 would automatically end and be lifted. The way
24 permanent exclusion works is it stays in effect as
25 long as—as long as the tenant doesn't apply to have

1 it lifted and the application is approved. Now this
2 is something that we—it was not balanced, but

3
4 CHAIRPERSON TORRES: [interposing] Which
5 is not permanence but--

6 DAN HAFETZ: But we have to balance—what
7 our concern as the DOI Report makes clear is that
8 enforcement of permanent exclusion is really
9 important. We agree with that assessment. So what
10 we've done is we've worked—I can assure you we've
11 worked very diligently both to create a process that
12 his both transparent and clear and fair and
13 accessible to residents to have the exclusion lifted,
14 but that's really just the first step. So putting an
15 app—a new application online is the first step of
16 what is going to be, you know, a multi-month long
17 process of engaging with advocates, engaging with our
18 residents, conducting events and developments with
19 the permanent exclusions, high numbers of permanent
20 exclusions using, you know, credible messengers in
21 the community to make sure that the message out there
22 is—is clearly conveyed that they can have their
23 permanent exclusions lifted if warranted. We don't
24 want to convey a confusing message. You know, the
25 concern would be we—we stop calling permanent

1 exclusion and then the message people take is oh,
2 these exclusions are no longer permanent. I can—they
3 are automatically lifted and the person can come
4 back.
5

6 CHAIRPERSON TORRES: Or if you keep it as
7 permanent exclusion, there will be continuing
8 confusion, but it is actually, in fact, permanent
9 because people assume that the words we use that's
10 the meaning we end. The advocates who recommend the
11 phrase permanent exclusion back in the 70s, is that-?

12 DAN HAFETZ: Correct.

13 CHAIRPERSON TORRES: Do those advocates
14 believe that it should remain permanent exclusion
15 that they should--?

16 DAN HAFETZ: [interposing] Right, you're
17 going to ask for--

18 CHAIRPERSON TORRES: When you did it for

19 DAN HAFETZ: [interposing] Well, we
20 worked with them.

21 CHAIRPERSON TORRES: --analysis, did you
22 ask them what should be the name of the procedure?

23 DAN HAFETZ: So we worked with over, you
24 know, 30 advocacy organizations across the city.

25 CHAIRPERSON TORRES: Okay.

1
2 DAN HAFETZ: I-I-my knowledge is quite
3 extensive.

4 CHAIRPERSON TORRES: Did you ask them
5 this question?

6 DAN HAFETZ: Oh, it was absolutely
7 something that we--

8 CHAIRPERSON TORRES: [interposing] And
9 what was the feedback from those advocates? Were
10 they in favor of the name change or keeping it the
11 same?

12 DAN HAFETZ: I think there were some
13 advocates that wanted it dropped, and we--so it's not--
14 the point is not that we--

15 CHAIRPERSON TORRES: [interposing] Would
16 you say some, a majority or all of them?

17 DAN HAFETZ: Oh, I can't-I can't make the
18 assessment, but it was some--the name is definitely
19 something that we've heard from advocates.

20 CHAIRPERSON TORRES: I see.

21 DAN HAFETZ: It doesn't mean it's the
22 right decision. It doesn't mean that they're dead
23 wrong. It doesn't mean that we're dead right. It
24 means that there--this is a--this is one situation our
25 goal is to keep making sure that the permanent

1
2 exclusions are enforced. Our assessment is that we
3 would do more harm than good by changing that
4 information, by changing that information.

5 CHAIRPERSON TORRES: And the next,
6 Council Member Gibson and you have permanent question
7 that I mentioned.

8 COUNCIL MEMBER GIBSON: Thank you,
9 Chairs. We're almost at the afternoon hour. Good
10 afternoon. Thank you for your testimony, and
11 certainly I've had a chance to meet with NYCHA to
12 talk about the--the PE policy. I won't call it
13 permanent exclusion. I'll just say PE policy and I
14 just had a few questions that had not been addressed
15 by the chairs. I wanted to ask about the information
16 sharing and the partnership with the NYPD in regards
17 to the enforcement. Many of our NYCHAs are under the
18 jurisdiction of PSAs and some of the local police
19 precincts. So, I wanted to find out how does the
20 information over lap when you have a PE case in terms
21 of enforcement does the NYPD enforce those cases as
22 well? And what happens if they confront a unit where
23 there isn't a PE case, how does that work to make
24 sure that NYCHA is working with the NYPD, and we're
25

1 all on the same page, which we try to do everyday.

2 How does that work?

3 HOWARD GOTTESMAN: Good morning.

4 COUNCIL MEMBER GIBSON: Good morning.

5 HOWARD GOTTESMAN: Council Member, you're
6 exactly right. We have PSAs and precincts that cover
7 public housing. To speak to the point of enforcing
8 or looking into PE cases, currently the NYPD does not
9 involve itself in the enforcement of permanent
10 exclusion cases.
11

12 COUNCIL MEMBER GIBSON: Okay, and in
13 NYPD's role of addressing housing issues on
14 developments, how do you guys deal with cases where
15 individuals are being arrested for serious crimes,
16 and how does that translate to working with NYCHA on
17 opening a PE action? So I'm trying to make sure that
18 we're working together, and we're not doing work in a
19 silo?

20 HOWARD GOTTESMAN: So I appreciate the
21 distinction with-with your second question. So
22 obviously cases of serious crimes that occur on
23 public housing developments is something we-we're
24 very much involved with commencing the case, and
25 bringing the case to the Housing Authority. I under-

1 I understood your first question to be solely with
2 the enforcement once a permanent exclusion is put
3 into place. That's something the NYPD does not
4 enforce or involve itself with in the enforcement
5 capacity. Starting a case is something we're very
6 much involved with.
7

8 COUNCIL MEMBER GIBSON: Okay, and I think
9 it was Mark that mentioned the database that NYPD has
10 in terms of the information. Is that the same
11 database that NYCHA keeps in terms of current cases,
12 outstanding cases? How does that work in terms of
13 the database that the NYPD has?

14 HOWARD GOTTESMAN: Well, historically
15 going back to 2004, the NYPD kept its own stand-alone
16 database through about a year or so ago where
17 improvements were made to the communication and the
18 collaboration between the two agencies. As part of
19 that improvement process, we created along with our
20 partners at the Housing Authority a share point
21 database where either agency has access to put
22 information in, view information, and populate
23 certain fields. We're currently in the testing phase
24 of that database, but it is something that I—I know
25 the Housing Authority is I believe very happy with

1 and on our end we still have to make some
2 improvements for our purpose, but those are ongoing.

3
4 COUNCIL MEMBER GIBSON: Okay, okay I have
5 to hurry because I have a timeframe here. I just
6 wanted to ask about prioritizing the cases of serious
7 offenders. How does NYCHA handle? I know each case
8 has an individual basis, but the overarching goal is
9 to move individuals who are convicted of serious
10 offenses. How do you prioritize those cases over
11 cases where it's lower level in terms of a threshold
12 of criminality? How do you make a distinction of
13 more serious offenses versus less serious?

14 DAN HAFETZ: Thank you, member—thank you
15 Council Member. That's the, you know, the core of
16 our decision making is making an appropriate
17 assessment about the nature of the offense and the
18 dangerousness of the offender. So, what-what we've
19 done with the NYPD in the past year and a half is
20 we've created with them a designation of high
21 priority. High priority is our cases involving
22 violence, and guns, and so those are our highest
23 priorities. All information that we receive from the
24 NYPD is a priority for investigation. The charges
25 may not always be, you know, a high priority

1 categorically, but that's—that's—we would open that
2 case and investigate, and move that case faster.

3
4 COUNCIL MEMBER GIBSON: Okay, and the
5 stakeholders you talked about, you talked about the
6 citywide Council of Presidents [bell] so I just
7 wanted to ask what their feedback was in terms of
8 understanding PE and some of the suggested changes
9 that they provided to the Housing Authority.

10 DAN HAFETZ: So they—we met with them
11 several times. They had information. They had good—
12 really good feedback on how to make the forms more
13 accessible. We went through, you know, a lot of
14 pains to make these forms as accessible to people as
15 possible. You know, to—these are legal matters,
16 these are complex, but I think we've gotten really
17 good feedback on—on how to do that.

18 COUNCIL MEMBER GIBSON: Okay, and if I
19 could just—Mr. Chair, sorry. Do you have a—a
20 position on Intro 1207 as of yet? Have you had a
21 chance to review the legislation? Do you have
22 suggestions and—and anything we can take back moving
23 forward?

24 DAN HAFETZ: So we appreciate the—we
25 appreciate the—the opportunity to talk about this.

1
2 One of the recommendations from the Vera Institute of
3 Justice was that NYCHA become more transparent with
4 what does with permanent exclusion. We're in the
5 process of putting a lot of the information that
6 this--this report will cover up on line. I'll give
7 just a quick list. We would provide the number of
8 cases that are referred by the NYPD, the number of
9 permanent exclusions, the number of terminations, the
10 number of probations. You know, the number of others
11 that are, you know, either withdrawn or duplicates of
12 other cases that we have ongoing. The number of
13 applications to list--lift--the number of applications
14 lifted, and we would also provide statistics on the
15 number or permanent exclusions entered by
16 stipulations versus hearing. There's other
17 information that is in the bill that either we don't
18 have, we don't track, cannot track or is information
19 that we don't think would do a good job of--no we
20 essentially don't think is-is useful. For example,
21 the criminal offense that is listed to provide a list
22 of all of these arrest charges doesn't do a good job
23 of accurately reporting what we do. We look at both
24 the offense and the offender, and sometimes the
25 arrest change doesn't always speak exactly to the--it

1 can over-speak or under-speak to--to type of offense
2 there. (sic)

3
4 COUNCIL MEMBER GIBSON: Okay. To be
5 continued. Thank you. Thank you, Mr. Chairs.

6 CHAIRPERSON GENTILE: Thank you. I just
7 want to mention the members that have come since
8 we've begin. Some have actually left but we have
9 Council Member Rafael Salamanca, Rosie Mendez, Helen
10 Rosenthal and Costa Constantinides.

11 CHAIRPERSON TORRES: Council Member
12 Salamanca.

13 COUNCIL MEMBER SALAMANCA: Thank you, Mr.
14 Chair. Good morning everyone. So, I cover the South
15 Bronx, and in the--in the South Bronx, I--I have what I
16 would consider one of the most dangerous NYCHA
17 developments in the city of New York. I have
18 Melrose, Adams and Saint Mary's Houses and Jackson
19 Houses to say the least. Last summer in the Adams
20 Houses Mr. Jessica White was shot and killed on June
21 of 20--2016 surrounded by her children in the
22 playground. Last summer in August of 2016 in the
23 Melrose Houses Rafael Guzman was shot and killed. In
24 2016 in the Saint Mary's Houses there was a gentleman
25 that was stabbed, and in 2015 in the Jackson Houses

1 there was a gentleman, a gentle that was stabbed in
2 the stair—in the stairwells. My question to—to NYCHA
3 is what measures are being put in place to increase
4 security in these NYCHA developments such as
5 surveillance cameras in the hallways in the entrances
6 needed access. You know, that's a big request from
7 the Tenant Associations, LED lighting on the ground
8 and the hallways and better lighting in the
9 playgrounds, but more importantly is NYCHA putting
10 these capital needs in their capital plans without
11 requiring the Council to put it in their own budget?
12

13 DAN HAFETZ: Thank you. That's an
14 interesting question and you seem to have mentioned
15 all the things that NYCHA is trying to do. First,
16 I'd like to thank all the City Council Members as
17 well as the Mayor and the Governor for providing
18 funds to put the things in that you said about. The
19 majority of the—we realize that NYCHA is in dire
20 straits when it comes to funds, and why I like to
21 thank the City Council Members and the Mayor is
22 because that's where we get a lot of our funding for
23 that access, closed circuit TVs or better light or I
24 can look at our map sites LED lighting. Those are
25 very, very important. What is going to our Capital

1 Plan right any help that we can get is we—we want to
2 get those funded to—to put in for those security
3 areas. The Mayor as well as the Governor made it
4 point. I think the Governor gave us \$100 million
5 last year, and we got tons—we have some funding from
6 our City Council Members. You're asking that we put
7 it completely in our capital budget ourselves. Well,
8 we're trying to do that. We realize that we're
9 dealing with an aging stock, and there are priorities
10 and one of our priorities, of course, is the safety
11 and local mention of our mentor communities. So what
12 is going into our outright capital loss (sic) stuff,
13 I have to get back to you on that. My own funds are
14 going into capital for those issues that you're
15 saying. But we are receiving money from outside to
16 do that from you and from our other electeds.

18 COUNCIL MEMBER SALAMANCA: In terms of
19 NYPD so I have PSA-7 that covers that area. We
20 worked very well. They need more resources in terms
21 of manpower, having officers actually, you know,
22 walking around, patrolling my NYCHA developments. Is
23 that something that's coming in this year's budget or
24 what is NYPD doing in terms of increasing
25 surveillance there?

1
2 DAN HAFETZ: I appreciate the question.
3 [coughs] Every year we—we evaluate and several times
4 within the year resources. Currently, there are over
5 2,200 uniformed members assigned to the Housing
6 Bureau, which covers nine PSAs, PSA-7. Certainly it
7 is not just one of our PSAs, but one of the more busy
8 PSAs. I'm sure you're very familiar with the New
9 York Commanding Officer at PSA-7. He's absolutely
10 wonderful. He wants more resources. We want to ship
11 resources as needed.

12 COUNCIL MEMBER SALAMANCA: So—so I'm
13 sorry. I'm with time. What are you going to give
14 him his resources that he's requesting since there's
15 a high crime—there are high crime areas in the South
16 Bronx.

17 DAN HAFETZ: So when we do our
18 evaluation, we—we have to look at the entire picture.
19 If, in fact, we do see a trend in that PSA, that
20 calls for more resources. We have mobile response
21 teams that we temporarily put in. They're assigned
22 to the entire Bronx and part of Queens, but we could
23 have them spend, and they do spend the majority of
24 their time in PSA-7. So they are mobile. We can
25 move them around whenever we want. Permanent

1 assignments are a little more difficult than that,
2 but we still make them.

3
4 COUNCIL MEMBER SALAMANCA: Why? Why are
5 they more difficult?

6 DAN HAFETZ: Because a permanent
7 assignment entails the moving of—of somebody,
8 individuals to their permanent command. To do that
9 to an individual, to move them around one week
10 they're here, the next week they go some place else
11 permanently is something that we try not to engage in
12 on week-to-week basis, but we do have the mobile
13 teams that have the vehicles and they have the model
14 to move around. [bell]

15 COUNCIL MEMBER SALAMANCA: Mr. Chair, can
16 I ask one more question?

17 CHAIRPERSON TORRES: Absolutely.

18 COUNCIL MEMBER SALAMANCA: My last
19 question in terms of the exclusion policy, how—how
20 will this exclusion policy likely affect the
21 undocumented immigrants, and is NYCHA doing enough to
22 ensure that the exclusion policy does not put a
23 bull's eye on someone that—someone that may be facing
24 deportation?

1
2 DAN HAFETZ: I think Council Member if
3 someone is, you know, obviously this is—we don't want
4 to, you know, jeopardize the livelihood or—the
5 ability of people who are, you know, facing, you
6 know, serious consequences to it—we don't want to,
7 you know, further endanger their ability to stay her.
8 If someone is—if we learn of someone who has
9 committed a very serious and dangerous offense, we
10 would take steps to exclude them and have them
11 removed from the apartment so that they don't come
12 back. We would not be, you know—the kind of
13 consequences you're—you're talking about, I think
14 really kind of don't apply here.

15 DAVID FARBER: And I would say overall, we
16 work closely with—with the city to ensure that these—
17 these issues that our NYCHA residents are not touched
18 by these new issues of undocumented status to the
19 greatest degree possible. We work closely with the
20 city to—to make sure that we are respecting the
21 rights of the people who live at NYCHA, and doing our
22 best to avoid these issues.

23 COUNCIL MEMBER SALAMANCA: Thank you, Mr.
24 Chair.

1
2 CHAIRPERSON TORRES: Council Member
3 Rosenthal.

4 COUNCIL MEMBER ROSENTHAL: Thank you so
5 much, Chairs, for holding this oversight hearing,
6 incredibly important oversight hearing so we can try
7 to get to the facts of what's going on here. I guess
8 I'm going to start with a little bit of
9 disappointment from your testimony on page 4 where it
10 says we are developing clear written guidelines when
11 permanent exclusion is sought. Do have a draft of
12 those that you're ready to share or what's your
13 timing? Why isn't that done?

14 DAN HAFETZ: [coughs] So we've been—we've
15 devoted serious time and resources to, you know,
16 formalizing our policy and our decision making. The
17 Vera Institute of Justice in February released a
18 report with many recommendations that have informed
19 it. We're moving along very well in getting a final
20 policy in place. You know, a good portion of that
21 policy is essentially already.

22 COUNCIL MEMBER ROSENTHAL: [interposing]
23 I have five minutes to--

24 DAN HAFETZ: Right.
25

1
2 COUNCIL MEMBER ROSENTHAL: Is it a month?
3 Is it two months?

4 DAN HAFETZ: Yeah, within the--within the
5 next month.

6 COUNCIL MEMBER ROSENTHAL: Within the
7 next month, May?

8 DAN HAFETZ: Yeah.

9 COUNCIL MEMBER ROSENTHAL: Okay, and
10 they'll be clearly written out? Right so in the--may
11 I make a just simple suggestion on the--the problem
12 with the word permanent. Just can you put an
13 asterisk next to the word and in a note explain what
14 you mean? I think you're under--I don't know what the
15 right word is but underestimating NYCHA residents and
16 their inability to understand clear explanations and,
17 you know, I'll pull out my Thesaurus to try to find a
18 different word for permanent, but you are--there's no
19 question that the debate of whether or not to use the
20 word is a valid one, and there--there is by
21 definition--by definition it's an oxymoron if
22 permanent exclusion does not mean permanent. So,
23 fixing that strikes me as a pretty simple linguistic
24 or footnote thing to do, and I'd urge you to try
25 harder on that.

1
2 DAN HAFETZ: Alright, thank you, Council
3 Member. We—we appreciate that. I think what I
4 should make clear is that in totally new completely
5 overhauled application to lift permanent exclusion
6 policy is now up on line. So, that portion is
7 complete. What is not complete is the--

8 COUNCIL MEMBER ROSENTHAL: Wait.

9 DAN HAFETZ: --will be and will be
10 addressed.

11 COUNCIL MEMBER ROSENTHAL: So what's
12 complete is the confuse—confusing part?

13 DAN HAFETZ: Yeah, no, so—so let me
14 address because I think it's a great point. We
15 acknowledge the confusing nature of this. I think
16 what we're trying to balance is ensuring that our
17 process is—that permanent exclusions are enforced,
18 and what we—part of what we're—there have been a
19 number of recommendations from the Vera Institute of
20 Justice, from advocates across the city that we are
21 taking to heart. So, and they agree--

22 COUNCIL MEMBER ROSENTHAL: [interposing]
23 Okay. Does Vera a recommendation on the use of the
24 word permanent?
25

1 DAN HAFETZ: They did not have a
2 recommendation on it.
3

4 COUNCIL MEMBER ROSENTHAL: Okay, I'll
5 reach out to them and get a recommendation from the
6 because it strikes me as a pretty simple thing--

7 DAN HAFETZ: Yes.

8 COUNCIL MEMBER ROSENTHAL: --to address.
9 My second question is I really do have problems with--
10 with NYCHA evicting tenants over non-payment. And
11 this is something that we-we're dealing with
12 regularly in our district, and I'm sorry. I know,
13 it's a tangential point to this issue, but to say as
14 a response that, you know, it's a de minimis number
15 every year, is really not a fair statement. I
16 understand to Council Member Torres' point that there
17 are many more evictions for non-payment of rent than
18 for, you know, serious crime. I-I think that's-I
19 think we need to not dismiss that point as saying
20 that 300 is a small number. I'd like to know how
21 many of those 300 end up in our homeless shelters.
22 Do you have a sense of that in terms of following up
23 with those eviction cases?

24 DAN HAFETZ: I'd just say--
25

1
2 COUNCIL MEMBER ROSENTHAL: Would you then
3 take them back in because people in our homeless
4 shelters have some sort of priority with NYCHA?

5 DAVID FARBER: I'll just say briefly I-I
6 understand and we take to heart what-what you're
7 saying. We go-we are looking for every opportunity
8 to avoid eviction including by-for-for non-payment of
9 rent. We work hand-in-glove with HRA. We literally
10 day-to-day whenever there's an opportunity to get
11 financial assistance, we give multiple extensions--

12 COUNCIL MEMBER ROSENTHAL: [interposing]
13 I adore you. Don't get me wrong--

14 DAVID FARBER: --to many--

15 COUNCIL MEMBER ROSENTHAL: --and I'm a
16 huge support of NYCHA, but you can't [bell] look in
17 the face and say that. I have hundreds of
18 constituents that I work with every single day and-
19 and it-it's-I appreciate that that's your intent, and
20 I appreciate that greatly. The follow-through just so
21 you're aware is not-is not there. Okay. Thank you
22 very much for your time. Again, thank you to the
23 Chairs.

24 CHAIRPERSON TORRES: Thank you-you,
25 Council Member and I just underscore your point. I

1 do, you know, I guess I want to be careful not to
2 diminish that's been done. You've obviously put your
3 heart and soul into crafting thoughtful policies.
4 I've collaborated extensively with both of you. I
5 think you're first rate professional, but I-I do find
6 it strange that in the two years NYCHA never thought
7 to ask whether we should change the name permanent
8 exclusion. So I'd be curious to hear what-what-the
9 bureau's recommendations to that effect. I want to
10 address the DOI's recommendation regarding the field
11 investigators. DOE-DOI is recommending that NYCHA
12 equip field investigators with-with safety equipment
13 or-or even firearms or-or transfer the function of
14 investigating and enforcement violations of permanent
15 exclusion to the NYPD. So, on one hand, I could see
16 why the inclusion of a firearm could escalate the
17 situation obviously, but I'm going to-I'm going to
18 play-play devil's advocate and I-and I have a
19 question for the chief actually who was in law
20 enforcement. I'm curious to know do you believe that
21 these investigators should be equipped with safety
22 equipment, firearms either/or both?

24 HOWARD GOTTESMAN: I don't agree that
25 they should be equipped with firearms or anything as

1 it pertains to safety to make their jobs safer. We
2 can always improve. I'm trying—I'm not sure what--

3
4 CHAIRPERSON TORRES: What about a bullet-
5 proof vest?

6 HOWARD GOTTESMAN: I don't see that.

7 CHAIRPERSON TORRES: What about a radio?

8 HOWARD GOTTESMAN: I would consider that
9 yes. It's always a good safety asset.

10 CHAIRPERSON TORRES: I guess I would ask
11 just generally, let's take it outside of the context
12 of Public Housing. Let's say you're—you're a
13 commanding—you are a commanding officer in the NYPD.

14 HOWARD GOTTESMAN: Yes.

15 CHAIRPERSON TORRES: Could you imagine a
16 situation where you would advise an investigator to
17 go without safety equipment into a situation where
18 there could potentially be a violent offender, a
19 firearm, and a risk of serious injury or death?
20 Would you—would you send you—would you send your
21 officers into that kind of situation?

22 HOWARD GOTTESMAN: Absolutely not, but
23 the time is different. There are police officers,
24 and when the stipulation was signed they realized
25 that these are not police officers coming to the

1 house. They're employees of the Housing Authority.

2 I would never send a cop in any places--

3
4 CHAIRPERSON TORRES: Why would you never
5 send a police officer into that kind of situation?
6 Because it's dangerous--because?

7 HOWARD GOTTESMAN: Because the police
8 officer I have seen them anywhere without their
9 standard equipment--

10 CHAIRPERSON TORRES: Okay.

11 HOWARD GOTTESMAN: --bullet-proof vests
12 and mace, a gun and a day stick.

13 CHAIRPERSON TORRES: Well, just setting
14 aside the fact they're policemen, do you think it's
15 safe for anyone to enter a situation without any
16 safety equipment where there could be a firearm or
17 weapon, a violent offender, and a risk of serious
18 injury and death?

19 HOWARD GOTTESMAN: No.

20 CHAIRPERSON TORRES: I'm sorry?

21 HOWARD GOTTESMAN: No, I don't think it's
22 safe to send anyone where there could be a firearm or
23 the things that you just mentioned.

24 CHAIRPERSON TORRES: So if I'm an
25 investigator, and I'm charged with enforcing the

1 permanent exclusion in a unit that could have a
2 dangerous offender, and could have a firearm and
3 could have a risk of serious injury and death, by-
4 judging by your answer it's not safe for me to have
5 to enter that situation?
6

7 HOWARD GOTTESMAN: Well, once again, this
8 is for the--your employees of the Housing Authority
9 who all happen to be civilians and they know what
10 their charges and they're trained in that. Like I
11 said, it's different being a police officer than just
12 being a civilian employee. We can't give them
13 bullet-proof vests.

14 CHAIRPERSON TORRES: And I just want to
15 know if this all hypothetical because there have been
16 no deaths.

17 HOWARD GOTTESMAN: I realize that. No.

18 CHAIRPERSON TORRES:

19 CHAIRPERSON TORRES: But-but I think it's
20 an interesting-I would like-it's an interesting.

21 HOWARD GOTTESMAN: And the-our record-the
22 records that we've had with them there have been no
23 injuries-injuries--

24 CHAIRPERSON TORRES: Right.
25

1
2 HOWARD GOTTESMAN: --the have been no
3 problems whatsoever. They do a fantastic job because
4 they've been trained properly to do their job.

5 DAVID FARBER: I've read--

6 CHAIRPERSON TORRES: Yeah.

7 DAVID FARBER: --so I-I think it's-it's-
8 it's a-it's interesting in the-in the context of
9 your-your comment that we should consider whether the
10 word permanent sends the right message or not. I
11 think this is a similar issue is that if we equip our
12 people-of course we want them to be safe. Of course
13 we consider that. We talk to the investigator.
14 They've been doing this for years.

15 CHAIRPERSON TORRES: Yes.

16 HOWARD GOTTESMAN: They tell us-if they
17 tell us what they need, right, then of course, we
18 would provide that, but if we begin to equip them as
19 if they're going into situations where there might be
20 engagement, where there-where they might trigger
21 these kinds of situations, I think then--

22 CHAIRPERSON TORRES: [interposing] Why
23 would you need a trigger?
24
25

1
2 HOWARD GOTTESMAN: Well, if the tenants--
3 if tenants who are facing inspections for permanent
4 exclusion--

5 CHAIRPERSON TORRES: Yeah.

6 HOWARD GOTTESMAN: --and their
7 communities begin to get the impression that the
8 inspectors are coming in not just as inspectors but
9 as law enforcement or quasi-law enforcement it
10 creates a whole different image of them--

11 CHAIRPERSON TORRES: And what if you
12 behave in exactly in the same way? The--the
13 difference is you have a bullet-proof vest on.

14 HOWARD GOTTESMAN: Just like the people
15 will hear about it. They will--they will--they will
16 know that this program is taking on a new
17 connotation, a new--a new impression and--and we're
18 concerned with that and that's why we thought about
19 it very carefully again talking with investigators
20 who have been doing this a long time. And so, our
21 conclusion is that they're--they're properly equipped.
22 As--as the chief said, perhaps we'll, you know,
23 consider radios, but we--we think that we're again
24 making the right balance.

1
2 CHAIRPERSON TORRES: Would you consider
3 any vest or--?

4 HOWARD GOTTESMAN: You have a point that
5 you had mentioned--

6 CHAIRPERSON TORRES: Yes.

7 HOWARD GOTTESMAN: --that the DOI Report
8 stated that maybe we should turn it over to the
9 police officer to the NYPD. This is a civil matter.
10 So I don't see the NYPD getting involved with
11 something like this.

12 CHAIRPERSON TORRES: Again, I'm--I'm--
13 again, I'm not--I don't want to defend every
14 regulation.

15 HOWARD GOTTESMAN: Oh, okay.

16 CHAIRPERSON TORRES: That's not--I'm not
17 here to--but--but I think the concern about safety is
18 an interesting one, right. There's a concern that if
19 you do introduce a firearm, there's no telling how
20 the situation would escalate where we've seen police-
21 civilian interactions escalate in ways that that are
22 unpredictable. But it is true that there could be a
23 situation where you're entering an apartment that
24 does have a violent offender that does have a weapon,
25 and what are the--what are you to do in those

1 circumstances if you don't even have a vest on? It's--
2 even if there are no deaths, as soon as they--you know
3 how violence works. As soon as there's one death,
4 there's automatically a change in policy.
5

6 HOWARD GOTTESMAN: And I agree with you,
7 City Councilman on that, but that goes for all of our
8 employees in--in dealing with NYCHA, or dealing
9 anywhere. You can go into--you can take a housing
10 assistant going into an apartment--

11 CHAIRPERSON TORRES: [interposing] No,
12 these are much more dangerous. Now, you're enforcing
13 permanent--not obviously everyone--

14 HOWARD GOTTESMAN: [interposing] We're
15 not enforcing. We're doing an inspection.

16 CHAIRPERSON TORRES: --but in some of
17 these or investigation. In some of these cases, you
18 have units that potentially have dangerous offenders
19 right? It's a small minority of cases, but those
20 cases do exist--

21 HOWARD GOTTESMAN: Yes.

22 CHAIRPERSON TORRES: --and those are the
23 cases you're investigating and there is a risk. It's
24 not a run-of-the-mill inspection by a housing
25

1 assistant for a tenant who might be—would have—might
2 have—I don't know—recording or problems there.

3
4 HOWARD GOTTESMAN: Okay, I give that.

5 CHAIRPERSON TORRES: Yeah. Do you want
6 to--?

7 DAN HAFETZ: Well, you know, I mean I—I—I
8 would only add I think these—I think part of the
9 reason why they work is they're I think adding a law
10 enforcement component to it would be a deterrent to
11 people agreeing to this. These are, you know, these
12 are civil agreements.

13 CHAIRPERSON TORRES: Yeah.

14 DAN HAFETZ: We don't want to put that in
15 jeopardy. When I went in—when I've gone out with our
16 inspectors to apartments that's where dangerous
17 people were excluded, what I observed is that tenants
18 do not generally see this as an antagonistic
19 situation. We know why the inspectors are there.
20 It's for a very limited focus. As soon as law
21 enforcement goes in—

22 CHAIRPERSON TORRES: But we're—not
23 concerned, I'm not concerned that the tenant of
24 record might be antagonistic. I'm concerned that the
25 offender is potentially antagonistic, right?

1
2 DAN HAFETZ: Right, but when law
3 enforcement is there, it takes on a different
4 dimension. They are no longer there just for the
5 narrow purpose of seeing whether or not the person is
6 visiting. It then takes on a different, you know,
7 investigative and law enforcement purpose, which we
8 don't (1) want to subject our tenants to.

9 CHAIRPERSON TORRES: Yes.

10 DAN HAFETZ: We don't want--

11 CHAIRPERSON TORRES: [interposing] So
12 let's set aside the law enforcement. Let's set aside
13 the fire arm. What about a vest?

14 DAVID FARBER: Again, I-I think we-we
15 considered these recommendations when they were made
16 two years ago. As we said then, we would explore
17 them. We came to the conclusion that except perhaps
18 for radios that the way we're currently handling the
19 program is-is the right way to do it.

20 CHAIRPERSON TORRES: I have a question
21 about reporting. According to-I'm just curious to
22 know is there a shared database that allows for
23 reporting between NYPD and NYCHA? I know that was
24 announcement that the Mayor had made a few years ago.
25 Is that database complete?

1
2 DAN HAFETZ: Yes, the database is up and
3 running.

4 CHAIRPERSON TORRES: And what are—what
5 are the kinds of offenses that trigger the sharing of
6 information between the NYPC and—and NYCHA?

7 HOWARD GOTTESMAN: So we have a procedure
8 that we implemented over 12 years ago in
9 collaboration with the Housing Authority that
10 delineates four separate categories that would
11 trigger a referral from the NYPD to the Housing
12 Authority. Twelve and a half years ago if this
13 database did not exist, and everything was delivered
14 via paper. About a year ago [coughs] we had the
15 database up and running, and so today if a case that
16 falls under these four categories and—and they're
17 subcategories, too. It's Appendix B I believe of the
18 DOI Report. That would be eligible to be put into
19 the database, and it is and then that would be shared
20 with the Housing Authority through the database.

21 CHAIRPERSON TORRES: So what are those
22 offenses?

23 HOWARD GOTTESMAN: So there's four
24 categories. The first category is anyone arrested as
25 the result of a search warrant for having contraband.

1 So there's--there's a whole slew of charges obviously
2 depending on what the--the contraband is. The second
3 category are felony narcotics and marijuana charges.
4 It doesn't have to necessarily be as a result of the
5 search warrant?
6

7 CHAIRPERSON TORRES: These are minor
8 cases you're now on?

9 HOWARD GOTTESMAN: No, felony--no, no
10 felony. Felony narcotics and felony marijuana.

11 CHAIRPERSON TORRES: So how many
12 quantities?

13 HOWARD GOTTESMAN: Well, felony--to have a
14 felony marijuana charge it's significant, and I don't
15 have the exact weight, but it's--it's like a pound or
16 more and it's--it's not personal use. That's for
17 sure. The third category are actually the crimes
18 that you might be referring to, and it's--it's a list.
19 Murder First Degree or Second Degree or an attempt on
20 either one; Rape First Degree or attempt; Robbery
21 First Degree or Robbery Second Degree; Assault First
22 Degree; Second Degree Assault when the victim is shot
23 by a firearm; First Degree Burglary; First, Second or
24 Third Degree Arson; First Degree Criminal Sexual Act
25 or its attempt; Course of Sexual Conduct Against a

1 Child in the First Degree or its attempt; Aggravated
2 Sexual Abuse First Degree or its attempt; and then
3 any firearm offense listed in Article 265 of the
4 State Penal Law. That's Category 3. Those are the
5 offenses. Then there's a Category 4 that we call a
6 catchall. DOI refers to it as catchall several times
7 in its report. That would be a case that doesn't
8 fall under the first three categories that a
9 commander of a PSA were increasing in his or her
10 judgement feels should be referred, and if they, in
11 fact, refer it because it doesn't fit into the first
12 three categories, that has to go through two further
13 steps that has to be approved by the Chief of the
14 Housing Bureau and our coordinator who coordinates
15 this program with the Housing Authority.
16

17 CHAIRPERSON TORRES: And what percentage
18 of cases are referred to that category?

19 HOWARD GOTTESMAN: So we don't tag the
20 cases that we submit by 1, 2, 3 or 4. However, we
21 anticipated a question so we looked. It was an
22 eyeball counting. We had to go through each case.
23 We do more than 1,500 cases annually. So the easiest
24 thing for us to do is to use 2017 because it's not
25 yet over and the data is readily there, and it was

1 6.8% almost 7% of the cases this year submitted fell
2 under Category 4, most of which were offsite, off
3 development.
4

5 CHAIRPERSON TORRES: But if a crime is-
6 fits into none of the original three categories, if
7 it's neither a sex crime or in the category for
8 violence, why would you refer it NYCHA?

9 HOWARD GOTTESMAN: Most of those fitting
10 into Category 4 do fit into the other three but for
11 the fact that they're not committed on the grounds of
12 the Housing Authority. So they do, in fact, fit
13 those crimes.

14 CHAIRPERSON TORRES: Now-now DOI is
15 alleging that you have improved your reporting of on-
16 site arrests, but you're lagging far behind in your
17 reporting of off-site arrests. Is that--?

18 HOWARD GOTTESMAN: So we respect the
19 investigation that DOI did and it was very thorough
20 and quite impressive the report as well. However,

21 CHAIRPERSON TORRES: NYCHA would like to
22 differ with that. (sic)

23 HOWARD GOTTESMAN: As it-I'm only here
24 for the NYPD--

25 CHAIRPERSON TORRES: Yes.

1
2 HOWARD GOTTESMAN: --as it pertains to
3 the facts of the NYPD. The issue we have is the--the
4 causation. Certain conclusions are drawn based on
5 facts that are just, you know, opinion. Not--not 100%
6 accurate. So for example the position or the
7 recommendation that the NYPD refer all qualifying
8 arrest of NYCHA residents who are arrested off
9 development, it's our position that that's not part
10 of the procedure. In fact, one of their
11 recommendations--

12 CHAIRPERSON TORRES: [interposing] So
13 it's not one of the NYPD's lead cases for the legal
14 action.

15 HOWARD GOTTESMAN: It is not, in fact.

16 CHAIRPERSON TORRES: No, DOI can see that
17 it's not part of the procedure, but it's mandated by
18 the MOU.

19 HOWARD GOTTESMAN: So the MOU is
20 something that predates the--the procedure, and the
21 particular part of that MOU that they are referring
22 to I believe is paragraph 3 of the MOU, which
23 requires the mass reporting of all arrests of NYCHA
24 residents off development. Not just those that would
25 qualify for what we call cases for legal action.

1
2 Everyone is referring to permanent exclusion. We—we
3 have a different term for it. That is—that is how I
4 read their recommendation.

5 CHAIRPERSON TORRES: Yes, so it seems to
6 me no one is advocating reporting of all arrests, but
7 that—that one?

8 HOWARD GOTTESMAN: Then you will see what
9 DOI is.

10 CHAIRPERSON TORRES: But if—if the
11 objective is to facilitate targeted use permanent
12 exclusion for the most serious crimes, then the case
13 could be made that there should be reporting of on-
14 site and off-site arrests for serious crimes.

15 HOWARD GOTTESMAN: So Category 4 allows
16 the occasional reporting off-site crimes by a NYCHA
17 resident, and—and it is, in fact, used. It is not
18 used very often, and the statistic I cited, Category
19 4, is this year is about 6.8% of the total cases.

20 CHAIRPERSON TORRES: So, if—if I'm a
21 NYCHA resident and I commit a violent crime, I murder
22 someone outside the premises of the a public housing
23 development, there's no guarantee that the NYPD will
24 report that information to NYCHA?

25 HOWARD GOTTESMAN: Correct.

1
2 CHAIRPERSON TORRES: Okay, and do you
3 have any intention of changing that policy?

4 HOWARD GOTTESMAN: Well, you know, you
5 have to look at each case on-on its own. Some if
6 someone goes to Las Vegas and--

7 CHAIRPERSON TORRES: [interposing] Well,
8 I mean I think you can make those determinations
9 based on the category. Like I think is there ever a
10 situation where a murder outside public housing
11 should not reported to NYCHA by a public housing
12 resident?

13 HOWARD GOTTESMAN: You don't dis-you
14 know, disqualify a whole group of cases especially
15 something that falls under something as heinous as
16 murder, but, you know, there could be--three could be
17 case made, you know, depending on the case itself
18 that it's something that the Housing Authority would
19 not act on.

20 CHAIRPERSON TORRES: But I-I why would
21 not--well, why would the Housing Authority--what makes
22 you--what makes you believe that the Housing Authority
23 would not act on that? I mean if--if--if you have a
24 NYCHA resident who murdered someone what--what leads
25 you to believe that the Housing Authority not act on

1 that? I mean if-if-if you have a NYCHA resident who-
2 who murdered someone what-that leads you to believe
3 that NYCHA would not act on that complaint?
4

5 DAVID FARBER: So Council Member if I can
6 just--

7 CHAIRPERSON TORRES: Well, I just want-I
8 would-I want him to explain the statement.

9 HOWARD GOTTESMAN: Well, we've-we've
10 touched on the subject before in front of this
11 committee, in front of-in-in private meetings between
12 the two agencies, and it was agreed that the mass
13 reporting of every single--

14 CHAIRPERSON TORRES: [interposing] Well,
15 I'm not advocating mass reporting. That's a straw
16 person. I'm asking-what I'm suggesting is and I
17 think what DOI is recommending, maybe I'm misreading
18 the report is reporting of off-site arrest for
19 serious violent offenses.

20 HOWARD GOTTESMAN: Right, so-so that
21 option is still there, and the commander of the
22 jurisdictional--

23 CHAIRPERSON TORRES: [interposing] No,
24 but why is not being exercised with the same
25

1 consistency that we report on-site arrests? I mean
2 that's the question that DOI is posing to you.

3
4 HOWARD GOTTESMAN: If you could--the--the
5 simple answer is the procedure does not call for it.

6 CHAIRPERSON TORRES: But you can modify
7 the procedure to--to capture that information. Like
8 what's to justify--you said that you're concerned that
9 NYCHA won't act on that information?

10 HOWARD GOTTESMAN: No, it's--the--the
11 reason why we don't report it every time isn't
12 because we don't NYCHA will act on it, it's because
13 it's looked at on a case-by-case basis.

14 CHAIRPERSON TORRES: But I can't think of
15 a case--wait. I can't think of a case where it would
16 be improper for the NYPD to report a murder or a rape
17 by a public housing resident. So how is that on a
18 case-by-case basis? I don't--

19 GIRARD NELSON: Council Member if I--

20 CHAIRPERSON TORRES: yeah.

21 GIRARD NELSON: --if I may. So, [coughs]
22 information about a dangerous person living in public
23 housing is important to NYCHA. Period, end of
24 sentence. What we've done in the past year and a
25 half is we have modernized and we've cleaned up and

1 we've drastically improved crime that takes place on
2 the NYCHA property that's serious. I mean we're more
3 targeted about it. We're getting more information.
4 It 's better information that we're getting from
5 NYPD, and so we have drastically improved that. The
6 MOU you're referring to is over two decades old. It
7 is in the process of being updated to reflect our
8 current practice, which we have significantly
9 altered. We wanted to get the right practice down so
10 that we could have it, you know, memorialize that
11 accurately, and we are in discussion with the NYPD
12 about dealing with off-campus arrest. They take on-
13 they're different than on-campus arrest. Not
14 because--necessarily because of the safety, but
15 because of, you know, the--any information that we
16 get needs to be actual. For us to move forward, it
17 needs to be actual, but one of the problems with off-
18 campus information is the only evidence--evidence
19 typing the person to a NYCHA apartment is the
20 information they give at arrest. We've talked a
21 little bit today about why that's not always
22 sufficient for us. The difference when an arrest
23 takes place on NYCHA is NYPD has gotten really good
24 at looking at information that would build out--help
25

1
2 NYCHA build our case. So they look for information
3 about the mail being there, the clothes, the
4 individual—they find the individual in the apartment.
5 It becomes very different when we look at off-campus
6 arrests. It doesn't mean we don't want the
7 information, and we agree that, you know, a serious—a
8 very serious dangerous high priority person is
9 someone that we want information about. I think
10 there are a number of considerations that we are
11 currently looking at, and we, you know, are---are
12 open obviously to improving that. I think we just
13 have to continue those discussions and work it out.

14 CHAIRPERSON TORRES: But there just seems
15 to me there's no difference between committing a
16 serious crime on public housing premises and
17 committing a crime ten feet outside of public housing.
18 I don't—

19 GIRARD NELSON: There's not necessarily
20 a difference in assessing the danger of the
21 individual, but it affects the ability of NYCHA to be
22 able to build a case against the tenancy.

23 CHAIRPERSON TORRES: Why are those cases
24 harder to build? I don't understand why they're
25 harder.

1
2 GIRARD NELSON: Because often times the
3 only information that connects—because remember we
4 have to not prove the offense, we have to connect
5 that offense to an mutual apartment. It has to be
6 serious I would say, but to connect it to an
7 apartment. When someone is picked up on the FDR
8 Drive and they give a NYCHA address, that may be the
9 only piece of information we have connecting them to
10 a tenancy. So that is about--

11 CHAIRPERSON TORRES: [interposing] But if
12 I—I commit a crime at the opposite end of Robinson
13 (sic) Houses where I live, right, you have no
14 evidence. You don't where—which particular apartment
15 in which I live so that—I mean it feels like that
16 circumstance could apply to both on site and off
17 site, I guess.

18 DAVID FARBER: So, I—I agree with your
19 concerns. We've spend over, you know, the last year
20 and half. We've done a tremendous amount of work.
21 There was so—obviously there was so much to do.
22 Improving the database by improving our coordination.
23 The NYPD has been fantastic partners, and put so much
24 effort into this. We have worked closely with—with
25 the Housing Bureau, right with the precincts where

1
2 NYCHA is primarily located to make sure that that
3 information gets to us better, right. The data is—
4 we're getting 80% more cases coming to the NYCHA Law
5 Department. So we've made great strides. I think a
6 sort of—a next step in our discussions with NYPD
7 would be to continue to explore what information
8 we're—we're either not getting or we're not getting
9 enough that maybe NYCHA hasn't asked for that that we
10 should be getting so that we can get comfortable if
11 it's off campus.

12 CHAIRPERSON TORRES: [interposing] Does
13 it—does this require exploration? I mean it seems
14 like you're an amount—a fair amount of information,
15 et cetera. (sic)

16 DAVID FARBER: [interposing] Yes, I'm
17 saying—I'm saying this is—this is something that will
18 be the subject of continuing conversations with NYPD.

19 CHAIRPERSON TORRES: I want to—you said
20 there was one case where you took issue with about
21 DOI's representation of the facts. You—you
22 mentioned a case about a—a sex offender or is that GC
23 case?

24 DAN HAFETZ: I believe so, yeah.

25

1
2 CHAIRPERSON TORRES: What was—what was
3 inaccurate about DOI's representation in that case?

4 DAN HAFETZ: I think what was—I think
5 what was inaccurate is that it falls under a
6 recommendation that NYCHA should pursue eviction of
7 someone who knows—to a tenant that knowingly shelter
8 an offender. The evidence that was available was
9 that individual was provided a NYCHA address in the
10 State Sex Offender Registry. I think that's actually
11 a good opportunity to talk about how we've made some
12 huge improvements since our last hearing on the
13 subject thanks to the help of State Senator Klein,
14 and—and this committee. We are now getting
15 information from the state where conduct a match with
16 anyone who's provided—any registered sex offender is
17 provided a NYCHA address. We—when we get that
18 information, we get it—we get it very frequently,
19 regularly. We conduct an inspection and
20 investigation to see whether or not we can—the person
21 is actually visiting and living there. In this case,
22 we determined that there was not evidence. That was
23 actually contradictory evidence.

24

25

1
2 CHAIRPERSON TORRES: So the tenant was
3 never caught sheltering GC in the apartment after a
4 GC was excluded?

5 GIRARD NELSON: Council Member, I think
6 the premise of the statement is that providing--in
7 fact, a registered sex offender provides an address
8 of a NYCHA tenant to the State Sex Offender Registry
9 means that truthfully the person is actually living
10 and visiting that apartment. Now, we don't agree
11 with that. We investigate and we'll make a
12 determination.

13 CHAIRPERSON TORRES: So you investigated
14 and you found no evidence?

15 GIRARD NELSON: And we found--we actually
16 found contradictory evidence.

17 CHAIRPERSON TORRES: Okay, any other
18 examples in the DOI Report with which you would take
19 issue.

20 GIRARD NELSON: Again, I--I don't think
21 that we would want to litigate each of these cases.
22 I think, again, FEMA is the--what--what do the facts as
23 even described by DOI, what do they mean? Do they--do
24 they lead to the same conclusions? Do we think that
25 they lead to the conclusions that DOI has--has reached

1 and even—even where the facts decided by DOI even—
2 even sometimes whether we agree or not on the facts,
3 sometimes we have significant differences on what the
4 correct conclusions would be and what the appropriate
5 action the part of NYCHA should be there.
6

7 GIRARD NELSON: There—there are advocates
8 who question just the empirical basis for permanent
9 exclusions and where do we get this notion that
10 permanent exclusions improves public safety? We know
11 that it can cause homelessness, but whether it
12 improves public safety is purely speculative. Has
13 there been an empirical study on the effectiveness of
14 permanent exclusions in improving safety?

15 GIRARD NELSON: Council Member, we have
16 not conducted that study. I think it's important to
17 note, as we've discussed--

18 CHAIRPERSON TORRES: [interposing] yes.

19 GIRARD NELSON: --in this hearing this is
20 one of a number of strategies actually to improve
21 public safety. It's a targeted one. It's a specific
22 remedy designed to remove individual dangerous people
23 from public housing.

24 CHAIRPERSON TORRES: But—but given the
25 unintended consequences that can result from the use

1 of permanent exclusions given the—how easily
2 permanent exclusions can morph into a blunt
3 instrument, don't you owe it to the residents to
4 study whether this policy is effective--

5
6 GIRARD NELSON: I think that--

7 CHAIRPERSON TORRES: [interposing] If
8 you're claiming that it's a public safety remedy,
9 shouldn't you study whether it is, in fact, a public
10 safety remedy?

11 GIRARD NELSON: So, you know, I—in many
12 ways we have studied that. That's when we conduct
13 the inspections, include that these that are working.
14 That means that dangerous people had--

15 CHAIRPERSON TORRES: [interposing] Will
16 have—have been an actual study, not—not anecdotal
17 experiences, but an actual systemic academic study of
18 permanent exclusions, and the role it plays in
19 improving public safety?

20 GIRARD NELSON: So it kind of—

21 CHAIRPERSON TORRES: [interposing] That's
22 what I consider a study.

23 GIRARD NELSON: So council member, if I
24 understand correctly, it—it sounds like you're asking
25 have there—has there been a study to see if permanent

1 exclusion has, you know, correlates to a drop in
2 crime rate in public housing.

3
4 CHAIRPERSON TORRES: Well--well--

5 GIRARD NELSON: There--there has not been
6 that study, and we don't think that's necessarily the
7 right way of evaluating the effectiveness of
8 permanent exclusion. The effectiveness of permanent
9 exclusion is that individual dangerous person is not
10 coming back to public housing.

11 CHAIRPERSON TORRES: And you have--and you
12 will say you don't think there is--how else would you
13 measure public safety if it's not by the crime rate
14 or by the presence of crime.

15 GIRARD NELSON: Well, I think what we're
16 talking about is measuring the effectiveness of
17 permanent exclusion.

18 CHAIRPERSON TORRES: Yes.

19 GIRARD NELSON: Right. So, you know, as--
20 as we discussed, there are a variety of ways of--of
21 examining that. We do it through our regular
22 inspection and apartments are subject to permanent
23 exclusion, and we also--

24 CHAIRPERSON TORRES: [interposing] I
25 guess but what--but what would prevent--what--what

1 prevents you from conducting a third-part independent
2 study of the effectiveness of permanent exclusions
3 rather than relying on your anecdotal experiences?
4

5 DAVID FARBER: So--so there--there--we have
6 different tools, right. We have different approaches
7 and resources--

8 CHAIRPERSON TORRES: [interposing] I'm
9 not interested in your differences. I'm only--I'm
10 only asking about one of those tools.

11 DAVID FARBER: Okay, right. So this
12 tool, right, this tool the success of this tool is
13 again, I asked the question earlier if NYCHA knows of
14 dangerous persons at NYCHA, should NYCHA do nothing
15 or should it do something. Again, what we think is
16 in a very targeted way. Our answer is we should do
17 something about that. Can we--can we make a
18 statistical correlation to whether crime at that
19 development is improved by having taken that action?
20 Not necessarily and we think that even if we did a
21 study, right, that showing those kinds of causalities
22 and relationships is very difficult in--in this
23 context. That being said, we still think permanent
24 exclusion is an appropriate tool to accomplish what
25

1 it is designed to accomplish, which is we know of bad
2 people. They should be removed.

3
4 CHAIRPERSON TORRES: We said the choice
5 is between doing something and doing nothing, but-but
6 if that something has a cost that outweighs its
7 benefit then that might lead an agency to rethink its
8 policy. That's—that's the point of the study is to
9 assess the difference between cost and benefit.

10 DAVID FARBER: [background comments]
11 That's why we don't—that's why we try not to evict
12 families because if the cost the dangerous person
13 gets removed we think that's not a cost.

14 CHAIRPERSON TORRES: But again, one
15 wonders if—if the evictions of—of families under this
16 as permanent exclusions is extraordinarily rare.
17 Right, almost never happens, and yet NYCHA spends
18 probably millions of dollars on its whole permanent
19 exclusion apparatus when you factor in the cost of
20 the attorneys and the investigators and-and what's
21 the point of spending all the money to evict only a
22 handful of people. You know, a case could be made
23 that the enforcement is just so--

24 DAVID FARBER: I—I think that when we have
25 considered this overall, especially over the last

1 couple of years right, the question was asked about
2 our resources, you know, how are we allocating. So
3 on the one hand it could more, and it could be less.
4 We think that does the program sense? Are there—is
5 there's an appropriate allocation of resources? Is
6 this something we should be doing as opposed to not
7 doing? Our overall answer is we think we are doing
8 the right thing.

10 CHAIRPERSON TORRES: So your argument is
11 that the mere fact of exclusion and the enforcement
12 of permanent exclusion short of eviction are
13 effective at commanding widespread complaints. Is
14 that—would that be an accurate summation of your
15 argument?

16 DAVID FARBER: Yes.

17 CHAIRPERSON TORRES: Okay, great. Vinny.

18 CHAIRPERSON GENTILE: I'm—I'm [coughs]
19 I'm just amazed when we look at the fact that a
20 quarter of all rapes in New York City and a third of
21 all shootings in New York City happen within 500 feet
22 of a NYCHA estab—a NYCHA building that you don't see
23 the need to—to report on a regular basis off-site
24 arrests, off-site criminal activity as something
25 important to the safety of NYCHA residents.

1
2 DAVID FARBER: I—I think I'm saying I—I
3 agree with you. That is information we should—we
4 should be getting, and I think that in the Category 4
5 that—that I believe we can confirm this, but that
6 NYPC is using its discretion that when there's
7 information in their cases that are particularly
8 relevant, that they are using that fourth category to
9 provide those case. What I'm saying is we should
10 continue to look at whether that's not--

11 CHAIRPERSON GENTILE: But that's their
12 decision, not yours. You're—you're not—that's—that's
13 NYPD decision on what to send to you rather than you
14 saying that you want—you want everything that's
15 within a certain radius of a—of a NYCHA building.

16 DAVID FARBER: So over the years they've
17 come, right, we work together all the time. We have
18 come to an understanding of what information what we
19 wanted over the years. I think that's something that
20 we should go back as per the Council's comments
21 today, we should continue to think about—to—to better
22 understand whether we are getting the full amount of
23 information relating to off-site crimes that—that we
24 need to properly inform what we are doing in terms of
25 exclusion.

1
2 CHAIRPERSON GENTILE: Just because of the
3 time limit just finish off, and as far as safety of
4 investigators go, you know, I've been in—I've been in
5 this place a long time. I've been here longer than
6 anybody else and usually when the City Council
7 suggest to an agency to do X, Y and Z more things
8 instead of A, B and C to C, D, E, F, G, usually the
9 response for the agency is well, given the resources
10 in the city budget, we can do those things. I didn't
11 even hear—this is first time I've ever been at
12 hearing where the agency did not even advocate to go—
13 to do those extra things were suggested by Councilman
14 Torres and—and members of the—of this committee. The
15 fact that if investigators are required to go into an
16 apartment, and there is someone who is violating a
17 permanent exclusion in that apartment, and doesn't
18 want to be discovered, and is dangerous in some way,
19 that puts the investigator in some danger. And to
20 say that the investigators shouldn't at least have
21 some protection in terms of a vest or radios or
22 something of that nature, seems to me that you're—
23 you're really putting investigators in—in—in—in
24 danger. Let's—let's—it hasn't happened, but there
25 are outliers like Yvonne and Christopher C. that—that

1 the investigators have to go into those apartments
2 where there are or potentially could be—let's put it
3 that way—there potentially could be dangerous people
4 who do not want to be discovered by the investigator,
5 and—and therein lies the safety issue for those
6 investigators.
7

8 DAVID FARBER: I—I would say it connects
9 to the point we are—we are always interested in more
10 resources, right. I think we've been in this
11 hearing. We've been too cautious about that. I
12 think that, you know, at NYCHA right there's so many
13 challenges in terms of funding, so many—so many—a
14 variety of needs that—that maybe, you know, on any
15 particular matter, right, we're cautious about—we
16 asked for funding for this but, in terms of resources
17 to do let's say more investigations, if there were
18 more resources available to us then that's certain—
19 certainly something that we would be interested in
20 considering.

21 CHAIRPERSON GENTILE: How about at least
22 now that you have six investigators sending them in
23 pairs?

24 GIRARD NELSON: We do. We send the out
25 in pairs.

1
2 CHAIRPERSON GENTILE: And—and at least
3 now you're talking about radios, too, right?

4 GIRARD NELSON: Yeah, we'll continue to,
5 you know, investigate that information.

6 CHAIRPERSON GENTILE: Maybe you only have
7 sixes because the people are—are—are--are worried
8 about their own safety doing a job like that. Now,
9 it's not happened. Let's—let's, you know, let's—
10 that's—that's a good thing, but—but given what we've
11 spoken about today, and the fact that their job is to
12 discover violations of permanent exclusions, you have
13 to consider the safety of those investigators.

14 GIRARD NELSON: We absolutely do. We
15 absolutely value the safety of those inspectors, and
16 we continue to consider it. It's—it's not something
17 that we trade off. I think what we're saying is that
18 we evaluate the—the program and the way it works to
19 be the—the safe way of doing it. There might be some
20 improvements that we can make. What we don't want to
21 do is fundamentally alter the character of those
22 investigations, which in our assessment believes will
23 make it less safe both for the staff going in, but
24 for our residents. Keep in mind, the vast, vast
25 majority of whom are complying with these orders.

1
2 CHAIRPERSON TORRES: Yes, I'll note in
3 closing, yeah, I-I think it should be underscored
4 that almost all residents in public housing are law
5 abiding citizens, and that the cases we are
6 referencing are a small minority of cases, right. We
7 know it's small subset that drives most of the
8 violent crime, but-but-but that's small stuff that's
9 matters, right, the-the crime that is committed at
10 the margins does matter, and it seems to me that DOI
11 and NYCHA seem to have a disagreement about how to
12 best apply the policy of permanent exclusion at the
13 margins that it should not be forgotten that it is a
14 marginal number of cases. So thank you for your
15 testimony. [background comments, pause]

16 CHAIRPERSON TORRES: So we will call up
17 the second panel, Margaret from Vera Institute of
18 Justice; Allison Wilkey from the Prisoner Reentry
19 Institute of John Jay College; Runa Rajagopal from
20 the Bronx Defenders; and I think Bellia (sp?) is with
21 Runa. [background comments, pause] You may proceed.

22 MARGARET DIZEREGA: Good afternoon. My
23 name is Margaret diZerega I'm a Project Director at
24 the Vera Institute of Justice.

25

1
2 CHAIRPERSON TORRES: I'm just being
3 mindful because we're—we're limited on time. We have
4 two minutes per testimony, and I will ask you whether
5 you have any thoughts on the name permanent
6 exclusion.

7 MARGARET DIZEREGA: So as has been
8 stated, beginning in 2016, Vera--NYCHA partnered with
9 Vera and Professor Umbach from John Jay College of
10 Criminal Justice to assist with NYCHA's internal
11 review of its PE policy, and we've heard a lot about
12 it today. So I'll just kind of skip ahead in the
13 action. So clearly, permanent exclusion has many
14 implications, but its connection to homelessness is
15 the central concern. NYCHA utilizes PE to limit the
16 number of families who are subject to eviction
17 because of the actions of one individual who in many
18 instances is not even a member of the household.
19 Increasing the use of evictions would destabilize
20 countless families and place them on a path the
21 city's overburdened shelter system. NYCHA is very
22 interested in improving the safety of its residents.
23 The approach that NYCHA has taken to revise the way
24 PE can be lifted is one example, providing additional
25 paths for people to list the permanent exclusions and

1 return home after incarceration helps to reduce
2 recidivism rates, reduces the likelihood of
3 homelessness and reunites families. With a stable
4 place to live, people returning to our communities
5 for prison or jail are more likely to find
6 employment, further their education and most
7 importantly have the support of their family members
8 as they adjust back into society. Over the last five
9 years, I've really seen a shift in NYCHA's
10 orientation around matters related to criminal
11 justice and the safety of its residents. In keeping
12 with our recommendations NYCHA understands the
13 importance of making this policy more transparent for
14 its residents, legal service providers and others and
15 it's taking steps to implement it successfully. We
16 work closely with NYCHA to help them think through
17 their plans for operationalizing these changes and to
18 educate residents about them. They're seeking
19 guidance and partnership from residents through
20 engagement sessions with NYCHA's Citywide Council of
21 Presidents and Youth Advisory Boards as well as other
22 stakeholders. Improving relationships results in
23 better communication, impacting how NYCHA and
24 residents can collaborate to improve public safety.
25

1 Increasing the use of evictions on the other hand
2 will only thwart any progress that's been made.
3 Thank you for your time.

4
5 CHAIRPERSON TORRES: Can I ask you a
6 quick question? Does Vera support the use of
7 permanent exclusion or--?

8 MARGARET DIZEREGA: The--the term or the--
9 the policy?

10 CHAIRPERSON TORRES: Both the policy and
11 the term.

12 MARGARET DIZEREGA: We do. We support
13 the policy I think [bell] for all the reasons that
14 have been stated about needing really to balance
15 keeping families stably housed and removing people
16 who might pose a threat to residents' safety and stop
17 this. (sic)

18 CHAIRPERSON TORRES: It seems like there
19 are circumstances in which it can be properly applied
20 and can serve as a public safety remedy, is that--

21 MARGARET DIZEREGA: Yes.

22 CHAIRPERSON TORRES: --Vera's position.
23 Okay, and what--did NYCHA ever ask you about the
24 actual term and the confusion that it creates?

1 People have this notion that permanent exclusion is
2 permanent.
3

4 MARGARET DIZEREGA: As did I when I
5 started with hearing this. Yes, we talked about it
6 extensively.

7 CHAIRPERSON TORRES: Okay, NYCHA said it
8 never saw your recommendation on it, though.

9 MARGARET DIZEREGA: No, I think they
10 that—well, I—so the—we did have conversations about
11 it, and I think for the reasons that were stated
12 earlier, you know, NYCHA is trying to balance both
13 the sort of clarity for the need to enforce the
14 exclusion, and then they recognize that there's a
15 real sort of gulf of information and understanding
16 that it can be lifted, and so one of the big areas of
17 emphasis in the implementation is making clear that
18 the lifting policy is out there. It's available, and
19 to increase understanding and awareness about—amongst
20 residents, legal service providers and others who can
21 make sure that residents understand this need—this
22 revamped policy.

23 CHAIRPERSON TORRES: But do you actually
24 believe that the effectiveness of permanent exclusion
25 enforcement depends on that one word, permanent? That

1 with out that one word there would be masses of
2 people violation permanent exclusion?
3

4 MARGARET DIZEREGA: So, I'm not an
5 attorney.

6 CHAIRPERSON TORRES: Right.

7 MARGARET DIZEREGA: I haven't represented
8 people in these cases, but, you know, I think the
9 fact so many advocates really stood up and—and
10 encouraged the use of the term is something that I
11 can't ignore, and do I think NYCHA is trying to move
12 forward in the best way sort of balancing all these
13 different interests around this policy, which is for
14 sure complicated.

15 CHAIRPERSON TORRES: Allison.

16 ALISON WILKEY: Good afternoon. My--
17 [coughs] pardon me—my name is Alison Wilkey. I'm the
18 Policy Director at the Prisoner Reentry Institute,
19 and thank you Council Members for holding this
20 hearing. The recommendations issued in the report by
21 the DOI regarding residents who are arrested are—are
22 misguided and irresponsible. The recommendations
23 really work against the efforts of the City Council
24 and the Mayor to reduce homelessness, to reform the
25 Criminal Justice system and to end the perpetual

1 punishment that follows involved in the Criminal
2 Justice System, and we really urge the City Council
3 to reject all of the recommendations of the DOI, and
4 we urge NYCHA to do the same. We coordinate a group
5 of policy advocates, advocacy organizations, resident
6 organizers and service providers who issued a
7 statement last week opposing the DOI recommendations,
8 and it was endorsed by 27 different organizations,
9 and that is actually attached to my testimony. DOI
10 is really recommending a dangerous approach urging
11 NYCHA to evict families, and to widen the collateral
12 consequences experienced by NYCHA residents, and the
13 entire report is really based of the fallacy that
14 evicting or excluding NYCHA residents would make
15 NYCHA safer, and we know from research on reentry and
16 recidivism that eviction and exclusion can actually
17 fracture prosocial supports that help prevent future
18 offending, and undermine engagement with
19 rehabilitative programming, and lead to greater
20 insecurity and instability that can actually serve as
21 a driver of future offending. DOI, you know, failed
22 to consult the body of evidence that exists on both
23 reentry and on reducing violence. We do share their
24 concern about the rates of violence in NYCHA.
25

1 Although they have been declining overall, they are
2 higher in the rest of the city, but we think that
3 that should be addressed as proven methods of
4 reducing violence. There's projects such as the
5 National Network for Safe Communities at John Jay
6 College, the Common Justice Project at Vera
7 Institute, and the Mayor's Action Plan for
8 Neighborhood Safety. All of these things are—are
9 aimed at preventing violence, and providing effective
10 and long-lasting ways to improve the fabric of the
11 community. These real solutions. The
12 recommendations in DOI's Report won't prevent
13 violence. It's a—it's response [bell] once violence
14 has already been committed, and I would suggest that
15 if DOI were really concerned about the safety of
16 residents, then they would have been at this hearing
17 today, and they would have been at the hearing 16
18 months ago where we talked about this same issue, and
19 where we levied these very similar criticisms against
20 them. The problem is not just for the
21 recommendations. It's also—also their methodology.
22 As—as NYCHA testified to extensively, when someone
23 reports a NYCHA address as part—when they are
24 arrested, that doesn't mean that they're living
25

1 there, and the investigation again, as NYCHA pointed
2 out, only talks about the arrest information, not
3 happened in the Criminal Justice System afterwards,
4 and not what NYCHA investigators have as they
5 proceeded on the case. In contrast to DOI, NYCHA has
6 really taken a thoughtful approach over the past two
7 years at looking at the policies. They have reached
8 out to stakeholders, advocates, many of the people in
9 this room, and they've used the best evidence
10 available on recidivism to begin reforming their
11 policy, and it is a policy change. It's a culture
12 change that's happening within NYCHA rather than
13 reacting in a knee jerk way to a resident who gets a
14 rent-arrested. They're really trained to focus their
15 efforts. Council Member Gentile talked about and
16 asked questions about due process, and it is correct.
17 I think we don't know the numbers of residents who
18 are unrepresented, but we think that they are vast,
19 and one thing that the City Council can do very
20 specifically to address that is make sure their
21 efforts, which are historic, in trying to make sure
22 that people who are facing eviction are represented
23 and have the right counsel to make sure that Intro
24 214 includes these types of proceedings. That's
25

1 incredibly important to make sure we protect due
2 process, right, and I'll find—finish by saying that
3 the approach that—that DOI is recommending represents
4 a call to move backwards. It's a regressive policy
5 and we need to move forward.

7 CHAIRPERSON TORRES: Tell us what you
8 really think. [laughter] It's like we're under
9 surveillance so I just want to be, but I understand
10 the criticism that DOI has not appeared before the
11 Council. That was a—a concern that was brought to my
12 attention and—and that is duly noted so—

13 RUNA RAJAGOPAL: Good afternoon. My name
14 is Runa Rajagopal the Managing Director of the Civil
15 Action Practice at the Bronx Defenders. I'm here
16 with Maria Lopez, who is my client and is a long-time
17 resident in public housing. Ms. Lopez is going to
18 begin, and I would like to yield one minute of my
19 times to Ms. Lopez because she's here to tell her
20 story not only as a resident, but based on her
21 experience almost experiencing eviction and
22 experiencing this policy of permanent exclusion that
23 we've been talking about and I'll go after here.

24 MARIA LOPEZ: Good afternoon. My name is
25 Maria Lopez. I live in the Bronx. I'm a 65-year-old

1 woman. I'm a retired disabled nurse. I live in my
2 NYCHA apartment for most of my life, 40 years. As a
3 single mom, this is the home where I raised my nine
4 children, in my home where I raised by 21
5 grandchildren where they celebrate their birthdays
6 and their holidays. My home was always the heart of
7 our family life, but this changed when NYCHA banned
8 one of my sons from my home. As a teenager, my son
9 was sent to prison. At that time, we had to make an
10 impossible decision to exclude him. Even though I
11 believed he was innocent I had no lawyer, and I was
12 on my own. I had no idea that he meant that he could
13 never come back. This was a very painful time for
14 all of us. The experience here would destroy him.
15 When he came out of jail after 20—after 14 years he
16 needed all the support he could get starting with a
17 place to live, but I could not help him. Imagine
18 being a mother and knowing that your son has be
19 living in stairwell because he had nowhere else to
20 go. That's what this policy of permanent exclusion
21 means for many families and mine. A short time after
22 my son's release his—his uncle died. His uncle had
23 been like a father to him and his siblings. The day
24 of the funeral, I was very sick and I was admitted to
25

1 the hospital with asthma. In my absence, my son went
2 into my apartment with one of his brothers to borrow
3 clothes for the funeral. Little did they know that
4 [bell] a NYCHA investigator had been watching them.
5 Because of this incident we were nearly evicted. I
6 was a good tenant paying my rent on time, and never
7 gave them no trouble. My son had paid his debt to
8 society, but it did not matter. He's still be
9 treated like a criminal, and because he stepped foot
10 in my apartment, we all had to be punished.
11
12 Thankfully, after finding a free lawyer and many
13 appeals, NYCHA decided to use its discretion. We were
14 allowed to stay on condition that my son never
15 returned. We no longer gather at my houses for
16 fresh-for special events or holidays. We are a close
17 family. We want my son to be a part of our lives.
18 So we have to go other places. I know my family is
19 not the only one in this situation. A few weeks ago
20 I learned about a report from City Department of
21 Investigation. It says NYCHA should evict entire
22 families if the landlord is arrested and accused of a
23 crime. In other words, they don't think permanent
24 exclusion is punishment enough. This is cruel and
25 unfair. Think about my story. Who benefits from

1 this policy? Did it make anyone safer for my son to
2 be homeless after coming out prison? [crying] Did
3 it make anyone safer for families to lose their
4 homes? Is it going to improve safety? What people
5 need are jobs, stable homes, and their families. Not
6 the opposite. I urge the members of the Council to
7 reject the recommendations of those people. Thank
8 you for your time.

10 RUNA RAJAGOPAL: So I know, we—we've
11 spent hours in—in—in talking to NYCHA of permanent--

12 CHAIRPERSON TORRES: [interposing] Can
13 somebody get tissues here?

14 RUNA RAJAGOPAL: --exclusion, but this is
15 a real story of—of a person and a family who is
16 affected, who is concerned about public safety in her
17 community, in her development, but was affected,
18 whose family was ripped apart by this policy, and
19 continues to experience the consequences of that. At
20 the Bronx Defenders, we represent over 30,000 people
21 in the Bronx every year, and our holistic approach
22 seeks to humanize these experiences, right. But our
23 clients and the community we serve are more than an
24 arrest or a conviction. They're human beings. There
25 is a context to their circumstances and texture to

1 their lives, and I know we spend a lot of time
2 talking about convicts and offenders, but really
3 we're talking about human beings, and that even the
4 Criminal Justice System where there are individuals
5 who may have more serious offenses and convictions,
6 there's a context to that. The Criminal Court system
7 is complex. There are all sorts of reasons why
8 people take pleas. So time when you talk about the
9 nature of policing, discriminatory policing. The way
10 communities are policed and criminalized that has-is
11 very relevant to our conversation today, and we-we
12 urge the Council to consider that in this-this total
13 conversation. I wanted to one, echo and iterate or
14 reiterate without repeating what Alison said. So,
15 right on. Everything that she said we echo those
16 sentiments. I wanted to talk about why NYCHA
17 discretion is so important in taking an
18 individualized assessment and approach is important
19 for people like Ms. Lopez and their families that on
20 paper things may seem much worse than they are just
21 like the DOI Report that went and looked at paper
22 files and arrest reports, but doesn't really lend to
23 the actual realities of the circumstances. That-the
24 DOI Report refers to known or should have known, but
25

1 they cite HUD versus Rucker, which is a standard that
2 encourages a strict liability approach, a one strike
3 approach to evictions. Right, Pearlie Rucker was a 60
4 something year-old woman who had her mentally
5 impaired daughter arrested 500 feet from her project
6 development with a crack pipe and was evicted for
7 that, and *HUD v. Rucker* said that was okay. Right?
8 So that's what they cite as support, and we don't
9 want that approach. We want to individualize
10 assessment at every level, right? NYCHA did
11 something really important here, and they used their
12 discretion to allow Ms. Lopez to stay, which is what
13 they should have done. I also just want to say two
14 more things, which is that we talk about the threat
15 of termination and eviction, and eviction is two
16 separate things, but the experience of a termination
17 proceeding, right. When NYCHA investigates a case,
18 there are three levels to this: A housing manager
19 assesses. They forward the file for termination,
20 which the Law Department investigates and maybe then
21 even the cases goes to a hearing officer, and the
22 experience of that again for residents for Ms. Lopez
23 is not nothing. Right? It can take years. It could
24 be—even it's 60 days or 30 days or however expedited
25

1 the timeline is, it has a real impact on the entire
2 family, and so just because they don't decide to
3 evict a family in the end, doesn't mean that there is
4 an impact from the investigation for termination.
5 Again, NYCHA is not a law enforcement agency. We
6 don't want our public housing communities to be more
7 criminalized and policed than they already have.
8 [bell] And I also just want to again echo the
9 importance of the right to counsel in all of these
10 conversations [bell] and what it would mean to
11 actually have access and understanding the process
12 and advocate and support through these types of
13 cases, and then just urge-- We together urge the
14 Council to reject in totality the recommendations of
15 the DOI. It is a walk backwards, and we-we truly--
16 this is the first time in 13 years that I've ever
17 done this at a hearing, which is a applauding NYCHA
18 for the steps that it truly is. [laughter] That's
19 not a joke. For the steps that it's taking to have a
20 more evidence-based approach to recognizing the
21 reality and values of reentry, to have conversations
22 with residents and other stakeholders and legal
23 services providers, and that that is a true movement
24 forward. Like what they said here on their panel,
25

1 that is the way forward, and that's what we have to
2 encourage.
3

4 CHAIRPERSON TORRES: Historic. Although
5 if-if the-an actual eviction right contributes to
6 homelessness it's deeply traumatic, and as you point
7 out even the experience of NYCHA's cockesque (sic) of
8 eviction, it can be traumatic. Why not just get rid
9 of the policy, right? If we're living in the age of
10 reentry where committing a crime should not haunt you
11 for the rest of their life, or for much of their
12 life, and the practical reality is that most of these
13 permanent exclusions do, in fact, remain permanent.
14 Why not just get rid of the policy?

15 RUNA RAJAGOPAL: Well, you know, I-I
16 think from our perspective we again just we want an
17 evidence-based approach that we understand that NYCHA
18 has an obligation to volunteer--

19 CHAIRPERSON TORRES: [interposing] Do you
20 believe the evidence justified permanent exclusion as
21 a policy?

22 RUNA RAJAGOPAL: I think that they're-you
23 know as an advocate I-I don't want that for-for my-my
24 clients except if, you know, it means that, you know,
25 it's saves-safeguards the total tenancy. So there

1 are circumstances where it could be narrowly-it
2 should be narrowly applied, but it should be time
3 limited, but there should be education and
4 information so that tenants understand this is the
5 duration and this is--these are my rights in that
6 process and this is what I could do to change that or
7 vacate, which I believe we're not there yet, but
8 we're--we're headed in that direction.

10 CHAIRPERSON TORRES: We were so far like
11 again eviction is traumatic, the experience of
12 eviction is traumatic. When people are signing
13 exclusion agreements, they don't even know what
14 they're signing. They think oh, my child cannot live
15 with me. No, your child cannot even visit on
16 Christmas or Thanksgiving. Most of those tenants are
17 represented. This is like a horrible process. Why
18 do we continue it?

19 RUNA RAJAGOPAL: Well, I'm not sure if--

20 CHAIRPERSON TORRES: [interposing] And
21 that--and that's--that's the status quo, right? Even
22 the status--even--even though NYCHA is making strides,
23 one could argue that the consequences are so inhumane
24 that why even have the policy. Do you actually
25 believe that permanent exclusion makes NYCHA's safer?

1
2 RUNA RAJAGOPAL: [pause] I-I don't know
3 that it does.

4 CHAIRPERSON GENTILE: Okay, let me-let me
5 ask. Okay, I just want to ask Ms. Lopez after your
6 son served his sentence, were you able to apply to
7 remove the permanent exclusion?

8 MARIA LOPEZ: I didn't know nothing. I
9 just also felt that he could try to do that.

10 CHAIRPERSON GENTILE: Okay. So it was
11 available. You just didn't know about?

12 MARIA LOPEZ? No, I don't know.

13 CHAIRPERSON GENTILE: You did not know.
14 No one-no one informed you--

15 MARIA LOPEZ? No.

16 CHAIRPERSON GENTILE: --that you could
17 apply to remove the permanent exclusion?

18 MARIA LOPEZ? No.

19 CHAIRPERSON GENTILE: Okay.

20 MARIA LOPEZ? I didn't even know what
21 permanent exclusion meant.

22 CHAIRPERSON GENTILE: Okay.

23 CHAIRPERSON TORRES: I-I just find that
24 the most-the strongest arguments for NYCHA's approach
25 are actually arguments against permanent exclusion

1
2 itself, right. So I mean Alison, what are your
3 thoughts on it?

4 ALISON WILKEY: Well, if-if a resident
5 committed an act of violence against another resident
6 and NYCHA did nothing, DOI would issue another
7 report, right? We would have another hearing. There
8 would be a huge amount of outcry. Permanent
9 exclusion or termination of tenancy is what HUD asked
10 Public Housing authorities to do decades ago. So
11 it's been the tool that's been utilized, right, and
12 we're encouraged that NYCHA is trying to hone that
13 into a better tool. Can I think of other ways that
14 you could address this? Would those require huge
15 amounts of resources to do? Yes, but there would be
16 other ways of addressing the issue of violence
17 committed by tenants that create safety issue for-

18 CHAIRPERSON TORRES: [interposing] And
19 let's be clear that NYCHA's policy on permanent
20 exclusion is largely if not entirely discretionary.

21 ALISON WILKEY: Yes.

22 CHAIRPERSON TORRES: It is not mandated
23 by HUD. There are only a few categories--

24 ALISON WILKEY: [interposing] Only yes,
25 it's only mainly--

1
2 CHAIRPERSON TORRES: [interposing] But
3 it's largely a product of discretion.

4 ALISON WILKEY: --discretion. Yes,
5 that's correct.

6 CHAIRPERSON TORRES: Okay. Any thoughts
7 on the name permanent exclusion I guess?

8 ALISON WILKEY: Well, I'll just say I
9 think more--perhaps more important than the name is
10 the outreach efforts and--and that's what we've been
11 discussing with NYCHA quite a bit is how to get the
12 information in the hands of tenants that this new
13 avenue is available. That was part of the problem
14 with the old policy that no one even knew it existed
15 not even lawyers to a large extent knew it existed.
16 So getting--getting this information out there and
17 making sure that tenants in particular who had a
18 member excluded are informed that there's a new
19 pathway. It's to me more important than the name. I
20 mean I do think that the name can be confusing, but I
21 also think that a lot of tenants go through the
22 process and don't understand what permanent exclusion
23 means even with--whether it has the name permanent or
24 not? So they don't understand and so we're--we're

1 really talking with NYCHA about what are the other
2 ways that we can make sure that--

3
4 CHAIRPERSON TORRES: [interposing] Yeah.

5 ALISON WILKEY: --tenants know throughout
6 the process and afterwards that--that it can be
7 lifted.

8 CHAIRPERSON TORRES: And--and I understand
9 the need for altruism. One could argue that name
10 creates the confusion that requires the outreach, but
11 I was--what is your position on the legislation that
12 Council Member Gibson is introducing?

13 ALISON WILKEY: I mean we've been--we've
14 been pushing NYCHA for a long time to get better
15 about releasing data, you know, and they've committed
16 to releasing data regularly. One advances to the
17 legislation is that it would put it in writing so it
18 couldn't be changed through--through subsequent
19 administrations. You know, if--right now NYCHA is
20 very willing to do this, and to get this information
21 out there. It would be nice to have--to make sure
22 that that information is not going to go away at some
23 point in the future.

24 CHAIRPERSON TORRES: Thank you for your
25 testimony. Thank you for your testimony.

1
2 CHAIRPERSON GENTILE: Thank you all.
3 [background comments] I'm going to call the next
4 panel Lucy Newman from the Legal Aid Society; Charles
5 Nunez from Youth Represent; Sergio from Brooklyn
6 Defender Services; Ariana from MFY Legal Services.
7 Okay.

8 LUCY NEWMAN: Hi. My name is Lucy
9 Newman. I'm an attorney at the Legal Aid Society.
10 Wanted to thank Council Members Gentile and Torres
11 for holding this hearing, and also just wanted to
12 echo Runa's words, which is that we do find ourselves
13 in an odd position today. I always say that we have
14 a dysfunctional relationship at Legal Aid with NYCHA.
15 Sometimes we sue them, and then other times we stand
16 together, but always in an effort to try and preserve
17 public housing and Section 8. But I do want to thank
18 Dan Hafetz and his team for all the work that they've
19 done over the past couple of years on permanent
20 exclusion. Legal Aid together with our members of
21 our working group on permanent exclusion urges the
22 Council urges the city and NYCHA to reject each of
23 the findings and recommendations in the DOI report,
24 and on many rounds, which I'll talk about, but also
25 based on the fact that they did not show up today to

1 testify and defend their report. I cannot overstate
2 how dangerous and inaccurate this DOI report is. The
3 drafts of it clearly lack of understanding and
4 appreciation of the historical use of permanent
5 exclusion and the laws that govern it. In addition
6 to that, it is a huge step backwards in how we think
7 about criminal just-justice issues today, and it's
8 quite fascinating that a city agency is proposing a
9 policy that will drive up rates of homelessness at a
10 time when we have a historic crisis of homelessness.
11 It's important to look at the law that governs
12 permanent exclusion. The DOI in its report basically
13 recommends evicting more households as a result of
14 their investigation. In the 1970s, NYCHA was sued
15 for violations of due process and how it undertook
16 it's eviction proceedings, and as a result of that,
17 we have the Escalera Consent Decree, which set up
18 these administrative proceedings and gave residents
19 an opportunity to examine and cross-examine
20 witnesses. Subsequent to that there was the Tyson
21 Randall Consent Decree, which basically expanded the
22 dispositional options that a hearing officer has, and
23 included permanent exclusion of the offending member
24 of the household in order to avoid evicting the rest
25

1 of the household. Significantly, under that consent
2 decree if an offending person at the time of the
3 hearing is not residing in the apartment, then the
4 hearing officer is prohibited from evicting the
5 entire family, and the only thing that they're
6 allowed to do is order permanent exclusion. And the
7 DOI seems to not understand that when it goes in its
8 report into all of these cases where it says they
9 should have evicted when in each of those instances
10 that it gives the resident was able to show that the
11 offending person was not residing in the household
12 and let me be clear, if NYCHA were to adopt this
13 strategy of evicting entire families when the
14 offending person was not residing there, Legal Aid
15 would sue them for violations of *Tyson Randall*. So
16 they should be clear about that. What else? Very
17 quickly, permanent exclusion in practice what we do
18 know about it is that its devastating impact on
19 families, youth, young adults, grandparents. Even
20 though we say that it's permanent, it—it pretty much
21 is permanent because people don't know how to lift.
22 In addition to that, currently as the policy works is
23 you have to show substantial rehabilitation. It's
24 unclear how you show that. It also has to be done on
25

1 paper. There's no opportunity to have a hearing or
2 present your—your proof. As you know, we have a
3 working group that was established in 2014 to try and
4 secure reform and refinement of NYCHA's permanent
5 exclusion policy, and we are working together with
6 NYCHA carefully and thoughtfully to set up objective
7 criteria for assessing risk and harm. And we've been
8 working on this very—this for years, and suddenly
9 this DOI Report comes out without any consideration
10 of the efforts that have been put in to try to reform
11 this policy. The DOI Report is flawed in both its
12 findings and its recommendations. You'll see in one
13 of the footnotes on page 81 I think it's footnote 81,
14 they basically urge NYCHA to go ahead and evict a
15 grandparent who clearly is taking care of their
16 grandchild because the who was permanently excluded
17 was dropping off diapers for that young kid, and it
18 was just cruel and inhumane. In addition to that,
19 substituting armed law enforcement for NYCHA civil
20 investigators will just increase the risk of—of harm,
21 traffic harm to people and will lead to
22 discriminatory piecing practices again in NYCHA.
23 [bell] So we urge NYCHA to reject these findings. We
24 want to be able to continue our thoughtful and
25

1 collaborative working group efforts to try and refine
2 the policy, and [bell] safety or position not be
3 through over-policing of NYCHA residents and should
4 come at the expense of constitutional rights.
5

6 CHAIRPERSON TORRES: Can I--can I ask a
7 question--

8 LUCY NEWMAN: [interposing] Yes.

9 CHAIRPERSON TORRES: --and I don't know
10 if you're at liberty to answer it, but is--is it the
11 position of Legal Aid or your position that--that case
12 law prohibits the kind of aggressive prosecution or
13 termination cases of permanent exclusion that--that
14 DOI is envisioning or--?

15 LUCY NEWMAN: Yeah. I mean clearly there
16 are recommendations to evict entire households would
17 violate *Randall Tyson* and many of the instances that
18 they--they use in their examples. In addition to
19 that, *Escalera* has many provisions that say things
20 like a hearing officer should be liberal in granting
21 adjournment so that a tenant can try and find time to
22 find counsel and try and prepare their case, and this
23 happened a couple of years ago after the shooting of
24 Officer Holder where NYCHA, you know, met with NYPD
25 and said, we're going to be much more aggressive

1 about pursuing these cases. They have to be
2 commenced within two weeks. They have to be
3 concluded within six weeks, and we actually had
4 instances at NYCHA where the hearing officers
5 themselves were saying this is a violation of
6 *Escalera*. Right, we actually have an obligation to
7 entertain adjournments that good cause has shown, and
8 you can't, you know, ride roughshod over those
9 rights. So, yes, I believe that it would violate
10 federal law and state law. [pause]

12 CHARLES NUNEZ: Hey, good afternoon,
13 Council and Committee. Appreciate the opportunity to
14 speak here. Good morning. I'm Charles Nunez, Youth
15 Represents Community Advocate, and also a NYCHA
16 resident for almost 20 years. At Youth Represent, we
17 provide reentry legal services for youth 24 and
18 under. Before continuing, I would like to just thank
19 the committee, but also just like highlight the fact
20 that like it's outrageous that DOI made all these
21 claims against community members and residents and
22 NYCHA without even being here to assert their claims.
23 So just to like move forward as a reentry law firm
24 that has represented families in NYCHA administrative
25 hearings for over a decade, Youth Represent finds all

1 of DOI's recommendations extremely alarming, but I
2 will address the three recommendations we believe can
3 have catastrophic effects on our communities.

4 Recommendations 5 and 7 basically recommend NYCHA to
5 utilize evictions against entire household more
6 aggressively and in the interest of public safety.

7 As of January 2016, over 400,000 reside in NYCHA
8 developments. Thirty-seven percent of those
9 households are headed by someone 62 years or—62 years

10 of age or older, and 27% of those people are young
11 people 18 years or younger. So if NYCHA—so if DOI's
12 recommendations are actually implemented, inevitably

13 children and elderly in our elderly population will
14 become homeless. Furthermore, homeless is like or

15 homelessness is already a crisis here in New York
16 City and let's not make it worse. Now, as a former

17 NYCHA resident who has two brothers currently
18 permanently excluded and who has experienced over
19 five permanent exclusion searches, recommendation 9

20 is the most disturbing by far. DOI recommends that
21 NYCHA transfer the duties of their field

22 investigators to NYPD officers or to allow field
23 investigators [bell] to carry bullet-proof vests,
24 radios and—and guns. Implementation of this

25

2 recommendation will create scenarios where NYCHA
3 residents can possibly be shot or killed by an
4 officer or a NYCHA field investigator. This
5 recommend—furthermore, this recommendation makes me
6 recall a time when two field investigators mistakenly
7 identified me as my brother who was permanently
8 excluded. I can't help but think that what would
9 have happened if NYPD was the one conducting the
10 searches that day. My mom let the investigators into
11 our apartment. As soon as I make eye contract with
12 the investigators, they asked if I was my brother. I
13 told them no. They—the deliberated amongst
14 themselves [bell] and requested that I show them
15 identification. I showed them my identification and
16 my height and weight matched the height and weight of
17 my brothers on their record. At that point, they
18 began threatening my mother and requesting that I
19 leave the premise. My mother like she got pretty
20 hysterical and began crying and insisted that the
21 investigators go to the living room and check out
22 family portraits that showed that my brothers and I
23 resemble each other highly. And upon viewing the—the
24 portraits, they hesitantly asked me to provide them
25 with more identification. I provided them with all

1 the identification I was able to find in my wallet.
2
3 My mom and grabbed my passport, but they finally
4 believed us like once they looked at all my
5 identification and apologized for the accusation.
6 But I'm not sure that these things would have ended
7 in our favor if NYPD would have conducted those same
8 searches. Ultimately, without considering the
9 extensive research that has been conducted on people
10 returning home after contact the Criminal Justice
11 System or speaking to a variety of stakeholders, DOI
12 concluded that these ten recommendations would
13 increase public safety. Ironically, DOI's process in
14 developing their recommendations contradicts the same
15 exact steps NYCHA is—the same exact issue NYCHA is
16 currently trying to address, which is public safety.
17 NYCHA's process has been thoughtful and has taken
18 into account input from all stakeholders. They—they
19 spoke to residents and independent researchers who
20 used the most current academic research on recidivism
21 and to develop policy recommendations. We—at Youth
22 Represent we don't agree with all the policies that
23 came out of this process, but we respect that they
24 are the results of research and deliberation, not a
25 reaction to isolated events. The City Council, our

1 community members and NYCHA must do everything in its
2 power to reject all of DOI's recommendations. Thank
3 you.
4

5 MALE SPEAKER: Alright, thank you. My
6 name is [pause]—which is a regressive document which
7 espouses a philosophy that—

8 CHAIRPERSON TORRES: What happens when
9 you speak of DOI. [laughter]

10 SERGIO JIMENEZ: It's possible that they
11 themselves have turned it off for me. The
12 aggressive—thank you DOI—the aggressive imposition of
13 civil collateral consequences to Criminal Court
14 involvement, which is something that we described as
15 perpetuated punishment is precisely the opposite with
16 individuals both in academia and in—in pragmatic
17 instances have seen across the political spectrum
18 that are now advocating against. Tellingly, aside
19 from the fact that DOI is now present here they cite
20 no evidence and give no indication that increasing
21 evictions that is driving much more of New York's
22 extremely low-income residents from the housing of
23 last resort, which both the courts and the public has
24 seen NYCHA as actually improves public safety either
25 locally or citywide. In reality there are many ways

1 in which heeding DOI's recommendations would make
2 NYCHA residents, in fact, less safe by removing their
3 ability to stay lawfully within NYCHA--and I see I'm
4 almost out of time--the authorized occupancy rate we
5 believe would increase instead of decrease. In an
6 era of potentially [bell] unprecedented cuts from
7 federal funding for public housing, as has been some
8 of the threats coming out of Washington, the DOI
9 instead--instead of suggesting that NYCHA uses funding
10 for its urgent capital and operating funding needs to
11 expend their resources in other areas beefing up its
12 eviction branch. Quickly, I--I'd like to remind the
13 Council of the tragic death of a Akai Gurley who was
14 shot and killed by a police officer while peacefully
15 descending the stairs of the Pink Houses. This
16 illustrates the dangers of armed law enforcement
17 agents or untrained investigators, armed
18 investigators patrolling residential buildings. It
19 seems to me that the DOI has taken the opposite view
20 that the New York City Council has, and I believe
21 deserving all the credit to do for spear--spearheading
22 a series of important reforms curtailing the NYPD's
23 business of residential evictions, namely the Public
24 Nuisance Abatement laws. Just to touch very briefly.
25

1 Brooklyn Defender Services strong supports Council
2 Member Gibson's legislation to require more reporting
3 not just on permanent exclusion but on extending that
4 to the entire termination process. As much as was
5 said earlier, it is one process for our clients for
6 the tenants or the residents of NYCHA. There's now
7 way of separating the permanent exclusion system from
8 the termination process.
9

10 CHAIRPERSON TORRES: I have a question
11 about it--

12 SERGIO JIMENEZ: Sure.

13 CHAIRPERSON TORRES: --because you--you
14 indicated that there's no evidence that increasing
15 evictions would improve public safety.

16 SERGIO JIMENEZ: Yes.

17 CHAIRPERSON TORRES: Right, but it seems
18 to me that could be an argument against permanent
19 exclusion generally. There's no evidence that the
20 evictions that NYCHA does carry out improves public
21 safety. So that argument I think could be made to
22 negate the whole process.

23 SERGIO JIMENEZ: I-I believe the--the
24 Chair made a very compelling argument when they asked
25

1
2 NYCHA if they had conducted any sort of study with
3 regard to that, and I would also be interested in--

4 CHAIRPERSON TORRES: [interposing]

5 Flattery will earn you no points here, but I
6 appreciate it. [laughter] [coughs] It seems that--
7 well, it seems to me that the criticisms of DOI's
8 report are criticisms that strike at the very core of
9 permanent exclusion itself, and so yeah.

10 LUCY NEWMAN: I don't agree with that. I
11 think that the reason we're--we're criticizing the
12 report is because the report and the things that they
13 used to write it just aren't accurate. They relied
14 on arrest reports, and so, you know, when--when
15 Council Member Gentile was reading one of the
16 examples, it was like oh, and Christopher Jones raped
17 someone. Christopher Jones stabbed someone. It
18 wasn't. It was an arrest report that made statements
19 that allegedly that person did that. So I think that
20 we--we have to understand that the--that the report
21 itself, the methodology and the things it did were
22 flawed and, therefore, the recommendations and
23 finding of it are.

24

25

1
2 CHAIRPERSON TORRES: [interposing] But—
3 but you know as well as I do that the threshold for
4 permanent exclusion is not conviction.

5 LUCY NEWMAN: [off mic] No, I know that.

6 CHAIRPERSON TORRES: The threshold is
7 much lower and so it seems to me—

8 SERGIO JIMENEZ: Well, it is a completely
9 discretionary mechanism, and that's what is somewhat
10 problematic about it. However, removing—only
11 allowing—these termination proceedings are sometimes
12 better handled with a scalpel instead of a sledge
13 hammer, and it seems that the DOI report wants to
14 take the scalpel out of NYCHA's hand and replace it
15 with a bulldozer [laughter] and sometimes that is not
16 the correct course of action.

17 CHAIRPERSON TORRES: I see.

18 ARIANA MARMORA: I'm Ariana Marmora. I'm
19 a staff attorney at MFY Legal Services. MFY annually
20 serves over 3,600 tenants including more than 850
21 NYCHA tenants, and we're committed with working—we're
22 committed to working with NYCHA and the City Council
23 to protect the safety and accessibility of public
24 housing. As me and my colleagues have also said, as
25 a member of the Right to Counsel Coalition, MFY also

2 supports the inclusion of NYCHA termination
3 proceedings as part of the city's commitment to
4 provide universal access to counsel for tenants
5 facing eviction. The DOI's recommendations on
6 permanent exclusion of NYCHA residents are
7 exceedingly misguided and would result in arbitrary
8 displacement of residents and families who pose no
9 danger to their communities. Further, they
10 contradict the Council's, Mayor's and federal
11 government stated commitment to increasing affordable
12 opportunities for people with criminal justice
13 involvement. We urge the City Council and NYCHA to
14 reject DOI's recommendations, which if adopted will
15 exacerbate homelessness and hardship among NYCHA's
16 families while doing nothing to increase public
17 safety. Strict enforcement of permanent exclusion
18 orders would often be disproportionate to the actual
19 seriousness of the situation as was the case for MFY
20 client Ms. W. Ms. W agreed to the permanent
21 exclusion of her brother George in the 1990s after he
22 was arrested for drug possession. Over the next
23 decade and a half, Ms. W submitted to countless
24 invasive apartment inspections, none of which showed
25 any sign of George's presence until one afternoon

1 when inspectors found George at Ms. W's apartment
2 babysitting her three children. Why was he there?
3 Because Ms. W had suffered a heart attack that
4 morning at work and from the emergency room called
5 the only person she could find who was available on
6 short notice to be there when her children came home
7 from school. Hospital records confirmed Ms. W's
8 story. In this case, NYCHA began termination
9 proceedings against Ms. W for her violation of the
10 permanent exclusion agreement, but after reviewing
11 the evidence and using their discretion, settled for
12 a one-year probation, which Ms. W completed
13 successfully. Ms. W and her children [bell] still
14 live in their NYCHA apartment today. Rather than
15 incur—oh, rather than encouraging NYCHA to more
16 aggressively pursue evictions of entire families in
17 cases like Ms. W's or in cases where a near arrest
18 may have occurred in the household, resources would
19 be better allocated to support community services and
20 programs that enrich the lives of NYCHA tenants or a
21 complaint I get from clients all the time improving
22 quality of life of residents include efficient access
23 to repairs related to public safety. Why aren't the
24 doors locked? Why are they constantly broken and not
25

1 repaired? Why isn't light increased on the grounds?

2 So the capital improvements just as my colleague

3 Sergio was discussing. In conclusion, we strongly

4 recommend the City Council carefully consider the

5 consequences of adopt DOI's recommendations regarding

6 reformation of NYCHA's permanent exclusion policy and

7 we commend the Council and NYCHA for its continuing

8 efforts to support safe, affordable housing for all

9 New Yorkers.

10
11 CHAIRPERSON TORRES: Do any of you

12 believe that a tenant should be targeted for

13 permanent exclusion in the absence of a conviction?

14 [pause]

15 SERGIO JIMENEZ: I think it's safe to say

16 that Brooklyn Defender Services believes that no

17 NYCHA resident should be targeted for any sort of

18 termination and permanent exclusion proceeding before

19 a conviction is in place.

20 CHAIRPERSON TORRES: Is that the position

21 of everyone here?

22 CHARLES NUNEZ: [off mic] Yes, that is.

23 CHAIRPERSON TORRES: Then suppose you

24 commit a serious crime, you go to prison for

25 presumably a long time, and then you come back. Do

1 you think it's--does it make sense for that person to
2 remain excluded by default even?
3

4 CHARLES NUNEZ: I would say that for
5 like Youth Represent really believes that like once,
6 you know, even in like certain situations when there
7 are serious crimes, permanent exclusion really sort
8 of like gives people another punishment once they
9 come home. So, quite honestly the extent of using
10 permanent exclusion like for everyone isn't really
11 something that we would agree on even for someone
12 that just come home after several years. But we
13 think that a tool definitely needs to be in which
14 like someone commits a very like violent crime
15 against someone else within like the development,
16 they need to have some sort of form like exclusion
17 but not like permanent.

18 CHAIRPERSON TORRES: But if I commit a
19 violent crime I'm probably going to jail for a long
20 time.

21 CHARLES NUNEZ: For A long time, yes sir.

22 CHAIRPERSON TORRES: And by the time I'm
23 out of jail 15, 20 years I'm probably not the same
24 person.
25

1
2 LUCY NEWMAN: Yeah and I think that all
3 of the studies on this shows the rates of recidivism
4 would—would have gone down exponentially, but also I
5 do know with the Vera and NYCHA Reentry Pilot, one of
6 the things that we had to change a couple of months
7 after they launched the pilot was that many of the
8 people who were trying to apply to be reunited in a
9 NYCHA public housing apartment coming from prison had
10 been permanently excluded. And so, they weren't able
11 to actually go back to the apartments, and so NYCHA
12 waived that permanent exclusion for those people that
13 had it so they could successfully reunite with their
14 family members. And so, in those instances you can
15 see that permanent exclusion would have barred
16 otherwise, you know, the sensible choices to reunite
17 with their families.

18 SERGIO JIMENEZ: And I think something
19 else to keep in mind is that we've been hearing lots
20 of phrases thrown about serious crimes of bad people
21 in the presence of our president bad hombres.

22 CHAIRPERSON TORRES: Bad hombres yeah.

23 SERGIO JIMENEZ: But what does that
24 actually mean? Is simple drug possession, and by
25 simple I—I mean not affirming that the NYPD is not—

1 out servicing. But does simple drug possession match
2 the level of permanent exclusion or a termination,
3 and anecdotally I—I have seen those cases, but I—I
4 believe that's not the intent of the New York City
5 Housing Authority or the City Council to have low-
6 level quality of life convictions even result in
7 either eviction or permanent exclusion.
8

9 CHAIRPERSON TORRES: And maybe I'm
10 misunderstanding the argument, but it seems to me all
11 of you seem to believe that permanent exclusion
12 undermines in some sense the presumption of
13 innocence, right? You're—you're effectively being
14 punished without being convicted of a crime? And
15 then once you have served your time, the permanent
16 exclusion serves as a barrier to reentry. So those
17 are not only arguments against the DOI Report—I hate
18 to repeat myself. That seems to be an argument
19 against permanent exclusion in and of itself, but—but
20 I don't want to dwell on that. I'll call the next
21 panel. Thank you. [background comments, pause]
22 Tockman from Goals (sic). Mora from Legal Services
23 New York City; Sebastian from the Legal Action
24 Center; Genesis Aquito from Housing Court Answers.
25 [pause] You may proceed.

1
2 TOCKMAN: [off mic]—I was youth organizer
3 [on mic] youth organizer, youth organizer at Goals
4 also known Goal East Side. As a life long NYCHA
5 resident, I would like to say that I'm highly
6 disappointed with the statement released by the DOI
7 in regards to permanent exclusion. When we speak
8 about criminal activity and violence with public
9 housing, we cannot ignore how the system that we have
10 in place perpetuates these conditions. Lack of
11 affordable housing, redlining, economic deprivation
12 and poor living conditions have really contributed to
13 the issue of violence within public housing. How can
14 we speak of concern about the safety of public
15 housing, but at the same time advocate for armed
16 officers to do inspections in apartments and—and to
17 evict innocent children and elderly people. The DOI
18 Report integrity must be questioned of the evidence
19 that they utilize, which is simply arrest reports.
20 The reason why arrest reports is a necessary and best
21 information, the goal to determine how permanent
22 exclusion should be carried out is because we have
23 unethical and illegitimate policemen within our
24 communities. Policies and initiatives that
25 disproportionately affect black and brown people such

1 as Stop and Frisk, Broken Windows and solitary
2 confinement have been statistically proven
3 ineffective in keeping our community safe. The
4 establishment has actually made efforts to end these
5 policies and initiatives because we come—because we
6 have come to the realization that these are not
7 conducive solutions to safety. The same energy that
8 we use to advocate for the eviction of people who are
9 arrested, we need to use it to speak out against
10 budget cuts for NYCHA or use it to speak out against
11 the inhumane conditions that many NYCHA residents
12 live in. You can evict as many so-called criminals
13 from NYCHA as you want, but until you address the
14 true causes of these issues, the issue of violence
15 within NYCHA will not cease. [pause]

17 LAUREN MACUNO: Good afternoon. My name
18 is Lauren Macuno. I'm the Deputy Director of Housing
19 at Legal Services NYC. I'd like to thank committee
20 chairs Torres and Gentile as well as the various
21 committee members for the opportunity to testify
22 today. Legal Services NYC is glad that the Council
23 is addressing the need for NYCHA to provide publicly
24 available reports related to permanent exclusion.
25 This status is particularly needed to ensure that the

1 future NYCHA policy is based on facts and not on
2 punitive assumptions underlying DOI's misconceived
3 and ill-considered recent report. We are deeply
4 troubled by the DOI's recommendations that NYCHA
5 should more aggressively prosecute termination of
6 tenancies and evict more families. These
7 recommendations are dangerous for the NYCHA community
8 since they push swifter more punitive action based on
9 alleged crime. As everyone who has gone before me
10 has said without examining criminal court records or
11 waiting for a determination that a crime was actually
12 committed. In the past, and often still, NYCHA
13 imposes permanent exclusion against individuals for
14 minor offenses and even when the criminal charges
15 have been dropped. While an individual is entitled
16 to free legal counsel in criminal proceedings it's
17 not so in NYCHA hearings and when NYCHA residents are
18 navigating these processes alone, they often forego a
19 hearing and stipulate to permanent exclusion on their
20 appearance because they are terrified of being
21 evicted. At Legal Services we represent countless
22 New York City Housing Authority residents to help
23 them battle the collateral consequences of, you know,
24 any contact with the Criminal Justice System. And we
25

1 represented many clients whose criminal charges have
2 been quickly resolved or dropped and in these
3 instances, correctly NYCHA settled the case
4 appropriately without permanent exclusion and with
5 probation perhaps or with withdrawal of the case.
6 NYCHA—this is because NYCHA has recognized
7 limitations in its prior practice of, you know,
8 immediately pushing for exclusion based on immediate—
9 based on [bell] allegations. We believe that DOI
10 should defer to NYCHA who is already deliberately
11 working on this process rather than illogically
12 encouraging more aggressive prosecution. While—with
13 all this in mind, you know, Intro 1207 addresses the
14 need for transparency in NYCHA's eviction process and
15 we welcome those proposed reporting requirements
16 because there'll be essential to hold NYCHA
17 accountable, but we also are concerned that these
18 reports will be used unfairly to impeach the
19 judgement of like NYCHA's Law Department and
20 defendant hearing officers, as the DOI did with its
21 recent reports. Without considering the totality of
22 the circumstances and, you know, significantly
23 permanent exclusion is only one of the possibilities
24 of the determination of tenancy proceeding. And
25

1 until we're collecting data on that—on any of the
2 possible outcomes and also, you know, recognizing
3 that numbers can be spun either way, and actually
4 measure effect on communities we need comprehensive
5 studies on the effects of permanent exclusion on
6 families, on reoffending, on crime levels.

7
8 Ultimately, we hope that the Council appreciates that
9 NYCHA's use of permanent exclusion as an alternative
10 determination is not a sign of weakness, make no
11 mistake permanent exclusion evicts New Yorkers who
12 need the stability that public housing that public
13 housing strong families provide. And because of
14 that, it's a drastic remedy that should only be used
15 judiciously. Excluded tenants don't disappear.
16 They're cast out into the streets and into often
17 desperate circumstances. We commend NYCHA for
18 echoing current criminal justice trends, and
19 instituting a pilot program to reintegrate offenders
20 [bell] as a step in the right direction to
21 effectively balancing the interest. At a time when
22 the federal government is returning to punitive,
23 discredited policies of the past, it's vital for New
24 York City to uphold the humane values that have
25

1 evolved over the past eight years, and unlike the
2
3 DOI--

4 CHAIRPERSON TORRES: [interposing] And
5 I'll ask you to wrap up?

6 LAUREN MACUNO: Alright. Unlike the DOI,
7 NYCHA understands these complexities and they have
8 taken them into consideration, and we encourage the
9 Council to reject the DOI Report--

10 CHAIRPERSON TORRES: Great.

11 LAUREN MACUNO: --and its findings.

12 CHAIRPERSON TORRES: Thank you.

13 SEBASTIAN SOLOMON: Hello. My name is
14 Sebastian Solomon. I'm the Director of New York
15 Policy at the Legal Action Center. For the sake of
16 brevity I will not covering my entire written
17 testimony. I want to thank the committees for
18 organizing a hearing on this important topic. Let me
19 begin by emphasizing that the statistics are clear,
20 NYCHA developments are more violent, and have more
21 legal activity than most other parts of the city. I
22 am fairly certain that everyone here would agree that
23 that is not an acceptable situation, and that no one
24 should have to live in a place that is unsafe or
25 residents living in fear. That is not the question.

1 The question is what is the appropriate response to
2 this reality? The DOI believes that the solution is
3 to permanently exclude more people. DOI also wants
4 NYCHA to terminate the tenancy of families that have
5 done nothing wrong other than have a relative who was
6 arrested for a crime. Seemingly even if crimes that
7 pose no threat to the NYCHA community and they have
8 happened far from the development. DOI also thinks
9 that families on probation should have their
10 apartments invaded by armed officers at any time even
11 if there is no sign of any wrong doing. Lastly, when
12 excluded individuals are found in an apartment they
13 argue that families should be evicted into the street
14 or into homeless shelters no matter what the reason
15 for individuals being there or whether their presence
16 is causing harm to the community. We, on the other
17 hand believe that the exclusion is counterproductive
18 especially in the manner that it has historically
19 been carried out. Exclusion and termination do
20 eliminate the problem. They simply move the problem
21 elsewhere. They also are likely to make matters
22 worse by removing family and other supports that have
23 long been shown to reduce the likelihood of further
24 criminal activity. NYCHA, to its credit, agreed to
25

1 meet with—with and listen to advocates who disagreed
2 with its policies. As a result, it realized that the
3 way in which it was carrying out exclusion was unfair
4 to tenants and ran counter to public safety and to
5 the established research on brain development and
6 assistance from criminal activity. This led NYCHA to
7 voluntarily do what most government agencies and
8 others are reluctant to do. NYCHA allowed researches
9 to come in and fully inspect its processes. It let
10 researches publish what they found, and it is working
11 to modify its policies based on what is in the
12 researcher's report. I'd also like to note that
13 NYCHA allowed itself to be questioned at this hearing
14 while DOI did not—did not, and the DOI appears not to
15 have thoroughly investigated its—its finding [bell]
16 instead of taking that that—those most inflammatory
17 (sic) story. While the reforms proposed by NYCHA
18 do not go as far as we and others might like, they
19 are a huge step forward. They create more fairness
20 and clarity both about who is being excluded and the
21 process by which exclusion will be lifted.
22 Historically, exclusions took place in a haphazard
23 way often based on low-level arrests that may not
24 have resulted—even resulted in a conviction. Under
25

1 the new policy, NYCHA plans to exclude only those
2 that didn't pose a threat to the NYCHA community.
3 Thereby, no longer splitting up families without
4 cause, removing unnecessarily from that support
5 network and will then bring people homeless. I'll
6 just finish by saying that in addition to being
7 inhumane, DOI's proposals were encountered to New
8 York's successful move over the last 25 years away
9 from the more punitive approaches to criminal
10 activity that have been used elsewhere. They also
11 run counter to all the work that the city has—the
12 City Council has sought to accomplish over the last
13 three years. Over that period, the—the Council has
14 take a host of action to reduce incarceration and
15 that this [coughs] assist those with prior
16 involvement in the Criminal Justice System to
17 successfully reintegrated into the community. We
18 urge NYCHA and the Council to reject a return to
19 failed aggressive enforcement policies that DOI is
20 recommending. These would take New York in the
21 direction from which it long ago moved away.

23 CHAIRPERSON TORRES: Genesis.

24 GENESIS AQUITO: Hi I work for Housing
25 Court Answers. I and staff are located at 250

1 Broadway in NYCHA Impartial Hearing Office, and there
2 I speak to many tenants who don't have legal
3 representations. So as you already know, the
4 recommendations to NYCHA the—is a recommendation to
5 NYCHA that as long as those, investigations—
6 investigation recommends the authority to terminate
7 the tenancies of families when there has been
8 allegations of criminal activity. DOI also
9 recommends that NYCHA prosecute cases to hear and to—
10 sorry—through a hearing stage, and requires—requires
11 tenants to raise a meritorious defense in good cause
12 before reopening the defaults. While NYCHA currently
13 files about 10,000 termination cases per year,
14 according to the latest information we have, it
15 follows that the DO-DOI's recommendation greatly
16 increased the number of cases that will go to a
17 formal hearing. Keeping in mind that the hearing
18 officers are not impartial hearing judges, but are
19 NYCHA employees, how does an average person without
20 an attorney and without legal background raise a
21 meritorious defense in the case—in this on-site
22 hearing. Currently, most termination proceedings are
23 settled before a formal hearing without a binding
24 agreement. Sorry, with a binding agreement
25

1 permanently excluding the arrested family member and
2 puts the tenant on probation agreeing to be
3 terminated if the excluded—if the excluded person is
4 allowed to return home. DOI recommending that NYCHA
5 to skip this step and go straight to a hearing stage
6 is unjust to the tenant. For those cases that go
7 formal-formal hearing, once a decision is made, the
8 tenant has four months to appeal if they lose.
9 During that period, if the agency starts a holdover
10 proceeding in Housing Court to obtain a warrant of
11 eviction, the Housing Court Judge has to [bell] has—
12 has zero power to overturn NYCHA's decision, and can
13 only the process if a tenant is a fighting an appeal
14 in the Supreme Court, a process that a few already
15 defended tenants can do on their own. Another
16 alarming majority of NYCHA—NYCHA residents go through
17 termination process without legal representation.
18 Mayor Bill de Blasio and Speaker Mark-Viverito
19 currently promised universal access to an attorney
20 for tenants facing eviction paid for by the city, a
21 family—if a family's income is below 200 percentage
22 [bell] of the Federal Poverty Level. However, the
23 administrative proceeding including NYCHA termination
24 cases that we are discussing today would not be
25

2 covered by the Right to Counsel Program. Today, the
3 Legal Services Program assisted—assisted low-income
4 tenants facing eviction, covered a tiny minority of
5 residents in NYCHA termination proceedings. The
6 Coalition for the Homeless reports that--

7 CHAIRPERSON TORRES: [interposing]

8 Please—please conclude here.

9 GENESIS AQUITO: Okay. The Coalition for
10 the Homeless reports that they—there are 10,000
11 families that apply for shelters each year, and right
12 now we have 62,000 people in—sleeping shelters.

13 CHAIRPERSON TORRES: In conclusion.

14 GENESIS AQUITO: Yes. As a member of the
15 Right to—sorry—as a member as the Right to Counsel
16 Coalition and as a member of the Permanent Exclusion
17 Working Group, Housing Court Answers would like to go
18 on record with a position that NYCHA families accused
19 of crimes were evicting them, and making them
20 homeless, get an attorney and the opportunity to
21 raise an adequate defense. NYCHA and the City
22 Council should resist to the DOI recommendations.

23 CHAIRPERSON TORRES: Thank you so much.

24 Thank you for your testimony. The next panel Diana
25 from Urban Justice Center, Community Development

1 Project; Francine Ellaboto (sp?) from the Urban
2 Justice Center, Community Development Project; and
3 Raju Jashwa (sp?). If I'm mispronouncing it I
4 apologize, Urban Justice Center. Okay, and Craig--
5 Fritz, right. [background comments, pause]
6 Professor, I love your book on Community Policing in
7 Public Housing so it's—it was—it was very good.
8 [background comments] Yes.

10 FRANCINE RETOVASCUS: Good afternoon,
11 Council Members. My name is Francine Retovacus(sp?).
12 I am a student from John Jay College of Criminal
13 Justice and I'm entering now the Community
14 Development Project part of the Urban Justice Center.
15 CDP supports NYCHA in growing collaboration with
16 numerous stakeholders including residents, community
17 based organizations, legal services providers and
18 social science experts to revise its permanent
19 exclusion policy. It's the stakeholders' good faith
20 effort to draw up an actual social science research
21 and data to help organize NYCHA's approach to
22 permanent exclusion. DOI has interjected with
23 sensationalistic and somewhat misleading reports.
24 DOI reports open with the statistics contesting the
25 decline in reported criminal activities across New

1
2 York City with a slight statistical increase in major
3 index crimes at NYCHA developments. The report
4 asserts that violent crimes continue to be
5 disproportionately concentrated in public housing
6 without acknowledging that such statistical
7 disparities may contribute to the discriminatory
8 policies at NYCHA developments that resulted in a
9 2015 class action settlement as well as underlying
10 racial and economic disparities within public housing
11 residents and New Yorkers that tend to strongly—
12 currently with markedly higher rents than
13 incarceration rates. Throughout the report its
14 aggressive language, which is medium to persuade its
15 readers serves to shifts the dialogue about public
16 housing by making it a clear distinction between its
17 tenants and the rest of New York City residents. DOI
18 also directs some warranted criticism—criticisms
19 toward—towards NYCHA’s impartial hearing officers for
20 their preferred tenancy when residents violated a
21 permanent exclusion. Courts have consistently
22 respected this question of NYCHA’s hearing officers.
23 In New York courts, DOI shows little—DOI shows little
24 regard for the [bell] for discretion expertise or
25 impartiality of hearing officers. The report’s

1 presentation of a few incidents seems to be confined to
2 hearing officers' legally mandated impartiality and
3 embarrass them into becoming more punitive.
4

5 CHAIRPERSON TORRES: After this hearing,
6 DOI might not want to write another report. I don't
7 know after this. [laughs]

8 JENNA CHACON: Good afternoon. My name
9 is Jenna Chacon. I'm a current student at John Jay
10 College of Criminal Justice and an intern with the
11 Community Development Project of Urban Justice
12 Center. Thank you, Council Member for the
13 opportunity to testify and following Francine's (sic)
14 testimony. The report cites numerous termination
15 cases brought against residents who themselves appear
16 to be law abiding citizens, but who DOI believes
17 should have been evicted solely because someone in
18 their family was arrested, and then and actually
19 provided an NYCHA address to arresting officers. DOI
20 calls specific attention to four cases at Ingersoll
21 Houses where NYCHA withdrew termination charges
22 against leaseholders because of a lack of
23 demonstrated ties between the criminal defendant and
24 the subject NYCHA apartments. Such cases are
25 indicative of a broader pattern. Between January and

1
2 October 2016, 936 of 67% of all termination
3 proceedings involving alleged criminal activity were
4 unsubstantiated—unsubstantiated or found to be less
5 serious than originally believed and settled with
6 tenants—tenancy probation or withdrawn. If anything,
7 the statistics and case outcomes cited by DOI showed
8 that NYCHA is failing to provide these residents due-
9 due process. While there—while there have been
10 clearly—been problems with NYCHA passing
11 implementation of its permanent exclusion policy,
12 contrary to the DOI's recommendations, more
13 punishment is not the solution. The Vera Institute
14 February 2017 Report, reports recommendations
15 informed by actual social science research, and which
16 showed the pursuit regarding of DOI's position that
17 listed interjections. We would like to conclude by
18 calling specific attention to the very proposal—
19 proposal for alternatives to exclusion in cases that
20 involve young adults. The DOI Report focused on the
21 prose—on the prosecution and eviction of these
22 residents rather finding an alternative to it. An
23 alternative to incarceration and eviction with
24 priority or repair of harm done between offender and
25 victim. In this—in this case offender and NYCHA

1 community. Rather than including DOI's goals for
2 increased funding to enforce permanent--permanent
3 exclusions, we urge City Council to consider helping
4 NYCHA develop and find alternatives to inclusion
5 [bell] programs that have been--that have been proved
6 to achieve better outcomes in all regards including
7 stabile--stabilizing families and communities and
8 reducing the likelihood of future criminal activity.
9 Prioritizing that is the ultimate goal.

11 CHAIRPERSON TORRES: Thank you so much
12 for all the representation from John Jay.

13 FRITZ UMBACH: Good afternoon. My name
14 Fritz Zimbach and I'm an associate professor at John
15 Jay College and also the co-author on the Vera Study
16 and recommendation on NYCHA's exclusion policies, and
17 I'm going to vary--vary from my written testimony in
18 the interest of time and in light of existing
19 testimony. I want to focus on two issues in
20 particular today, and one is I've explored the likely
21 consequence of following the DOI recommendations and
22 second the question of whether or permanent
23 exclusions and evictions vary the--or have any impact
24 on NYCHA crime rates. And in the course of writing
25

two books--thank you for the shout-out--on crime and
policing in public and New York housing--

CHAIRPERSON TORRES: [interposing]

Because the other one is just Public Housing Myths.
Is that--?

FRITZ UMBACH: That's the other one, yes.

CHAIRPERSON TORRES: Okay.

FRITZ UMBACH: [laughs] Good. Two shout-
outs. Fifteen years of talking to residents,
crunching statistics and interviewing cops, it became
clear to me that what is true policing in general was
doubly true for public housing. And the most
important lesson to be drawn there is the inescapable
value that a community sense of police legitimacy has
for maintaining order. Maintaining order is never
achieved through force alone. Instead, governance
requires the consent of the governed, and in my many
conversations with police officers and public housing
residents, it is clear that evicting innocent members
of a household for the crimes of others violates the
public housing community's sense of legitimate
exercise of authority. Such evictions might help win
the battle today against a handful of offenders in a
few NYCHA developments. But it could very well make

1 the job of winning the larger war against crime in
2 public housing much harder for police officers and
3 the Housing Authority of itself. The police rely on
4 the cooperation and compliance of the communities
5 they serve, and so the possibility of wholesale
6 evictions of households for the crimes of a few
7 mongers is likely to make public housing residents
8 less not more cooperative with law enforcement.
9 [bell] Just as the police must target particular
10 crimes rather than all forms of disorder, so, too,
11 must NYCHA target its tenancy policies against
12 particularly violent individuals rather than entire
13 households. And now, on the empirical question of
14 whether or not evictions and permanent exclusions
15 raise crime or lower crime in NYCHA developments.
16 It's true there is no evidence one way or the other.
17 We don't have the evidence because no one has done
18 the studies, and until very recently, those studies
19 were impossible to do, but in about two weeks we
20 could have the answer. The numbers are there. I've
21 got them all on my laptop. [laughter] And this is a
22 thoroughly answerable question, but we do not need to
23 go on in--
24
25

1
2 CHAIRPERSON TORRES: [interposing] If you
3 have the answer, why are you holding us in suspense?
4 I don't understand.

5 FRITZ UMBACH: No, no, I-I have the data.
6 I just haven't done the study.

7 CHAIRPERSON TORRES: Yeah, let's make
8 news.

9 FRITZ UMBACH: But it-but it is
10 definitely doable.

11 CHAIRPERSON TORRES: Great. Well, we're
12 going to be holding a hearing next month. So if I
13 know what the answer to those empirical questions
14 are. Do-do you, Professor, I'm curious to know do
15 you support the use of permanent exclusion or--?

16 FRITZ UMBACH: With the existing data
17 yes, I support the-the use of permanent exclusion.

18 CHAIRPERSON TORRES: Okay, and then the-

19 FRITZ UMBACH: [interposing] And as to
20 use the previous term a scalpel in NYCHA's hand.

21 CHAIRPERSON TORRES: And-and do you think
22 this historically has been a scalpel or it's become a
23 scalpel?

24 FRITZ UMBACH: I think it was a scalpel
25 for some years, and it became a sledge hammer for

1 four or five years, and could again be a scalpel.

2 There are some years when NYCHA likely overused the
3 scalpel.
4

5 CHAIRPERSON TORRES: And you think it-it
6 is a scalpel even in cases where there's no
7 conviction, where someone has not been found guilty
8 of a crime in a court of law?

9 FRITZ UMBACH: I-remember that permanent
10 exclusion is a civil remedy--

11 CHAIRPERSON TORRES: [interposing] Yeah,
12 I know.

13 FRITZ UMBACH: --not a criminal remedy,
14 and in cases of particularly violent individuals
15 where this evidence that NYCHA has that's legal and
16 available to it, it is warranted to permanently
17 exclude someone prior to a conviction. I'm speaking
18 for myself and not for Vera on that issue.

19 CHAIRPERSON TORRES: And what about the
20 goal of-do you feel permanent exclusion as currently
21 practices is compatible with the goal of reentry?

22 FRITZ UMBACH: Yes, particularly with the
23 lifting policies and procedures that we recommended
24 for NYCHA. I also want to point out that NYCHA lifts
25 about 200 permanent exclusions a year.

1
2 CHAIRPERSON TORRES: Alright. Wow,
3 that's more than I thought.

4 FRITZ UMBACH: That's right.

5 CHAIRPERSON TORRES: And that's—is that a
6 recent increase or is that--?

7 FRITZ UMBACH: Well, that's been the most
8 recent data. I don't have the data on trends.

9 CHAIRPERSON TORRES: And do you suspect
10 that the vast majority of permanent exclusions go
11 unlifted because of a lack of knowledge or--?

12 FRITZ UMBACH: NYCHA would very much like
13 to increase its outreach efforts. They're getting
14 good advice on how to do that. I suspect if the
15 absence of outreach less so, then the term permanent
16 and permanent exclusion, which I agree is somewhat
17 confusing, but it is the outreach that matters much
18 more than the nomenclature that we use.

19 CHAIRPERSON TORRES: Right, and NYCHA is
20 a reentry pilot program, right?

21 FRITZ UMBACH: Yeah, under Vera-Vera's
22 data.

23 CHAIRPERSON TORRES: How many people
24 participate in that program?

2 FRITZ UMBACH: You know, I don't want to
3 speak to that because I don't run that program.
4 Margaret who is no longer here, but the-the data is
5 available on-on that. I think they have 107 people
6 in the pilot program.

7 CHAIRPERSON TORRES: And how long has the
8 program been existence?

9 FRITZ UMBACH: Two years. Correct me if
10 I'm wrong, Dan.

11 CHAIRPERSON TORRES: An-an outreach has
12 been done around that program, right?

13 FRITZ UMBACH: Yes.

14 CHAIRPERSON TORRES: So NYCHA's outreach
15 has led to 107 participants in a program that has
16 been in place for three years. I may have concerns
17 about the effectiveness of NYCHA's outreach.

18 FRITZ UMBACH: Agreed.

19 CHAIRPERSON TORRES: I mean it seems like
20 the six-the compatibility of reentry with permanent
21 exclusion depends on tenants knowing that you can
22 lift an exclusion.

23 FRITZ UMBACH: Yes.

24 CHAIRPERSON TORRES: And-and without that
25 knowledge and without that outreach then permanent

3 exclusion undermines the role of reentry and case
4 could be made.

5 FRITZ UMBACH: A case could.

6 CHAIRPERSON TORRES: Thank you for your
7 testimony. Do you have any—

8 MALE SPEAKER: No.

9 CHAIRPERSON TORRES: Okay, great. This—I
10 can't believe it's over. [laughter] Actually, we
11 have a surprise, we're actually going to call DOI
12 [laughter] to the stand. Okay, with that said, I—
13 this hearing adjourned. [gavel]

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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 May 12, 2017