

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON PUBLIC SAFETY

Jointly with

COMMITTEE ON JUSTICE SYSTEM

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February 7, 2019
Start: 10:12 a.m.
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HELD AT: Council Chambers - City Hall

B E F O R E: Donovan J. Richards
Chairperson

Rory I. Lancman
Chairperson

COUNCIL MEMBERS: Justin L. Brannan
Fernando Cabrera
Andrew Cohen
Chaim M. Deutsch
Vanessa L. Gibson
Carlos Menchaca
I. Daneek Miller
Keith Powers
Ydanis Rodriguez
Jumaane D. Williams
Alan N. Maisel
Deborah L. Rose
Eric A. Ulrich

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

Matthew Pontillo
Assistant Chief at NYPD

Benjamin Tucker
First Deputy Commissioner of NYPD

Ann Prunty
Deputy Commissioner for Legal Matters at NYPD

Oleg Chernyavsky
Executive Director of Legislative Affairs NYPD

Victoria Davis
Sister of Delrawn Small

Victor Dempsey
Brother of Delrawn Small

Eric Vassell
Father of Saheed Vassell

Constance Malcolm
Mother of Ramarley Graham

Christopher Boyle
New York County Defender Services

Cynthia Conti-Cook
Legal Aid Society

Jen Borchetta
Bronx Defenders

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

Jacqueline Caruana
Brooklyn Defender Services

Oded Oren
Bronx Defenders

Nahal Zamani
Center for Constitutional Rights

Kylynn Grier
Girls for Gender Equity

Michael Sisitzky
New York Civil Liberties Union

Darian X
Make the Road New York

Joo-Hyun Kang

Shaniqua Charles [sp?]

Kate McDonough
Dignity in Schools Campaign

Charlotte Pope
Children's Defense Fund

Roberto Cabanas
Urban Youth Collaborative

Stephanie Benham [sp?]

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

Tamika Graham [sp?]

Kelly Grace Price

Towaki Komatsu [sp?]

3 CHAIRPERSON RICHARDS: I am Council
4 Member Donovan Richards of the 31st District in
5 Queens and the Chair of the Public Safety Committee.
6 Thank you for joining us today. I want to thank the
7 members of the Public Safety Committee who will join
8 us eventually, but I want to acknowledge my Co-Chair
9 Rory Lancman, Rory Lancman who is in attendance. I'd
10 like to start by thanking the Independent Review
11 Panel of Mary Jo White, Barbara Jones, and Robert
12 Capers [sp?]. I know this wasn't an easy task, but
13 it was incredibly valuable to protecting and
14 improving the integrity of the NYPD. I approach
15 today's subject with mixed feelings. On the one
16 hand, I believe that by retaining a panel of legal
17 experts to review the NYPD's disciplinary process,
18 Commissioner O'Neill showed that he sees the need for
19 meaningful changes to their process. I believe that
20 by publicly stating that he supports changes to Civil
21 Rights Law 50A, which is one of the most restrictive
22 police records laws in the country, Commissioner
23 O'Neill said what he needed to say. But I also think
24 there is more he needs to do to prove his commitment
25 to improving transparency. I want to see him in

3 Albany and I want to see the Mayor in Albany pushing
4 for changes to state law. The fact that the
5 Commissioner accepted the panel's recommendations
6 shows that he understands that the public does not
7 have faith in the way the Department holds its
8 members accountable. It is essential that our
9 citizens feel safe from crime and safe from those who
10 are cloaked with authority but do not always exercise
11 it appropriately. I should be clear that I think the
12 overwhelming majority of police officers are good,
13 honest New Yorkers who are committed to helping
14 people. I'm speaking directly to those officers when
15 I say this is not about you. This hearing is about
16 officers who act as if they are above the law in a
17 system that does not hold them accountable, a system
18 that does not have a set of consistent guidelines so
19 that officers can expect to be treated fairly, a
20 system that keeps the public in the dark about how a
21 Department keeps their public servants who pose the
22 greatest danger of over-stepping their authority
23 under control. The public has a right to know how
24 the police are kept in check. It's simple as this,
25 the public must know. 50A must go. There are other
laws on the books that protect officer privacy.

3 There are rules of evidence that prevent officers
4 from being harassed on the witness stand. We don't
5 need 50A for those things, and they are not what 50A
6 is really about. This hearing is about what it means
7 to be a citizen in a free society. It's about being
8 able to tell the people in positions of authority
9 that they answer to the people. This is about the
10 Police Department being able to look us in the eye
11 and tell us that they truly are New York City's
12 finest, that the ones who can't follow the high
13 standard of conduct will no longer be allowed to
14 wield authority that comes with a badge. From what
15 we have seen, that does not seem to be the case. The
16 documents released by Buzz Feed suggest that too many
17 officers are allowed to remain on the force after
18 they've done things that most of us would be fired
19 for with no pension and no good guide letter. Those
20 documents also tell us that the discipline does not
21 seem to fit the conduct. The Independent Panel
22 Report tells us that the Police Department doesn't
23 even collect enough data to tell them whether that is
24 true. That, to me, is the most shocking thing about
25 the report, not what is in it, but what is missing.
It just doesn't tell us anything about how

3 disciplinary decisions are actually made and why
4 certain people keep their jobs. The report says
5 there is not favoritism or preference for higher
6 ranking officers, but it doesn't reveal the data that
7 led them to that conclusion. I would have thought
8 that after reading this report, I would at least be
9 able to identify a line that an officer cannot cross,
10 but given the videos I have seen with my own eyes, it
11 seems like there really is no line. But I am here to
12 ask the Police Department to convince me that things
13 are going to change. We are here today to listen to
14 how the Department intends to fix the problems
15 identified in the report, but also to demand more to
16 get the information the public is entitled to, and we
17 are here to take up legislation that's going to
18 require the Department to provide the answers that we
19 seek. We are hearing two bills I'm sponsoring:
20 Introduction Number 1105, a Local Law to amend the
21 Administrative Code of the City of New York in
22 relation to requiring the Police Department to submit
23 reports on complaints of misconduct, and Introduction
24 Number 1309, a Local Law in relation to requiring the
25 Police Department to study the impacts of
implementing an internal disciplinary matrix. We are

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3 also hearing a pre-considered Introduction number
4 sponsored by the Speaker, a Local Law to amend the
5 Administrative Code of the City of New York in
6 relation to requiring the Police Department to
7 public-- to make public the Department's disciplinary
8 guidelines and the number of officers disciplined
9 each year, and to provide a disciplinary action
10 report directly to the Council. We are also hearing
11 two pre-considered introduction numbers sponsored by
12 Council Member Lancman, a Local Law to amend the
13 Administrative Code of the City of New York in
14 relation to granting District Attorneys access to law
15 enforcement records, and a Local Law to amend the
16 Administrative Code of the City of New York in
17 relation to requiring the Department to report on the
18 number of arrests for resisting arrest or assault in
19 the second degree. I am also sponsoring a related
20 pre-considered introduction, a Local Law to amend the
21 Administrative Code of the City of New York in
22 relation to requiring the Police Department to report
23 on the number of arrests for obstruction of
24 governmental Administration. Last, but certainly not
25 least, we are hearing a preconsidered resolution
sponsored by Council Member Jumaane Williams calling

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3 up on the New York State Legislature to pass and the
4 governor to sign A02513 which would repeal Section
5 50A of the New York City-- New York Civil Rights Law
6 in relation to the personnel records of police
7 officers, firefighters and correction officers. I
8 will now turn the mic over to my co-chair Council
9 Member Rory Lancman.

9 CHAIRPERSON LANCMAN: Thank you, Council
10 Member Richards, and good morning to everyone. I'm
11 Councilman Rory Lancman, Chair of the Committee on
12 the Justice System, and we are joined by Council
13 Member Debbie Rose who is also a member of the
14 Committee. Let me thank Council Member Donovan
15 Richards for leading this very timely hearing on a
16 series of bills concerning police misconduct, focused
17 particularly on the Administration's misuse of the
18 state's 50A law to conceal police misconduct from the
19 public, the Council and our District Attorneys, and
20 the abuse of resisting arrest and assaulting a police
21 officer charges in order to administer some notion of
22 street justice. Transparency in policing policy has
23 not been the hallmark of this administration.
24 Reports required by law are delivered late or not at
25 all. Letters requesting clarity on policy or

3 procedure go unanswered for months. Civil Rights Law

4 50A is reinterpreted in the most narrow way possible,

5 and its statutory exceptions is ignored, and even

6 District Attorney who require information from police

7 to prosecute cases and comply with their own

8 constitutional responsibilities are stonewalled. New

9 York City-- New York Civil Rights Law Section 50A

10 creates an exception to the state's Freedom of

11 Information Law, exempting a police officers'

12 disciplinary records for public disclosure, except by

13 court order in the course of relevant litigation.

14 The Administration narrowed its interpretation of 50A

15 so that even the routine reporting of disciplinary

16 actions, not the records themselves, but the

17 reporting of the actions would now be withheld. And

18 even when ordered by a court to release documents

19 under a more liberal interpretation under 50A, the

20 City appealed and appealed until it got the decision

21 that it wanted. However, 50A expressly excludes from

22 its coverage among others District Attorneys, a Grand

23 Jury or any agency of government which requires the

24 records in the furtherance of their official

25 functions. None the less, the NYPD has refused to

supply this information to the City's District

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3 Attorneys in a timely manner and refuse to supply
4 this information to the Council, an agency of
5 government, at all. One of my bills, Intro 3706,
6 addresses the delay in supplying police disciplinary
7 information to District Attorneys, making it
8 impossible to vet the right reliability of testimony
9 and evidence of cases brought to them for prosecution
10 by the NYPD and allowing serial misconduct to fester
11 with impunity. Specifically, it requires the NYPD to
12 produce disciplinary records to a District Attorney
13 within 24 hours of being requested. Given the
14 Department's own unwillingness to confront perjury
15 and so-called "testa-lying" in its ranks, and as
16 Councilman Richards alluded to, leaked disciplinary
17 documents last year revealed that an officer found to
18 have committed perjury in front of a grand jury was
19 sanctioned with losing only 30 vacation days. It is
20 more important than ever that District Attorneys be
21 given the opportunity to independently evaluate the
22 credibility and strength of cases they are charged
23 with prosecuting at the earliest possible time. My
24 other bill, Intro 3707 requires the NYPD to report on
25 the number of circumstances and demographics of
arrests for resisting arrest and assaulting a police

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3 officer. A separate bill sponsored by Council Member
4 Richards does the same for obstructing governmental
5 administration. No one should resist arrest, assault
6 a police officer who obstruct the Administration of
7 government, but we know that these charges are often
8 brought against individuals whose only real offense
9 is talking back or showing what an officer perceives
10 to be disrespect, and these charges are often dropped
11 by the District Attorney. My bill will require
12 reporting on where these arrests are occurring, the
13 demographics of those being arrested, and how often
14 prosecutors disregard these charges and decline to
15 prosecute. Let me also note my support and co-
16 sponsorship of Intro. 3704 introduced by the Speaker,
17 which imposes transparency and accountability on the
18 District Attorney themselves who are funded by the
19 City budget for their charging bail diversion
20 incenting decisions for the very first time. This
21 information has the potential to truly transform the
22 criminal justice system in New York City. Thank you.

22 CHAIRPERSON RICHARDS: Thank you. And
23 once again we're joined by Council Members Rose and
24 Menchaca and Deutsch. Alrighty. We'll call the
25 first panel. I'll start with the Assistant Chief

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3 Matthew Pontillo⁶, First Deputy Commissioner Benjamin
4 Tucker, Assistant Deputy Commissioner Ann Prunty,
5 Executive Director Oleg Chernyavsky.

6 COUNCIL CLERK: DO you swear to tell the
7 truth, the whole truth and nothing but the truth
8 before this committee today and answer all questions
9 to the best of your ability?

10 UNIDENTIFIED: Yes.

11 CHAIRPERSON RICHARDS: You may begin.

12 FIRST DEPUTY COMMISSIONER TUCKER: Okay,
13 good morning, Mr. Chairman Richards, Chairman
14 Lancman, and members of the Council. I'm Ben Tucker,
15 First Deputy Commissioner, and I'm joined by
16 Assistant Chief Matthew Pontillo, the Commanding
17 Officer of the Office of the First Deputy
18 Commissioner, Assistant Deputy Commissioner and
19 Acting Deputy Commissioner for Legal Matters, Ann
20 Prunty, and Oleg Chernayvsky, the Department's
21 Executive Director of Legislative Affairs. On the
22 behalf of Police Commissioner James O'Neill, we are
23 pleased to testify about the bills before you today.
24 At the core of the Department's mission in our
25 obligation to protect the health, safety, and welfare
and visit-- and welfare of those that live in, work

3 in, and visit our city, a well-trained focus and
4 discipline team of more than 36,000 officers is vital
5 to this mission. We are the largest police force in
6 the nation and also the most scrutinized. No Police
7 Department operates under as much public scrutiny as-
8 - or as many layers of oversight as the NYPD,
9 oversight and scrutiny that we welcome. In the past
10 five years, that is during the de Blasio
11 Administration, the NYPD has accomplished a series of
12 sweeping reforms designed to build trust and
13 encourage collaboration with New York City
14 communities. In the context of all those reforms,
15 the credibility of our internal system for
16 disciplining misconduct by police officers is an
17 important component in winning public trust. If
18 people see the Department's discipline system as
19 minimizing or discounting police misconduct, they
20 will be far more likely to doubt the legitimacy of
21 any police action. We recognize that lasting trust
22 cannot be achieved without a fair and transparent
23 police discipline process. That process should
24 provide the people we serve with an understanding of
25 and an insight into how the Department addresses
their complaints of officer misconduct and how we

2 ensure that our personnel perform with integrity. In
3 the NYPD we believe overall we have a very robust
4 discipline process that holds officers accountable
5 for misconduct and punishes guilty officers
6 appropriately, but it is crucially important that the
7 public believes it too. That's one of the reasons
8 why the Police Commissioner commissioned an external
9 independent panel of criminal justice experts to
10 examine our internal discipline process and make
11 recommendations on how we can improve it. The panel
12 reported their findings last week, and the
13 Commissioner immediately accepted all their
14 recommendations. He has charged me with heading an
15 implementation group to ensure the panel's
16 recommendations are adopted expeditiously. The panel
17 raised important issues which their recommendations
18 addressed, but they did not identify any significant
19 systemic problems with the fundamental fairness or
20 overall effectiveness of our discipline system. We
21 are ready and willing to remedy any problems that
22 they have identified. The members of the Police
23 Department implementation group have almost two
24 centuries of combined experience in law enforcement,
25 and they will assist me in ensuring that the panel's

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3 recommendations are executed faithfully. We're also
4 committed to engaging in outside organization as the
5 panel recommended to audit our disciplinary process
6 once the new procedures are in place. I'd like to
7 thank the panel once again for lending us their time
8 and expertise. They and their staff took time out of
9 their busy lives to provide this vital public
10 service. Their recommendations will ensure fairness,
11 accountability, and transparency. And as it is
12 always the case, once implementation is complete, we
13 will continue to look for additional avenues of
14 improvement. Before I discuss the panel
15 recommendations and discipline system further, I'd
16 like to talk a little about the Department's wider
17 reform agenda in order to present the context in
18 which our disciplinary reforms are taking place.
19 Since 2014, the Department has remade its patrol
20 model, its investigative model, its training for both
21 recruits and in-service officers, its use of force
22 policy, its performance evaluation system for
23 officers, and its approach to assisting and
24 supporting victims of crime. Compared with just five
25 years ago, we are far better connected to communities
at the local level, far more service-oriented, and

3 far better trained in diffusing situations, and
4 alternatives to force. Our investigative work is
5 more sharply focused on the real drivers of violence
6 in the City, and we no longer use arrests and
7 summonses as primary measures of police officer
8 performance. With the advent of the Crime Victim's
9 Assistance Program, we are much more responsive and
10 helpful to victims of crime. All this has been
11 accomplished with crime itself-- while crime itself
12 has fallen to its lowest levels of more than 60
13 years. The reforms that we call neighborhood
14 policing are localizing police service and connecting
15 neighborhoods all across the city. Average
16 population in New York City precincts exceeds
17 100,000, so we are anchoring our police officers, our
18 patrol officers in smaller sectors within precincts
19 to foster connection between cops and the people they
20 serve. We are empowering our officers to work with
21 residents and take initiative in solving problems and
22 fighting crime at the very local level. This is a
23 seat-change in how policing is done as we invite
24 neighbors to share responsibility with us and play a
25 role in how their neighborhoods are policed. Trust
is built by ensuring that officers spend time

3 interacting with communities they serve. Trust is
4 built by including our advocate partners and making
5 us more sensitive to the unique needs of diverse
6 communities and victims of crime, and trust is built
7 by collaborating with our elected community and faith
8 leaders to make life better, safer, and fairer for
9 all communities. On the investigative side, we've
10 also moved to a more geographic model with most
11 detective work including proactive drug and gang
12 investigations overseen by each of the eight
13 localized detective commands. This new structure has
14 propelled a series of precision gang violence
15 investigations that have brought several thousand
16 violent gang members to justice. As the effect of
17 these investigations took hold in 2017, murders fell
18 to 292, the lowest level since 1951, and shootings
19 fell to 789, the lowest level on record. Last year,
20 murders ticked up by three incidents, but shootings
21 fell further to 754. An astonishing number when
22 compared with the 5,200 shootings back in 1993. Our
23 revised policing methods are helping us decrease the
24 gross number of enforcement actions as we pursue less
25 punitive approach, a less punitive approach to public
safety. In 2018, arrests were down 13.8 percent for

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the year, and 37.3 percent in the past five years.

3 Criminal summonses were down 45 percent in 2018, and

4 nearly 79 percent in 2013. Transit Bureau arrests

5 were cut nearly in half last year along, and

6 misdemeanor arrests for marijuana have declined by 71

7 percent in five years. Following big drops in 2012

8 and 2013, streets stops have fallen further than 90

9 percent since then. The NYPD also has transformed

10 its training from Police Academy courses for recruits

11 to advancing the skills of experienced officers in

12 de-escalating street confrontations with both

13 criminals and emotionally disturbed persons. And

14 probably the most significant change, we've abolished

15 impact zones. These were higher crime locales where

16 new officers were sent fresh out of the Academy

17 largely to conduct stop and frisk operations and

18 other heavy enforcement. Today, in contrast, new

19 officers receive six months of field training with

20 experienced mentors. They gain exposure to a full

21 range of police functions and interactions and

22 develop as well-rounded providers of police service.

23 The use of force reforms are equally

24 transformational, as it has long done for firearms.

25 The NYPD is now tracking all uses of force and

3 requiring internal investigations in each case to
4 ensure that each use of force was justified. The
5 data is reported quarterly and broken out by the
6 categories of firearms, conducted electrical weapons
7 or Tasers [sp?], impact weapons, K9, OC spray,
8 restraining mesh blankets, and other physical force.
9 Our use of force policy also goes far beyond the
10 requirements of the law. It obliges officers to
11 attempt to de-escalate encounters before using
12 physical force, mandates that they intervene if
13 another officer uses excessive force, and establishes
14 the duty to report all such incidents. Closed force
15 allegations at the Civilian Complaint Review Board in
16 2017 had declined by 50 percent since 2013. The
17 NYPD's victim services initiatives have gone largely
18 unheralded. By late last year we had placed two
19 victim service advocates in every precinct and in all
20 police service areas that serve the City's public
21 housing. One advocate specializes in domestic
22 violence, while the other works with other victims.
23 We've never had anything quite like this at this
24 level in the City. The advocates are helping victims
25 to secure services and compensation and otherwise to
rebuild their lives providing an unprecedented degree

of support for innocent people traumatized by crime.

3 The Department has continued its policies of openness
4 and transparency. We voluntarily publish crime
5 complaint and enforcement data. We have collaborated
6 with the City Council on dozens of transparency laws,
7 including opening our Patrol Guide to public review
8 with limited exceptions. We have equipped
9 approximately 20,000 officers on patrol with body-
10 worn cameras with more to come, and we have held
11 regular meetings with community members,
12 stakeholders, and leaders. All of these initiatives
13 are designed to build trust with the people we serve.
14 Reforms to our discipline system have the same goal.
15 But as we discuss building trust with the public with
16 certain police discipline you should also be aware
17 that we face a second challenge, which is winning the
18 trust inside the Department. Traditionally, our cops
19 have perceived our discipline system as unfair,
20 arbitrary, unduly punitive, and most of all, as
21 taking far too long. Officers felt that their
22 careers were put on hold, including promotions and
23 transfers while they awaited judgement sometimes for
24 many months on pending disciplinary cases. In the
25 past five years, we have done much to improve the

3 system, cutting the process and trial times almost in
4 half and scaling back on draconian penalties for
5 minor offenses. I think it's important for people
6 outside the Department to understand that we use the
7 discipline process not just to punish defenders, but
8 to train and instruct and manage our workforce.

9 While we are always ready to terminate the serious
10 offenders, we don't necessarily want to fire people
11 who have made honest mistakes or even had ethical
12 lapses of some kind. Many of these people are
13 redeemable and may go on to successful careers with
14 us and the discipline system is part of the
15 redemption and training process. Transparency of the
16 discipline process is key to building public trust.

17 The Department will continue and increase our
18 advocacy for amendments to Civil Rights Law 50A.

19 These changes permit us to release information of
20 significant public interest, including officers'
21 names, trial transcripts, trial decisions and final
22 disciplinary outcomes. We will also be judicious in
23 our application of the current law, as we have been
24 when seeking to release body-worn camera footage and
25 disciplinary case summaries. Although we were
enjoined from releasing this information, we are

3 optimistic that the final decision by the courts will
4 support our position that those materials are not
5 personnel records. The Department, however, does not
6 support the full repeal of 50A, because the law
7 provides vital protection for police officers from
8 harassment in court and possible threats to their
9 personal safety both on-duty and off-duty. The
10 threats in public work, in police work, are very
11 real. There were 151 direct threats to individual
12 officers recorded in 2017, and 154 direct threats in
13 2018. The right path toward greater transparency
14 would amend the portions of the law that raised road
15 blocks to transparency but preserve those sections of
16 the law that protect the brave men and women who
17 protect us all. That is the responsible and balanced
18 approach. I'd like to close with the explanation of
19 how our discipline system is structured to establish
20 a framework for further discussion today. Complaints
21 about members of the service can be made to the
22 Civilian Complaint Review Board, the Internal Affairs
23 Bureau, or by calling 311. 311 complaints-- routes
24 complaints to CCRB and IAB based on the type of
25 allegation. IAB has a 24-hour hotline that members
of the public and the police officers may call to

3 report misconduct and the reporter may remain
4 anonymous. CCRB handles complaints of force, abuse
5 of authority, discourtesy, and offensive language,
6 and CCRB investigates those complaints, finds
7 complaints to be substantiated, unsubstantiated, or
8 unfounded, and issues recommendations for discipline
9 in substantiated cases. In 2018 there were 4,747
10 complaints made against officers to CCRB, as compared
11 with 4,486 complaints in 2017, an increase of 5.8
12 percent. Of those 2018 complaints, 1,208 were fully
13 investigated with 19 percent substantiated and 74
14 percent exonerated, unsubstantiated, and unfounded.
15 That represents a two percent increase as compared to
16 2017 when 72 percent of such cases resulted in a
17 determination that the complaint made against the
18 officer was unsubstantiated or unfounded, or that the
19 officer was exonerated. Authorized by a 2012
20 Memorandum of Understanding between CCRB and the
21 Department, CCRB's Administrative Prosecution Unit,
22 prosecutes CCRB cases when an officer chooses to
23 challenge CCRB findings and recommend discipline.
24 The trials which are open to the public are held
25 before the NYPD Deputy Commissioner of Trials which
is the adjudicating body in the police disciplinary

3 cases. Trial results are reviewed by my office and
4 the Police Commissioner. The final resolution of
5 discipline rests with the Commissioner as mandated by
6 law. He has the power to accept or modify
7 recommended discipline. As the Independent Panel
8 noted, the Commissioner does not take the
9 responsibility lightly. He draws on his 37 years of
10 police experience and works toward a fair and
11 meaningful disciplinary outcome in each case. IAB
12 investigates all other serious allegations of
13 misconduct and corruption. IAB investigations are
14 not only commenced as a result of allegations, but
15 are also self-initiated, including the performance of
16 integrity tests. For example, in some cases, IAB
17 investigations may be referred for criminal
18 prosecution. If an IAB investigation substantiates
19 an allegation, it refers the case to the Department
20 Advocate's Office which prosecutes disciplinary
21 cases. If a case goes to trial, the adjudicating
22 body such as the CCRB prosecutions is the Deputy
23 Commissioner of Trials. As in CCRB cases, whether a
24 case ends in a pre-trial settlement or post-trial
25 verdict, the recommended discipline is reviewed by my
office and then by the Police Commissioner.

3 Depending on the infraction, penalties can include
4 command discipline, retraining, loss of vacation
5 days, unpaid suspension and termination. During the
6 time period from 2014 to 2018, discipline proceedings
7 ended with termination in 150 cases-- 156 occasions.
8 Lower level infractions generally involving
9 administrative violations are referred to officers'
10 commanding officer for command discipline. It should
11 be noted that most discipline in the Department
12 results not from complaints or IAB investigation, but
13 from investigations conduct and penalties assessed at
14 the command level by the officer's direct
15 supervisors. The NYPD values our relationships with
16 CCRB in our collaboration is always involved,
17 evolving to be better served to better serve the need
18 of the public. The 2012 MOU that enabled CCRB to
19 prosecute certain cases also lead to development of
20 the reconsideration program, which was further
21 revised last year and will be improved upon again
22 based on the Independent Panel's recommendations.
23 This program established a formal process for
24 negotiating cases in which the Department differs
25 with the CCRB findings or their suggested penalties.
The differences may result from new facts emerging or

3 from NYPD's judgement that the CCRB finding was based
4 on misinterpretation of the law, or resulted in an
5 unjust outcome. The Department may formally request
6 CCRB to reconsider their findings or recommendations.
7 The program has led to increased agreement between
8 the departments and the CCRB's findings. I hope that
9 we can all agree that last-- that the vast majority
10 of police officers perform their often dangerous work
11 with integrity and courtesy, but the noble work of
12 the vast majority cannot excuse or justify in any way
13 misconduct by a relative few. Police misconduct not
14 only hurts its victims and the community at-large,
15 but also harms other cops. All cops feel the erosion
16 of the public's trust, and all cops feel the
17 suspicion and the shame when one of their own behaves
18 in a way that is inconsistent with our shared values.
19 Just as important, unless the public can see that
20 there are consequences for these improper actions in
21 a way that the Department disciplines its own, New
22 Yorkers might be led to the false belief that acts of
23 corruption and misconduct are shrugged off or somehow
24 tolerated. As a Department we can never permit that
25 outcome. It breeds the perception of lawlessness and
damages our individual and collective reputations,

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3 most of all, the first casualty of such negative
4 perceptions would be our ability to build
5 relationships with-- and fight crime successfully. I
6 will now turn it over to executive director Oleg
7 Chernyavsky who will discuss the legislation being
8 considered today. Thank you, Mr. Chairman.

9 CHAIRPERSON RICHARDS: Hold on one
10 second, Oleg. Thank you. Just want to acknowledge
11 we've been joined by Council Members Cabrera, Gibson,
12 Williams, Powers, and Cohen, and I want to go to
13 Jumaane Williams for a statement on his resolution.

14 COUNCIL MEMBER WILLIAMS: Thank you,
15 Chair Richards, Chair Lancman, and Speaker Johnson
16 and my colleagues for holding this hearing, and of
17 course, the panel. This is just an opening
18 statement. I won't go into any back and forth. But
19 power corrupts and there is nothing more corrupting
20 than power exercised in secret. Those are the words
21 of late investigative journalist at number 17 on
22 Nixon's enemy list, Daniel Schorr, and these words
23 ring true even more today. Power exercised in secret
24 is just corrupting, whether it be the orange man in
25 the White House signing Executive Orders in between
executive time or the Governor and Mayor forcing

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3 through three-billion dollar deals with the world's
4 richest man without public review, or the NYPD
5 operating with almost zero public consequences in
6 cases of misconduct and abuse. We must demand
7 transparency and accountability at all levels of
8 government, and that includes ensuring that those in
9 charge of protecting us are also answerable to us.
10 This does not mean that we are anti-police or do not
11 very much support the brave men and women who are
12 tasked to protect us every single day. This is why
13 I'm proud to sponsor a Resolution on the New York
14 State Legislature to pass and the Governor to sign
15 which would repeal Section 50A of the New York City
16 Rights Law, it's A02513, on the senate side 02673.
17 According to the Committee on Open Government, the
18 interpretation and application of the law deprives
19 the public of information essential to oversight and
20 lends a shield of opacity to the very public state
21 and local police agencies that have perhaps the
22 greatest day-to-day impact over the lives of
23 citizens. Section 50A increases the harms caused to
24 New Yorkers who experience police abuse by denying
25 them and their loved ones access to information about
whether departments take any disciplinary action at

3 all about officers who mistreat them, including
4 withholding information about officers whose actions
5 result in a person's death. In fact, we learned
6 thanks to a disciplinary records leak in April 2018,
7 Buzz Feed news article, that between 2011 and 2015 at
8 least 319 NYPD staff committed offenses, including
9 lying under oath, driving under the influence, and
10 excessive force with almost no serious consequence.
11 This is what erodes public trust in our law
12 enforcement and this administration. The Mayor has
13 to answer the questions right now. There are-- we
14 are in a much better place, I always admit, with this
15 Administration than we were before, except in the
16 areas of transparency and accountability. The two
17 areas where people are yearning to see some kind of
18 change is those two areas, and those two things we
19 haven't seen much movement. In terms of
20 transparency, I believe in many parts, we have moved
21 backwards. This has to change. 50A must no longer be
22 used as an excuse to tie the hands of District
23 Attorneys as a reason for a slap on the wrist
24 treatment of officers who have undermine their duty
25 to protect or unnecessary cause of added pain and
trauma to individuals and families seeking justice in

3 the fairest big city in America. Having been a

4 victim of excessive force myself in the last term, I

5 am sad that not much has changed in that area.

6 Repealing 50A is a necessary step toward justice for

7 Eric Gardner, for Saheed Vassell, for Marley Graham,

8 for Delrawn Smalls, for Mohammad Ba [sp?], and for

9 the countless New Yorkers just asking for truth and

10 for openness. I am thankful that the Department and

11 Administration put together this panel. I'm very

12 happy that I was able to be interviewed by the panel

13 and relay my experiences. I'm hoping that what I

14 heard was true, that they will be accepting all of

15 the recommendations, but I do think it did show a

16 systemic issue around discipline. Again, I am

17 thankful to the Speaker and Chairs Richards and

18 Lancman for holding this hearing on these crucial

19 piece of legislation starting the much-needed process

20 of turning back the tide on the corrupting nature of

21 secrecy in our law enforcement. And I'll end with

22 just saying I am glad that I believe this

23 conversation with this Administration at least has a

24 different feel than the last Administration, and that

25 in itself is progress. So thank you.

3 CHAIRPERSON RICHARDS: Thank you, Council
4 Member Williams. We'll go back to you.

5 EXECUTIVE DIRECTOR CHERNYAVSKY: Good
6 morning Chair Richards, Chair Lancman, and Members of
7 the Council. As Commissioner Tucker has just laid
8 out, now that the Independent Discipline Panel as
9 commissioned by the Police Commissioner has completed
10 its work, the Department has commenced implementation
11 of the panel's recommendations. As you probably have
12 noticed, some of the bills or portions of the bills
13 being heard today addressed the same or similar
14 topics. The Police Commissioner has accepted all of
15 the panel's recommendations, and we look forward to
16 keeping the Council updated as we work toward the
17 most effective and meaningful way to implement these
18 reforms. I would now like to comment on the
19 legislation being heard today. Intro 1105 would
20 require the Department to report monthly on the
21 number of complaints of police misconduct received by
22 the Department specifically use of force, or misuse
23 of force, harassment, and use of offensive language,
24 and the action taken by the Department in response to
25 each complaint. While the Department does not have
an objection to providing transparency about such

3 data, it should be noted that complaints about force
4 and offensive language are handled by the CCRB which
5 currently posts such data publicly. Any complaints
6 received by the Department related to these areas are
7 immediately referred to the CCRB. Additionally, CCRB
8 has begun investigating and recommending discipline
9 regarding sexual harassment complaints. The
10 Department supports CCRB's continued practice of
11 allowing public access to this data. However,
12 because this is not the Department's data, we do not
13 believe we are the proper entity to report about it.
14 We note that the second sentence of the proposed new
15 section referring to actions taken in response to
16 each such complaint would have to be interpreted
17 consistent with the limitations of Civil Rights Law
18 Section 50A. Intro 1309 would require the Department
19 to study and implement a discipline matrix. The
20 Department supports the intent of this bill. As the
21 Council is aware, the Independent Discipline Review
22 Panel has also recommended the implementation of such
23 a discipline matrix. While the implementation of any
24 type of discipline guidelines must remain within the
25 purview of the Police Commissioner as the legally
mandated final arbiter of discipline, the adoption of

3 such a matrix will be something the implementation
4 group will be working towards, and we intend on
5 keeping the Council informed throughout the process.
6 Preconsidered Intro 3705 would require the Department
7 to publish its disciplinary guidelines which are
8 effectively a description of the types of violations
9 and range of penalties officers committing misconduct
10 face as well as the number of disciplinary cases
11 disaggregated by precinct among other disaggregation
12 points, with the exception of ongoing investigation
13 or pending cases, the Department's goal of amending
14 Civil Rights Law Section 50A would permit the
15 disclosure of such data with greater specificity than
16 even this bill requires. However, given ongoing
17 litigation over the interpretation of the types of
18 information covered by the current Civil Rights Law
19 50A, the current injunctions which are in place
20 arising from such litigation, we are concerned that
21 the disaggregation of all of the data points at the
22 level of granularity sought in the bill may lead to
23 the two additional litigation. We look forward to
24 working with the Council on a draft bill at the
25 conclusion of the litigation that comports with the
court's rulings and law so that we may disclose as

3 much aggregate discipline data as possible. We also
4 commit to continue actively seeking an amendment to
5 Civil Rights Law 50A that would at a minimum permit
6 the Department to post the type of data the current
7 version of this bill envisions at the conclusion of a
8 disciplinary proceeding. Pre-considered Intro. 3706
9 would require the Department to turn over all
10 disciplinary records requested by a District
11 Attorney's office within 24 hours of a request. The
12 Department opposes this legislation. The NYPD has a
13 strong and productive working relationship with each
14 of the District Attorney's offices as well as the
15 Special Narcotics Prosecutor. These relationships
16 have developed over decades and have resulted in
17 countless successful prosecutions of many criminals.
18 We count the City's prosecutors among our vital
19 partners who have worked with us to reduce crime to
20 lows not seen since the 1950s. While at the same
21 time, the number of arrests has been reduced by tens
22 of thousands each year since the start of this
23 Administration. We call it "Precision Policing," the
24 targeting of the few individuals who are responsible
25 for driving crime in this city. The prosecution of
these bad actors requires ongoing collaboration and

3 sharing of information to ensure that they are taken
4 off the streets before they can find their next
5 victim. Through the years we've developed processes
6 that ensure that our prosecutorial partners get
7 material evidence in a timely fashion, including the
8 ability of prosecutors to make expedited requests
9 when necessary. These processes have evolved and have
10 been strengthened offer time based on court
11 decisions, statutory amendments, and a mutual desire
12 to improve. To that end, the Department led a working
13 group with prosecutors that has revised the manner in
14 which requests for discipline records are processed.
15 We have centralized and streamlined this process so
16 that the Department's document production unit is the
17 single responsive unit to such requests from
18 prosecutors. Also, based on the request from
19 prosecutors, we simplified and revised the form used
20 by DA's offices to submit their request to better
21 reflect their needs, all in an effort to ensure a
22 timely response. We have all fostered an effective
23 relationship over the years that accounts for the
24 prosecutor's need for time to prepare their case,
25 meet court-imposed and statutorily-mandated deadlines
while utilizing finite Department resources. We

3 object to this bill because setting by Local Law an
4 arbitrary and stringent time table for the transfer
5 of information between law enforcement agencies
6 effectively micromanages the day-to-day and hour-to-
7 hour operations of this Department. It fails to
8 account for the resources required for compliance and
9 protocols for ensuring requests are limited to
10 relevant information and are not overly broad. The
11 Department commits to a continued productive working
12 relationship with the City's prosecutors to ensure
13 fair and successful prosecutions. Finally, Pre-
14 considered Intros 3707 and 3708 set out reporting
15 requirements for charges of resisting arrest, assault
16 in the second-degree, and obstruction of governmental
17 administration. We do not oppose the reporting of
18 broad categories relating to these crimes that we
19 would be unable to provide certain-- however, we
20 would be unable to provide certain detailed data
21 points required by this bill. For example, the
22 Department can report on the number of arrests for
23 these charges, disaggregated by borough, by precinct,
24 by age, by race, and by gender of the arrestee.
25 However, we cannot capture data on the specific
underlying charge that an arrest be resisted the

3 relationship of an arrestee charged with resisting
4 arrest to another individuals whose arrest they
5 resisted, the nature of injuries in a felony assault
6 case, whether the District Attorney declined to
7 prosecute a case, the entity which operates the
8 building where the arrest transpired, the ethnic
9 origin or specific gender identity of the arrestee,
10 or the specific government function obstructed. The
11 Department looks forward to working with the bill
12 sponsors on amendments to these pieces of legislation
13 to achieve a greater level of transparency within our
14 data collection capabilities. Thank you, and we look
15 forward to answering any questions you may have.

16 CHAIRPERSON RICHARDS: Thank you. No
17 other individuals testifying? Alrighty, great.
18 Well, let's start off with the million-dollar
19 question. And you know, I would argue that the
20 public is not adequately informed of how and when
21 police officers are disciplined for misconduct, and
22 that is fact, not just I. The panel that the Police
23 Commissioner put together called it a "fundamental
24 and pervasive lack of transparency." Does the Police
25 Department agree with the panel's assertion of 50A?

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EXECUTIVE DIRECTOR CHERNYAVSKY: We-- the

3 Department accepted and the Police Commissioner
4 immediately accepted all of the recommendations of
5 the panel, and I think it's important to note that
6 the Department has attempted to be more transparent
7 and has been brought to court, you know, in those
8 attempts. So for example, body-worn cameras are an
9 example where the Department sought to release body-
10 worn camera footage and was enjoined from doing so,
11 and that case is before the courts. The Department
12 sought to lay out discipline summaries and
13 discipline-- aggregate discipline data within what we
14 believe to be the bounds of 50A, and again, we were
15 enjoined by the courts. So, we await the results of
16 those cases, and we look forward to further
17 advocating strongly for the amendment to 50A, but
18 that's the key. It has to be an amendment to 50A
19 that appreciates the safety concerns for our
20 officers.

21 CHAIRPERSON RICHARDS: And so let's just
22 stay on that for a second. So, in know the Police
23 Commissioner has also committed to reforming 50A,
24 obviously. What aspects of 50A do you think need to

25

3 be preserved that aren't accounted for in other laws
4 on the books?

5 ASSISTANT DEPUTY COMMISSIONER PRUNTY:

6 Let me speak to that, Chair Richards. I think the
7 Police Commissioner has been very vocal and very
8 supportive of this, and we certainly are, but there
9 are aspects presently of 50A that don't allow us to
10 be as transparent as we wish. So, in that sense, I
11 think we have common ground with you. We would like
12 to be able to provide the public with our
13 disciplinary outcomes with the names of the officers,
14 the charges, some of the documents relating to the
15 disciplinary procedure and also the outcome. We'd
16 like to be able to do that at the conclusion of the
17 process, when the officer has had full due process,
18 all of the facts have been heard, and the decision-
19 makers have been able to determine what the proper
20 outcome is. So, in that sense, I think we have that
21 common ground. On the other hand, I think what's
22 really important to recognize and to understand here
23 is that we want to be able to find an amendment to
24 50A that retains that part of it, that addresses the
25 safety concerns of our officers, and these are very
real concerns. You know, the original underlying

3 purpose of 50A was to make sure that officers
4 wouldn't be harassed, intimidated, humiliated,
5 threatened as the result of the release of data and
6 information related to their personnel records, and
7 that's still very important to us. You know, we've
8 heard references to it in our testimony earlier, but
9 threats to officers are very real today. You heard
10 Commissioner Tucker speak about the fact that we've
11 got data that indicates that in 2017 we had 151
12 direct threats to police officers. In 2018, that
13 number rose to 154. We've had officers who have
14 responded, for example, to an incident of a vehicle
15 accident, and that officer was stalked and harassed
16 as a result of taking police action in that case.
17 We've had officers who made an arrest, and in one
18 instance we had an individual who was determined to
19 send bombs to what he believed were the homes or the
20 locations where that officer might be, and
21 unfortunately, one of those bombs detonated and
22 killed an innocent homeowner when he sent it to the
23 wrong address. And of course, everyone knows that
24 since 2014 we've had assassinations of three police
25 officers who were doing their job on the street and
were killed simply because they were officers in

3 uniform. So, we need a 50A amendment that recognizes
4 all of our concerns about being more transparent, yet
5 at the same time takes into account those very
6 serious and real concerns about officer safety.

7 CHAIRPERSON RICHARDS: So your panel
8 noted, and we're certainly sensitive and we want to
9 ensure that police officers are protected in every
10 which way. We believe in ensuring that they have
11 safety. However, in your panel's report they
12 discussed Chicago P.D. I believe released over
13 200,000 cases, and within your panel's report it
14 concluded that even when those names and cases were
15 reported, there were no threats or harassment to
16 officers. The other thing I want to mention is-- so
17 there have been names of officers put out there, so
18 Pantaleo and others. Have there been any threats
19 directly to officers' names who have been put out in
20 the press currently?

21 ASSISTANT DEPUTY COMMISSIONER PRUNTY:

22 Well, there certainly have been threats to officers
23 whose names have been put out in connection with
24 discipline--

25 CHAIRPERSON RICHARDS: [interposing] Okay,
I've heard that. So, based on names that-- so can

3 you name some threats to officers whose names
4 recently have been put out in newspapers, and can you
5 give me some conclusive information on those threats?

6 FIRST DEPUTY COMMISSIONER TUCKER: Well,
7 I mean, listen-- I think-- I don't have names for
8 you, but I think that's not the point.

9 CHAIRPERSON RICHARDS: But I think you
10 would know the answer to that, so the answer--

11 FIRST DEPUTY COMMISSIONER TUCKER:
12 [interposing] Well, but no, but the answer is
13 probably no we don't have any threats against
14 Pantaleo that we're aware of, but the point is--

15 CHAIRPERSON RICHARDS: [interposing] Not
16 just Pantaleo, any officers right now whose names
17 have over the last year or two or three or four years
18 who have been put out in the press, have there been
19 direct threats to the officers?

20 FIRST DEPUTY COMMISSIONER TUCKER: Yeah,
21 we have those information. That's-- in that number
22 that Ms. Prunty mentioned, the 154, the 151, within
23 the scope of those numbers, there are officers. We
24 know who they are. That's how we know that the
25 complaints are real. SO, and you know, you can't
predict this. This is not something where you can

3 say if it didn't happen within the last three months,
4 then somehow it's not relevant. It is relevant, and
5 it's important. So, we should take that into
6 account, and all we're trying to establish is trying
7 finding the right balance to how we provide the
8 information that we are ready, willing and able with
9 all the [inaudible] to provide to the public. We
10 just told you that, and we gave you some specific
11 examples that Ann mentioned, with respect to what
12 we've been trying to do, what we've been prevented
13 from because of the litigation. So, it is not that
14 we lack the will or the desire to find some way to be
15 more transparent, certainly with respect to the body-
16 worn camera videos that we produced. We said we
17 would when we implemented the body-worn camera
18 program, we would continue to do it, and we'd be
19 doing it even still, but for the litigation, and we
20 hope and believe that maybe we'll prevail and be able
21 to do it subsequently.

22 CHAIRPERSON RICHARDS: And take me
23 through what advocacy. So we've been hearing at
24 least for the last two years that the Mayor and the
25 Police Commissioner support an amendment to 50A. Can
you speak to any advocacy that has happened in

3 Albany? Can you speak to any trips the Commissioner
4 has taken to Albany to lobby legislators? Can you
5 name legislators that the Administration has lobbied
6 on an amendment to 50A?

6 EXECUTIVE DIRECTOR CHERNYAVSKY: Sure.

7 So, I mean, and I think it's important to highlight
8 the process first in terms of we're in the mayoral
9 agency. So, the Administration speaks with one
10 voice. The process for pushing forward or supporting
11 legislation or pushing for legislation centralized
12 and done through the Mayor's Office. Yes, we have
13 done significant outreach and significant work over
14 during the course of this administration to seek
15 amendments to 50A, now both publicly through the last
16 two commissioners, Commissioner Bratton and O'Neill,
17 as well as the executive staff have made public
18 comments, have written op-eds in support of such
19 amendments. We have also worked with elected leaders
20 through the Mayor's Office to introduce legislation
21 that struck the right balance, because I-- and I
22 think this is worth noting stemming from your prior
23 question. If we all agree of the type of
24 transparency needed, the type of records that should
25 be released ultimately, why are we disagreeing about

3 the need to protect police officers? The need to
4 protect police officers is not linked or somehow
5 shielding transparency because we all seem to agree
6 to amend the law to allow these certain vital records
7 that are of public interest, but why throw away the
8 protections afforded police officers in doing that? I
9 think we could achieve both. We don't need to-- we
10 don't need to choose one over the other. We can have
11 both, and I think that that's the approach the
12 Department has taken. Greater transparency while
13 also protecting the officers that protect us all.

13 CHAIRPERSON RICHARDS: And I would argue,
14 first off once again, we are-- we want to be 100
15 percent supportive of protecting our police officers,
16 but we also want to be 100 percent positive in
17 protecting the public as well, and when you look at
18 the families unfortunately who misconduct and police
19 violence has taken effect on, it truly erodes that
20 transparency and community building between the
21 Police Department and local communities. So, I just
22 wanted to hear a little bit more about, you know,
23 obviously the panel has agreed, right? That 50A is a
24 huge problem, that transparency within the Department
25 and accountability is a problem. Do you acknowledge

3 the toll that 50A and the lack of transparency in the
4 Department, the toll it takes on the victims of
5 police abuse and their families when a department
6 doesn't tell them what's going on with an
7 investigation?

8 EXECUTIVE DIRECTOR CHERNYAVSKY:

9 Absolutely, and I think that was the point of our
10 advocacy for an amended 50A, but in all of the
11 examples that you're mentioning, which would be
12 addressed by the options that we're offering, right,
13 I don't think in any of those cases you would say
14 that well, we could achieve the transparency that's
15 needed that's called for by everybody including us,
16 but let's at the same time make it somewhat easier to
17 harass a police officer on the stand or threaten a
18 police officer engaged in a high-profile incident.
19 We could have both. The concerns that you're raising
20 raised by the community, concerns that we've
21 acknowledge time and time again, and we've pushed for
22 amendments to the law, that's because of these
23 concerns. We agree with the panel that transparency
24 is absolutely needed but we don't need to throw away
25 the protections afforded our officers in the law.

3 That's what needs to stay. The transparency piece is
4 the piece that needs to change.

5 CHAIRPERSON RICHARDS: So, tell me what
6 pushing looks like now that we have a different year
7 in Albany, what is that going to look like this year?

8 EXECUTIVE DIRECTOR CHERNYAVSKY: I think
9 pushing is going to look like it would be travel
10 [sic]--

11 CHAIRPERSON RICHARDS: [interposing] How
12 is it going to look different?

13 EXECUTIVE DIRECTOR CHERNYAVSKY: I mean,
14 it's going to-- while, I mean, where really I don't
15 have a vote in the state legislature, so obviously I
16 write I bill, introduce a bill, and--

17 CHAIRPERSON RICHARDS: [interposing] So,
18 you're not running for the State Senate anytime?

19 EXECUTIVE DIRECTOR CHERNYAVSKY: But no,
20 I don't think I will. I don't think you want me to.
21 What we're going to do is we're going to work through
22 the Mayor's Office with the Senate, with the
23 Assembly, with the Governor's office to advocate for
24 this approach, the approach that I'm stating publicly
25 for you today, the approach that we've supported for
a number of years now during this Administration, and

3 hopefully we're going to have favorable court rulings
4 that further the expansion of reporting that we're
5 trying to do without an amendment, and hopefully
6 we'll have an amendment that we've been calling for
7 for a number of years.

8 CHAIRPERSON RICHARDS: And I will say I
9 don't necessarily support the particular bill you're
10 speaking about today, but we'll continue to have
11 discussions on that and work with our state partners.
12 I want to get through on some of the reporting. So
13 one of the bills we're hearing today actually report
14 data about what kind of offenses get discipline and
15 how much discipline different-- how-- and how much
16 discipline different offenses get in the aggregate.
17 Do you support making that information publicly
18 available?

19 EXECUTIVE DIRECTOR CHERNYAVSKY: So,
20 we're talking, just to be clear, we're talking about
21 Intro 1105?

22 CHAIRPERSON RICHARDS: Yeah.

23 EXECUTIVE DIRECTOR CHERNYAVSKY: Okay, so
24 with Intro 1105, and I mentioned this in my
25 testimony, that the highlighted offenses of
misconduct that you mention are handled by CCRB and

3 they actually current post as data online, the pieces
4 of-- the portions of the bill that address, so I
5 think just as a logical conclusion, I think that data
6 should be posted and continue to be posted by them
7 and we clearly have no objection to them doing that.
8 The portion of the bill that would link each and
9 every case to an outcome, to an investigation, I
10 mean, meaning advertising the fact that we're
11 conducting an investigation as well as releasing the
12 disciplinary conclusions of the investigation, I
13 mean, these are all things that are either the
14 subject of litigation or are covered by 50A, so
15 again, we await the conclusion of that litigation and
16 wherever that conclusion takes us, the more they
17 allow us to release at that point, we'll be in favor
18 of doing that, and again we'll be pushing for an
19 amendment to 50A. That's actually going to give you
20 even more than what you ask for in this bill.

21 CHAIRPERSON RICHARDS: So, let's go
22 through agencies and non-governmental agencies you
23 work with. So, obviously there's CCRB. Are they--
24 they're' covered under 50A? Are they precluded from
25 looking at cases under 50A? Can you go through-- so,

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3 can you answer that question. I just want to get it
4 on the record.

5 DEPUTY COMMISSIONER PRUNTY: No, under 50A
6 there's a, I believe it's subdivision four. It
7 allows for certain agencies that are conducting their
8 official functions to have records, and we routinely
9 provide CCRB--

10 CHAIRPERSON RICHARDS: [interposing] And
11 can you go through all of the agencies who could have
12 full access?

13 DEPUTY COMMISSIONER PRUNTY: Well, I can-
14 - off the top of my head that District Attorneys,
15 which are one of the named agencies in 50A, the
16 Attorney General's Office is also one of the accepted
17 agencies in 50A. I know that we have provided
18 disciplinary records to, for example, the Department
19 of Investigation. We have provided them to the
20 Office of the Inspector General for the NYPD. We've-
21 - I'd have to-- Corp Council-- yeah, Corporation
22 Council is another one. So, those are all agencies
23 that we consider to be-- fall within that exception
24 in 50A, and we provide them with records, and that
25 makes sense, because they need the records in order
to perform their official functions.

3 CHAIRPERSON RICHARDS: Right, and you
4 saw-- appreciate the Commissioner, once again, in
5 pulling this panel together, but you just went
6 through a bevy of different agencies that could
7 perhaps look at your disciplinary process, period.
8 I'm interested in knowing, you know-- don't you think
9 an outside agencies is in the best position to
10 evaluate whether your system has improved?

11 DEPUTY COMMISSIONER PRUNTY: Well, I
12 think one of the reasons--

13 CHAIRPERSON RICHARDS: [interposing] So,
14 being that we had this panel, and this panel, were
15 they covered under 50A, too? How much were they able
16 to look at?

17 DEPUTY COMMISSIONER PRUNTY: They were
18 able to look at essentially what those other
19 oversight bodies were able to look at, and they also
20 agreed to abide by the confidentiality provisions of
21 50A and not disclose anything that would violate 50A.

22 CHAIRPERSON RICHARDS: So, they were able
23 to look at particular officers' case files?

24 DEPUTY COMMISSIONER PRUNTY: That's
25 correct. That's correct, and did.

3 CHAIRPERSON RICHARDS: And how much? How
4 many fields did they have access to?

5 DEPUTY COMMISSIONER PRUNTY: I don't have
6 off the top of my head, but they looked at at least a
7 100, maybe more.

8 CHAIRPERSON RICHARDS: But if they wanted
9 to look at, I don't know, every file in the
10 Department, would they have access to that?

11 DEPUTY COMMISSIONER PRUNTY: They
12 absolutely would have. I mean, one of the things
13 that's important to note about the blue ribbon panel
14 that the Police Commissioner convened is that we, the
15 NYPD, did not direct their work, at all. They were a
16 completely independent panel. They determined what
17 they wanted to look at, when they wanted to look at
18 it, who they wanted to speak to, and they got full
19 access because we wanted an outcome that was-- had
20 integrity and was entirely impartial and objective,
21 and that's what we got.

22 CHAIRPERSON RICHARDS: And with the
23 documents provided to the panel, were any of the
24 documents-- did any of them have redactions?

25 DEPUTY COMMISSIONER PRUNTY: No.

3 CHAIRPERSON RICHARDS: So none had
4 redactions. Alright. Why didn't the panel provide
5 an analysis of all the most common offenses, and what
6 kind of discipline is handed down if that's the case?

7 DEPUTY COMMISSIONER PRUNTY: Again, I
8 don't-- we didn't direct what the panel would report
9 and what they would examine and how they would go
10 about their business. So, I simply can't answer
11 that.

12 CHAIRPERSON RICHARDS: But I'm just
13 having a hard time understanding if they had access
14 to all of this information. Why couldn't they hand--
15 why couldn't they get that specific information to
16 us? One of the few analysts-- analysis they did
17 involve, that they did point out was on DV cases,
18 domestic violence cases. They said that domestic
19 violence is not taken seriously enough. What are you
20 going to do about it?

21 FIRST DEPUTY COMMISSIONER TUCKER: What
22 are we going to do about domestic violence cases? So
23 let just talk a little bit about that, and we can
24 give you some details. But for some time now we've
25 been looking at the data with respect to domestic
26 violence cases that have come through the Department

3 Advocate's office, and we've seen an increase over
4 three years, Matt? And so we are-- as we did with
5 our DWI cases, took a look at those carefully and
6 recognized that we need to think about ways in which
7 we change the way we handle those cases with respect
8 to penalties and so forth. So that process is under
9 way, and as part of the implementation group we'll be
10 looking at it much more-- in much more detail with a
11 view toward coming up with some different approaches
12 to how we handle those cases, one of which will
13 include a variety of increases such as dismissal
14 probation, looking at the nature of the case.
15 Sometimes it's violence involved in a domestic
16 violence, sometimes it's not. So we'll have to
17 assess it and sort of think about what level, what
18 the nature of each case is, and then think about what
19 the penalties are to be. But certainly something
20 that's on our radar. Certainly something we care a
21 lot about, and certainly it could end up in
22 terminations as well as it does on some cases with
23 DWI cases. So, again, the-- there is this-- we have
24 this desire to figure out as we learn things. This
25 is a work in progress, and as we-- and we discover
that we're having-- we may be-- we may have been

3 looking at the way we discipline people for DV cases
4 based on precedent. We now know or we believe just
5 because of the increase that we see, and perhaps even
6 the nature of the conduct of the individual offender
7 know that we now need to do something more than that.

8 CHAIRPERSON RICHARDS: But I'm just
9 astounded why it took a panel for us to understand
10 the importance of ensuring, and I know there can be
11 people who-- well, you know, so let me just give a
12 case, because I just want to speak factually. So the
13 panel said that there's an officer who was not
14 dismissed even though he had eight prior domestic
15 violence incidents, two of which were substantiated.
16 What possible reason is there to not fire someone who
17 has two substantiated DV cases?

18 FIRST DEPUTY COMMISSIONER TUCKER: Well,
19 a number--

20 CHAIRPERSON RICHARDS: [interposing] And I
21 just want to point out, this is why there's a such a
22 lack of trust when it comes to the way the NYPD
23 disciplines its officers.

24 FIRST DEPUTY COMMISSIONER TUCKER: Well,
25 part of--

3 CHAIRPERSON RICHARDS: [interposing] And
4 this is just one case, right? So, if there's a crack
5 here, how many other cracks are--

6 FIRST DEPUTY COMMISSIONER TUCKER:
7 [interposing] Well, I don't know that it is a crack.
8 I mean, the officer you're referring to has been
9 terminated, and was terminated.

10 CHAIRPERSON RICHARDS: When was he
11 terminated?

12 FIRST DEPUTY COMMISSIONER TUCKER: August
13 of '18.

14 CHAIRPERSON RICHARDS: August of '18, and
15 it took eight incidents for us to terminate him.

16 FIRST DEPUTY COMMISSIONER TUCKER: But we
17 don't know what the incidents were. We know-- we
18 know what they are now.

19 CHAIRPERSON RICHARDS: [interposing] Two
20 were substantiated. And was he still serving in the
21 Department during that period when these cases were
22 substantiated, even after the first one?

23 FIRST DEPUTY COMMISSIONER TUCKER: Well,
24 clearly the one-- well, he's terminated based on
25 cases that were substantiated, so.

3 CHAIRPERSON RICHARDS: So, he got two
4 shots at working on the streets of New York City,
5 although he had one substantiated case-- should have
6 been enough for termination, is that correct? Would
7 you agree?

8 FIRST DEPUTY COMMISSIONER TUCKER: You
9 know, the challenge with this--

10 CHAIRPERSON RICHARDS: [interposing]
11 Would you agree that one substantiated DV case should
12 have had this individual terminated?

13 FIRST DEPUTY COMMISSIONER TUCKER: No, I
14 don't agree.

15 CHAIRPERSON RICHARDS: You don't agree
16 that an individual who had a substantiated case on
17 domestic violence--

18 FIRST DEPUTY COMMISSIONER TUCKER:
19 [interposing] Let me--

20 CHAIRPERSON RICHARDS: for the first time
21 should not have been terminated?

22 FIRST DEPUTY COMMISSIONER TUCKER: Not
23 necessarily. You depend on what the--

24 CHAIRPERSON RICHARDS: [interposing] So,
25 how do we-- how do we--

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EXECUTIVE DIRECTOR CHERNYAVSKY:

3 [interposing] Council Member, if I can, can we let
4 the Commissioner please answer?

5 CHAIRPERSON RICHARDS: [interposing] Let
6 me-- let me just-- let me just say this. So, in a
7 time where we just had a hearing on the SVD Unit, how
8 could the public trust the NYPD to deal with victims
9 of sexual violence and domestic violence when they're
10 not even disciplining individuals within their own
11 Department?

12 EXECUTIVE DIRECTOR CHERNYAVSKY: That's
13 not a fair characterization.

14 FIRST DEPUTY COMMISSIONER TUCKER: It's
15 not.

16 EXECUTIVE DIRECTOR CHERNYAVSKY: And if
17 the Commissioner can finish his--

18 CHAIRPERSON RICHARDS: [interposing] So,
19 why did it take two substantiated cases--

20 EXECUTIVE DIRECTOR CHERNYAVSKY:
21 [interposing] Council Member--

22 CHAIRPERSON RICHARDS: to get rid of an
23 individual?

24 EXECUTIVE DIRECTOR CHERNYAVSKY: Council
25 Member--

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3 FIRST DEPUTY COMMISSIONER TUCKER: You

4 know, listen--

5 EXECUTIVE DIRECTOR CHERNYAVSKY:

6 [interposing] You asked a question. I would like the
7 Commissioner--

8 CHAIRPERSON RICHARDS: [interposing] If
9 there was a person in my office with one
10 substantiated case, that person would be gone. So
11 why, why within the NYPD-- how could we have an
12 individual with two substantiated domestic violence
13 cases still working in the Department?

14 FIRST DEPUTY COMMISSIONER TUCKER: Well,
15 let me just say this. You don't know the facts in
16 any of those cases, you don't. And so--

17 CHAIRPERSON RICHARDS: [interposing] I
18 know enough to know that they were substantiated.

19 FIRST DEPUTY COMMISSIONER TUCKER: Well,
20 that doesn't mean-- that yeah, they may have been
21 substantiated, but you don't know what they were
22 substantiated for.

23 CHAIRPERSON RICHARDS: So why did you
24 terminate him?

25 FIRST DEPUTY COMMISSIONER TUCKER:
Listen, we can go around all day.

3 CHAIRPERSON RICHARDS: But he was
4 terminated, correct?

5 FIRST DEPUTY COMMISSIONER TUCKER: Why
6 don't we do this, because I will get that specific
7 facts to that case and I will walk you through every
8 single incident that occurred so you have a sense of
9 what transpired. But I want to say to you that just
10 because you have one substantiation doesn't mean
11 you're going to terminate the individual. You don't
12 know what that was. It was an argument. You don't
13 know whether it was violent, so you--

14 CHAIRPERSON RICHARDS: [interposing] But
15 he had eight prior incidents to that.

16 FIRST DEPUTY COMMISSIONER TUCKER: But
17 that's what I'm saying. So, I could walk you through
18 what those prior incidents were, and they may not
19 have risen-- not one of those--

20 CHAIRPERSON RICHARDS: [interposing] So,
21 this one person had eight priors and two
22 substantiated, and you don't find something wrong
23 with that.

24 FIRST DEPUTY COMMISSIONER TUCKER: I
25 didn't say I didn't find anything wrong with it.
Don't put words in my mouth.

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3 DEPUTY COMMISSIONER PRUNTY: And also--

4 FIRST DEPUTY COMMISSIONER TUCKER:

5 [interposing] I'm suggesting to you that until you
6 know the facts, okay-- it's important to understand
7 every single case and the circumstances and what
8 those complaints were and how they were handled.
9 It's as simple as that.

10 CHAIRPERSON RICHARDS: Okay. The panel
11 also indicated that DWI cases ended up getting higher
12 amounts of loss vacation days than domestic violence.
13 Why are police officers who are caught driving
14 intoxicated given any leeway?

15 FIRST DEPUTY COMMISSIONER TUCKER: What
16 was the question?

17 CHAIRPERSON RICHARDS: Why do officers
18 who are caught driving intoxicated given more leeway
19 than individuals engaged in alleged domestic
20 violence?

21 FIRST DEPUTY COMMISSIONER TUCKER:
22 They're not.

23 CHAIRPERSON RICHARDS: Any leeway at all?
24 So your panel-- this is not Donovan Richards making
25 this stuff up. This was the Police Commissioner's
panel. I'm just taking the facts from--

3 FIRST DEPUTY COMMISSIONER TUCKER:

4 [interposing] Well, but just be-- you've got to be
5 more clear what--

6 CHAIRPERSON RICHARDS: [interposing] from
7 what the panel came up with. This is not-- I know I'm
8 viewed as crazy on some days, but this is-- this is
9 not Donovan Richards making this stuff up. This is--

10 FIRST DEPUTY COMMISSIONER TUCKER:

11 [interposing] Just--

12 CHAIRPERSON RICHARDS: a panel that you
13 appointed whose stated in their report that it
14 indicated that DWI cases ended up getting higher
15 amounts of loss vacation days than domestic violence.
16 Why are police officers who are caught driving
17 intoxicated given any leeway at all?

18 FIRST DEPUTY COMMISSIONER TUCKER: Well,
19 again, this is-- you have to put all of this in
20 context. And so we are holding officers-- you just
21 heard me say that we increased the penalties
22 significantly based on what we observed in the number
23 of DWI cases occurring in the Department by members
24 of the service, both uniform and civilian, by the
25 way. And so we took steps now to increase the number
of the penalty days, and they can be quite

3 significant, but those penalty days come along with
4 typically a dismissal probation, and when that event
5 occurs again, that individual will be terminated.
6 They go to counseling. They get breathalyzers. You
7 know, the whole-- we follow the investigation. It's
8 very methodical. We go through the process. What
9 we're doing is going through the same approach.
10 We're taking the same approach we took with DWI.
11 We're looking at taking the same approaches, that
12 same type of an approach with domestic violence, but
13 domestic violence has some other, I think, factors to
14 it that may make what we do slightly different. But
15 that will all be determined when we sit down with the
16 implementation team to think about what this looks
17 like going forward, specifically around DV.

18 DEPUTY COMMISSIONER PRUNTY: I think
19 also--

20 CHAIRPERSON RICHARDS: [interposing] And
21 I'm going to come back around. I'm going to go to
22 Rory after this, but--

23 DEPUTY COMMISSIONER PRUNTY: [interposing]
24 If I could just add on the DWI point, I think it's
25 also important to note that if an officer is found to
be driving while intoxicated, the vast majority of

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3 those are going to be criminal prosecutions. Those
4 cases are referred to the prosecutor's offices, and
5 those cases are dealt with in the criminal system.
6 So, it's not that those cases are not treated
7 seriously. There's probably nothing more serious
8 that can occur to an officer than to wind up in
9 handcuffs in the criminal justice system.

10 FIRST DEPUTY COMMISSIONER TUCKER: And
11 the outcome ultimately--

12 CHAIRPERSON RICHARDS: [interposing] And
13 how often does that happen? How often are those
14 cases followed up on by the DA's?

15 FIRST DEPUTY COMMISSIONER TUCKER:
16 They're followed up-- every single one of them is
17 followed up on.

18 CHAIRPERSON RICHARDS: Okay.

19 FIRST DEPUTY COMMISSIONER TUCKER: And we
20 follow up on it. So there's two tracks. There's the
21 criminal tracks and whatever's happening with the
22 DA's, but at the same time that same officer, we'll
23 be dealing with it through our administrative process
24 as well, disciplinary process.

25 CHAIRPERSON RICHARDS: Alright, I'm going
to come back after. I just have a few more

3 questions, and then I'm going to come back. I want
4 to get to my colleagues as well. So, you were
5 talking about vacation days, and obviously a lot of
6 individuals seem to be, seem to be disciplined with
7 vacation days being taken away. Do you consider
8 taking someone's vacation days as an effective
9 deterrent to misconduct?

10 FIRST DEPUTY COMMISSIONER TUCKER: Well,
11 it certainly has an effect on officers who lose those
12 days and the number of those days. Yes, that's one
13 of the things that-- if you are, for example, if you
14 are new police officer, probably under three years on
15 the job, and we take 10 vacation days or 20 vacation
16 days depending on the nature of the conduct, that
17 means you're not getting a vacation for two years,
18 maybe three years. So, you know, again, it depends
19 on what the conduct is and then what we're trying to
20 do is use the penalty that, you know, that fits that
21 particular conduct.

22 CHAIRPERSON RICHARDS: And is there
23 evidence to suggest that docking vacation days is the
24 most effective way to deal with--

25 FIRST DEPUTY COMMISSIONER TUCKER:
[interposing] I don't know about the most effective

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3 way, but you know, we'd look at the data, but if that
4 officer doesn't ever violate again, then that's an
5 indication that he or she learned his or her lesson.

6 CHAIRPERSON RICHARDS: How does the
7 Department assess how many vacation days should be
8 docked? So, in the panel's report, for instance, it
9 spoke of the discrepancy between individuals who I
10 believe have DUIs opposed to DV. So they saw a
11 higher amount of vacation days docked for DWI or DUI
12 opposed to DV. So, more 30 days being docked--

13 FIRST DEPUTY COMMISSIONER TUCKER:

14 [interposing] Yeah--

15 CHAIRPERSON RICHARDS: for DV opposed to
16 60 days for DUI. So can you just speak on that
17 discrepancy a little bit more or disparity? Let me
18 not say dis-- disparity and why do those disparities
19 exist?

20 FIRST DEPUTY COMMISSIONER TUCKER: Well,
21 it's pretty simple. You just heard me say that we
22 looked at DWI and two years ago we restructured the
23 penalty process for those cases based on the number
24 of cases that we were seeing and the nature of those
25 that conduct. So we changed the-- we shifted and we
changed what had been heretofore a precedent that we

3 thought was not making the grade because people seem
4 to be getting involved in these incidents. So we
5 changed the penalties, and with those changes we've
6 seen a change in behavior. We've seen a decrease in
7 those incidents. That happens. So this is-- the way
8 to think about this disciplinary process is it is a
9 work in progress, and so as we discover that there
10 are challenges or issues with a particular type of
11 conduct, we address that conduct in different ways.
12 We did with DWI. We raised the penalties. They're
13 much more severe, and there is a-- you know, it steps
14 up. So, you know, it has, you know, levels to it.
15 So, if I'm an officer and I'm driving, and I'm drunk,
16 but I also have my weapon with me or I have an open
17 bottle in the car, you know, the penalties get higher
18 and higher and higher. Ultimately, those officers
19 might be terminated as a result of the conduct and
20 the number of days, but they will almost certainly,
21 even in the first instance, end up on dismissal
22 probation in addition to the number of days that they
23 take and that they lose and so forth.

23 CHAIRPERSON RICHARDS: And I just want to
24 stay on that. So, any citizen charged with a DWI
25 immediately loses their license, correct?

3 FIRST DEPUTY COMMISSIONER TUCKER: I

4 don't know. I mean I-- a hearing, they have a
5 hearing. They could lose their license, but it's not
6 in every instance, no, and that's not to say that
7 that couldn't happen to an officer, either. You know
8 I mean it's-- again, as Commissioner Prunty pointed
9 out, there usually-- there may be depending on the
10 circumstance, there may be a separate parallel of
11 criminal investigation taking place which will have
12 implications for that officer.

13 CHAIRPERSON RICHARDS: Alrighty. I'm
14 going to go to Council Member Lancman and then my
15 colleagues, and I'll come back for a second round.

16 CHAIRPERSON LANCMAN: Again, good morning.

17 FIRST DEPUTY COMMISSIONER TUCKER:
18 Morning.

19 CHAIRPERSON LANCMAN: When the panel
20 released its report, Commissioner O'Neill said, "I
21 and the entire leadership of the NYPD accept and
22 fully embrace all the recommendations in the panel's
23 report." And I'm going to assume, unless you want to
24 correct me, that that includes the panel's
25 recommendation that "until 50A is amended, the
Department should interpret it as narrowly as

3 possible, consistent with the Court of Appeals'

4 ruling." Let's take a look at 50A so we understand

5 what it is that we're talking about here. Civil

6 Rights Law 50A: All personnel records used to

7 evaluate performance towards continued employment or

8 promotion under the control of any police agency or

9 Department of the State or any political subdivision

10 thereof shall be considered confidential and not

11 subject to inspection or review without the express

12 written consent of such police officer, except as

13 maybe mandated by lawful court order." The next two

14 sections then describe the process and the mechanism

15 for getting that court order. And then we get to

16 Section Four: "The provisions of this section shall

17 not apply to any District Attorney or any agencies of

18 government which requires the records described in

19 subdivision one in the furtherance of their official

20 functions." As a baseline understanding, does the

21 Department accept that District Attorneys under 50A

22 Section Four, that District Attorneys are not covered

23 by the restrictions of 50A and that they are entitled

24 to these disciplinary records in furtherance of their

25 official duties?

3 DEPUTY COMMISSIONER PRUNTY: Yes, in
4 furtherance of their official duties, we absolutely
5 agree with that.

6 CHAIRPERSON LANCMAN: And I assume that
7 there's also no debate that when a District Attorney
8 asks for this information in the context of a
9 criminal case where they need to evaluate whether or
10 not an officer's testimony will be credible, whether
11 or not the affidavit that they might have sworn out
12 is credible, whether or not they have a history of
13 being disciplined for perjury or misconduct or
14 falsifying records, that is relevant and in
15 furtherance of their responsibilities as District
16 Attorneys, correct?

17 DEPUTY COMMISSIONER PRUNTY: Yes, and we
18 provide those records to the District Attorneys
19 routinely.

20 CHAIRPERSON LANCMAN: So let's talk about
21 that, because I don't think there's any other way to
22 describe the Department's view of your disclosing
23 those records to the District Attorneys, and the
24 District Attorney's view or at least the view of the
25 Manhattan District Attorney's Office has just
representing two complete alternate realities, and

3 this gets to my bill, Intro. 3706, which would
4 require the Police Department to disclose
5 disciplinary records to the District Attorneys within
6 24 hours of being asked. In the testimony this
7 morning it was said, "The NYPD has a strong and
8 productive working relationship with each of the
9 District Attorney's offices as well as the Special
10 Narcotics Prosecutor. Through the years we have
11 developed processes that ensure that our prosecutor
12 partners get material evidence in a timely fashion,
13 including the ability for prosecutors to make
14 expedited requests when necessary. We object to this
15 bill 3706 because setting by Local Law an arbitrary
16 and stringent time table for the transfer of
17 information between law enforcement agencies
18 effectively micromanages the day-to-day and hour-to-
19 hour operations of the Department." That's one view
20 of reality. This is the letter that District
21 Attorney Vance's office sent to the NYPD in May of
22 2018 discussing the disclosure under 50A or
23 disclosure not really under 50A but disclosure of
24 these personnel records: "To date, little progress
25 has been made and the focus has largely been on how
we as prosecutors can make accommodations to address

3 the NYPD's resource concerns. For example, you have
4 asked us to delay requests for disciplinary
5 information until a case is actually headed for
6 hearing or trial." As you know, very, very few cases
7 in the criminal system actually go to trial. Almost
8 all guilty pleas are secured-- almost all convictions
9 are secured through guilty pleas long before there's
10 a trial. "You've asked us to delay requests for
11 disciplinary information until a case is actually
12 headed for a hearing or trial rather than up front
13 when we are assessing the credibility of police
14 officer and civilian witnesses and the merits of an
15 arrest. You've also asked that we avoid requesting
16 such information until we have confirmed with an
17 officer that he or she has been the subject of
18 discipline, regardless of whether the officer can
19 accurately recall and relay that history. You have
20 insisted that after such an inquiry we make specific
21 narrow request for information using a check list
22 with a single point of contact, a process that can
23 take weeks or months for your office to complete, and
24 despite the terms of an agreement reached with our
25 office in 2014, the NYPD has failed to provide us
with access to certain reports and video surveillance

3 feeds. These limitations frustrate our ability not

4 only to prepare for trial, but to make early

5 assessments of witness credibility, explore

6 weaknesses in a potential case, and exonerate

7 individuals who may have been mistakenly accused."

8 Listen, I'm not sitting around thinking up bills to

9 put in, believe me. You have the District Attorney

10 of New York County, and I am not aware and I have not

11 heard either privately or publicly any of the other

12 District Attorneys context Vance's office's

13 representation of how the NYPD is producing this

14 information. You have the District Attorney saying

15 the NYPD is not getting this information in either a

16 timely manner or in a complete manner, and that is

17 inhibiting our ability as District Attorneys to do

18 justice, to determine the strengths and merits of the

19 cases in front of us to determine what kind of pleas

20 to offer, and to make sure-- he uses the word

21 exonerate-- to make sure that we're not wrongly

22 convicting people. So, in light of the District

23 Attorney's representation, which I hope-- I assume

24 that my co-chair here will not object to me making

25 this letter a part of the record. In light of the

District Attorney's description of the NYPD's refusal

3 to provide this information, why shouldn't the
4 Council pass a law requiring you to do so?

5 DEPUTY COMMISSIONER PRUNTY: So, Chair
6 Richards-- I'm sorry, Chair Lancman. Let me give you
7 some background. You know, the short answer to your
8 question is that some of the claims in that letter
9 are inaccurate. I'm very familiar with that letter.
10 The NYPD responded fully to that letter, and I'm
11 happy to enter into the record the NYPD's response to
12 the letter. But let me give you some background
13 which I think will assist you in understanding our
14 position. Let me start out by saying that prior to
15 my arrival in the NYPD I was an Assistant District
16 Attorney in Manhattan for 31 years, and I think that
17 gives me a unique vantage point in understanding both
18 the needs of the prosecutors who are very important
19 partners to us and people that we value very highly
20 in that partnership. You know, the needs of the
21 prosecutors in order to effectively prosecute cases,
22 I understand those and I have members on my staff who
23 are also former prosecutors, and we understand that
24 acutely. So, in 2016, we formed a working group,
25 actually it was initiated by the Department. we
asked each of the District Attorney's offices in each

3 of the five counties, the Special Prosecutor's
4 Office, and the two Federal Prosecutor's Offices,
5 eastern district and southern district offices, to
6 join us on a working group, and we had executive
7 representatives from each of those offices join in
8 that working group, and we convened that working
9 group for the express purpose of addressing exactly
10 what you are speaking about, and that is ensuring
11 that prosecutors have information about our police
12 officers that are necessary to assess their cases and
13 effectively prosecute their cases. That working
14 group met numerous times. We also spoke in
15 conference calls numerous times, and based upon all
16 of that work and all of that discussion, and by the
17 way that included the Manhattan District Attorney's
18 Office. We arrived at a mutually agreeable process
19 in order to ensure that the prosecutors would have
20 this information.

21 CHAIRPERSON LANCMAN: I need you to just
22 fast forward to May of 2018 when the District
23 Attorney's Office sent this letter which indicated
24 that the working group isn't working. So, what's the
25 disconnect?

3 DEPUTY COMMISSIONER PRUNTY: Well, the
4 disconnect is is that many of the things that are
5 said in that letter are inaccurate. The individual
6 who wrote that letter was not part of this working
7 group, was not fully familiar with the history of
8 this working group, and clearly was not fully
9 familiar with the processes that we arrived at. But
10 let me continue in the efforts that we've made in
11 order to ensure this. We, NYPD--

12 CHAIRPERSON LANCMAN: [interposing] Well,
13 no I'm sorry, go ahead.

14 DEPUTY COMMISSIONER PRUNTY: We in the
15 NYPD in order to effectuate this and at the request
16 of the prosecutors, all of the offices, we assigned a
17 single point person within the NYPD to be responsive
18 to all of the prosecutor's offices, and in
19 conjunction with that, we asked each of the
20 prosecutor's offices to assign a point person for
21 this process. We regularly communicate that point
22 person from the NYPD, with the point people from the
23 prosecutor's offices on requests, on needs, on things
24 that are urgent or an emergency, and we have had
25 instances, and in particular, instances with the
Manhattan District Attorney's Office where we've

3 gotten a request as late as a Friday afternoon for
4 something they needed on a Monday morning, and we've
5 gotten it to them over the weekend. So, I would
6 suggest to you that what we did was we collaborated
7 with all of the prosecutors, arrived at a mutually
8 agreeable process and that that process has worked
9 and is continuing to work.

10 CHAIRPERSON LANCMAN: Well, I have
11 written testimony from the DA's office, the Manhattan
12 DA's Office for today's hearing where he still-- they
13 still describe, "Given the inadequacy of the existing
14 disclosure process," and this is a very supportive
15 letter of what our bill is trying to accomplish and
16 what we're trying to do here today. So, I'm going to
17 end this part of my questioning where it began, which
18 is the NYPD and the District Attorneys are describing
19 two different realities and the reality that the DA's
20 are describing, that Vance's office is describing--

21 DEPUTY COMMISSIONER PRUNTY:

22 [interposing] That's one DA.

23 CHAIRPERSON LANCMAN: That's one DA, but
24 none of the DA's have contradicted that, either in
25 their personal conversations with me or publicly and
everything that Vance's office is describing we've

3 heard from other District Attorneys. So, if your
4 objection to our bill hinges on us believing that
5 District Attorney Vance and the common experience of
6 everybody in the criminal justice system is false and
7 wrong, that's not much of a case.

8 DEPUTY COMMISSIONER PRUNTY: That's not
9 what I'm saying. What I'm saying is we also have
10 very frequent conversations. I have frequent
11 conversations with the executive members at each of
12 those offices. They did not join in that letter when
13 that letter was issued by the Manhattan District
14 Attorney's Office in May of 2018, and I would like to
15 enter our full response to that letter into your
16 record as well.

17 CHAIRPERSON LANCMAN: I'd be happy to
18 have it. Is that the statement from Phil Walzack
19 [sp?]?
20

21 DEPUTY COMMISSIONER PRUNTY: No, it's
22 not.

23 CHAIRPERSON LANCMAN: Okay, well, I'd be
24 happy to-- I'd be happy to have that, but right now
25 we're looking at a very, very detailed description by
a District Attorney's Office in New York that
comports with what I hear from other offices that the

3 NYPD is not disclosing the disciplinary material in a
4 timely or comprehensive matter, and unless I--

5 DEPUTY COMMISSIONER PRUNTY: [interposing]

6 Well, that's not--

7 CHAIRPERSON LANCMAN: [interposing] Unless

8 I am persuaded that that is flat out false, then I
9 don't see any reason not to move our bill. Let--

10 DEPUTY COMMISSIONER PRUNTY: [interposing]

11 Well, I think that's an-- it's important to hear us
12 on that as well.

13 CHAIRPERSON LANCMAN: Well, I look

14 forward to hearing and viewing your response to that.

15 Let's move on to the other-- another very, very

16 important issue, and that is the NYPD's disclosure of

17 so-called 50A material to the Council or lack of

18 disclosure. In August of 2017, the Daily News

19 reported the City's top cop recently overturned a

20 guilty verdict against an officer in a department

21 misconduct trial. Then the NYPD and the Civilian

22 Complaint Review Board, citing a state law protecting

23 police disciplinary records, wouldn't say what the

24 cop was accused of. But sources told the Daily News

25 the cop was charged with using a banned choke-hold.

Now, 50A, Section Four, as I read before, expressly,

3 expressly declines to apply 50A to other government
4 agencies in furtherance of fulfilling their
5 obligations, and you mentioned a few of the agencies
6 that you recognize and a few of the other government
7 agencies that you recognize as being exempt from 50A,
8 and certainly, you know, if one looks at the powers
9 of the Council-- we have the power to legislate. We
10 have budgetary power. We have oversight power. I
11 could cite all the provisions of the Charter, but I
12 don't think that's in dispute. You're here today
13 testifying to the Council about disciplinary issues
14 regarding legislation that we may or may not pass
15 that we are considering. And so when I read that
16 story it got my attention as a Council Member with
17 legislative and budgetary and oversight
18 responsibilities as a government official. As you
19 might know, I'm sponsoring the bill in the Council
20 that would make it a misdemeanor for an officer to
21 apply a chokehold. As you might know, I'm sure-- I
22 think some of you have testified at hearings that
23 we've had on use of force, particularly use of
24 chokeholds. We've had testimony. We give a
25 tremendous amount of money to the NYPD related to the
training that officers get on use of force issues.

3 The Chairman has had hearings, many hearings, on the
4 effectiveness of the CCRB and its role in
5 disciplining officers. And so, I wrote a letter to
6 the Commissioner after reading that Daily News story
7 in 2017. As the sponsor of currently pending
8 legislation, which would make a police officers' use
9 of a chokehold a misdemeanor, I write to request the
10 records in the recent case which you overturned an
11 Administrative Judge's guilty verdict against an
12 officer accused of using a chokehold. I specifically
13 cited Section 50A, subsection four, which provides an
14 exception to 50A for any agency of government which
15 requires the records in the furtherance of their
16 official functions. Now, the response I got a month
17 later from the Commissioner was three sentences.
18 "New York State Civil Rights Law 50A prohibits the
19 types of disclosure sought in your letter." Not even
20 the courtesy really of making-- distinguishing why
21 50A subsection four doesn't apply. I'm used to that.
22 It's okay. The third sentence, interesting was,
23 "However, a video of the incident was recently made
24 available with the consent of the police officer
25 involved." Which raises the other issue of the
Department's selective disclosure of information to

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3 support the decisions that it makes. We'll put that
4 aside. Sitting here today with the panel recommending
5 that the Department interpret 50A as narrowly as
6 possible with the Commissioner's statement that he
7 fully embraces the panel's recommendations, will you
8 commit-- well, will you acknowledge that the City
9 Council and Council Members as government agencies or
10 government actors are entitled this information as
11 long as it is in furtherance of fulfilling our
12 governmental responsibilities?

13 EXECUTIVE DIRECTOR CHERNYAVSKY: So,
14 Council Member, I think first I'd like to address the
15 point about the selective disclosure. Even in the
16 example that you mentioned, and I noticed when you
17 were reading 50A into the record, one of the prongs
18 that you left out was not only a court order allowing
19 a personnel record to be disclosed, but it also could
20 be disclosed with the consent of the officer.

21 CHAIRPERSON LANCMAN: Yes, yes.

22 EXECUTIVE DIRECTOR CHERNYAVSKY: Okay?
23 So, and then the body-worn camera footage that you
24 gave, you correctly pointed out that we got the
25 consent of the officer before we released it. Now,
I'll go a step further to say that the Department has

3 taken the position publicly and in court that body-
4 worn camera footage is not 50A material. We were
5 enjoined, of course, from releasing it.

6 CHAIRPERSON LANCMAN: [interposing] Okay.

7 EXECUTIVE DIRECTOR CHERNYAVSKY: But
8 these are points of how we have interpreted 50A
9 narrowly in addition to seeking to release summaries
10 of discipline data. Now, what you are talking about
11 is potentially a significant expansion, or not even
12 potentially, actually a significant expansion--

13 CHAIRPERSON LANCMAN: [interposing] Let me
14 just put it to you this way. Do you consider, do you
15 recognize that the Council and Council Members are
16 government agencies, and that in circumstances where
17 we can demonstrate that we need this disciplinary
18 file in order to-- in furtherance of our obligations,
19 whether it's our oversight, our budgetary, our
20 legislative obligations, that we like District
21 Attorneys and Grand Jurys and other agencies that
22 were referenced before, should be entitled to this
23 information?

24 EXECUTIVE DIRECTOR CHERNYAVSKY: Well, I
25 think that's what you raise as an interesting
question. That's probably-- would be settled in

3 litigation. Now, you're certainly a branch of
4 government--

5 CHAIRPERSON LANCMAN: [interposing] But I
6 want to settled in litigation--

7 EXECUTIVE DIRECTOR CHERNYAVSKY:
8 [interposing] I--

9 CHAIRPERSON LANCMAN: [interposing] if I
10 have to sue you again.

11 EXECUTIVE DIRECTOR CHERNYAVSKY: I-- if I
12 can finish. You're certainly a branch of government,
13 the legislative branch of government. I mean, the
14 fact that you're choosing to interpret yourself as an
15 agency and not a branch of government whereas
16 agencies generally fall under a different branch of
17 government, which is the executive branch, and the
18 fact that a law was enacted designating an Inspector
19 General to do oversight of the Department, which is
20 part of an agency of government who routinely
21 receives these records, the fact that if you take a
22 look at subdivision four before you get to the last
23 provision, what you see is executive branch agencies,
24 mainly prosecutors and attorneys who do prosecutorial
25 work, that's an interesting question that you raise.

3 I have not viewed a branch of government as an
4 agency. I viewed it as a--

5 CHAIRPERSON LANCMAN: [interposing] You
6 don't--

7 EXECUTIVE DIRECTOR CHERNYAVSKY: different
8 branch.

9 CHAIRPERSON LANCMAN: Within the ambit of
10 50A section four, you don't-- this is what I'm here
11 to establish-- you don't consider the City Council a
12 government agency?

13 EXECUTIVE DIRECTOR CHERNYAVSKY: I think
14 that's a question that would need to be-- that would
15 need to be researched. I mean, certainly the Council
16 in a variety of--

17 CHAIRPERSON LANCMAN: [interposing] Just
18 to be clear, sorry. Just to-- I don't mean to
19 interrupt this time. Just to be clear about the
20 language, "any agency of government." So we're not
21 even talking about a government agency like in a
22 specific sense. Any agency of government-- you don't
23 consider the City Council any agency of government?
24 That's the question I'm putting to you right now.

25 EXECUTIVE DIRECTOR CHERNYAVSKY: Well,
no, I understand and I was answering the question

3 before I was interrupted, but what I mentioned was
4 that the Council is a branch of government certainly.
5 The Police Department and the Mayor's Office is
6 certainly part of the Executive Branch as well as the
7 Prosecutors, and then there's' the Judicial Branch of
8 government. The approach you're taking, or the
9 interpretation you're taking is a unique approach
10 given other laws that are in the Ad-code, in the
11 Charter, where the Council is not seen as an agency
12 of government. So, I think it's certainly a path
13 that should be looked at.

14 CHAIRPERSON LANCMAN: I would love to
15 know what -- what are you referencing when you say
16 there's somewhere else that doesn't see the Council
17 as an agency of government?

18 EXECUTIVE DIRECTOR CHERNYAVSKY: I
19 believe there's a-- I believe I had read a provision
20 of the Charter where members of Council are not
21 permitted to be employed by an agency. So, that's
22 certainly a conclusion, a logical conclusion to
23 reach, but there are-- I'm sure there are other
24 provisions and other laws that we can look at as we
25 explore the issue that you've raised.

3 CHAIRPERSON LANCMAN: So, how do you
4 reconcile that with Commissioner Tucker's willingness
5 to share with Chairman Richards and presumably other
6 Council Members the disciplinary file of the
7 individual who was involved in the domestic violence
8 dispute? I mean, what would be the basis for sharing
9 that with us if it wasn't-- that we were an agency of
10 government that was not covered by 50A?

11 EXECUTIVE DIRECTOR CHERNYAVSKY: The
12 individual is terminated and not an employee of the
13 NYPD. I mean, there is a distinction there.

14 CHAIRPERSON LANCMAN: So, that's the
15 distinction you're making? That--

16 EXECUTIVE DIRECTOR CHERNYAVSKY:
17 [interposing] Well, it's--

18 FIRST DEPUTY COMMISSIONER TUCKER:
19 [interposing] It's fact. I mean, that's--

20 CHAIRPERSON LANCMAN: [interposing] No,
21 no, no, I know that it's fact. I'm-- so the
22 distinction you're making is you can share that
23 disciplinary file because that individual was
24 terminated?

25 EXECUTIVE DIRECTOR CHERNYAVSKY: First of
all, I want to say that the police-- that the

3 Commissioner did not say he was going to turn over a
4 disciplinary file. What he said is he was going to
5 speak to Council Member Richards--

6 FIRST DEPUTY COMMISSIONER TUCKER:

7 [interposing] Right.

8 EXECUTIVE DIRECTOR CHERNYAVSKY: and give
9 him context and give him an overview of the scenarios
10 that happened. That's different than turn-- that's a
11 different scenario than turning over discipline
12 records. But yes, the individual that you're
13 referencing no longer works for the Police
14 Department.

15 CHAIRPERSON LANCMAN: I understand the
16 Speaker is here and he's going-- on a schedule, and
17 then we will come back to me because I want to talk
18 about the second bill, the issue of resisting arrest,
19 etcetera. Thank you.

20 CHAIRPERSON RICHARDS: And I just want to
21 acknowledge we've been joined by Council Member
22 Miller. We'll go to the Speaker now.

23 SPEAKER JOHNSON: I thank you Chair
24 Lancman and Chair Richards. I want to thank you all
25 for being here today. It's good to see you,
Commissioner Tucker and Oleg and everyone else. I

3 really appreciate you being here. I apologize I
4 wasn't here for the beginning of this hearing, which
5 is a very important hearing, to give an opening
6 statement. So, I want to give some brief remarks on
7 my thoughts on where we are today and why it is so
8 important that we're having this hearing and
9 considering these pieces of legislation. So, we don't
10 want to make it harder for the good police to do good
11 police work, but officers, as you all know, are given
12 guns and batons and Tasers and the authority to use
13 them against ordinary citizens who have the right to
14 be treated with respect and with dignity whether or
15 not they have done something wrong. The public has
16 every right to know at least the basics of what
17 happens when people, police officers, with this kind
18 of power misuse that power, and the current lack of
19 consistency and transparency in this area is
20 alarming. Police officers who kill people over
21 untaxed cigarettes should not be allowed to be police
22 officers anymore, and it shouldn't take four years to
23 figure that out. Police officers who break into
24 people's homes without a warrant or without consent
25 because they think they're above the law, should not
be police officers anymore. Police officers who lie

3 to make their case stronger, should not be police
4 officers anymore. Police officers who commit
5 domestic violence or drive while intoxicated should
6 not be police officers anymore. Police officers have
7 great power, and with that great power comes great
8 responsibility, and because of that responsibility
9 these officers should be held to a higher standard of
10 conduct. So I commend the Police Commissioner for
11 taking steps last summer to produce the report that
12 came out last week. I am deeply concerned that the
13 report does not really say what happens to people who
14 do those things. It does not say how many officers
15 were fired and why or how many officers were allowed
16 to keep their benefits when they were fired and why.
17 It does not say how the Department treats the worst
18 offenses, except to say that domestic violence isn't
19 taken as seriously as being insubordinate to a
20 superior, which is very disturbing. And I think the
21 report only shows how important it is for there to be
22 more oversight by the City Council and by the
23 District Attorneys and maybe by other agencies as
24 well. Because when an independent panel says that
25 the Police Department doesn't have the data that
could tell them how people are being disciplined,

3 that is a very serious problem. I know the
4 Commissioner has agreed to retain outside experts to
5 do routine audits, and that is an important
6 commitment, but it is not enough. The City Council
7 has a duty to the people of this great city to look
8 closely at exactly how these cases are handled, and
9 that is why I am sponsoring a bill to require that
10 the Police Department publish reports to the public
11 and give the Council the data we need to do our own
12 analysis. I look forward to working with the
13 Commissioner and allowing him to make the changes
14 that he has committed to, but we are going to make
15 sure the Council is doing what we have to do as an
16 independent branch of government, what we are
17 mandated to do in order to guarantee the level of
18 transparency and accountability our citizens expect
19 from the people charged with keeping us safe. Now,
20 in just a little while, I'm sure you know this, we're
21 going to have family members who are coming here to
22 testify. I sat with some of these family members
23 last week, and it was extraordinarily painful to sit
24 with these family members and to see the grief and
25 trauma and loss associated with their loved ones
being killed. So, today we're going to be joined by

3 Victoria Davis who is the sister of Delrawn Smalls,
4 and we're going to be joined by Eric Vassell, the
5 father of Saheed Vassell, and we're going to be
6 joined by Constance Malcolm, the mother of Ramarley
7 Graham, or Marley Graham. These families deserve
8 justice. They deserve answers, and if there are
9 police officers who are still on the force that acted
10 inappropriately that were involved what most
11 individuals would deem as misconduct where now these
12 families have to live with this the rest of their
13 lives, we need to do right by them. we need to do
14 right by the citizens of New York City, because the
15 Police Department does a tremendous amount of good
16 work every day in this city, and I think it's
17 important to acknowledge that, but when there are
18 mistakes, we have to say that and there have to be
19 consequences. So, I look forward to hearing from
20 these family members, hearing what they've gone
21 through, acknowledging their pain, and seeing how we
22 as a body can be involved in hopefully righting those
23 wrongs and making sure that if there is a police
24 officer in the future that does something that is
25 wrong, illegal, criminal, outside of the Patrol
Guide, that they suffer the consequences, because

3 that's important. So, I have a couple of questions
4 that I want to ask. When there is a high profile
5 case, wouldn't there be so much more value in the
6 Commissioner coming out and saying something was
7 wrong? Don't other police officers need to hear
8 that? Doesn't the public need to hear that?

8 FIRST DEPUTY COMMISSIONER TUCKER: Well,
9 I would agree that that's true, and we have said when
10 things are wrong, they're wrong. I mean, your
11 statement is not unique to you, and we understand
12 certainly the pain of anyone who loses someone. You
13 know, we don't take that lightly, but it is also true
14 that the-- you know, there's a process in place, and
15 sometimes it doesn't move as quickly as people,
16 particularly people in grief, would like and prefer.
17 And so but in terms of understanding and making sure
18 that our officers-- you missed the opening statement.
19 You missed some--

20 SPEAKER JOHNSON: [interposing] I
21 apologize for that, Commissioner.

22 FIRST DEPUTY COMMISSIONER TUCKER: much
23 of what I said, but you know, I don't take that
24 lightly, and I can tell you that notwithstanding the
25 conversations we've had here which talk about things

3 that are, you know, maybe in the future that we can
4 do better, that there is a whole lot that is
5 different over this last four or five years that is
6 very different than what the norm was prior to--
7 prior to 2014. And part of that, and everything that
8 we've done with respect to training to improve the
9 way officers are taught and to give them the strength
10 to do what they need to get done to do their jobs
11 every day and to keep people safe and look at the
12 statistics with respect to civilian complaints, and
13 to I think a greater degree, look at how our
14 statistics with respect to firearm discharges and how
15 often our-- how little officers fire their firearms
16 over the last five years, and the numbers continue to
17 go down, and what they-- you know, typically they're
18 usually in adversarial circumstances. So, I
19 understand what you're saying and we would agree that
20 we all should be paying attention to and have a
21 desire to eliminate those circumstances where people
22 die at the hand of our police officers, but the truth
23 is it's not as if we rest on laurels there. So, we
24 are, I think, working every day to make the
25 Department better, and I think we have in so many
ways that is pretty extraordinary, and I can tell you

3 going back-- you know, I can sit here, and I've been
4 around for a long time, and I can tell you that the
5 work that's been done by this agency over the last
6 five years has been unprecedented, both with respect
7 to crime victims-- I think you know that for sure--
8 but also in terms of the way we fight crime and the
9 focus on those tiny, small group of folks who are
10 committing the most violent crime in the city. We've
11 gotten much better at doing that. No more dragnets.
12 Stop and frisk is down at, you know, record lows, and
13 you know, which suggests that it's being used more
14 judiciously and under the proper and correct
15 circumstances. So,--

16 SPEAKER JOHNSON: [interposing] But
17 Commissioner, I appreciate all of that, but do you
18 agree that if you were a family member of someone who
19 was killed, taking four years for departmental trial,
20 how painful that would be?

21 FIRST DEPUTY COMMISSIONER TUCKER: Well,
22 listen, I-- of course, I can understand.

23 SPEAKER JOHNSON: So then why has it
24 taken four years? Why has it taken so long for
25 Daniel Pantaleo, the officer who killed Eric Garner,
to be brought to departmental trial?

3 FIRST DEPUTY COMMISSIONER TUCKER: Well,
4 but I think you know part of that answer, and it's
5 not always been in our court in terms of the process.
6 I mean, there is a process to these prosecutions and
7 to the way discipline is metered out. We--

8 SPEAKER JOHNSON: [interposing] But if it
9 takes so long it feels like something's broken. It
10 feels like the process is broken if it takes this
11 long.

12 FIRST DEPUTY COMMISSIONER TUCKER: Yeah,
13 the -- you can-- it may be broken but it's not-- it
14 doesn't mean that it's broken.

15 SPEAKER JOHNSON: So what are we going to
16 do to fix it?

17 FIRST DEPUTY COMMISSIONER TUCKER: Well,
18 it's not-- but my point is, it's not just the Police
19 Department involved in this process. And so-- and I
20 don't want to debate this with you, but I think-- I
21 understand the reality as I prefaced in my opening
22 remarks to you in reference, in response to your
23 comments. I do understand the grief of the families.
24 I mean, no one can ignore that. But you know, to sit
25 here and suggest that somehow the Police Department

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3 is solely responsible for a four-year delay in how
4 this process is worked is just not the case.

5 SPEAKER JOHNSON: I didn't say solely
6 responsible, but there--

7 FIRST DEPUTY COMMISSIONER TUCKER:
8 [interposing] Well, but you suggested that we--

9 SPEAKER JOHNSON: [interposing] No, but
10 there is response--

11 FIRST DEPUTY COMMISSIONER TUCKER: need to
12 fix it.

13 SPEAKER JOHNSON: There is
14 responsibility, not sole responsibility. Of course,
15 the Justice Department did what they did, and there
16 are major issues with what they did, but separately
17 this has taken far too long, I think, from our
18 perspective and from the public's perspective as it
19 relates to--

20 FIRST DEPUTY COMMISSIONER TUCKER:
21 [interposing] It's--

22 SPEAKER JOHNSON: [interposing] delayed
23 process from the PD level.

24 FIRST DEPUTY COMMISSIONER TUCKER: Well,
25 it's taken far too long from our perspective as well.

3 SPEAKER JOHNSON: Well, I'm happy to hear
4 that you think--

5 FIRST DEPUTY COMMISSIONER TUCKER:
6 [interposing] But I'm not suggesting we're the reason
7 for it. I'm just saying that the process--

8 SPEAKER JOHNSON: [interposing] I didn't
9 hear what you said. You're not suggesting what?

10 FIRST DEPUTY COMMISSIONER TUCKER: That
11 we're the reason for it.

12 SPEAKER JOHNSON: One of the bills we're
13 hearing today asks the PD to report about what kinds
14 of-- report data on what kinds of offenses get
15 disciplined and how much discipline different
16 offenses get in the aggregate. Do you support making
17 that information publicly available?

18 EXECUTIVE DIRECTOR CHERNYAVSKY: Yes, Mr.
19 Speaker, so thank you for the question. So, we took
20 a position on this bill, and I just want to explain
21 the position to you. The first part of the bill--
22 it's important to parse the bill. The first part of
23 the bill basically requires us to post the different
24 types of violations that an officer could commit, the
25 range of penalties that each one of those violations
can get an officer if they're found-- if they're

3 substantiated, and then it also asks for a
4 description of the offense. I mean, that's clearly
5 something that we would want to do. That's something
6 that we sought to do in a case that's now before the
7 courts where we're being enjoined, because we
8 actually tried to go even further and offer case
9 summaries on certain cases. That's particular issue
10 is in the courts right now, but the description of
11 our process in the way the first part of your bill
12 envisions is certainly something that we support and
13 certainly something that we would be interested in
14 doing. The bill goes further in the subsequent
15 portions and talks about disaggregating certain types
16 of data. Now, certainly aggregate data is not
17 something that we have an objection to posting. I
18 think if you take a look at the advocacy we've been
19 doing to amend 50A, Civil Rights Law 50A, it would
20 allow us to go even beyond what this bill prescribes
21 and actually put even more meaningful data out there.

22 SPEAKER JOHNSON: So, Oleg, do you have
23 any issues with this bill?

24 EXECUTIVE DIRECTOR CHERNYAVSKY: There
25 are a couple of issues.

SPEAKER JOHNSON: What are those issues?

3 EXECUTIVE DIRECTOR CHERNYAVSKY: In terms
4 of the disaggregation points that would actually
5 disaggregate the specific type of discipline by
6 specific precincts. That currently is the subject of
7 litigation or not the exact issue as you mentioned,
8 but similar issues are before the courts right now,
9 and we're being enjoined from sharing a discipline
10 report that has case summaries in addition to a lot
11 of the things that are called for in this bill. So
12 what we are asking is that we await the courts
13 determination in those cases.

14 SPEAKER JOHNSON: Okay, and what's the
15 other part that you have an objection to?

16 EXECUTIVE DIRECTOR CHERNYAVSKY: Well, I
17 think I kind of grouped in-- I think whether you look
18 at subdivision B and C, both of them call for a
19 disaggregation. The difference is that subdivision C
20 calls for an even greater disaggregation, but we
21 would be providing it directly to the Council rather
22 than posting it on our website. But--

23 SPEAKER JOHNSON: [interposing] I know the
24 Police Commissioner has been very vocal about
25 supporting the changes to 50A in the state
legislature. Has the Police Commissioner sent a

3 letter-- would the Police Commissioner send a letter
4 to the Majority Leader and the Assembly Speaker and
5 all members of the legislature talking about that
6 support?

6 EXECUTIVE DIRECTOR CHERNYAVSKY: Sure. I
7 think we've advocated-- just to give you a little bit
8 of background on this, I've-- the Police Commissioner
9 has advocated for this, the Executive Staff,
10 Commissioner Bratton as well.

11 SPEAKER JOHNSON: But have you guys done
12 a letter to the--

13 EXECUTIVE DIRECTOR CHERNYAVSKY:
14 [interposing] They've written op-eds. I don't think
15 they've written a letter yet.

16 SPEAKER JOHNSON: Would you guys be open
17 to writing a letter?

18 EXECUTIVE DIRECTOR CHERNYAVSKY: I'll
19 certainly bring that back to them, but the core
20 principles that I think both of us are advocating for
21 in terms of transparency is something that are very
22 well documented. I'll bring the idea of issuing a
23 letter to the legislature to them to amend 50A.

24 SPEAKER JOHNSON: So, the panel that was--
25 - that came up with the report last week said that

3 the PD isn't collecting the data that would enable
4 that panel to conduct a full analysis. They said
5 that. So don't you think that given the Council's
6 oversight responsibility as a municipal legislature,
7 we have to require to collect and provide that
8 information so that a full outside independent
9 analysis can be done?

10 FIRST DEPUTY COMMISSIONER TUCKER: Well,
11 let me just say that we are collecting the data, and
12 I think it's the way in which we collect the data
13 that the panel may have been referencing, because we--
14 - what we need to do is and what we're-- I think
15 we'll be discussing as part of the implementation
16 group is to think about how we can, you know, have
17 one system where the data is controlled. Right now,
18 we have a number of databases that collect data for
19 different reasons and thus I think the panel says
20 it's hard to really understand what's going on if the
21 data is scattered throughout the agency. So, we'll
22 be taking look at, you know, what does that mean to
23 us and what can we do going forward. but I'm sure,
24 you know, it won't be an easy lift as we-- you know,
25 we have to think about what that means for purposes
of technology and how we aggregate the data into one

3 system or fix-- put a fix in place that allows us--
4 allows the data to be shared between and among
5 systems that would generate an aggregate report for
6 example. So, just food for thought, but we heard it
7 in the report. We understand what they mean, and
8 that will be one of the issues we take up as part of
9 our discussions in the group.

10 SPEAKER JOHNSON: But part of the issue
11 here is that we believe that there needs to be the
12 ability for outside entities to do analysis of this
13 data, not just the PD doing the analysis on their
14 own, but that we as the City Council who have
15 oversight responsibility on city agencies, we need to
16 be able to conduct our own analysis. So, is there an
17 objection to that from the PD?

18 EXECUTIVE DIRECTOR CHERNYAVSKY: No, so
19 Council Member-- Mr. Speaker, I think we're getting
20 at the same point. I think-- and what I was saying
21 before is when we await the resolution of the two
22 pending pieces-- the two pending cases in the courts
23 combined with the push for amendment to 50A, when we
24 achieve that, we will be able to publicly disclose
25 even more granular data than is required in the bill.
At a minimum it would do what the bill is looking to

3 do. What we're talking about is the current state of
4 affairs. So, there are currently restrictions within
5 the statute of 50A. There are currently restrictions
6 put upon us by the courts because of pending
7 litigation, so whereas we can certainly share some of
8 the data that the bill requires, and we want to
9 share-- if you look at our position on 50A and the
10 amendment to 50A, we are going exactly where you're
11 going with this bill. The idea is, though, because
12 of the pending litigation, because of the statute,
13 we're constrained at this point from doing it.

14 SPEAKER JOHNSON: So, who currently gets
15 fired for misconduct?

16 FIRST DEPUTY COMMISSIONER TUCKER: Yeah,
17 we can give you some sense of that.

18 SPEAKER JOHNSON: Tell me what offenses
19 one has to commit to get fired for misconduct.

20 ASSISTANT CHIEF PONTILLO: So, I'll give
21 you some data. Between 2014 and 2018 the NYPD has
22 terminated 156 police officers or forced them to
23 separate from the Department because of disciplinary
24 proceeding. The reasons vary, and I think this maybe
25 points to one of the challenges the independent panel
had when they talked about data, that the fact

3 patterns and the levels of offenses can be very, very
4 specific and very, very fact-sensitive. So, in
5 general, we've terminated people. So, one of the
6 issues that came up was a discussion about domestic
7 violence. So, in 2018, for example, we terminated
8 eight people for domestic violence-related offenses
9 that were substantiated. We talked about false
10 statements and perjury, you know, over-- when we look
11 at the number of cases we've terminated a number of
12 people for those cases as well. Conviction of a
13 crime, if a police officer is convicted of a crime,
14 either a felony or a crime that goes to their oath of
15 office by operation of law, they keep their title,
16 and we separate them. So, there are a lot of reasons
17 why, however--

18 SPEAKER JOHNSON: [interposing] Why did so
19 many people--

20 ASSISTANT CHIEF PONTILLO: It's very, very
21 fact-specific.

22 SPEAKER JOHNSON: Why do people get
23 voluntary separation?

24 ASSISTANT CHIEF PONTILLO: So, it's part
25 of the analysis that the Department Advocate does on
every case that comes before it. SO, when the

3 advocate considers a case, they look at strength of
4 the evidence, strength of witnesses, the likelihood
5 of prevailing at trial, and they have to make a
6 tactical and strategic decision on where to go with
7 this case.

8 SPEAKER JOHNSON: Does a memo get written
9 up to defend that decision so that it doesn't feel
10 like favoritism is being played?

11 ASSISTANT CHIEF PONTILLO: Yeah, so
12 internally the-- within the advocate's office there
13 are teams of attorneys that handle these cases.
14 Every team has a supervisor and a team leader. Then
15 there's executive oversight, and then every
16 disciplinary case that comes out of the advocates
17 office before being implemented comes to the First
18 Deputy Commissioner for review and then to the Police
19 Commissioner for final review and determination.

20 SPEAKER JOHNSON: Commissioner, you
21 review those.

22 FIRST DEPUTY COMMISSIONER TUCKER:
23 Absolutely.

24 SPEAKER JOHNSON: So, do you have a list?
25 Is there a list publicly available of the offenses

3 that are considered serious [sic] enough to warrant
4 termination?

5 FIRST DEPUTY COMMISSIONER TUCKER: Well,
6 we know what those offenses are. I mean, we don't
7 have a list. You do case by case and you look at the
8 conduct of the officer. You look at that officer as
9 an individual. You look at his or her conduct.
10 Sometimes the conduct in and of itself
11 notwithstanding the officer and their background and
12 whether they've ever been in trouble before, it
13 doesn't matter. If the conduct is so egregious that
14 we would terminate under those circumstances. But
15 there are those cases. They're not all that cut and
16 dry and there are those cases in which you have to
17 look at the larger picture and get a sense of what
18 the circumstances are and that's how-- that's really--
19 - that analysis gets done by the advocate. They
20 usually do that, do a deeper dive there, but when it
21 comes to us we look at what their rationale has been
22 and then we make a determination as to whether we're
23 sending it forward with their recommendation or we
24 sometimes change it and sometimes we disagree, and we
25 think it may be-- they may be asking for a penalty
that we think should be stronger, and we go higher,

3 or it may be lower and we go lower, or we make a
4 recommendation, send it forward to the Police
5 Commissioner as-is. And of course, then there's a
6 whole other discussion that takes place. There's
7 another review process at the Commissioner level with
8 all of us present for those conversations. So
9 there's a process. It does-- it does-- it is
10 rational. It does make sense, and I think by in
11 large the outcomes are the right outcomes.

12 SPEAKER JOHNSON: Does voluntary
13 separation mean that someone can get a job another
14 Police Department?

15 FIRST DEPUTY COMMISSIONER TUCKER: Well,
16 we wouldn't give them an endorsement for that. It
17 depends on the nature of the conduct, but we don't--
18 you know, it depends on the other Police Departments
19 as to whether they want to hire them, but it's
20 unlikely that they would. We're talking about
21 getting approval for a license or, you know,-- we may
22 not give them-- you know, when we put people out of
23 the department under those circumstances where
24 they're being terminated, they don't get a letter
25 from us that says that they're entitled to or we
endorse their ability to get a license for a firearm.

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3 SPEAKER JOHNSON: But even though you may
4 not endorse it, I mean, isn't very problematic?

5 FIRST DEPUTY COMMISSIONER TUCKER: So--

6 SPEAKER JOHNSON: [interposing] Let me
7 just finish. Let me finish my-- isn't it very
8 problematic if someone has been given voluntary
9 separation for serious misconduct? You know, like
10 you just said, it's a case by case circumstance where
11 you just figure out if it's termination or voluntary
12 separation. It's case-specific.

13 FIRST DEPUTY COMMISSIONER TUCKER: Right,
14 so we--

15 SPEAKER JOHNSON: [interposing] But if
16 someone has done something that the Police Department
17 internally has said this is serious misconduct, but
18 they're given voluntary separation, isn't that a real
19 problem if they are then able to go and be a police
20 officer in another department--

21 FIRST DEPUTY COMMISSIONER TUCKER:
22 [interposing] This is what--

23 SPEAKER JOHNSON: someone found to have
24 engaged in serious misconduct?

25 ASSISTANT CHIEF PONTILLO: Short answer
is no because--

3 SPEAKER JOHNSON: [interposing] No to
4 what?

5 ASSISTANT CHIEF PONTILLO: That--

6 SPEAKER JOHNSON: [interposing] it's not a
7 problem?

8 ASSISTANT CHIEF PONTILLO: That it's a
9 problem for the Police Department. It's not, and
10 I'll tell you why.

11 FIRST DEPUTY COMMISSIONER TUCKER: It's
12 what he was going to tell you a second go.

13 ASSISTANT CHIEF PONTILLO: So, if there
14 is a negotiated penalty with a respondent, a member
15 of the NYPD for misconduct, and part of that
16 negotiated penalty-- excuse me-- includes separation
17 from the Police Department. Typically, that will be
18 coupled with other penalties, suspension time,
19 vacation time, changing duty status, etcetera,
20 depending upon the facts and circumstances of the
21 case. Several weeks ago, we just completed a round
22 of reporting to the n year State Division of Criminal
23 Justice Services on members separated from the NYPD.
24 So, there's a state law and DCGS maintains-- DCJS
25 maintains a state database, and we report to them all
members of the service who have entered the NYPD but

3 also all members of the service who have left the
4 Department in the prior six months, and we'd give the
5 reasons for that separation. So, it could be normal
6 retirement. However, we do break out by very, very
7 specific category all members who are separated
8 either as a result of a disciplinary hearing and were
9 terminated, or who left, resigned potentially when
10 they had a disciplinary matter pending, so they quit
11 to avoid being disciplined as well as these
12 negotiated pleas. So, DCJS maintains that database,
13 and that database is there.

14 SPEAKER JOHNSON: So why not just fire
15 them?

16 ASSISTANT CHIEF PONTILLO: Well, then
17 again, it goes back to the strength of the case, the
18 strength of the evidence, the likelihood of success
19 at a department trial. You know, if we go that
20 route, there's always a risk that we lose that trial.
21 So that's why we have the advocate and he as a cadre
22 of very experienced attorneys who look at these and
23 make recommendations, and then like we described that
24 review process up to the First Deputy Commissioner,
25 Police Commissioner, to make sure we're getting it
right and that the approach is sound. You know, like

3 I said, the risk is we go to a trial and lose or the
4 person goes to the Civil Service Commission or brings
5 an Article 78 and gets reinstated. So, we have to
6 make sure that we have a sound case to bring and that
7 it's sustainable. And the other benefit of a
8 negotiated plea--

9 SPEAKER JOHNSON: [interposing] I just
10 want to point out, the Commissioner can overturn a
11 finding of not guilty if the Commissioner determines
12 that it was found in the incorrect way. Is that
13 correct?

14 ASSISTANT CHIEF PONTILLO: He can, but
15 then, you know, the risk there is then what happens
16 next, whether it's the Civil Service Commission or an
17 Article 78 proceeding. So we also have to think
18 about what happens on appeal if we bring a weak case.
19 So there are lot of factors that have to be
20 considered and we try to take the most reasonably
21 objective approach to get the desired result. So
22 sometimes that's a negotiated plea where we're able
23 to get rid of the person much more quickly than we
24 would if we went through the full trial process.

25 SPEAKER JOHNSON: If someone goes to work
for another Police Department after voluntary

3 separation, do they still collect their police
4 pension here?

5 ASSISTANT CHIEF PONTILLO: So that,-- it
6 depends. So,-- and that is not a result of the
7 disciplinary process per-say. A member of the NYPD
8 who is entitled to a pension even if they are
9 terminated by operation of state law will still
10 collect their pension unless they are convicted at a
11 criminal trial of a felony. So if you're convicted
12 at a criminal trial of a felony you're terminated,
13 you lose your pension, we serve you with a final
14 order of dismissal. Other separations, even though
15 you're being separated from the Police Department,
16 under State Civil Service Law you are still
17 collecting your pension. And that's not something
18 the Police Commissioner can override or change the
19 outcome on.

20 SPEAKER JOHNSON: Well, I'm glad we're
21 having this hearing today. I think it's important
22 for the public to have a level of confidence in the
23 New York City Council and in the NYPD, that these
24 conversations happen openly and publicly so people
25 understand what the independent-- what the panel
looked at, what the Council's looking at, what this

3 legislation seeks to remedy and figure out for
4 greater transparency, and I just, you know,-- I
5 really-- it's very painful not just for the family
6 members involved, but for the public when you see
7 Daniel Pantaleo still on the job collecting a salary,
8 when that video was very clear about what happened,
9 and the other officers that were involved as well.
10 And this is about doing what's right. This is about
11 justice. This is about ensuring that no one is above
12 the law, no citizen, no police officer, no one, and
13 it's my hope that these bills will hopefully help fix
14 this from happening in the future where there are
15 instances of misconduct and that-- and that we do
16 what's right by these families who have suffered so
17 much, and where this panel has said that there's
18 still major flaws in the disciplinary process. So,
19 you know, these-- I'm glad the Commissioner appointed
20 this panel. I'm glad they came back with
21 recommendations. I'm glad the Commissioner said he's
22 accepting those recommendations, glad the
23 Commissioner said he's accepting those
24 recommendations. I'm glad you all are here today
25 talking about sending a letter to the State
Legislature on 50A and improving this. part of me

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3 wishes that it didn't take this long, you know, that
4 these changes were made before, and that people that
5 have had to deal with so much grief didn't have to
6 wait so long for a panel and for us to impose bills
7 to see some of these important changes to happen, and
8 I appreciate you answering the questions, and I look
9 forward to continuing of a conversation.

10 Commissioner, you and I have always worked really
11 well together, and I look forward to working well on
12 this together to actually see some changes be made.

13 FIRST DEPUTY COMMISSIONER TUCKER:

14 Absolutely.

15 SPEAKER JOHNSON: I want to turn it back
16 to the Chairs.

17 CHAIRPERSON RICHARDS: Thank you, Mr.
18 Speaker. I'm going to go Council Member--
19 Councilwoman Rose.

20 COUNCIL MEMBER ROSE: Thank you very
21 much, Chair. Please forgive me. I have a cold or
22 something, and thank you Speaker Johnson, who pretty
23 much asked most of the questions I had. But I and
24 the people in my district have been impacted by the
25 fact that it has taken an awful long time, an
inappropriately long time, for discipline actions to

3 be taken. I'm specifically speaking in the case of
4 Officer Daniel Pantaleo. So, I am concerned that--
5 is there a timeline that guides the length of time
6 that it can take before disciplinary action is
7 taking?

8 ASSISTANT CHIEF PONTILLO: So, I'll just
9 jump in. There's no artificial timeline. However,
10 in a matter where there is a criminal investigation
11 and either a prosecution or a potential prosecution
12 by either a District Attorney or the US Attorney's
13 Office, the NYPD's internal disciplinary process or,
14 as in this case, the Civilian Complaint Review
15 Board's process for their case and then bringing that
16 to administrative trial to impose discipline which is
17 different than the criminal aspect.

18 COUNCIL MEMBER ROSE: Is there a
19 specified time that discipline has to take place?

20 ASSISTANT CHIEF PONTILLO: No, so there's
21 a statute of limitations for administrative
22 disciplinary proceedings, which is 18 months, but
23 that can be stayed once we serve charges or because
24 there's an ongoing criminal prosecution. So, in this
25 case, for four years or almost four years there was
an ongoing criminal investigation and possible

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3 criminal prosecution by the Justice Department. So
4 therefore because of the pendency of that possible
5 criminal action, the administrative action was stayed
6 until that was resolved. Once that was resolved,
7 then the administrative case for discipline is then
8 allowed to move forward.

9 COUNCIL MEMBER ROSE: But you are not
10 mandated to have to wait for the criminal action to
11 have occurred, that the criminal case to be disposed
12 of. You could have gone with disciplinary action
13 before or during that time.

14 FIRST DEPUTY COMMISSIONER TUCKER: We
15 could have, but if you-- then you-- I mean, listen,
16 you want an outcome, and you want the right outcome,
17 and so if the case is being prosecuted criminally or
18 they're going in a later time going for a civil
19 rights violation. So you don't want to jeopardize
20 those processes in the interim. So we are almost
21 always asked by those entities not to proceed with
22 our administrative proceeding because it will
23 interfere with the outcome of what--

24 COUNCIL MEMBER ROSE: [interposing] But in
25 this particular case, Commissioner, the Justice

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3 Department still has not rendered any sort of
4 decision, and you have--

5 FIRST DEPUTY COMMISSIONER TUCKER:

6 [interposing] And we have proceeded.

7 COUNCIL MEMBER ROSE: proceeded without--

8 FIRST DEPUTY COMMISSIONER TUCKER:

9 [interposing] Right.

10 COUNCIL MEMBER ROSE: So--

11 FIRST DEPUTY COMMISSIONER TUCKER:

12 [interposing] And we waited--

13 COUNCIL MEMBER ROSE: [interposing] You
14 waited four years but it could have happened sooner.

15 FIRST DEPUTY COMMISSIONER TUCKER: Well,
16 but that was unusual. It really was, and I can't
17 think of another situation where that situation would
18 have occurred for a whole host of reasons, but in any
19 case it's now back in our court, and a trial has
20 been-- a trial date has been set. So, we're moving
21 forward, albeit certainly not soon enough.

22 COUNCIL MEMBER ROSE: Am I-- the trial is
23 now is the CCRB process, right?

24 FIRST DEPUTY COMMISSIONER TUCKER:

25 Correct.

3 COUNCIL MEMBER ROSE: And so could you
4 tell me how many-- how frequently is it that the
5 Commissioner follows the findings of the CCRB,
6 whatever their trial finds to be the just and cause--
7 just and equal discipline?

8 ASSISTANT CHIEF PONTILLO: So, when it
9 comes to the Civilian Complaint Review Board, I think
10 a little context is helpful. So when we look back--
11 so currently, we look at police officers in the NYPD,
12 over 15,000 of the NYPD police officers have no
13 civilian complaints. That 41 percent of the Police
14 Department, and another almost 8,000 only have one
15 complaint. That's about 21 percent. When we look at
16 substantiated complaints, almost 33,000 police
17 officers or 90 percent of the Police Department have
18 no substantiated complaints, and about eight percent
19 or 3,000 have one substantiated complaint. When we
20 look at 2018 and we look at the cases brought by
21 CCRB, their Administrative Prosecution Unit, where
22 they brought a trial against a police officer, the
23 concurrence rate was 85 percent, meaning the Police
24 Commissioner enforced APU's recommendation 85 percent
25 of the time, and that's because three of those cases
were not guilty. So, the person went to trial. They

3 were found not guilty and the Police Commissioner
4 went along with the determination made by the trial
5 judge.

6 COUNCIL MEMBER ROSE: So, when a case is
7 substantiated and a discipline is recommended by
8 CCRB, the Commissioner usually follows that
9 recommendation?

10 ASSISTANT CHIEF PONTILLO: So I think if
11 you look at the independent panel report, they did a
12 sampling of a few hundred civilian complaint cases,
13 and they found that the Police Commissioner agreed
14 with the findings in most cases. When we break it
15 down and we look at it, you know, we also see that,
16 like I said, the disciplinary concurrence rate with
17 the Administration Prosecution Unit trial was 85
18 percent. You know, three of those were because they
19 were found not guilty at trial. The concurrence rate
20 on other matters that are-- that don't go to trial
21 that are just a board vote and recommendation. The
22 concurrence rate there is 78 percent. When we look
23 at the breakdown of those cases, we see that the
24 Police Commissioner in about 31 of those cases, he--
25 a little more than half-- he concurs with the
findings and the recommended penalty. In two

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3 instances last year, he increased the penalty, and in
4 21 instances he lowered the penalty.

5 COUNCIL MEMBER ROSE: Is there-- are all
6 of the disciplinary actions brought to bear by the
7 CCRB or is there an internal process that could
8 trigger a disciplinary action without the CCRB?

9 ASSISTANT CHIEF PONTILLO: Oh, it's both.

10 COUNCIL MEMBER ROSE: Yes. So, would an
11 officer's disciplinary history, what-- how many
12 incidents would it take in an officer's disciplinary
13 history before it would trigger an internal
14 investigation and possibly termination?

15 ASSISTANT CHIEF PONTILLO: So, a single
16 incident, and it depends upon the nature of the
17 incident and we'll determine who has jurisdiction
18 over it. So, if the incident is related to use of
19 force, abuse of authority, discourtesy or offensive
20 language, the Civilian Complaint Review Board as per
21 the Charter has jurisdiction over those allegations.
22 They get those cases. They investigate them, and
23 then they will make a recommendation in terms of both
24 findings and penalties. It's interesting to note
25 that, you know, the Commissioner mentioned the total
universe of complaints that came in last year. The

3 Civilian Complaint Review Board substantiated 226

4 complaints, but they exonerated 218 and found 92

5 unfounded. So more were exonerated or unfounded--

6 COUNCIL MEMBER ROSE: [interposing] And

7 that's-- I'm really glad to hear that. But what I'm

8 trying to get to is the fact that you can have an

9 officer still in active duty that has multiple

10 numbers of disciplinary actions that have been taken

11 prior to-- and again, I'm talking about for

12 transparency. I'm talking about Pantaleo who has had

13 multiple disciplinary charges brought against him,

14 and he has not been terminated. So what would

15 trigger that internally without having to have a CCRB

16 inquiry into this?

17 ASSISTANT CHIEF PONTILLO: So, speaking

18 generally about the process, if a complaint is made

19 that is investigated by the Civilian Complaint Review

20 Board, they will investigate it. They will

21 eventually send their findings and recommendations to

22 the Police Department. Independent from that, the

23 Police Department whether it's through Internal

24 Affairs--

25 COUNCIL MEMBER ROSE: [interposing] Well,

would you say that an office that has at least eight

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3 charges of, you know, misconduct against him should
4 have been addressed by some sort of internal process
5 that could have led to termination?

6 ASSISTANT CHIEF PONTILLO: So, it would
7 say it depends upon the facts and circumstances of
8 each case. Each case will be addressed whether it
9 comes from the Civilian Complaint Review Board or
10 it's a matter that is under the jurisdiction--

11 COUNCIL MEMBER ROSE: [interposing] So, is
12 discipline pretty much arbitrary?

13 ASSISTANT CHIEF PONTILLO: It is
14 absolutely not arbitrary.

15 COUNCIL MEMBER ROSE: Well, it seems as
16 if the process then is broken. If someone can have
17 multiple charges of misconduct and still be on the
18 force.

19 ASSISTANT CHIEF PONTILLO: Well, it
20 depends whether or not they're just allegations or
21 they've been substantiated, and then--

22 COUNCIL MEMBER ROSE: [interposing]
23 Substantiated.

24 ASSISTANT CHIEF PONTILLO: what the level
25 of the offense was, it's severity, as well as--

3 COUNCIL MEMBER ROSE: [interposing]

4 Substantiated.

5 ASSISTANT CHIEF PONTILLO: other
6 aggregating or litigating factors.

7 COUNCIL MEMBER ROSE: They were
8 substantiated. I'm just having a hard time
9 understanding how discipline is metered out in the
10 Department when you have officers that have a known
11 history. What triggers that? What triggers?

12 FIRST DEPUTY COMMISSIONER TUCKER: So, if
13 you have an officer who's-- so we monitor the
14 officers. We look for the number of, for example,
15 civilian complaints, but we also look at their other
16 conduct and whatever that conduct is. Maybe there
17 are administrative violations. Maybe they're stealing
18 time. it could be a whole variety of issues, but we
19 monitor the-- that-- it's for-- discipline would be
20 progressive, and we may have officers-- if you have
21 an officer who's been found guilty of some violation
22 or for being off-post-- those are more minor-- not
23 doing their job out of work but not reporting in and
24 stealing time. It depends on what it is. But in any
25 case, we will follow that officer. We look at his
history or her history and at some point we will put

3 them on-- we could put them on dismissal probation
4 depending on the severity of any of those particular
5 or the conglomerate-- the fact that he had multiple
6 violations, and we dealt with each one--

7 COUNCIL MEMBER ROSE: Violations of the
8 rule book?

9 FIRST DEPUTY COMMISSIONER TUCKER: No,
10 no. It's we're looking at the individual officer and
11 what it is they've done, and we look at their
12 evaluations based on-- you know, from their
13 commanding officers. So if we find that this officer
14 has a history and is a problem, we will be-- we have
15 progressive discipline and we will hold them
16 accountable for it, and ultimately it could get to
17 the point where we put them on dismissal probation.
18 Dismissal probation really means that in addition to
19 whatever the penalties were for any one or more of
20 those charges that we brought them up on or any one
21 of the command disciplines that they had. In addition
22 to those penalties that they served, dismissal
23 probation says that if you engage in-- while you're
24 on dismissal probation which usually is for a year,
25 if during that period you engage in some other
misconduct, we can terminate you, and we don't have

3 to go through a process. We can do that
4 automatically, the fact that you're on dismissal
5 probation. We don't have to have a hearing. We
6 don't have to have a trial. We can just terminate
7 you. That's rare. Those circumstances, not
8 dismissal probation, but where you have an officer
9 that has multiple events and goes out that way.
10 Typically, there's something serious enough that
11 they've engaged in in one event that we then put them
12 on -- put the dismissal probation. If in fact that
13 event was more serious, then we might terminate them
14 on that one as the chief pointed out on that one
15 instance, and that one-- that one--

16 ASSISTANT CHIEF PONTILLO: [interposing]

17 Yeah, and--

18 COUNCIL MEMBER ROSE: [interposing] Thank

19 you.

20 FIRST DEPUTY COMMISSIONER TUCKER: type of

21 conduct.

22 ASSISTANT CHIEF PONTILLO: Also, I think

23 you may have some inaccurate information about the

24 number of substantiated cases if we're talking about

25 the same case. My understanding is that individual

has one prior substantiated misconduct allegation for

3 making a pedestrian stop that was not legally
4 justified, but that was the only prior substantiated
5 disciplinary history, whether it was from a civilian
6 complaint or internal policy violation.

7 COUNCIL MEMBER ROSE: I would like to
8 continue my conversation with you offline, because my
9 time is up, but I just want to say it's-- in light of
10 transparency, it's very telling that we knew
11 everything about the young man's criminal record who
12 took the video, but we were not able to get any of
13 the information about the officer that was implicated
14 in the death of Eric Garner. There has to be
15 something done about transparency and accountability.

16 CHAIRPERSON RICHARDS: Thank you, Debbie.
17 And let me just-- I just want to point out a fact on
18 substantiated and unsubstantiated cases. Because I--
19 those words are being thrown out around a lot, and
20 just because a case is unsubstantiated it does not
21 mean that there was not a case there. It might mean
22 that there was not enough proof to bring, you know,
23 more discipline, but if there's a pattern of
24 unsubstantiated cases, it doesn't mean a person was
25 exonerated. It means that-- am I correct--

3 FIRST DEPUTY COMMISSIONER TUCKER:

4 [interposing] No, you're absolutely right. It
5 doesn't mean-- it just means you couldn't prove it.

6 CHAIRPERSON RICHARDS: We just couldn't
7 prove it.

8 FIRST DEPUTY COMMISSIONER TUCKER: Right.

9 CHAIRPERSON RICHARDS: But it doesn't
10 mean that--

11 ASSISTANT CHIEF PONTILLO: [interposing]
12 But due process is important.

13 CHAIRPERSON RICHARDS: nothing happened,
14 occurred.

15 ASSISTANT CHIEF PONTILLO: Right, but due
16 process is still important.

17 CHAIRPERSON RICHARDS: And then I just
18 want to hop back in because you talked about CCRB a
19 little bit, and the panel talked about the
20 Departmental Advocate's Office and undue influence
21 specifically that could be occurring in that office.

22 The panel report indicated that the Department
23 Advocate may be subjected to improper influence in
24 particular because he asked questions about certain
25 cases after he attends social events where

disciplinary cases are informally discussed. He said

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3 he was encouraged to increase communications with
4 unions. Why is it appropriate for there to be
5 informal conversations about these cases at all at
6 events? So, if I'm at a party--

7 FIRST DEPUTY COMMISSIONER TUCKER:

8 [interposing] I don't they mentioned that, but--

9 CHAIRPERSON RICHARDS: [interposing] This
10 is not Donovan Richards making it up.

11 FIRST DEPUTY COMMISSIONER TUCKER: It is
12 not--

13 CHAIRPERSON RICHARDS: [interposing] Hold
14 up. Hold up. Hold up. This is not Donovan Richards
15 making this stuff up, this is what the panel came
16 back with--

17 FIRST DEPUTY COMMISSIONER TUCKER:
18 [interposing] Hold up [sic].

19 CHAIRPERSON RICHARDS: and this is also
20 what Kevin Richardson who's in charge of the
21 Department, that particular department specified to
22 the panel. So do you think it's appropriate at any
23 time for conversation to occur on disciplinary cases
24 outside of the realms of an office?

25 FIRST DEPUTY COMMISSIONER TUCKER: It's
not appropriate, but you never know what people are

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3 going to ask you, or you know, you ask-- they ask you
4 a question, you can-- if it's about a case you
5 shouldn't be having a conversation. The-- your
6 response should be, "I can't discuss that with you."

7 CHAIRPERSON RICHARDS: Right.

8 FIRST DEPUTY COMMISSIONER TUCKER: It's
9 as simple as that.

10 CHAIRPERSON RICHARDS: But it seems like--

11 FIRST DEPUTY COMMISSIONER TUCKER:

12 [interposing] We all--

13 CHAIRPERSON RICHARDS: [interposing] that
14 may not have--

15 FIRST DEPUTY COMMISSIONER TUCKER:

16 [interposing] go to--

17 CHAIRPERSON RICHARDS: [interposing]
18 Right.

19 FIRST DEPUTY COMMISSIONER TUCKER: these
20 events as executives in the Department. We attend,
21 you know, a plethora of, you know, fraternal
22 organizations and all of that. Union people are
23 there and so forth. So, but you know, you just-- you
24 know, this is not rocket science.

25 CHAIRPERSON RICHARDS: Do you think it's
appropriate? And I stopped--

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3 FIRST DEPUTY COMMISSIONER TUCKER:

4 [interposing] No, it's not appropriate.

5 CHAIRPERSON RICHARDS: And I stopped
6 getting-- I stopped getting a lot of invitations, by
7 the way, so I'm feeling a certain way. But what I
8 will say also--

9 FIRST DEPUTY COMMISSIONER TUCKER:

10 [interposing] No, it's not--

11 CHAIRPERSON RICHARDS: is do you think
12 it's appropriate that the Commissioner attends those
13 events at all, and--

14 FIRST DEPUTY COMMISSIONER TUCKER:

15 [interposing] No, I don't think it's inappropriate,
16 no. I mean, I-- listen, you can go to these events.
17 I mean, he's a senior official in the Department. The
18 fact that he happens to be the Department Advocate
19 makes it-- you know, he has to be much more cautious
20 about what he does when he's there and what those
21 conversations are about, but and they shouldn't--

22 CHAIRPERSON RICHARDS: [interposing] And I
23 agree. I'm trying to put myself in his shoes. He
24 works for the Department.

25 FIRST DEPUTY COMMISSIONER TUCKER: Yeah.

3 CHAIRPERSON RICHARDS: I don't want him
4 to feel like he can't have a conversation and he's
5 just boxed in, but I do think, you know, that it does
6 invite a level of undue influence to the process--

7 FIRST DEPUTY COMMISSIONER TUCKER:
8 [interposing] Well, it's-- it's--

9 CHAIRPERSON RICHARDS: [interposing] It
10 can. It can. It can.

11 FIRST DEPUTY COMMISSIONER TUCKER: Yeah.

12 CHAIRPERSON RICHARDS: So, I think the
13 panel had recommended that, for instance, if an
14 individual was to ask about the case, a case at an
15 event specifically that, you know, perhaps the
16 Department Advocate would log that information, and
17 I'm not saying I trust that 100 percent, because how
18 do we know that anybody would log that information,
19 but do you-- are you examining a process for him when
20 he attends events? Should there be another
21 individual attending with him to make sure that they
22 take notes, and I think that that's something the
23 panel recommended at the very least. Once again, I
24 don't want him to feel as if he's boxed in and he
25 can't have a conversation because we're all human.
But what I don't want is him to be at a party

3 slapping fives and having conversations on a
4 disciplinary case and undue influence being a part of
5 that.

6 FIRST DEPUTY COMMISSIONER TUCKER: I
7 suspect you won't find that. I think that's okay,
8 but it is something that we can talk about as part of
9 our--

10 CHAIRPERSON RICHARDS: [interposing] But
11 the Commissioner did agree to--

12 DEPUTY COMMISSIONER PRUNTY: [interposing]
13 Yes.

14 CHAIRPERSON RICHARDS: do this in the
15 recommendation. So, is this process going to be put
16 in place to ensure that?

17 DEPUTY COMMISSIONER PRUNTY: Yeah, that's
18 part of what the implementation working group is
19 going to address, but I think the panel specifically
20 said that-- they suggested that we have guidelines
21 with respect to what types of events the decision-
22 makers within the discipline process attend, that we
23 have guidelines, that we have protocols and that we
24 have some type of a tracking or logging system, and
25 that's specifically what we're going to begin to

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3 address in the implementation working group, which I
4 believe begins--

5 FIRST DEPUTY COMMISSIONER TUCKER:

6 [interposing] In 45 minutes.

7 CHAIRPERSON RICHARDS: Oh, really?

8 You're not leaving in 45 minutes.

9 ASSISTANT CHIEF PONTILLO: Also like to

10 point out that--

11 CHAIRPERSON RICHARDS: [interposing] But

12 then-- and then I just want to add to that. The

13 report also indicated that the Commissioner himself

14 sometimes inquiries about cases or expresses his

15 opinion while the DAO is reviewing cases. How often

16 does that take place, and do you think that that adds

17 a level of undue influence to the process as well?

18 FIRST DEPUTY COMMISSIONER TUCKER: Yeah,

19 I can't answer that. I don't know.

20 CHAIRPERSON RICHARDS: You can't?

21 FIRST DEPUTY COMMISSIONER TUCKER: I

22 doubt it.

23 CHAIRPERSON RICHARDS: Oleg, you--

24 EXECUTIVE DIRECTOR CHERNYAVSKY:

25 [interposing] I mean, there's-- I mean, I think that

3 what the Commissioner is saying putting a number on
4 how many--

5 CHAIRPERSON RICHARDS: [interposing] Yeah.

6 EXECUTIVE DIRECTOR CHERNYAVSKY:
7 communications, he's not saying that there is-- he
8 can't speak to the undue influence, which there is no
9 undue influence. I mean, again, we describe--

10 CHAIRPERSON RICHARDS: [interposing] But
11 do you think the Commissioner calling downstairs to
12 inquire about a case, do you think that could add a
13 level--

14 EXECUTIVE DIRECTOR CHERNYAVSKY:
15 [interposing] No, I'll explain why.

16 CHAIRPERSON RICHARDS: You don't put
17 pressure?

18 EXECUTIVE DIRECTOR CHERNYAVSKY: The
19 Commissioner is the head of the NYPD. He's called
20 upon routinely to comment about cases that are of
21 significant public interest. To put blinders on and
22 separate himself from the day-to-day workings and
23 significant cases affecting the public would be the
24 absolute wrong approach. I think the important piece
25 is-- and we described in-- the Commissioner and the
Chief and Commissioner Prunty described the process

3 in which there are multiple layers now. Although
4 there's a recommendation there's an investigation by
5 Internal Affairs. There's a recommendation by CCRB
6 or Department Advocates Office. The First Deputy
7 Commissioner reviews that recommendation.

8 Ultimately, it goes back to the Police Commissioner
9 to review that recommendation be the final arbiter.
10 It would be illogical for the Police Commissioner to
11 influence a case that he's ultimately the final
12 arbiter on disciplining. So, I don't believe that's
13 what's occurring, and I think it's a vital part of--

14 CHAIRPERSON RICHARDS: [interposing] And
15 I'm not questioning the Commissioner's integrity,
16 because I think he has shown a great level of
17 integrity since we've been here. But I do think that
18 calling to inquire about a case could be perceived as
19 undue influence. And I think that the panel
20 acknowledged that.

21 EXECUTIVE DIRECTOR CHERNYAVSKY: Well, I
22 think it-- I acknowledge that it was raised in the
23 report, but I think ultimately the Police
24 Commissioner has great confidence in the independence
25 and the competence of the executives that are in

3 charge of the discipline system, and there are
4 significant layers of oversight in that process.

5 CHAIRPERSON RICHARDS: Alright. I'm
6 going to go to Council Member Deutsch now.

7 COUNCIL MEMBER DEUTSCH: Thank you very
8 much, Chair. So, firstly, I just want to say I've
9 been sitting here since the beginning of the hearing
10 and listening to the dialogue back and forth on
11 several of the bills being heard today, and it's very
12 important to have this open dialogue on and offline.
13 So, I just want to say for the record before I go to
14 my questions that, you know, the NYPD is probably the
15 most scrutinized agency in New York City, and it used
16 to be in the past that the internal operations and
17 procedures within the NYPD was based on policy, and
18 over the last years we, here in the New York City
19 Council, we've been legislating more on issues that
20 affect New Yorkers within the NYPD, and we are
21 holding offices accountable, and yes, we do need to
22 get rid of the bad apples and work on these issues to
23 make sure that things-- it's more level when it comes
24 to the community, the City Council and the NYPD, but
25 as was mentioned before that an officer has great
power, an officer has great responsibility. And in

3 the meantime, I just want to say for the record, that
4 having a job where you have a pretty high suicide
5 rate, whether you're a police officer whose very
6 stressful-- very stressful job, or even a retired
7 officer-- we just had recently a retired MOS who
8 killed herself, and we tend not to look or have--
9 speak about these things, how we could bring in more
10 resources to those officers, and when you have
11 someone, an officer who has that stressful job, and
12 we're constantly speaking about the different ways to
13 legislate, which is extremely, extremely important to
14 have that accountability, but we also need to talk
15 about that officers need and must get paid a living
16 wage. Because when someone signs up for a job that
17 puts their life at risk, puts their families' lives
18 at risk, they need to get paid. And I think that we
19 need to talk about especially now before the budget
20 and work with the unions and work with these officers
21 and work with the Council and work with the
22 Administration to finally, finally get this done. So,
23 you know, it hurts me when I sit here and just
24 talking about people, talking about the men and women
25 who put their lives on the line, and have more stress
when they can't pay their bills, when they can't put

3 food on the table, when they can't provide for their
4 families, and that's very stressful not only for
5 them, it's stressful for people that look at them
6 from the outside and to say how do they do it each
7 and every day? How do they go to work and have so
8 much responsibility, and when they get home and when
9 they have to buy clothing or diapers or formula, they
10 can't afford it. So, I just wanted to say that for
11 the record. So, my question now is-- with the most
12 recently we had the incident with Jazmine Headley
13 where the officers came in and responded to the call.
14 I just wanted to ask as a follow-up of what happens
15 to those officers? What was the outcome if you could
16 speak about that? And also, what do you think needs
17 to be changed in regards to how the police respond to
18 a very sensitive case. I saw the video, and you
19 know, I usually-- there's always three sides to every
20 story. When I see the video I said-- you know, to
21 me, having five children and two grandchildren,
22 there's no excuse when a baby is grabbed away from a
23 mother's arm while she is laying on the floor.

23 EXECUTIVE DIRECTOR CHERNYAVSKY: I think
24 as a result of the incident, significant policy
25 changes have gone into effect. We've-- this is us

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3 together with HRA. HRA has augmented their internal
4 policies to limit the number of cases where they
5 called the NYPD to the scene of one of their
6 facilities. They instituted, I believe, a policy
7 where a supervisor is brought to the situation before
8 a call is made to-- for emergency first responders.
9 As the Police Department, we instituted a policy of
10 having a supervisor respond to the HRA facility if we
11 are called. So, I believe there may be something
12 else that I'm missing.

13 FIRST DEPUTY COMMISSIONER TUCKER: Yeah,
14 but it was the supervisor primarily.

15 EXECUTIVE DIRECTOR CHERNYAVSKY: And I
16 believe there was a training component as well. I--
17 there was another piece. I'm sorry. I'm just failing
18 to recall. But we did institute both HRA and the NYPD
19 instituted policies after that incident, and--

20 COUNCIL MEMBER DEUTSCH: Alright, just
21 yeah. So what happened after that, I mean, what
22 happened with the officers? What was the-- was there
23 a punishment? Was there sensitivity training? Is
24 the officer required to work in the play group with
25 kids for what happened? Like, what happened after
that?

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3 FIRST DEPUTY COMMISSIONER TUCKER: I'm

4 not sure where we are. I can find out for you.

5 COUNCIL MEMBER DEUTSCH: Okay, so, yeah,
6 I'd like to know--

7 FIRST DEPUTY COMMISSIONER TUCKER:

8 [interposing] Other than what we--

9 COUNCIL MEMBER DEUTSCH: [interposing]

10 Yeah, I just want to know a follow-up to that. I
11 have oen more question which has-- can go a little
12 bit off topic. So, you have in the NYPD, within the
13 NYPD you have the Homeless Outreach Units. And in
14 the City you have also what's called Breaking
15 Grounds. When you call 311 Breaking Ground comes out
16 and makes contacts with the person who is maybe
17 sleeping on the streets or the homeless person
18 sleeping on the subway. And there have been an
19 unbelievable tool here in New York City. so, I
20 actually have the first time here in New York City
21 because I'm coming up with this-- working with Steve
22 Banks, we're having a training for first responders
23 on how to communicate with people, with homeless
24 people living on the streets. because what happens
25 is as New Yorkers we always complain that the
Administration is not doing enough, but you do have

3 people that work, that volunteer in Community Boards,
4 go to committee council meetings, go to civic
5 meetings. So, people like to get involved. So
6 without having the training, those people who are
7 passing a homeless person or someone riding on the
8 subway don't know how to interact. They may give
9 that person a dollar, but they don't know how to
10 interact and what resources they could provide, what
11 information they could give that person who's
12 sleeping in the streets or sleeping on the subway.
13 So we're having-- I'm having a training in a few
14 weeks from now with DHS, two first responders
15 throughout the City of New York on how to interact
16 and how to try to build a relationship with someone
17 who's living in the streets to provide them with the
18 right services. That being said, so Breaking Ground
19 does outstanding work. Now, with the NYPD homeless
20 outreach, do you feel that something needs to be
21 changed with how they are working with homeless
22 people sleeping in the subways because I've-- I've
23 used the subway over the last month, and you see
24 people laying on the car on the chairs. You see
25 people urinating, and writing a summons really
doesn't mean much if someone doesn't have ID or if

3 someone may be undocumented. So what is the purpose
4 of the unit of homeless outreach within the NYPD,
5 number one, and number two, do you think there needs
6 to be some type of reform to better-- not only issue--
7 - not issue summonses but to try to work together
8 with DHS to actually give them mental health and give
9 them shelter. New Yorkers are really fed up when
10 they go on the trains and the subways and there's
11 urine all over the place, and if I have to sit down
12 on the chair in the subway, I put on my gloves,
13 because I don't know if someone just urinated on the
14 chair because there's no bathrooms or people are just
15 laying down and urinating. And just a few weeks ago,
16 I-- the whole cab just emptied out.

17 FIRST DEPUTY COMMISSIONER TUCKER: So we
18 are-- I mean, through our transit district we are
19 moving people off the-- out of the cars. But you
20 know, we're trying not to make arrests. We're trying
21 to connect with other services that might be
22 available. That's not always something that the
23 individuals we're moving are willing to accept. So,
24 that makes it a bit more of a challenge. The group
25 that you mentioned, I'm not familiar with.

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3 COUNCIL MEMBER DEUTSCH: So, if you call
4 311, Breaking Ground is mandated to respond within an
5 hour to that location.

6 FIRST DEPUTY COMMISSIONER TUCKER: Okay.

7 COUNCIL MEMBER DEUTSCH: And they-- it's
8 very important to call 311 because they actually take
9 notes and they build a relationship over time
10 offering shelter to that individual. So, I think
11 it's important for homeless outreach within the NYPD
12 to work with Braking Ground to work together, because
13 it's not about issuing summonses, and those summonses
14 probably don't go anywhere, and if there's a warrant
15 then you end up taking someone in who just doesn't
16 have the funds or the resources or has a mental
17 illness. So, I think we should do a better job and
18 get the homeless people out of the trains, off the
19 streets, and into shelter. And by working with the
20 NYPD and working with Breaking Ground and working
21 with Department of Homeless Services and HRA, I think
22 we must do better for New York City and work together
23 and put these people into shelter. So, I know that in
24 my district on Sheepshead Bay Road we used to have
25 almost two dozen homeless people, and I went out
there three, four, -- five a days a week speaking to

3 them myself knowing them by first name. And there
4 was one individual who was out in the streets for
5 years and building a relationship with him, he's now
6 in a-- he's now in a regular apartment and he gets
7 the mental health resources. If we put enough effort
8 by working together, not just the Administration
9 because they're not doing a good enough job, but
10 working with the NYPD, working in partnership with
11 the community, we can make a great impact, and we
12 need to get them off the streets, and we need to make
13 the quality of life in New York City better for
14 everyone.

14 CHAIRPERSON RICHARDS: Thank you.

15 FIRST DEPUTY COMMISSIONER TUCKER: Well,
16 I will follow up, because you and I should have a
17 sidebar conversation. There a couple of issues that
18 we can discuss both with respect to transit moving
19 into neighborhood policing from that perspective with
20 officers who should be providing other types of
21 services, but also to talk about New York City Thrive
22 and the work that Commissioner Herman who was
23 formerly with us is now going to be running that. So
24 we could have a conversation about what type of
25

3 services we could connect to and coordinate on to
4 really address the issue you've raised.

5 COUNCIL MEMBER DEUTSCH: Thank you very
6 much. I look forward to that, Commissioner, and I
7 also want to ask the Chair as being the Public Safety
8 Committee for five years, that we should have a
9 hearing on MOS suicide, Members of the Service, the
10 suicide rate and what resources we can bring in to
11 them, for them. And finally, I just want to mention
12 what I said originally, fair pay to every single
13 officer, very important.

14 CHAIRPERSON RICHARDS: Thank you, and I--
15 well, we will have a lot more to say on that actually
16 on the MOS. We're working on a bill with Council
17 Member Levine, actually. I want to go to Council
18 Member Cohen. Thank you, Chair Richards. Thank you
19 Chair Lancman. Thank you for the panel for hanging
20 tough. I just-- I want follow up on the 50A stuff,
21 because I guess really we're-- you know, this package
22 of bills-- we're essentially here because I think
23 that 50A is sort of warping , I think, the
24 disciplinary process or making it difficult for the
25 public to have confidence, you know, with the lack of
transparency. You know, just as a preliminary

3 question-- you know, I'm not as knowledgeable as
4 other members of the committee, so I apologize. I
5 don't-- what is the rationale for 50A? When does it
6 make sense that an officer should-- you know, his
7 identity should be protected, the facts should be
8 protected, and when-- like, I don't think it's
9 universal. I mean, we talked about DV. I guess I
10 could see an instance where we want to protect the
11 privacy of the victim, but in a DV case, why are--
12 what is the rationale. I understand it's not your
13 policy, it's state law, but I'd like to-- if you
14 think it's a defensible policy, maybe it's not, or is
15 there a rationale that you're aware of?

16 DEPUTY COMMISSIONER PRUNTY: I mean,
17 there was an underlying rationale that was pointed to
18 by the legislature back in I think it was 1974 when
19 they passed 50A, and that was, you know, in effort to
20 protect police officers from being threatened,
21 humiliated, harassed either on the stand in the
22 context of litigation or as the courts later rules
23 and recognized also outside of litigation. So that
24 was the underlying rationale. And you're right to
25 identify, this is not our policy at all. This is a
state law that we must abide by. Having said that

3 we've been very vocal as we said at the outset of
4 this that we're very much in favor of amending that
5 state law so that we can increase the transparency.
6 And I think the Police Commissioner has been very
7 clear about this. You know, we need to build trust
8 with the communities that we serve. One of the ways
9 we do that is by increasing transparency and by
10 increasing a sense of accountability, and we're very
11 much in favor of that. So, in response to your
12 question that was the original intents of the
13 legislature when they passed 50A.

14 COUNCIL MEMBER COHEN: In other words, the
15 concern is when someone's being prosecuted, that the
16 officers' disciplinary record would be used to
17 impeach him on the stand.

18 DEPUTY COMMISSIONER PRUNTY: I think it
19 was more concerned that unsubstantiated allegations,
20 things that had not been proven or had not yet gone
21 through the system would be used in some way to
22 improperly impeach the officer, but then again, it's
23 a broader sense too. It's also that officers don't
24 in general get harassed or humiliated or threatened.

25 COUNCIL MEMBER COHEN: What I also didn't
understand, there was a dialogue back and forth.

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3 Does 50A apply when someone is no longer a police
4 officer?

5 DEPUTY COMMISSIONER PRUNTY: In general,
6 I don't think the Department takes the position that
7 we apply 50A in that circumstance.

8 COUNCIL MEMBER COHEN: That you do not.

9 DEPUTY COMMISSIONER PRUNTY: we do not.

10 COUNCIL MEMBER COHEN: But are those--
11 those records are not widely available is my
12 understanding. Is that--

13 DEPUTY COMMISSIONER PRUNTY: No, they're
14 not.

15 COUNCIL MEMBER COHEN: You would turn
16 over the disciplinary records--

17 DEPUTY COMMISSIONER PRUNTY: [interposing]
18 No, I think it's--

19 COUNCIL MEMBER COHEN: of officers who
20 are no long--

21 FIRST DEPUTY COMMISSIONER TUCKER:
22 [interposing] No.

23 DEPUTY COMMISSIONER PRUNTY: I think it's
24 important to understand, too that they're-- even if
25 you put aside 50A, you also have the Freedom of
Information Law, and those-- that also applies here.

3 So, that's an entirely separate state law that we
4 have to abide by.

5 COUNCIL MEMBER COHEN: But under either
6 circumstances, will you turn over the disciplinary
7 records of officers who are no longer employed by the
8 NYPD?

9 DEPUTY COMMISSIONER PRUNTY: No, because
10 then we have to apply the FOIL Statute. That's what
11 I'm trying to explain do you.

12 COUNCIL MEMBER COHEN: FOIL is not a bar
13 to disclosing those records.

14 DEPUTY COMMISSIONER PRUNTY: It often can
15 be. It often can be because FOIL has its own
16 separate set of exemptions. For example, there's a
17 privacy exemption. There's a life and safety
18 exemption. There's a pending criminal proceeding or
19 other proceeding. So there are all kinds of
20 provisions within the FOIL--

21 COUNCIL MEMBER COHEN: [interposing] But
22 you don't parse whether they do apply or they don't
23 apply. You have a blanket policy. You don't apply--
24 you will not disclose the disciplinary records of
25 officers who are not part of the NYPD period.

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3 DEPUTY COMMISSIONER PRUNTY: No, we apply
4 the exemptions under FOIL to those records. That's
5 what I'm trying to explain.

6 COUNCIL MEMBER COHEN: You think FOIL is
7 a universal bar to --

8 DEPUTY COMMISSIONER PRUNTY: [interposing]
9 I'm not saying that. I'm saying we would analyze it
10 under FOIL.

11 COUNCIL MEMBER COHEN: Does that-- so if
12 I serve a FOIL request tomorrow, will you parse?
13 Some you'll disclose and some you won't, or is it a
14 univ-- a blanket--

15 DEPUTY COMMISSIONER PRUNTY: [interposing]
16 We'll analyze it under that statute and apply the
17 appropriate exemptions.

18 COUNCIL MEMBER COHEN: Well, let me add
19 this, have you ever turned over the disciplinary
20 records for someone where you've-- who does not work
21 for the NYPD anymore and you found that FOIL did not
22 apply?

23 DEPUTY COMMISSIONER PRUNTY: I can't
24 answer that. I don't know the answer to that off the
25 top of my head. I'd have to go back and look at what
we've done.

3 COUNCIL MEMBER COHEN: Will someone agree
4 to get back to us to let us know?

5 FIRST DEPUTY COMMISSIONER TUCKER: We can
6 let you know, sure.

7 COUNCIL MEMBER COHEN: Okay, I would
8 appreciate that. The disaggregation question, too,
9 I wonder-- like, it does sound like there's sort of a
10 broad general agreement that enhanced transparency is
11 good for the Department. I think that we've
12 advocates for it. But it does seem a little bit like
13 the NYPD is taking the position of, you know, for the
14 officer. In other words, if-- like under the example
15 that Council Member Lancman said, rather than saying--
16 - like the right to privacy should be asserted by the
17 officer as opposed to the NYPD in a case where
18 there's a good faith belief that it should be turned
19 over, us making that request whether it's subject to--
20 - I mean, the interpretive-- isn't that the role of
21 the courts to interpret 50A, not in an open question?
22 If you have a desire to, as you're representing, to
23 turn over records, but you think it's possible that
24 50A, why don't we-- we could agree right now together
25 let's run a test. Somebody else will sue if they
want to sue, and we could let the courts decide

3 rather than it seems you taking a very-- you know,
4 even though the Commissioner talked about a narrow
5 interpretation, it seems that you're taking a fairly
6 broad look at 50A and saying that it could apply. If
7 it's not clear it does apply-- unless it's absolutely
8 clear it does apply, I think that the default
9 position should be it doesn't apply and let someone
10 else take us to court and decide if it does or
11 doesn't.

12 DEPUTY COMMISSIONER PRUNTY: I don't
13 think we're doing that. I think we're applying the
14 statute to the particular circumstances, and we're
15 applying it and we are therefore withholding the
16 records under the provisions of the current state of
17 the law, and our interpretation of that statute has
18 been affirmed repeatedly, especially in the past four
19 years in appellate court decisions. So that's what
20 we're doing. There's no default position. It's not
21 an interpretation. We are applying the statute that
22 we must presently abide by. Having said that, we'd
23 like to see changes to that statute so that we can
24 have more transparency.

25 EXECUTIVE DIRECTOR CHERNYAVSKY: And now,
I think just to add to that, we did attempt to go

3 further. So, when I make the distinction in the
4 testimony, I point to the fact that yes, there is
5 50A, but there's also two injunctions in place. It's
6 two situations where the Police Commissioner decided
7 to go further to disclose more. One of the bills is
8 body-worn camera footage, but the other bill is
9 actually reporting on discipline, right? And those
10 cases are the subjects of injunction. So, we're not
11 hiding behind 50A. we're trying to interpret it,
12 both you know, based on the recommendations of the
13 independent review panel, based on what I think we
14 both agree with, but we are being enjoined, and we
15 are trying to push it, you know, where we can.

16 COUNCIL MEMBER COHEN: Yes, but in
17 response to the question from the Speaker, you
18 thought it might be analogous, the TRO, but we-- and
19 stating that as a reason not to support this
20 legislation, but we don't know if it's analogous.
21 Let a judge decide. Why--

22 EXECUTIVE DIRECTOR CHERNYAVSKY:
23 [interposing] Well, what--

24 COUNCIL MEMBER COHEN: is the NYPD
25 deciding that.

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3 EXECUTIVE DIRECTOR CHERNYAVSKY: What I'm
4 saying is those cases are currently before the court.
5 We're not--

6 COUNCIL MEMBER COHEN: [interposing] I
7 know, but they don't apply-- you vocalized an
8 objection to this legislation based on that TRO, but
9 we don't know if that TRO will apply.

10 EXECUTIVE DIRECTOR CHERNYAVSKY: No, I
11 said-- what I said was similar issues are currently
12 before the court, right? And we have court
13 decisions, recent court decisions, cases that are
14 currently before the court, and what I'm saying to
15 the Speaker is that we agree to with the fundamental
16 principle of this bill. If the 50A amendments that
17 we're advocating for actually go into effect, we will
18 be able to produce more than what the bill is asking
19 for. So this isn't an issue of we're trying to not
20 give what the bill is asking for, but we're making
21 logical decisions based on cases that are currently
22 in litigation, where they're going based on recent
23 interpretations of 50A.

24 COUNCIL MEMBER COHEN: Thank-- I
25 appreciate that. Commissioner, I'm very fond of Oleg
despite this interaction, and I-- for just one

3 second, there has been a dialogue between the-- and I
4 know it's off-topic, but I just want to go on the
5 record, a dialogue between the Commissioner and I
6 regarding manpower at the 50th precinct, and I need
7 to follow up on that, because although I'm getting
8 nice letters back, I'm not getting more manpower and
9 I'm very concerned about that. And conditions of the
10 physical plant at the 5-2, that precinct house is
11 holding substantially more officers than it ever
12 held, and the conditions there are really not
13 appropriate. We need some capital work at that
14 station. Thank you, Chair.

15 CHAIRPERSON RICHARDS: Thank you.

16 Miller, then Lancman, then back to Co-chair Lancman.

17 COUNCIL MEMBER MILLER: Thank you,
18 Chairs, and thank you, Commissioner, for coming out.
19 So-- wow. We're here to talk mostly about 50A here,
20 so I want to follow up on what Council Member Cohen
21 was just saying and the Speaker. Is-- in my mind, at
22 the very least, and based on the original kind of
23 execution of 50A in some of the more recent cases
24 that it was more of a matter of interpretation
25 because it appears that the NYPD was applying 50A
differently from other law enforcement agencies

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3 throughout the State of New York. Would you find
4 that to be the case?

5 DEPUTY COMMISSIONER PRUNTY: I'm not
6 aware of different interpretations from other
7 agencies throughout the--

8 COUNCIL MEMBER MILLER: [interposing]
9 Other agencies were asked to and turned over
10 information pertaining to discipline, to your
11 knowledge?

12 DEPUTY COMMISSIONER PRUNTY: Not that I'm
13 aware of. They would also be bound by 50A as well if
14 they're within New York State.

15 COUNCIL MEMBER MILLER: Yeah, but who
16 would-- who would enforce that in the state if an
17 agency was willing to turn over the information and
18 there was no-- there was no descent from officers or
19 those representing the officers?

20 DEPUTY COMMISSIONER PRUNTY: Well, I can
21 tell you with respect to our experience, when we have
22 tried, for example, to release the body-worn camera
23 footage, or with respect to the disciplinary
24 summaries, we've been taken to the court by the PBA.

25 COUNCIL MEMBER MILLER: So, let me ask--
how much-- how much of this, the conversation that

3 we've had this morning around 50A and discipline is
4 actually 50A, and how much is a matter of collective
5 bargaining?

6 DEPUTY COMMISSIONER PRUNTY: I don't
7 think--

8 COUNCIL MEMBER MILLER: [interposing]
9 Specifically as we talk about discipline, and we
10 talked about some of the time frames that were in
11 there, and I know I'm going to put on my Labor former
12 Union President hat, and say that I know that there
13 are provisions that say that certain discipline has
14 to be executed within x amount of time, and that
15 amount of time has been negotiated, unless there is
16 an investigation going on. But some of the cases
17 that we talked about today clearly have exceeded
18 those time periods. Although, I know that every
19 collective bargaining agreement is different, so I'm
20 not going to assume. You did say a year and a half or
21 18 months and something like that. And that's--

22 ASSISTANT CHIEF PONTILLO: Yeah, so I
23 don't think any of what we've discussed today is
24 subject to collective bargaining. I think everything
25 we've been talking about either falls under 50A or
Article 75 which determines the process for

3 administrative trials. The statute of limitations
4 for an administrative proceeding is 18 months. So
5 there's a whole body of law that pertains to civil
6 service and these disciplinary adjudications. There
7 are some nuances in the collective bargaining
8 agreement about representation, but everything we're
9 talking about today has been based upon state or city
10 law.

11 COUNCIL MEMBER MILLER: SO, okay, let's -
12 - that's something else. That's a whole another--
13 without having the agreement in front of me, I
14 certainly couldn't say that. But the panel had
15 concluded that it was unable to properly order
16 discipline outcomes due in part PD's data collection
17 or lack thereof and maintenance. As we move forward--
18 - and I know you said that there is some things that
19 you're putting in place. I looked at some of the 13
20 recommendations, and in that hat I-- half of them I,
21 you know-- they're okay. The other half I just think
22 convolutes the process and undermines the integrity
23 of the workforce that we represent here in the City.
24 And I value civil service and those servants probably
25 more than anyone else, but we're talking about
transparency. We're also talking about-- it was some

3 mention of discipline, and the purpose of discipline
4 is corrective. Without transparency, without all the
5 things that we talked about today, we can't be
6 corrective, and what I see is we're kind of walking
7 it back or kind of justifying the system that we're
8 in. Aside from the recommendations, what do you see
9 possible can be done in order to expedite some of
10 these cases, in order to-- obviously, they're very
11 sensitive, but to maintain public integrity and the
12 character of the Department, what are you doing?
13 What can we do now?

14 FIRST DEPUTY COMMISSIONER TUCKER: Well,
15 I-- listen, what we-- what the-- right now, since
16 we're talking about the panel, we are going to
17 implement the recommendations that they've made, and
18 how we do that remains to be seen in some cases, but
19 there'll be discussions within the implementation
20 group about where we're going and how we're going to
21 get there. That's the plan, and you know, obviously
22 some of the discussions we've had here today, most of
23 the discussion around 50A which is one of the
24 comments that was made by the panel, and the matrix
25 and those sorts of things or issues in DV instances
and cases. Those are some things that are on our

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3 radar and have been on our radar for some time. SO,
4 those discussions will probably get traction faster
5 than some of the other issues, perhaps. But all of
6 it will be part of the implementation landscape as we
7 go forward.

8 COUNCIL MEMBER MILLER: So, in terms of
9 discipline being implemented, have you-- when
10 examining the data, have you applied that data to
11 departments throughout the region? Is there-- and I
12 know that you said that you-- there were some numbers
13 that you quoted, that was quoted, and then there was
14 numbers that were substantiated and unsubstantiated
15 and so forth. Are those consistent with the other
16 departments throughout the New York State region, and
17 are they consistent with other agencies throughout
18 New York City, municipal agencies?

19 FIRST DEPUTY COMMISSIONER TUCKER: Well,
20 no, we haven't looked at discipline except in our own
21 Department with respect to effectiveness.

22 COUNCIL MEMBER MILLER: So, what-- the
23 point I'm getting at, and because some of the
24 infractions whether or not you-- not being truthful
25 under oath and outside activities that may impair you
from doing your job or prevent you from doing your

3 job in a certain way, that happens throughout
4 municipal employment. It happens in other agencies
5 as well. The point is are people being disciplined
6 differently within the-- within NYPD from other
7 municipal agencies or other law enforcement agencies
8 locally.

9 FIRST DEPUTY COMMISSIONER TUCKER: We
10 haven't looked at other law enforcement agencies
11 locally or other city agencies. We are looking at
12 our specific disciplinary process, and we have been
13 since 2014 and we've made adjustments as we've gone
14 along. So it's been a process, and we continue to do
15 that. We're looking at--

16 COUNCIL MEMBER MILLER: [interposing] So,
17 in--

18 FIRST DEPUTY COMMISSIONER TUCKER:
19 [interposing] We-- no. what we're doing is looking at
20 the conduct of our officers and we-- and the conduct
21 of our officers are driving what we're doing and the
22 outcomes of the discipline and how officers respond
23 to it, all of those things within the sphere of the
24 NYPD.

25 COUNCIL MEMBER MILLER: So, I-- so I
think you said and I think we all agree that the

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3 purpose of discipline is corrective, and that we--

4 you guys are operating with the system of progressive

5 discipline, and I recently read that there was an

6 officer who had not just multiple complaints,

7 multiple substantiated complaints and a few

8 settlements and was recently in the paper. And how

9 does that happen?

10 FIRST DEPUTY COMMISSIONER TUCKER: I'm

11 not sure--

12 COUNCIL MEMBER MILLER: [interposing] If

13 there-- if discipline-- if this is progressive

14 discipline, there like instances person was charged;

15 person was disciplined. How does it continue to

16 happen?

17 FIRST DEPUTY COMMISSIONER TUCKER: Well,

18 I'm not sure what case you're talking about, so it's

19 a little bit too vague to-- I can't comment on that

20 example.

21 COUNCIL MEMBER MILLER: So, yeah, I was

22 talking about something that was recently. In fact,

23 it was in this week's-- one of the publications this

24 week and they talked about that. But again, so in a

25 case of a person-- when we talk about discipline and

what that may end up being, is there a case where

3 someone-- how often is someone assigned to desk
4 duties because of aggression or for whatever reason
5 not being-- other than physical-- not being able to
6 perform duties. Is there a time when folks are-- how
7 often are people placed on desk duty after discipline
8 not during?

8 ASSISTANT CHIEF PONTILLO: You raise a
9 couple of issues here. So, let me take a step back
10 and talk about. The beginning of a disciplinary
11 process which would be some act that maybe misconduct
12 or corruption or some allegation or some triggering
13 event that then prompts a response and an
14 investigation, and it could be by an executive. It
15 could be a captain. It could be internal affairs.
16 It could be SCR. Those investigations will run their
17 course. Depending upon the nature of the event, the
18 severity of the event, the likelihood or the
19 potential for disciplinary action being imposed even
20 at that early stage, sometimes summary action will be
21 taken. So, immediately upon the event, a police
22 officer may be suspended or put on modified data
23 where we take their firearms, we restrict what they
24 can do, and reassign them.

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3 COUNCIL MEMBER MILLER: As a matter of
4 discipline, is anyone then placed on restricted duty?

5 ASSISTANT CHIEF PONTILLO: Not re--
6 restricted is for a medical reason. So, yes, often
7 times as a penalty depending upon the facts and
8 circumstances and the nature and the severity of the
9 offense, as well as any aggregating and miti--
10 aggravating [sic] and mitigating factors, the final
11 penalty may include additional suspension days,
12 additional vacation days, change in duty status,
13 dismissal probation and separation or forced
14 separation.

15 COUNCIL MEMBER MILLER: So, in the case
16 that I mentioned that you weren't familiar with, but
17 there were multiple potentially multiple light
18 infractions. That person could potentially as a
19 matter of discipline from those prior incidents could
20 have been placed on some form of modified--

21 ASSISTANT CHIEF PONTILLO: It could have
22 been, but we'd have to look at the fact, the
23 particular case, the timeline of events, what the
24 misconduct was, when it occurred. There are a lot of
25 things we'd have to look at. So, we're kind of

3 speaking in the abstract because we don't have the
4 details on the matter you're speaking of.

5 COUNCIL MEMBER MILLER: Alright, thank
6 you so much and we look forward to the implementation
7 of the panel's suggestions and look forward to
8 working with you on that. Thank you. Thank you,
9 Chairs.

10 CHAIRPERSON RICHARDS: Back to Co-Chair
11 Lancman, and I'm going to dig up that case.

12 COUNCIL MEMBER LANCMAN: Thank you. Now
13 let's take a look at the other bills that I am
14 sponsoring with Council Member Richards. These are
15 the bills requiring reporting and disclosure on three
16 different offenses, resisting arrest, assault in the
17 second degree, and obstructing governmental
18 administration. These are, I think, 3707 and 3708.
19 I'm a little confused by the Department's response
20 and the basis for its objection to these bills.
21 First, the foundation for this legislation is the
22 fact that these charges, resisting arrest, the
23 obstruction of government administration, an assault
24 in the second degree, which section three which leads
25 to assault in the second degree when you're
assaulting a police officer. These are unfortunately

3 very commonly used as a catch-all when there is no
4 other basis to arrest someone, and the circumstance
5 arises where an officer or officers feel like someone
6 ticked them off or mouthed off to them, or needs to
7 be told a lesson, and very often these offenses end
8 up not being charged or ultimately prosecuted by the
9 District Attorney's office. Now, look, and in fact,
10 resisting arrest is the 15th most commonly arrested
11 misdemeanor in the City of New York. I think this is
12 for last year. Obstructing government administration
13 is the second-- is the 17th most commonly arrested
14 misdemeanor. The data we have for assault, too, is
15 not limited just to assaults on police officers. But
16 it is the most commonly arrested felony in New York
17 City and the fourth most common arrest overall. So,
18 your objection to these reporting bills, as you
19 stated, "We do not oppose the reporting of broad
20 categories relating to these crimes, and we would be
21 unable to provide certain detailed data points
22 required by this bill." And look, if I wasn't clear,
23 what we want is the NYPD to justify these arrests so
24 that they are not being used as catch-alls just to
25 harass people and let folks know on the street who's
boss.

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EXECUTIVE DIRECTOR CHERNYAVSKY: Yeah, so

3 I'll--

4 CHAIRPERSON LANCMAN: [interposing] I want

5 to--

6 EXECUTIVE DIRECTOR CHERNYAVSKY: I guess

7 I'll start--

8 CHAIRPERSON LANCMAN: [interposing] I

9 want to just--

10 EXECUTIVE DIRECTOR CHERNYAVSKY:

11 [interposing] But I think--

12 CHAIRPERSON LANCMAN: [interposing] read

13 your--

14 EXECUTIVE DIRECTOR CHERNYAVSKY: I think

15 I just want to log in our objection to that

16 characterization.

17 CHAIRPERSON LANCMAN: That's noted. We

18 do not-- this is your testimony: "We do not oppose

19 the reporting of broad categories relating to these

20 crimes, but we would be unable to provide certain

21 detailed data points required by this bill. For

22 example, the Department can report the number of

23 arrests for these charges, disaggregated by borough,

24 precinct, age, race, and gender of the arrestee.

25 However, we cannot capture data on the specific

3 underlying charge an arrestee resisted, the
4 relationship of an arrestee charged with a resisting
5 arrest to another individual whose arrest they
6 resisted, the nature of injuries in a felony assault
7 case, whether the District Attorney declined to
8 prosecute a case, the entity which operates the
9 building where the arrest transpired, the ethnic
10 origin or specific gender identity of the arrestee,
11 or the specific government function obstructed." I
12 want to focus on three of these, because I can't
13 understand how it's possible that you cannot collect
14 this data. So, first, "However, we cannot capture
15 data on the specific underlying charge that an
16 arrestee resisted." Now, I don't understand how
17 that's not possible, because I don't understand how
18 you'd be able to charge and prosecute a case for
19 resisting arrest without articulating some basis for
20 the arrest in the first place.

21 EXECUTIVE DIRECTOR CHERNYAVSKY: Sure, so
22 maybe it's just the lack of clarity in the way you've
23 drafted this provision. What this is basically
24 asking for is the charge for which the person
25 arrested was charged with resisting. So, let's
assume you arrest a person under multiple charges.

3 How would an officer determine which particular
4 charge that individual resisted? What we're looking
5 to clarify is maybe righted in a way that is
6 reportable, we're certainly willing to work with you
7 to get there.

8 CHAIRPERSON LANCMAN: Okay, well I
9 understand. We wouldn't expect an officer to be
10 mind-reader. If someone is charged with four
11 different underlying offenses, to be able to
12 determine which one of those was the one that the
13 person who was arrested for resisting arrest was
14 resisting over, but maybe they'd be able to just
15 identify what all four of the underlying charges.
16 That's the kind of--

17 EXECUTIVE DIRECTOR CHERNYAVSKY:
18 [interposing] I mean, but that's--

19 CHAIRPERSON LANCMAN: [interposing]
20 confusion that you're concerned about?

21 EXECUTIVE DIRECTOR CHERNYAVSKY: That's
22 the kind of confusion.

23 CHAIRPERSON LANCMAN: Okay.

24 EXECUTIVE DIRECTOR CHERNYAVSKY: I'm glad
25 that you agree with me on the confusion. I think we

3 can work past it and figure out a meaningful way to
4 give you meaningful data.

5 CHAIRPERSON LANCMAN: Okay, well, we'll
6 work on that. The second one: "However, we cannot
7 capture data on the nature of injuries in a felony
8 assault case." As you know, assault in the second
9 degree, subsection three, with intent to prevent-- a
10 person is guilty of assault in the second degree when
11 with attempt to prevent a peace officer or a police
12 officer of performing a lawful duty, he or she causes
13 physical injury to such peace officer/police officer.
14 So, I don't know how you would be able to charge, let
15 alone prosecute this offense without being able to
16 articulate what is the physical injury that's a basic
17 element of the offense. So why would the Police
18 Department not be able to provide us data on the
19 physical injury that when it is charged-- arresting
20 someone for assault in the second degree?

21 EXECUTIVE DIRECTOR CHERNYAVSKY: I think
22 the way that it can be done again, drafting I think
23 the way it can be done is to capture broad category
24 of injuries in the way that we report on use of force
25 and pursuant to a council bill, and we would be able
to link the offense charged with a category of

3 injury. That's what we do now with our use of force
4 reporting. I believe that's something we can do here,
5 but however, the way it's written again, it would
6 seem that we would list the individual injuries. We
7 would disaggregate those injuries by precinct. If
8 there's a particular precinct that has only one such
9 incident, are we singling out an officer when talking
10 about their medical conditions? I don't know. I
11 think there's a way to achieve the goal of that
12 provision, but not as it's written.

13 CHAIRPERSON LANCMAN: Okay, just for our
14 edification, what are the-- what are some of the cat-
15 - the broad categories of injuries that are
16 reportable.

17 EXECUTIVE DIRECTOR CHERNYAVSKY: I think
18 you were talking use of force reporting?

19 CHAIRPERSON LANCMAN: You rose [sic]--

20 EXECUTIVE DIRECTOR CHERNYAVSKY:
21 [interposing] Yeah, I think what it has is physical
22 injuries. I may be muddying the words a little. I
23 think it has serious physical injury, and there's a
24 third category as well that I can't--
25

3 CHAIRPERSON LANCMAN: [interposing] Well,
4 if that's what you're contemplating, I don't think
5 that's going to cut it, because--

6 EXECUTIVE DIRECTOR CHERNYAVSKY:
7 [interposing] Well, like I said, we don't normally
8 negotiate bills at the table. I raise the objection.
9 I understand what you're trying to get to now, and I
10 think we can work through it.

11 CHAIRPERSON LANCMAN: Okay, well that's
12 good to hear. And then the third one is in relation
13 to the charge of obstructing government
14 administration in second degree: "However, we cannot
15 capture data on specific government function
16 obstructed." Again, I don't know how you'd be able
17 to charge someone, let alone prosecute them, let
18 alone convict someone for obstructing governmental
19 administration without being able to articulate the
20 government function that they obstructed.

21 EXECUTIVE DIRECTOR CHERNYAVSKY: Well,
22 the government function that the individual
23 obstructed is certainly articulated. It's
24 articulated in the narrative portion of an arrest
25 report, capturing the data. Obviously, I would hope
you know, through all the bills we've negotiated,

3 that is not a meaningful way to capture data is to do
4 word searches of a narrative. It may not capture all
5 of the data accurately, because officers will
6 describe things in different ways using different
7 words. There is no system now, a check-box-type
8 system, the way that race, gender, age may be
9 captured that could let us collect the data in the
10 aggregate and put it into buckets. That doesn't
11 exist for OGA. That's more of a descriptive
12 narrative on the arrest report, so that's the
13 challenge with--

14 CHAIRPERSON LANCMAN: [interposing] Well,
15 I understand the challenge. Like, there's no box to
16 check currently or there's no field or whatever, but
17 there's no reason that you couldn't set one up so
18 that if there was a law requiring you to report, for
19 an officer to report, what government function is
20 being obstructed by the person that you're arresting
21 for obstructing a government function. It doesn't
22 seem like it's impossible to set up a system for that
23 data to be articulated and collected in a way that
24 you can deliver to us.

3 EXECUTIVE DIRECTOR CHERNYAVSKY: It's

4 certainly not impossible, and if the law is a funded
5 law that would--

6 CHAIRPERSON LANCMAN: [interposing] Say
7 that again.

8 EXECUTIVE DIRECTOR CHERNYAVSKY: I don't
9 think it's impossible, and if the law is a funded law
10 that could foresee the changes that need to be made
11 to computer systems, I think that's certainly
12 something we could talk about.

13 CHAIRPERSON LANCMAN: Well, we could talk
14 about that in the budget hearing I'm sure, but like
15 requiring the PD to report on the basis for the
16 arrest that is making, I certainly right now am not
17 of the mind that well, you'll do that but only if we
18 provide you extra funding for that. This seems like
19 a basic responsibility, and with all of our reporting
20 bills there's not then an additional requirement that
21 the Council fund-- the specific reporting requirement
22 that we're opposing.

23 EXECUTIVE DIRECTOR CHERNYAVSKY: That's
24 actually-- that's not true. So there are reporting
25 bills that we work with council on that will have us
report on data that is captured by our current

3 systems, and we never raise objections to it, nor do
4 we attach any price tags to it, but there were
5 reporting bills that the Council worked on, for
6 example, the Criminal Justice Reform Act with the
7 civil summonses that required significant changes to
8 systems that was in fact funded. So it's a
9 difference of what kind of reporting bills are being
10 introduced. Some of them can be done without cost.
11 Some of them have a cost attached.

12 CHAIRPERSON LANCMAN: Are you concerned
13 that the Department doesn't readily have knowledge of
14 what government functions were obstructed by the
15 1,033 people who were arrested for obstructing
16 government function last year?

17 EXECUTIVE DIRECTOR CHERNYAVSKY: I don't
18 think that's accurate. I mean, as I just testified
19 that an officer charging obstructing governmental
20 administration or for that matter any of the other
21 two charges needs to articulate on the arrest report
22 and to the prosecutor the basis of that charge. So,
23 of course, we know it's being done. There are
24 safeguards in place through District Attorneys that
25 would either pursue the case or not pursue the case,
but it's being done. The issue is the way that you

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3 would have us report or collect the data. It's-- I
4 can run a word search for you. It's going to give
5 you inaccurate data.

6 CHAIRPERSON LANCMAN: It's going to give
7 inaccurate data.

8 EXECUTIVE DIRECTOR CHERNYAVSKY:
9 Inaccurate data.

10 CHAIRPERSON LANCMAN: So, if that's how
11 you would collect the data for me, and it would be
12 inaccurate, is there some different way that you're
13 collecting the data for yourselves that would be
14 accurate? Because otherwise you're telling me that
15 the data that you would collect to know why are all
16 these arrests being made and are they good arrests is
17 faulty. Do you have currently a mechanism?

18 EXECUTIVE DIRECTOR CHERNYAVSKY: Well, I
19 mean it's-- of course, there's a mechanism. There's
20 integrity, there's integrity control measures in
21 place in the Department that reviews arrests that
22 follows these things that we can pull up arrests by
23 officer, by charge, and review the arrest report,
24 review the documents in that-- in that review. But
25 what you're asking for is an aggregate data set
relative to particular charges, and then you're

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3 looking to go even further and disaggregated by the
4 basis of that particular charge, which I understand
5 what you're trying to do, but what I'm telling you is
6 the system doesn't aggregate numbers in that way. It
7 enables us to pull up the arrest, to review the
8 arrest, to review the narrative, to do integrity
9 control, but it doesn't do what your-- what you would
10 want it to do based on the language of this bill.

11 COUNCIL MEMBER LANCMAN: And then lastly,
12 just a different topic. I think intro 1105, which is
13 the one-- which has to do with false official
14 statements. I know that this was maybe touched on
15 earlier, but why not have the CCRB review those
16 allegations?

17 EXECUTIVE DIRECTOR CHERNYAVSKY: I'm
18 confused. I'm-- can you--

19 CHAIRPERSON LANCMAN: [interposing] Let
20 me-- right now, the C-- if someone is, if an officer
21 testified falsely through the CCRB, right, where is
22 that adjudicated? Where would there be discipline
23 for that false testimony?

24 EXECUTIVE DIRECTOR CHERNYAVSKY: So, and
25 I'll let Chief Pontillo add to this, but if we--
currently, the way the system works is that if we

3 have ongoing relationships with the five DAs, the
4 Special Narcotics Prosecutor, two US attorneys, we
5 are in regular conversation with them. We've
6 appointed an adverse credibility committee within the
7 Department that reaches out to these offices,
8 collects adverse credibility findings. Now that
9 includes findings by the prosecutors themselves or
10 findings in court, you know, and they notify of these
11 things. The committee reviews these findings, pulls
12 the transcripts from these events, from the
13 testimony, and then makes recommendations from that.
14 One of the recommendations could be if it's deemed an
15 intentional false statement, one of the options could
16 be to refer it to internal affairs for an
17 investigation which will ultimately lead to
18 discipline and could potentially include perjury
19 criminal charges.

20 CHAIRPERSON LANCMAN: But how would you
21 feel--

22 EXECUTIVE DIRECTOR CHERNYAVSKY:
23 [interposing] Others would be that there could be a
24 simple mistake in the testimony, a lack of
25 preparedness by the officer. There would be training

3 involved there. In some cases there may be
4 reassignment of the-- or a suggestion.

5 CHAIRPERSON LANCMAN: Why not let the
6 CCRB have jurisdiction over false statement cases?

7 ASSISTANT CHIEF PONTILLO: I think the
8 Internal Affairs Bureau has a lot of experience with
9 these cases and has done a very good job with them.
10 Like I stated earlier, in 2018, we terminated and/or
11 separated 45 members of Department from the NYPD for
12 perjury or false statement cases. There's also a
13 criminal component to this. So, if it's a false
14 statement that rises to the level of perjury,
15 misstatement at a sworn testimony or sworn hearing or
16 signing an affidavit that is factually inaccurate,
17 Internal Affairs is going to work with the prosecutor
18 that has jurisdiction over that matter. So the first
19 part of that case will be a criminal investigation,
20 and they will look to see if a criminal charge can be
21 sustained. If Internal Affairs, working with the
22 prosecutor, decides that there is criminality and the
23 prosecutor is going to prosecute the case, then it's
24 a criminal case. It will run its course, and they
25 will bring it potentially to trial and it'll be
resolved. For those cases that the DA declines or do

3 not rise to the level of perjury or false official
4 statement, but it's some other false or misleading
5 statement, then Internal Affairs has demonstrated
6 they're very capable at investigating those cases
7 thoroughly and bringing them to a resolution where
8 there is pen-- where there's discipline.

9 CHAIRPERSON LANCMAN: Well, without
10 specifically impugning the ability of Internal
11 Affairs to conduct investigations, you understand
12 that the reason there is a CCRB is because of the
13 public's-- I won't say lack of confidence--

14 ASSISTANT CHIEF PONTILLO: [interposing]
15 That's a--

16 CHAIRPERSON LANCMAN: desire for more
17 confidence that comes from a somewhat independent
18 body conducting certain investigations.

19 ASSISTANT CHIEF PONTILLO: Sure, but CCRB
20 has jurisdiction over certain matters that are
21 defined, and other matters are handled by the
22 Internal Affairs Bureau or even potentially other
23 outside bodies, especially when talking in a matter
24 which is criminal or potentially criminal and is
25 going to being with a criminal investigation and
possibly criminal proceeding, then Internal Affairs

3 is best situated to investigate those criminal cases
4 and work with a prosecutor to bring prosecution.

5 CHAIRPERSON LANCMAN: Alright, last one,
6 just going back to the other bills. One of the things
7 that in your testimony you say you cannot capture
8 data on when the District Attorneys decline to
9 prosecute these particular offenses. Does the NYPD
10 not review which charges it brings or arrests people
11 for that the District Attorney is ultimately declined
12 to prosecute. Because that seems to me like
13 something the Department should pay attention to and
14 should be concerned about if you see for certain
15 kinds of charges that in a certain precinct or
16 overall, a lot of those are being dismissed. They
17 may be dismissed because the District Attorney
18 doesn't believe the validity or the merit of the
19 underlying case which would ring one kind of alarm
20 bell. It might be that the officers are not writing
21 out their reports correctly or articulating their
22 reasons for such and such an arrest, correct? Even
23 though there is a good reason. Is no one at the NYPD
24 monitoring the-- for want of a better term, the
25 declination rates for different offenses?

3 EXECUTIVE DIRECTOR CHERNYAVSKY: Sure. I

4 mean, the rates and cases are monitored. I think in
5 the way you envision it again in the bill, this is
6 District Attorney data. You're asking us to report
7 on another agency's data set. I've noticed that there
8 was another bill being heard today that has to do
9 with reporting by the District Attorney's offices, if
10 that's something they're going to disaggregate in
11 their reporting.

12 CHAIRPERSON LANCMAN: Do you- does the
13 NYPD have the information own in its possession, not
14 necessarily at this table, but somewhere One Police
15 Plaza on the number of arrests for obstructing the
16 administration of justice or arrest for resisting
17 arrest that the District Attorney declined to
18 prosecute?

19 ASSISTANT CHIEF PONTILLO: Yes, so we
20 have access near real-time to every declined
21 prosecution case. So all those criteria that you
22 described, like the reasons why the case was
23 declined, and the overwhelming majority are
24 prosecutorial discretion. The next biggest category
25 is complainant not available and then there were some
paperwork ones. But it also includes things like

3 office failed to appear, officer not ready,
4 insufficient, you know, legal basis for stop, or no
5 probable cause. We get those. We examine those
6 pretty much on a monthly basis and we conduct
7 investigations where we see there are repeat DPs or
8 one of the categories is a category that raises
9 questions about the conduct of the officer. So, we
10 get that, but I think what we're talking about here
11 and the point Oleg is making is that that's data feed
12 that we get from OCA, and we're talking about
13 disparate systems. So the problem is linking up data
14 from two entirely separate systems to produce the
15 aggregate data you're looking for. So, it's not a
16 question of not having the data. It's not having
17 data in a format that's readily capable of generating
18 reports on a timely basis. What--

19 CHAIRPERSON LANCMAN: [interposing] In
20 whatever format you have it currently, can you
21 provide that data to us for the last year for those
22 three offenses?

23 EXECUTIVE DIRECTOR CHERNYAVSKY: Well, I
24 think-- Council Member, I think it-- you have to
25 appreciate the fact that this is not NYPD data. The
data in the manner that we get it needs to be recog--

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3 CHAIRPERSON LANCMAN: [interposing] He
4 says that you have data.

5 EXECUTIVE DIRECTOR CHERNYAVSKY: We have
6 data--

7 CHAIRPERSON LANCMAN: [interposing]
8 Whatever format you have it in,--

9 EXECUTIVE DIRECTOR CHERNYAVSKY:
10 [interposing] But that's--

11 CHAIRPERSON LANCMAN: [interposing] I'd
12 like to have that data.

13 EXECUTIVE DIRECTOR CHERNYAVSKY: That's
14 not how the Department reports data. The Department
15 reports its own data that we can stand behind and we
16 can verify. This is data from another agency that
17 you can readily ask the other agency--

18 CHAIRPERSON LANCMAN: [interposing] But
19 I'm asking you. It's data that you have, correct,
20 sir? It's data that you have. Can I have the data
21 that you have? That's my question.

22 EXECUTIVE DIRECTOR CHERNYAVSKY: Council
23 Member, you want us to post a public report--

24 CHAIRPERSON LANCMAN: [interposing] No,
25 no, I'm not asking you to post anything right now.

3 That's-- I'm not talking about the bill. I'm talking
4 about--

5 EXECUTIVE DIRECTOR CHERNYAVSKY:

6 [interposing] Well, I thought that's what we were
7 talking about.

8 CHAIRPERSON LANCMAN: you've got data that
9 I'd like to see, and I believe that that data would
10 help inform my thinking about how this bill should be
11 negotiated, presented, and ultimately what the law
12 should be. You've got data. I'd like to see that
13 data. That's all. Can I have that data?

14 EXECUTIVE DIRECTOR CHERNYAVSKY: We'll be
15 in contact with your office about it.

16 CHAIRPERSON LANCMAN: Thank you.

17 CHAIRPERSON RICHARDS: Thank you. And I
18 just wanted to-- we're going to begin to close out.
19 I just want to go back to the false statements again.
20 So, the panel found that the Department routinely
21 under prosecutes false statement cases by not
22 charging these cases under a provision of the Patrol
23 Guide that has a presumptive termination penalty. It
24 recommended that the Department be more aggressive in
25 investigating officers' claims of mistaken statements
and forced determination penalty in all cases in

3 which an officer has been found guilty of making a
4 materially false statement and required a commission
5 to explain any deviation from that policy. So once
6 again, you know, the panel-- certainly it's not me
7 saying this-- thought that you were undercharging.
8 Can you speak a little bit to why that is occurring?

9 DEPUTY COMMISSIONER PRUNTY: I think one
10 of the things that even the panel recognized in its
11 report is there's a specific provision in the Patrol
12 Guide, I think it's 20308, and that's the one that
13 has in our Patrol Guide a "Presumptive dismissal
14 policy absent exceptional circumstances to be found
15 by the Police Commissioner." That's a pretty narrow
16 provision. It applies in situations in which there
17 is an intentional falsehood by the officer. It is
18 about a material fact, and it is in the course of an
19 official proceeding, and I think the panel themselves
20 recognized in their report that there's some
21 difficulties with the way that particular provision
22 is structured, that it's not altogether clear and
23 sometimes can lead to the difficulty in whether or
24 not it's charged. For example, I think one of the
25 things that the panel pointed out was, you know, the
provision says "material" but material to what? That

3 was the panel's analysis. It's unclear. And the
4 panel also recognized that there can be often-- it's
5 difficult sometimes to prove the operations of an
6 officer's mind when he has written a statement or
7 made a statement, and that's one of the other
8 elements of that, and they recognize that sometimes
9 that's difficult to prove. So I think that's-- I
10 think the panel themselves analyzed at least in that
11 regard as to why that particular provision hasn't
12 been-- hasn't been prosecuted as much as others,
13 because it's a difficult provision.

14 CHAIRPERSON RICHARDS: Right, but they
15 also--

16 DEPUTY COMMISSIONER PRUNTY: [interposing]
17 Having said that again, the panel also laid out a
18 series of recommendations for us in order to improve
19 in this area, and as we've said many times today, the
20 Police Commissioner has embraced those
21 recommendations, and once the implementation group
22 gets underway, those are the specific things we're
23 going to take a look at and implement.

24 CHAIRPERSON RICHARDS: Right. And he
25 also said more aggressively investigate false
statements. So I'm assuming-- I'm not saying it

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3 wasn't taken serious, but that we need to do a little
4 bit more work there to protect the integrity of the
5 Department. How many officers have been terminated
6 over false statements?

7 DEPUTY COMMISSIONER PRUNTY: You have
8 that now?

9 ASSISTANT CHIEF PONTILLO: In 2018 it was
10 45.

11 CHAIRPERSON RICHARDS: So, 45, okay, in
12 2018 over false statements.

13 ASSISTANT CHIEF PONTILLO: Or perjury.

14 CHAIRPERSON RICHARDS: Or perjury.

15 ASSISTANT CHIEF PONTILLO: Either
16 terminated or separated as a result of a plea
17 negotiation.

18 CHAIRPERSON RICHARDS: Okay, and then
19 just last point, I know they also recommended the
20 Department should upgrade and integrate its case
21 management system because it seems like IAB has their
22 own information, DAO has their own information, and
23 we need to integrate that. Now they also talked
24 about access to this system and also an audit or
25 periodic auditors of these specific disciplinary
process in the system. Who else would have access?

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3 So, an independent auditor, what does that look like?

4 Would the specific agencies--

5 FIRST DEPUTY COMMISSIONER TUCKER:

6 [interposing] We--

7 CHAIRPERSON RICHARDS: [interposing] that,

8 that--

9 FIRST DEPUTY COMMISSIONER TUCKER: We

10 don't know.

11 CHAIRPERSON RICHARDS: Say it again.

12 FIRST DEPUTY COMMISSIONER TUCKER: I

13 mean, we don't know yet. I mean, that'll be part of

14 our discussion. I mean, that's-- we've been-- we've

15 had--

16 CHAIRPERSON RICHARDS: [interposing] But

17 50A wouldn't preclude DOI, the IG, CCRB from having

18 access to the case management system and the

19 disciplinary audience? Would that preclude them

20 from-- exclude them from having access to these

21 things? Or are you considering-- would you consider

22 also ensuring that those agencies have access as

23 well?

24 DEPUTY COMMISSIONER PRUNTY: Well, I

25 think some of the agencies that you mentioned have a

3 statutory oversight obligation which we comply with
4 routinely.

5 CHAIRPERSON RICHARDS: Okay.

6 FIRST DEPUTY COMMISSIONER TUCKER: This
7 might make it more efficient, I mean, depending on--

8 CHAIRPERSON RICHARDS: [interposing]
9 Right.

10 FIRST DEPUTY COMMISSIONER TUCKER: the
11 system they set up.

12 CHAIRPERSON RICHARDS: But they would--
13 as you develop, you're going to develop this case
14 management system. I just want to ensure that there
15 are more eyes and ears specifically here. Not saying
16 that we don't trust you to be accountable and
17 transparent, but the more eyes the better. With that
18 being said, I want to thank you all for coming out.
19 I know this has been a tough discussion but a
20 necessary one. I have the utmost respect for each
21 and every one of you, as you know, but at the end of
22 the day we have an obligation to drive as an
23 oversight body these hard conversations, and at the
24 end of the day, I think we all share the same common
25 goal, right? We want a safe city. we want to ensure
that we have the best officers in the Department, but

3 the only way for us to achieve even more historic
4 record crime lows is to ensure that we have in our
5 building to trust with local communities, and the
6 only way to do that is to ensure that we have the
7 best of the best out there serving our communities.
8 Once again, this is not an indictment on the entire
9 Department. There are small minute of people in the
10 Department who are getting away with all sorts of
11 infractions, and that leads to mistrust with the
12 community, but furthermore, as a neighbor to Shawn
13 Bell [sp?], I lived across the street from him. You
14 look at so many different cases, the Eric Garner
15 cases-- we want to avoid having families having to
16 come before this body to testify about a lack of
17 transparency and accountability in the Department.
18 And lastly, I think the most important thing is that
19 we don't want to see community members harmed. This
20 is just as much about the safety of officers, but
21 more importantly, and just as important I would argue
22 the safety of community and community members. And I
23 think sometimes the Department gets lost. I
24 understand you have an obligation to protect
25 officers, but I also urge you to look at it from the

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3 civilians' perspective. If we do that, we will move
4 mountains in this city,--

5 FIRST DEPUTY COMMISSIONER TUCKER:

6 [interposing] Well--

7 CHAIRPERSON RICHARDS: but once again, you
8 know, when you turn on the news and you see an
9 officer still getting paid after misconduct in which
10 you know that if you were in any other job you would
11 be fired for, it doesn't say that we are building a
12 true system that ensures that the police are held
13 just as accountable as the public is held accountable
14 for their actions. There cannot be two laws, laws
15 for the Police Department and then a law for the
16 public. I think we all have an obligation to adhere
17 to one law, and that law should apply to everyone
18 evenly. So if you're out here doing a DUI, listen, I
19 mean as a politician I would be put on the front of
20 every paper and probably be told to resign. Same
21 should go for police officers.

22 FIRST DEPUTY COMMISSIONER TUCKER: Well,

23 you know,--

24 CHAIRPERSON RICHARDS: [interposing] There
25 should be no distinction between the two. We all are
public servants. We all take an oath of office, and

3 the public expects us to carry ourselves with
4 professionalism, with courtesy, respect, and like I
5 said, large majority of the Department, probably 95
6 percent of the Department, carries themselves in that
7 way. The problem is when we're shielding that five
8 percent. That five percent is out there running
9 amuck, and we have to hold those individuals
10 accountable so that we don't have to have victims of
11 police violence in the future. So thank you for
12 coming today. I'll allow you to give a closing
13 statement, but--

14 FIRST DEPUTY COMMISSIONER TUCKER:

15 [interposing] Not really, I just--

16 CHAIRPERSON RICHARDS: [interposing] I

17 want to thank you. I want to thank you and I want to
18 thank the Police Commissioner because he's done some
19 things in my opinion that are very tough that other
20 commissioners would have not nearly gone towards.
21 But I want to acknowledged that and thank him for
22 doing that, but also say that we're not going to stop
23 at driving the conversation around accountability and
24 transparency in this body.

25 FIRST DEPUTY COMMISSIONER TUCKER: Well,

you know, I just-- all I would say is that we do that

3 in the context of 50A, figure out how we strike that
4 balance, but also I would just take exception to your
5 last comment about-- suggesting that there is some
6 sort of widespread people running amuck in the
7 Department.

8 CHAIRPERSON RICHARDS: I didn't say
9 widely. I said five percent of those individuals. I
10 just--

11 FIRST DEPUTY COMMISSIONER TUCKER:
12 [interposing] Well, but you said running amuck, you
13 know, which suggests that--

14 CHAIRPERSON RICHARDS: [interposing] There
15 are some.

16 FIRST DEPUTY COMMISSIONER TUCKER:
17 somehow this is conduct that we don't discipline
18 people for, and that's not the case. And I think you
19 also discount-- if you read my testimony and you get
20 a sense of what we've done and why we've done it, and
21 it's all been for the purpose of rebuilding trust
22 with communities. And I would also disagree that
23 there's a majority of people out there who think that
24 the police are not doing their jobs. That's--
25

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CHAIRPERSON RICHARDS: [interposing] I

3 just want to correct you. I did not say that. I said
4 over-- we believe 95 percent of the Department--

5 FIRST DEPUTY COMMISSIONER TUCKER:

6 [interposing] Well, 95 percent--

7 CHAIRPERSON RICHARDS: So I just wanted
8 to put that on the record. This is doing a great
9 job, but that five percent--

10 FIRST DEPUTY COMMISSIONER TUCKER:

11 [interposing] Five percent of--

12 CHAIRPERSON RICHARDS: [interposing] that
13 are out there running--

14 FIRST DEPUTY COMMISSIONER TUCKER:

15 [interposing] 55,000 or 36,000 it's a big number.

16 CHAIRPERSON RICHARDS: amuck, you know.

17 FIRST DEPUTY COMMISSIONER TUCKER: I'm
18 not sure that that's a case. That's all. I just want
19 to be clear about that.

20 CHAIRPERSON RICHARDS: We can disagree on
21 that one.

22 FIRST DEPUTY COMMISSIONER TUCKER:

23 Absolutely.

24 CHAIRPERSON RICHARDS: That's okay. I'm
25 going to just ask if the panel can stay just to hear

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3 the first panel. We would really deeply appreciate
4 that.

5 FIRST DEPUTY COMMISSIONER TUCKER:

6 [interposing] No, no, no, we can't, man. We got--
7 we--

8 CHAIRPERSON RICHARDS: [interposing] If

9 the panel,--

10 FIRST DEPUTY COMMISSIONER TUCKER:

11 [interposing] It is two o'clock.

12 CHAIRPERSON RICHARDS: if you can stay

13 just to hear the first panel, that would be deeply
14 appreciated. Eric Vassal [sp?], Victoria Davis--

15 FIRST DEPUTY COMMISSIONER TUCKER:

16 [interposing] We'll leave someone behind, though.

17 Alright? But we've got to--

18 CHAIRPERSON RICHARDS: [interposing] Can

19 someone from the panel remain?

20 FIRST DEPUTY COMMISSIONER TUCKER: No.

21 Oleg, can you stay?

22 CHAIRPERSON RICHARDS: Alright, so I'm

23 going to call the first panel: Constance Malcolm

24 [sp?], Victoria Davis, Eric Vassal [sp?]. Alright,

25 and we'll just ask you to state your names for the

record, and then we're going to put-- and so state

3 your name for the record, then you may begin your
4 testimony.

5 VICTORIA DAVIS: Do you want each of us
6 to?

7 CHAIRPERSON RICHARDS: I'm sorry, it's
8 your first time. So you'll just press the button.
9 You'll say your name for the record.

10 VICTORIA DAVIS: Yeah, my name is Eric
11 Vassal.

12 CHAIRPERSON RICHARDS: And then you
13 present your testimony or whatever you want to say.

14 VICTORIA DAVIS: I'm going to go first.

15 CHAIRPERSON RICHARDS: So who-- you're
16 going to go first.

17 VICTORIA DAVIS: Yes.

18 CHAIRPERSON RICHARDS: Okay, so you can
19 go first.

20 VICTORIA DAVIS: And excuse me for my
21 voice. I have like a slight cold.

22 CHAIRPERSON RICHARDS: I have a cold,
23 too.

24 VICTORIA DAVIS: I do want to start by
25 thanking Speaker Johnson for the invitation to come

3 here and Council Member Richards for allowing our
4 testimony today. I just want to start by saying my
5 name is Victoria Davis. I am the sister of Delrawn
6 Small who was killed on July 4th, 2016 by Officer
7 Wayne Isaacs on Atlantic Avenue. Delrawn was driving
8 down the street on Atlantic Avenue when Isaacs was as
9 well. When Isaacs was driving erratically, and he
10 put people in the public in danger as well as Delrawn
11 who was driving at the time with his four-month-old
12 son and 15-year-old stepdaughter who were in the car.
13 At some point they put stop at a stop sign and
14 Delrawn stepped out of the vehicle to speak to Wayne
15 Isaacs and ask him, you know, why is he driving so
16 erratically. He can put his baby and his children in
17 danger. When Isaacs-- Delrawn never actually got to
18 the vehicle, but Wayne Isaacs shot Delrawn three
19 times as soon as Delrawn exited the vehicle and
20 approached it. Wayne Isaacs's testimony during the
21 court hearing was that he shot Delrawn not once, not
22 twice, but three times because he's trained to shoot
23 in spurts of three. Delrawn's case was the first case
24 by the Special-- the AG Special Prosecutor to be
25 taken to trial, and for six weeks, and was unjustly
found-- Wayne Isaacs was unjustly found not guilty as

3 officers usually are. I just wanted to say a little
4 bit about Delrawn before I continue. So the reason
5 why I myself and my brother Victor who is here as
6 well, represent Delrawn is because we do not have a
7 mother. Our mom died when I was nine, Victor was
8 six, and Delrawn was 12. She died from complications
9 of HIV and AIDS, and therefore we lived in the foster
10 care system in various different homes. We
11 ultimately lived in a foster home which then turned
12 into an adopted home that was very abusive and very
13 traumatic. Delrawn spent all of his time trying to
14 find an adult who would remove us from the house, and
15 he was unsuccessful, even until Delrawn died and we
16 were all adults, he felt very guilty that he was
17 unsuccessful at protecting us, although I've
18 explained to him plenty of times it wasn't his fault
19 and he shouldn't have had to carry that burden
20 because he was also a child himself. While Delrawn
21 was our brother, he was like a father-figure to us
22 because he had to protect us, and he did so, and he
23 meant a lot to me. He meant a lot to Victor. While
24 I moved upstate for a period of time to Utica, about
25 four hours away, Delrawn would often come and visit
me, check on me, make sure I was okay. We spent a

3 lot of time on the phone. When I lived in
4 California, Delrawn would call and facetime and speak
5 to my other son and just make sure that we were okay
6 and check in. On the evening that Delrawn was killed
7 by Wayne Isaacs, Delrawn was leaving-- it was July
8 3rd, the evening of July 3rd when he was leaving a
9 family gathering with his-- like I stated, his four-
10 month-old child and his 15-year-old stepdaughter in
11 the car. Even though Delrawn exited the vehicle to
12 ask Wayne Isaacs why he was putting his family in
13 danger by driving so erratically for so long down
14 Atlantic Avenue, I feel and the public feels that
15 Wayne Isaacs had other options. Wayne Isaacs could
16 have not rolled down his window. Wayne Isaacs could
17 have driven off. Wayne Isaacs could have-- this is
18 my brother Victor. When Isaacs could have stated
19 that he was a police officer. And I just wanted to
20 state for the record, Wayne Isaac was off-duty and he
21 was in plain clothes driving in his personal vehicle.
22 I'm sorry, I just-- there's just things I just didn't
23 want forget and I wanted to highlight. When Wayne
24 Isaacs shot Delrawn, Delrawn stumbled from car to
25 car and ultimately fell in between two cars bleeding

3 to death. Wayne Isaacs did nothing to preserve
4 Delrawn's life. He looked at him. He holstered his
5 gun. He then called 9-1-1 complaining of fake
6 injuries and never ever told them that there was a
7 civilian bleeding to death in between two cars.
8 Wayne Isaacs for a week lied about the interaction,
9 even stating that Delrawn attacked him. The public
10 took that narrative, and a week later the video
11 surfaced that showed that Wayne Isaacs lied. During
12 the trial, Wayne-- the defense for Wayne Isaacs
13 continued to state that Wayne Isaacs was a police
14 officer in an attempt to give Wayne Isaacs some
15 leniency, and I believe that's how the jurors saw
16 Wayne Isaacs as a police officer. The defense also
17 mentioned tattoos that Delrawn had and they mentioned
18 his criminal record. Wayne Isaacs knew nothing of
19 this. He knew nothing about Delrawn when Delrawn
20 exited the vehicle, but the way that the defense
21 attorney put Delrawn on trial created a narrative for
22 the jurors that allowed Wayne Isaacs to walk. The
23 AG's office believed so strongly in the case that
24 they were willing to prosecute Wayne Isaacs with
25 murder. Although Wayne Isaacs was not charged with
murder, Wayne Isaacs is a murderer. Wayne Isaacs

3 killed Delrawn in cold blood and he should be held
4 accountable. He has not been held accountable in any
5 way, shape or form. He actually received a higher
6 salary since the incident. Since the conclusion of
7 the trial, my brother and I over the summertime hand-
8 delivered a letter to Mayor de Blasio and
9 Commissioner O'Neill. We've never received a response
10 from them. We were disregarded. We believe that
11 Wayne Isaacs is a danger to public-- to the public.
12 If he was able to kill Delrawn and not have any sort
13 of compassion for him, he shouldn't be patrolling
14 anyone because he did not protect and he did not
15 preserve-- he did not protect and he did not serve,
16 and those are the reasons that he should be held
17 accountable. If he doesn't-- if he's not held
18 accountable, the City would set a precedent that
19 officers are held at a standard, a higher standard
20 than civilians, and that is okay for them to kill and
21 they'll just go back to work with no accountability.
22 If Wayne Isaacs so happens to kill another civilian,
23 it would be the fault of the de Blasio Administration
24 and who knows, he'll probably just go back to work
25 again. Since Delrawn's killing, I had a child, and
because Delrawn meant so much to me, to pay honor to

3 Delrawn I named my son Justice, because that's what I
4 was-- what I spent all my time pursuing, justice for
5 Delrawn, even when I was pregnant in the hot son, in
6 the winter, you know, just because I wanted-- I need--
7 - we need and we need to make sure that when Isaacs
8 is held accountable, and accountability to us looks
9 like Wayne Isaacs being fired. If it was any other
10 person, especially a civilian, Wayne Isaacs would
11 have been arrested on the scene. He would not have
12 been able to tell these lies and he would not have
13 been able to be given preferential treatment. I do
14 have a list of demands or questions. Sorry, not
15 demands. But I do have a list of--

16 CHAIRPERSON RICHARDS: [interposing] It's
17 okay to demand.

18 VICTORIA DAVIS: asks for Delrawn, for my
19 four-month-old baby Justice, and for the rest of my
20 family. I'm pleading with you all to demand that the
21 NYPD immediately bring discipline charges against
22 Wayne Isaacs for the multiple violations of the NYPD
23 protocol he engaged in, including escalating the
24 situation with a civilian, murdering my brother,
25 lying about it in official reports, and more. Pass
City Council bills that will require the NYPD to

3 publicly report on what discipline steps that have
4 not taken,-- that have not been taken related to all
5 cases of police killings, deaths in custody, police
6 sexual violence, police brutality, and lying in
7 official capacity. The next ask is pass Council
8 Member Williams' resolution to call on Albany to
9 repeal 50A as soon as possible, to work with me and
10 other families and the groups that we work with like
11 the Justice Committee, Communities United for Police
12 Reform, to make sure that we can prevent other
13 families from going through what we have gone
14 through. We would never want to see any of our
15 families experience what we have. We've experienced
16 a lot. Delrawn's death, the pain did not end at
17 Delrawn's death. It impacted our family negatively
18 in many ways. The Department has made no actions.
19 There's no formal charges against Wayne Isaacs. The
20 Department didn't charge him with anything, and so
21 thank you for your time and thank you for your
22 invitation.

22 CHAIRPERSON RICHARDS: Thank you so much.

23 [applause]

24 VICTOR DEMPSEY: Thank you, Councilman,
25 for allowing us. Again, my name is Victor Dempsey.

3 I'm also the brother of Delrawn Small and Victoria
4 Davis. I really just wanted to add something else to
5 this. you know, it's-- we've talked about our
6 brother's murder for a year, you know, since it
7 happened as much as we can to bring awareness to it,
8 and sometimes besides the families and the supporters
9 that we've had and the organizations whose helped
10 out, all of the families since then, we had to
11 witness our brother get murdered twice, not just with
12 Wayne Isaacs murdering him, but in that court room
13 awaiting a verdict for days. And to believe, you
14 know, and we still believe. Us begin the first
15 family to utilize the Special Prosecution that
16 families before us fought for with organizations like
17 CPR and Justice Committee, to fight to get the
18 special prosecution-- the Special Prosecutor to take
19 on these police-involved murders, and to watch them
20 work day-in and day-out on this case through the
21 fact-finding and really go through every little
22 thing, for our family to sit here and say he's going
23 to be held accountable. Just looking at the facts,
24 and to feel good about that, to get the support from
25 all of the other families who suffered just like us,
and to tell them we're going to be fine, we're going

3 to get justice. We're going to get justice. And to
4 hear that verdict and him being acquitted right
5 there, my brother literally got killed a second time.
6 That pain is unmountable [sic]. It's-- you can't
7 imagine what we went through having to listen to
8 someone else say your brother was murdered, but
9 there's nothing we can do about it. I really wanted
10 to bring that home because I don't think the
11 Department, the NYPD, understands what they're doing
12 to people. Not only are they murdering civilians,
13 they're demolishing the trust that the public will
14 have with them, because you're not holding anybody
15 accountable. Like my sister said about the video,
16 the video surfaced six days after the murder. Wayne
17 Isaac's original testimony was my brother hit him
18 repeatedly. I don't know if any of the Council
19 Members have watched the video. My brother was
20 killed instantaneously as approaching that car. Not
21 one time do you see a punch being thrown. Even if
22 you wanted to assume, which it wasn't even there, I
23 don't know how we lost that case. But one thing that
24 did speak out to me when the judge was given
25 directions to the jury, and Steve, the-- his attorney
fought to say regardless if he's off-duty or not,

3 he's still a police officer, and he ran that home
4 over and over and over, and I assume it was just so
5 the jury who are members of the public would give him
6 this unprecedented, you know, view like he's-- you
7 know, he's a public servant. He can't' do any wrong
8 is the interpretation I got form that. And he said
9 he didn't have a duty to retreat because he's an
10 officer regardless. But like my sister stated, you
11 know, he had time. He stated that he watched my
12 brother walk-- he could have rolled the window or
13 pulled out your badge, but you-- he testified to
14 reaching for his handgun. He testified that that's
15 what he chose to do. And not only not-- he didn't
16 shoot him one time, he shot him three times, three
17 times. A medical examiner testified to say we don't
18 know which shot-- which order the shot came to
19 actually killed him, but my brother drowned in his
20 own blood. One shot hit him in the hip. That pretty
21 much-- he couldn't walk. That's why he was
22 stumbling. Another shot pierced his lung and his
23 lungs got flooded with blood, and as my brother laid
24 on the concrete dying, Wayne Isaacs picked up the
25 phone. He made a phone call, but he not once in that
recording that we heard in that trial did he say

3 there's a man dying. I shot-- not once. He said he
4 discharged his weapon and he needs help. He's a
5 member of service. I can provide this tape for you.
6 That's exactly what he said. Not once did he
7 acknowledge that there was a man dying, but this is
8 someone who took an oath to protect our city. So, I
9 really just wanted to reiterate that because like my
10 sister said, she had another child. I have a son.
11 My four-month-old nephew at the time was in the car
12 with my brother. My 16-year-old niece was in the car
13 with my brother. His girlfriend was in the car with
14 him. That's never going to change. It's never going
15 to be etched out of their minds. And like all of the
16 other families and supporters who fight with us every
17 single day, we relive this every single day just
18 hoping that we get some form of accountability, and
19 at this point, him being fired is the least of
20 accountability that we can ask for. So I really just
21 wanted to make sure that we understood how
22 detrimental that is to my family as well.

23 CHAIRPERSON RICHARDS: Thank you for
24 having the courage to come down here and testify and
25 speak on unfortunate incident. Thank you.

3 ERIC VASSELL: Good afternoon, Chairman

4 Richards, members of the Public Safety Committee.

5 Thank you Speaker Johnson for this invitation to

6 speak today. My name is Eric Vassell. I'm the

7 father of Saheed Vassell who was murdered by the NYPD

8 on April 4th, 2018 when in the space of three seconds

9 he was shot 10 times. I must say to the committee

10 that the death of my son brings terrorism, pain to

11 our family, also to the community. The pain and

12 sorrows is not about that my son died, but s the way

13 that he was murdered and what happened after he was

14 murdered. Hours after my son was murdered he was

15 placed on social media by the NYPD. It takes 16

16 weeks after his death for us to know the names of the

17 four police officers that killed my son. Days after

18 he was murdered the case was taken up by the AG

19 office, and until today those four police officers

20 are still on duty. I'm asking this committee to

21 assist me and my family and the community. I'm

22 asking for your assistance and demanding that these

23 police officers who murdered my son, Saheed Vassell

24 put on modified duty. Thank you very much for

25 listening to me this evening.

CHAIRPERSON RICHARDS: Thank you.

3 CONSTANCE MALCOLM: My name is Constance
4 Malcolm. I'm the mother of Ramarley Graham. My son
5 Ramarley Graham was murdered in front of my six-year-
6 old son and their grandma, my mom, in 2012 in my own
7 home. In this testimony today I'm also speaking
8 about-- I'm speaking for Ms. Carr, because she
9 couldn't be here today. So you're going to hear
10 testimony from my side, my case, and also Gwen Carr
11 [sp?] case. So, I want to also thank, like everybody
12 else already did, thank Mr. Richardson [sic] and Mr.
13 Johnson to have us here today to hear us, you know,
14 speaking about what's going on. It would take days
15 for me to really go into everything that happened to
16 me and my family, which we know we don't have that
17 time, but I try to summarize as much as possible that
18 I can. And also with Eric Garner case, too. Since I
19 have just a few minutes there's a few things I would
20 want to highlight now. The rest will be in written
21 testimony. In both of our case, like I again I said
22 Ms. Carr and my case, the NYPD obstruct [sic]
23 accountability and failed to bring transparency.
24 There have been used this lack of transparency to
25 make it harder for us, our family, to fight for
justice and accountability for our loved one. In the

3 case of Ramarley, which is my son, there was at least
4 12 officers that was involved in my son's murder.

5 Only three out of a dozen officer was disciplined. On
6 this day, Mayor de Blasio and NYPD have still refused
7 to give me names of the officer engaged in misconduct
8 with my son. There was at least 12 officer that
9 should at least been fired, but they wasn't. There
10 was off-- I'm going to give you a couple example.

11 The officer who assaulted my mom after Ramarley was
12 killed, she was interrogated for seven hours in a
13 precinct after she just witnessed her son was killed--
14 - I mean, her grandson was murdered. These officer
15 that also leaked sealed documents of my son. Officer
16 also assaulted me in the precinct when I went there
17 to find out about my son. They assaulted me also, and
18 also the officer that also tried to cover up the
19 incident, none of these officer was ever fired, and
20 we don't even know some of the officer names. This is
21 unacceptable. Keeping these kinds of officer on the
22 job is very dangerous to New Yorkers. Two-- there
23 was three officer that was charged. Two of the
24 officer-- two of them is off the force, but none of
25 them was fired, and the reason two is off the force
because there was nonstop fighting from me. Didn't

3 want to give up. My family wasn't about to give up,
4 and organizations and the community that stood behind
5 me to fight to make sure these officer didn't stay.
6 It took five years nonstop organizing by groups who
7 supported me. Richard Hays [sp?] even saw-- he
8 wouldn't have saw any discipline trial if it wasn't
9 for me out there in the front line. Richard Hays was
10 able to resign instead of being fired. Richard Hays
11 has gotten annual salary, which you hear from
12 testimony here from these other families, overtime
13 increased after murdering loved ones. These officers
14 continuously did overtime on modified duty, racking
15 up their pension. That's unacceptable. This the
16 only job that I see that you get reward for doing bad
17 behavior. It took six years to have any movement on
18 Sergeant Morris and Officer McLoughlin. They never
19 saw a discipline trial. Morris is off the force while
20 McLoughlin is still on the force, and McLoughlin was
21 the one that kicked my door in. While yes, he's
22 still on the force. Let me be clear, Hays and Morris
23 was forced to resign, but not because of the NYPD.
24 In spite everything, it was a nonstop public pressure
25 that organized with group support and me not would
have-- it would not happen. Both Hays and Morris

3 would still be on the force. Every step of the way,
4 50A was an obstacle. This 50A is a really big
5 problem, and that's why me and other families
6 fighting for repeal it's very important. Richardson
7 is the DOA-- DAO, also was very disrespectful to me
8 and my family. In case-- in the case where we was
9 going to trial, Richardson wouldn't even tell me the
10 charges that this man that was facing that murdered
11 my child. He wouldn't even tell me the charge this
12 man was facing. Had to sit through a trial to catch
13 charges, which I should have been told before all of
14 this. This is the disrespectful that we as family
15 got to go through to get justice. They refused to
16 let my mom testify. She was in the house when
17 everything happened. They made it look like she was
18 never there in that trial. She never told what
19 happened. She didn't get a chance to tell what
20 happened. Only Richard Hays and his little goons
21 with their fabricated stories got to testify. She
22 and my son was the only witness apart from the rest
23 of them that was in the house, the officer that was
24 in the house. She wasn't allowed to testify. So,
25 basically, you never heard her side of the story.
Richardson also, when I met Richardson, I asked him,

3 "Can you have your team come to my house to see the
4 layout of my house?" Because what the officer was
5 saying happened, it couldn't have happened that way.
6 I begged him to have his team come to my house. He
7 said yes. He told me yes. That never happened. I
8 also think that if they would have come to my house
9 in this trial, they would have understand a lot more
10 about the apartment and what these officer was saying
11 did not happen the way how they said it went down,
12 because the lay of the house would have shown there's
13 no way these officers could have been in the hallway
14 when they said it happened and how it happened.
15 There are many examples I could go into, but like I
16 said, it's so much. But today as I sit here,
17 Richardson is not fit to be in that office. He need
18 to get fired from that office. As I go-- I'm going
19 to-- I'm finish testifying Ramarley. I will go into
20 Ms. Gwenn Carr testimony. Again, thank you to sit
21 here and listen to me. As you know, Eric Garner was
22 murdered on July-- in July 24th by NYPD. It's been
23 five years later. Daniel Pantaleo, the officer who
24 took Eric and threw him on the ground, unlawfully
25 arrested him, officer who lied on the official
report,-- and you hear testimony all the time. These

3 officer continue to lie on reports, and nothing has
4 been done to them. Officer who failed to supervise
5 and other officer who engaged in the misconduct are
6 all still on the force, still collecting a paycheck
7 again. Ms. Carr is very worried that NYPD is trying
8 to sweep, sweep this under the rug. It's not sure if
9 this mayor, Mayor de Blasio and the Commissioner
10 O'Neill have continued to-- they have continued to
11 refuse to tell her the name of the officers. Again,
12 you hear this often again. These administrator don't
13 want to give the name of the officer who, you know,
14 harm people, and it's just a disrespect to the
15 family. They continued don't want to give her the
16 name of the officer who plays in the murder of Eric
17 Garner and attempt to try to cover it up afterwards.
18 There have-- they have the name of five, five, five
19 officer beside Pantaleo only because she and group
20 supporting have been pacing to like the media report
21 of officer who lied in the report, and this is how
22 she gets these names. All of the families stand with
23 Ms. Carr and are really concerned that de Blasio and
24 O'Neill have no intention of holding any officer
25 accountable for murdering Eric. Given the widespread
cover up and many responsible for the misconduct--

3 excuse me-- of the misconduct of Pantaleo, it should
4 just be-- it should not just be Pantaleo facing
5 possible discipline. It was so many other people
6 that was there that should be also charged and is not
7 charged. Pantaleo, just make it clear, Pantaleo need
8 to be fired. You choke a man on national TV and you
9 still have a job. Again, what organization does that?
10 But the NYPD. If it wasn't for the CCRB pushing for
11 charges for Pantaleo, discipline and charges, that
12 would have never happened. Again, NYPD though seems
13 like they want to bring any off these officer that
14 murder unjustly to justice or you know, discipline
15 any way, any transparency. They tried to block CCRB
16 from bringing charges. NYPD tried to block CCRB from
17 bringing charges. It wasn't until Ms. Carr point out
18 that NYPD lied delaying charges against last year
19 that the NYPD decide to stop blocking CCRB from
20 bringing charges against Pantaleo. Pantaleo case is
21 only one that has even move forward, and that's
22 because of CCRB again, not the NYPD. The NYPD has
23 even brought another officer up on this very charges,
24 not the one who lied on official report or the one
25 who jumped on Eric back, falsely accusing him of
selling cigarettes. Sorry, not-- accusing him of

3 selling cigarettes and for they arrested him. They
4 also started spreading propaganda, stories about
5 Eric. Remind you, if it wasn't for-- what's his
6 name? Ramsey Artes [sp?], we would have never knew
7 what happened. Thank God for him because we would
8 get another story. Eric had just broken up a fight,
9 a fight. That's not the warrant you get to break up
10 a fight, a death sentence? Shame on New York.
11 Shame. Where is the middle-- we are in the middle of
12 a massive cover-up. Ms. Carr and I-- Ms. Carr and
13 all of us feel nobody's hearing us. Nobody cares
14 about us. We are really-- we are really worried that
15 Pantaleo might not get fired. What happened in my
16 case where they let this officer resign, we are very
17 scared that might happen again in this case. We want
18 these officer to be held accountable. We have these
19 two family here also. I know that the Davis [sic] and
20 Vass [sic] also need help in their fight for justice
21 for Delrawn and Saheed. We can keep having-- we
22 can't keep having our black children murdered by NYPD
23 officers and no one is held accountable. There's so
24 much families not here. So many family die, passed
25 away before they even see how their case panned out.

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2 COMMITTEE ON THE JUSTICE SYSTEM

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3 Is this what New York stands for? I don't know what
4 to say. Thank you.

5 CHAIRPERSON RICHARDS: Thank you. I want
6 to thank all of you for coming here today. I know it
7 takes a lot, and I want you to know that we are
8 hearing you, and that's why we're here today. I want
9 to go to Council Member Inez Barron.

10 COUNCIL MEMBER BARRON: Thank you to the
11 Chairs for holding this very important hearing, and
12 I'm glad that we had the opportunity to hear directly
13 from those families that are impacted, and I'm glad
14 that you gave them the time to be able to tell the
15 story, but until we have change and until we get a
16 Mayor and a Police Commissioner who acknowledge that
17 the lives of black people, brown people, poor people
18 of all colors are important and that the NYPD
19 certainly does not have any privilege that insulates
20 them from being prosecuted to the fullest extent of
21 the law, and until we get citizens who understand
22 that as well, it's going to continue to exist. One
23 of the biggest examples for me of a police officer
24 who has risen through the ranks and gotten increases
25 in pay is the Inspector at the 75 Precinct whose name
is Inspector John Chell who in 2008 shot and killed

3 Ortannzo Bovell by shooting him in the back. There
4 was never an investigation by the Department to
5 determine if any kind of policy had been violated or
6 to bring charges, but recently after 11 years there
7 was a civil trial, and the jury awarded the family a
8 settlement. The jury awarded an award to the family
9 because the ballistics proved that Inspector, the
10 Inspector in the NYPD at the 75 Precinct, in fact
11 lied when he said oh he was falling and his gun
12 accidentally discharged. It was proven to be a lie
13 because ballistics proved that he had to be in a
14 standing position in order to have the bullet enter
15 at the angle that it did, but until we have the
16 ability to have jury trials that bring us the result
17 that the evidence lays out before us, that officers
18 lied in their reports, that officers constructed
19 evidence and that they were protected by the system,
20 until we can change that, it's unfortunately is going
21 to continue. So I met Victor and his sister after
22 the killing of their brother, the murder of their
23 brother, and they have been stall works and they have
24 been activists to try an bring attention to this, and
25 so Ramarley Graham's mom and all the others that have
unfortunately established a bond based on the crimes

3 of murder committed against unarmed citizens, but
4 until we get an action, and until we get people in
5 power who are willing to acknowledge that all lives
6 are important, particularly black lives, brown lives,
7 and poor people, because they're the ones who have
8 been subjected to this. So until we can get that,
9 we're going to be coming here again and again, and
10 50A is one of the ways that we can get information
11 about those officers who have a history of engaging
12 in this kind of activity. I want to remind you that
13 Kenneth Boss, one of the people who killed Amadou
14 Diallo, had killed before. So, we can't forget this.
15 We can't slip it under the rug. We've got to make
16 sure that we get the laws in place and get people to
17 have their minds awakened and sharpened to the fact
18 that crime is crime, even when it's committed by
19 those who wear a blue uniform, and justice has to be
20 served. Thank you.

21 CHAIRPERSON RICHARDS: Thank you. It's
22 powerful. Thank you all for coming out. Thank you.

23 VICTOR DEMPSEY: Thank you.

24 UNIDENTIFIED: Thank you for having us.
25

3 UNIDENTIFIED: And thank you to the rest
4 of the Council Members. I think we forgot. Thank
5 you.

6 CHAIRPERSON RICHARDS: Thank you. I'm
7 going to call the next panel: Cynthia Conti-Cook, Jen
8 Borchetta, Christopher Boyle, Jacki Caruana, Oded
9 Oren. So I'm going to go through this again,
10 Christopher Boyle, New York County Defender Services;
11 Jen Borchetta, the Bronx Defenders; Cynthia Conti-
12 Cook, the Legal Aid Society; Jackie Caruana; and Oded
13 Oren. Alrighty, so I'm going to ask you-- I mean,
14 most of you know the drill I'm assuming. State your
15 name for the record and who you're representing.
16 Also, due to the hour, going to put you on a clock,
17 so we want to hear specific great ideas, but I think
18 we know all of you well. So, start ladies first,
19 then we'll work our way down. Press the button.

20 JACQUELINE CARUANA: My name is
21 Jacqueline Caruana. I'm a Senior Attorney at
22 Brooklyn Defender Services in the Criminal Defense
23 Practice. I want to thank all of you for the
24 opportunity to testify. I did submit a written copy
25 of my testimony to the committee, but I would like to
focus with the limited time that we have on the

3 stories of two people whom I personally represented
4 who were directly affected by the lack of access to
5 police disciplinary records. Both of these cases
6 involved allegations of assault on an officer. I
7 know that that was brought up earlier and the high
8 number of arrests there are on these assault two
9 charges, and they are often the type of charge that
10 we see as public defenders where, you know, there's
11 an allegation that our client has done something
12 wrong, then nothing has happened. There is-- nothing
13 is found on their person. There's no underlying
14 offense, and then they're being charged with an
15 assault two, an assault on the officer. So, the
16 first story that I wanted to tell you was about my
17 client, Mr. C, I'm going to call him. A police
18 officer stops my client Mr. C in the street because
19 he thought that he saw an unknown heavy object in Mr.
20 C's pocket. It turned out that Mr. C had nothing in
21 his pocket, so the officer then charged Mr. C with
22 disorderly conduct, and claimed that Mr. C had head-
23 butted the officer. Mr. C then ended up with a
24 felony assault charge, even though the officer did
25 not suffer any injury. I know that that was brought
up earlier, what are the injuries? Why can they not

3 document a report on what these injuries are?

4 Clearly, this officer's credibility was central to

5 the case, but unfortunately as Mr. C's defense

6 attorney I had no access to the officer's

7 disciplinary records. Because of Civil Rights Law

8 50A, the only method by which to obtain police

9 disciplinary records is to file a motion with the

10 court. I did so with that case, and to then request

11 that the court order the police records to be turned

12 over to the judge to review. In that motion, the

13 defense is required to make a clear showing of facts

14 sufficient to warrant the judge to request police

15 records for review. We can't make that claim without

16 access to the police records. It's a Catch-22. In

17 order for us to satisfy the requirements, we need the

18 records. 50A is set up in a way that we will not

19 prevail as defense attorneys in order to obtain this

20 information to adequately defend our clients and

21 cross-examine these police officers. So therefore,

22 these motions are usually unsuccessful. In Mr. C's

23 case, he was initially charged with a felony and

24 ended up with an ACD, if you're familiar, an

25 Adjournment in Contemplation of Dismissal. So his

case was eventually dismissed and sealed, but it was

3 shortly after I filed the motion to get access to the
4 officer's disciplinary records that the prosecution
5 immediately offered my client this ACD. From a
6 felony assault charge to an ACD, and that is because
7 in my opinion the prosecution did not want me to gain
8 access to this police officer's disciplinary records.
9 I don't know that for sure, but I do know that they
10 must have spoken to someone who authorized this ACD.
11 And that's one of the stories that I have. The other
12 one, I'll be brief, but I think it's also equally
13 important, was about an inmate at Brooklyn House of
14 Detention. My client, we're going to call him Mr. H.
15 That case actually needed up going to a jury trial.
16 He was accused of assaulting the officer and
17 possessing a sharp piece of plexi-glass and was
18 charged as a weapon. I filed a motion to gain access
19 to his disciplinary records. I was denied. Actually
20 Department of Corrections showed up to the court
21 proceeding to personally oppose my motion to get
22 access to this officer's record. During the jury
23 trial in which my client was acquitted of all the
24 charges, it came out that this officer had fabricated
25 the paperwork and that the actual item that my client
was accused of possessing, this piece of plexi-glass

3 was planted. It was very clear during the testimony,
4 and he was acquitted. That officer is currently
5 employed at Brooklyn House of Detention. I saw him
6 there personally last week when I was there to visit
7 a client. So Brooklyn Defender Services supports the
8 resolution urging a repeal of Civil Rights Law 50A,
9 and we thank the sponsors for their work to improve
10 police accountability. We also support the bills
11 that would require reporting of police disciplinary
12 actions, but we stress that the information that's
13 gleaned from these reports should be used to enact
14 further reforms. We thank the council, again, for
15 the opportunity to speak, and we hope that you'll
16 view Brooklyn Defender Services as a resource as we
17 continue to work together to address this issue. And
18 if you have any questions I'm here to answer them,
19 but also feel free to reach out to Sayha Joseph [sic]
20 or their office.

21 CHAIRPERSON RICHARDS: Thank you so much
22 for your testimony and the work you do.

23 CHRISTOPHER BOYLE: My name is
24 Christopher Boyle. I am the Director of Data
25 Research and Policy at New York County Defender
Services. I have a couple of very brief anecdotes

3 that I myself have filed with this 50A motion. So,

4 I'd like to just take a quick look here. This is the
5 motion that I filed. It's almost two inches thick.

6 Most of it is exhibits that have to do with civil law

7 suits against police officers that were involved in

8 my client's case. He was charged initially with some

9 type of a drug sale. Eventually, after I had filed

10 this motion and it was denied by the court, I was

11 offered through my client a misdemeanor and community

12 service. So we've had similar experiences when we

13 file these 50A motions. There is lots of fighting

14 that goes on, but we do eventually see some given by

15 the District Attorneys, because they don't

16 necessarily seem like they want us to get access to

17 the files. But in this particular case, what I

18 wanted to highlight was-- so the way this work in

19 practice is we kind of do a research of trying to

20 find out what types of lawsuits were against some of

21 the police officers. So we'll do a search. We'll get

22 that. If you're doing the right thing, you're making

23 phone calls to the lawyers that represented them in

24 the lawsuits. So I did that. I made some phone

25 calls to some of the private lawyers. I find out

like most of these cases, they start out as criminal

3 cases. They're all dismissed, because if you took a
4 plea you're not going to win a civil lawsuit. So
5 they're easily resulting in ACDs or they're resulting
6 in dismissals. So, I find out this one case was a
7 drug charge that resulted in a dismissal. I said why
8 did it result in a dismissal? He gave me all this
9 paperwork. It turned out that the lawyer who worked
10 for Legal Aid apparently found out that there was a
11 video and showed that officer had completely lied
12 about that event, and so the case was eventually
13 dismissed, but there's no mechanism here for us to
14 find that out. So, we're discussing whether or not--
15 we're discussing 50A motions, but there's another
16 issue here. You know, I listen to this letter that
17 Mr. Vance apparently had given about the idea that
18 they were going to try to get police personnel
19 records. I've never had a District Attorney join in
20 an application for me to try to get a police
21 officers' personnel records, never in my history of
22 doing this. and so what I'm wondering here is, why
23 wasn't that information-- this officer lied under
24 oath at a grand jury proceeding that there was some
25 type of drug sale that happened, that was now proof,
video proof, that this did not in fact happen, but

3 nothing was done. This officer probably still works
4 there, but more importantly, none of the rest of us
5 knew about it. This officer might have got moved to
6 a different precinct in a different borough. We
7 would never know to be able to make an application at
8 some point. Now, keep in mind, a judge knew this and
9 still denied my motion. I could not get access to
10 the police personnel records even having that
11 information there. I'll just talk about one other
12 case very briefly. So I had another case where my
13 charge was-- my client was charged with a drug type
14 of charge, a drug sale. He claimed it didn't happen,
15 and the officers that were involved were from the
16 VIPER Unit. Now I don't know if you're familiar with
17 that. Now, I don't know what a VIPER Unit is. I
18 google it and it turns out there's a New York Post
19 article that says, "Dumping ground for dirty cops."
20 So, there's apparently there were hearings on this.
21 I had no idea about it. So I file another 50A
22 motion. Once again denied, even though it's clear
23 that the VIPER Unit is the dumping ground. Headline
24 from the New York Post, the dumping ground for bad
25 cops. So what ends up happening, I realize
eventually that IAB apparently went and spoke to my

3 client at the hospital. My client didn't realize they
4 were IAB, never told me about it. Then we got the
5 motion granted because there was an ongoing IAB
6 investigation. Once we got access to that material,
7 it was apparently rally, really awful stuff and they
8 dismissed the case outright. So that was the end of
9 the case. There are more problems here than just
10 50A. There are reporting problems. We are not
11 getting the information about who's lying. Most
12 officers are not going to be charged with perjury.
13 We are not getting these falsified report
14 information, whether they lied under oath somewhere,
15 because nobody wants to charge them, because that's
16 the end of their career. Let's be honest. If
17 they've lied under oath, what are the odds that a
18 jury is ever going to believe that officer again?
19 They are effectively done at NYPD, that's why they
20 don't do it. Thank you.

21 CHAIRPERSON RICHARDS: Thank you.

22 CYNTHIA CONTI-COOK: Good afternoon. My
23 name is Cynthia Conti-Cook. I work at the Legal Aid
24 Society, and we are a coalition member of Communities
25 United for Police Reform. To start, I just want to
thank you for this panel, and thank you for today,

3 and thank you for listening to the families. I also
4 am very grateful that I'm here offering in writing
5 very specific feedback, but my testimony today I want
6 to focus on correcting the record somewhat from what
7 the NYPD testified to about this morning,
8 specifically as it regards to what 50A does and does
9 not do, to the legislative history of 50A, and to how
10 the Department is still abusively interpreting 50A.
11 As Justice Jennie Rivera [sic] said in her descent
12 from the Court of Appeals case this past December,
13 "Government is the public's business." And the
14 police are certainly also the public's business.
15 These bills are crucial first steps to allowing the
16 public into the process and having an informed role
17 in deciding what reforms need to be made, and we hope
18 that these reporting bills are the first steps in
19 many more steps that we will be able to take hand-in-
20 hand with full amount of information that we need in
21 order to create community-based reforms ourselves and
22 to be heard by the City Council and by the
23 Department. These bills are all really important
24 pieces to a puzzle, and I think it's important to
25 emphasize that missing any one of them will leave a
big hole in the picture that we're trying to

3 understand here, and especially with 50A. So,
4 turning to some of the statements made earlier today.
5 Council Member Cohen asked about the legislative
6 history of 50A, and I think that this was
7 specifically answered wrong. In 1976, there was
8 legislative history that showed the concerns about
9 50A were mostly about how officers were being
10 questioned in court. I also just want to restate that
11 confronting an officer with prior misconduct in court
12 is not harassment, it is impeachment. It is
13 constitutionally guaranteed for someone accused of a
14 crime to be able to confront their accuser, and being
15 able to question officers about prior misconduct is a
16 part of that confrontation right. People who are--
17 have misconduct records that are deemed either
18 irrelevant or lack a good faith basis, those are kept
19 out by the judges. The judges act as gatekeepers in
20 those contexts. In 1981, the legislative history was
21 expanded to include correction officers. The
22 Department this morning, the Legal Department
23 specifically testified that there was additional
24 legislative history regarding just general
25 harassment, protecting officers from embarrassment.
That was in the context of prisons in the legislative

3 history in 1981. The courts have done a very sloppy
4 job of combining those legislative histories and
5 extending the concerns about harassment to police
6 officers from prison guards, and I think that it's
7 worth really deciphering what we're talking about
8 when we're talking about what the legislative history
9 has already really put into the record. The
10 Department is currently opposing our request for
11 civilian complaints for officer Scarcella [sp?] who
12 has been retired for more than 20 years. Earlier
13 today they testified that they would not be opposing
14 requests for officers who have been terminated, and
15 that is incorrect. Councilman Lancman asked earlier
16 whether the panel was adopting the report from last
17 week, the recommendations to not broaden the
18 interpretation of 50A any further, and yet they sat
19 here and said that they were possibly going to oppose
20 some release of aggregated data. I think that those
21 two statements are internally inconsistent. 50A does
22 not cover aggregate data at all, and for them to say
23 that they have concerns about whether 50A would cover
24 aggregated data, I think really just means that
25 they're worried the PBA will sue them. I don't think
it means that the PBA will win, and I think that we

3 should still demand them to report on aggregated
4 data. Finally, I just want to say that there's
5 nothing in 50A that protects officers' safety more
6 than existing FOIL exemptions that protect the
7 privacy of all public employees. In Chicago this
8 past week we learned that an officer who's leading
9 the implementation of implicit bias training has a
10 long history of civilian complaints. We would never
11 had known that if the Chicago Police Department had
12 not had to make their 30 years of civilian complaint
13 history public, and journalist organization, The
14 Invisible Institute" made that available publicly.
15 The Chicago Police Department's Fraternal Order of
16 Police confirmed that no threats have resulted from
17 that database being released, and that was confirmed
18 in the panel's report released next week. I'll leave
19 the rest of my comments to my written testimony.
20 Thank you.

21 CHAIRPERSON RICHARDS: Thank you.

22 JEN BORCHETTA: Good afternoon, Chairman
23 Richards and Chairman Lancman. Thank you very much
24 for the opportunity to testify today and for this
25 important package of accountability and transparency
bills. My name is Jen Rolnick Borchetta. I'm the

3 Deputy Director of Impact Litigation Practice at the
4 Bronx Defenders. I'm here with my colleague Oded
5 Oren. Mr. Oren is a Criminal Defense Attorney, and
6 he'll speak from that perspective. In my testimony,
7 I'd like to focus on lessons learned from the stop
8 and frisk remedial process. We have represented the
9 plaintiffs in both the Floyd and Ligon cases, and
10 while our work with the Federal Court Monitor
11 overseeing the reforms in those cases is well-known,
12 what's less well-known is the massive community input
13 into reforms that was conducted as a part of this
14 reform process. I want to bring attention to their
15 voices today as they are the people whose lives are
16 affected by the NYPD's continued unlawful practices
17 and its refusal to meaningfully hold officers
18 accountable. As background in this process, this
19 community input process was held over a three-year
20 period from 2014 to 2016. It included 64 focus
21 groups of predominantly black and Latino people from
22 neighborhoods in New York that bore the brunt of the
23 NYPD's unlawful stop and trespass enforcement
24 practices. Over 500 people gave testimony in those
25 focus groups. There were also community forums that
were held throughout the city and in those community

3 forums, over almost 2,000 people participated. The
4 focus group transcripts are available publicly.

5 They're linked to-- or the link to them is provided

6 in our written testimony, and we would urge you to

7 look at those in the context of the reporting bill,

8 particularly on the disciplinary matrix, because we

9 think that their voices are important. In addition

10 to the NYPD's reporting on the implementation of a

11 disciplinary matrix, it's important that their voice

12 and the need for it are also reflected. And so to

13 end my testimony I want to share their statements.

14 These are some quotes from the focus group

15 transcripts, and they reflect really an overwhelming

16 consensus among people affected by these practices

17 that police are not meaningfully held accountable.

18 "There's no accountability. The police can just do

19 anything. I'll lose my job if I have weed in my

20 pocket. They can't lose their job if they show

21 someone wrongfully? I see all my life cops break the

22 law and nothing happens to them. There should be

23 consequences. They act like they can get away with

24 anything, which basically they can. If you don't pay

25 a consequence, you're not going to learn anything.

Even though they have evidence of misconduct, the cop

3 always wins. We've made significant changes, but the
4 new rules will only be as good as enforcement and
5 accountability. No matter how many people you get to
6 testify and say that person was in the wrong, as long
7 as he has a badge, he's untouchable." Thank you for
8 your time.

9 CHAIRPERSON RICHARDS: Thank you.

10 ODED OREN: Thank you very much for your
11 time, Chairman. My name is Oded Oren. I'm with the
12 Bronx Defenders. I wanted to speak a bit about
13 police disciplinary records in criminal court
14 proceedings. I think as my colleague at Brooklyn
15 Defender Services highlighted, those records are
16 really important for us when we take a case to a
17 hearing and then a trial, but I want to highlight two
18 other aspects or rules that these records play in our
19 representation. By influencing the judge and the
20 proceedings and the juries if a case goes to trial,
21 the disciplinary records provide some measure of
22 accountability for unlawful behavior through the
23 court system itself, even when other accountability
24 systems such as the CCRB or IAB fail to do more than
25 just give an anemic slap on the wrist to the officer,
by airing what happened in court and by being cross-

3 examined on those records, there is some
4 accountability that comes to that specific encounter
5 with the police. And just as importantly, and I
6 think this was highlighted by the previous panel,
7 disciplinary records help our clients and their
8 families and their communities find some measure of
9 closure. The records allow us to contextualize
10 police behavior and to show that our client's claims
11 about profiling and use of force and other abuses
12 have precedent, that they are very much rooted in the
13 specific behavior of that officer or of the NYPD as a
14 whole. These records affirm our clients and their
15 stories of abuse by the police. They validate our
16 clients, and they ultimately vindicate our clients in
17 criminal court, in federal court, and in civil court.
18 I wanted to take just a few more moments to talk
19 about-- I believe it was the last back-and-forth
20 between Chairman Lancman and the NYPD representatives
21 here. I think, Chairman Lancman, the data that you
22 were asking for about cases or encounters with the
23 police that ultimately were DP'd, decline to
24 prosecute", I think that data is instrumental for you
25 and for everyone and for the public as a whole to
understand what is actually happening and to hold

3 offices accountable. And I think that even when we
4 gain access to disciplinary records of the police,
5 that allows us to know which officers have already
6 been implicated in the past, but I think the data
7 that you were talking about would allow us to
8 highlight and find out about new officers who do not
9 have a misconduct record and to highlight other ways
10 in which misconduct of various ways happens and maybe
11 is evading our case. Thank you very much for your
12 time.

13 CHAIRPERSON RICHARDS: Thank you.
14 Council Member Lancman for questions.

15 CHAIRPERSON LANCMAN: So these motions
16 that you have to make to be able to get access to
17 these records, this is the Gissendenner [sic] Motion?

18 UNIDENTIFIED: Yes.

19 CHAIRPERSON LANCMAN: What is it that you
20 need to show, whoever wants to answer that?

21 CYNTHIA CONTI-COOK: In order to show
22 that-- so, this for a subpoena. This is not for
23 using the information in a court room. In order to
24 get to the information itself, our attorneys have to
25 create a showing that they know of the existence of
material in the custody of the Police Department or

3 the Civilian Complaint Review Board that would be
4 relevant and material in their case. That means that
5 they have to show two things: something exists that
6 they know of. That is impossible for us to show
7 unless we have previously gone through this process
8 and we know that there are files from another case,
9 in which case we probably don't need to do this
10 again. But for officers for whom we do not already
11 have information, it is literally impossible for us
12 to show to the court that we know of the existence of
13 records that we believe would be relevant or material
14 in our case. Also, in the-- in a few cases, we've--
15 the Legal Aid Society created a database that it
16 shared with other institutional defenders like the
17 Bronx Defenders and New York County and Brooklyn
18 Defenders and we try to share as much publicly
19 gleaned information as we can so that as best as we
20 are able to, we can make the case that there is
21 likely going to be internal records that are relevant
22 because we know that there are lawsuits and we know
23 that there's news stories, and we know that there's a
24 good amount of other public information, and
25 therefore it's highly likely, but we can't prove the
existence of internal records as well.

3 CHAIRPERSON LANCMAN: How often is that
4 enough, the existence of civil lawsuits which suggest
5 that there must be something?

6 CYNTHIA CONTI-COOK: Almost never. Judges
7 love to say that we are often on a fishing
8 expeditions and that lawsuits are not the same as
9 internal misconduct, and it's true, all lawsuits are
10 not the same as internal misconduct, but if we can't
11 even get a sense of whether or not an officer has a
12 disciplinary history, it's impossible for us to even
13 make the slightest application to the court based on
14 evidence.

15 CHRISTOPHER BOYLE: So, the problem is is
16 that the lawsuits all settle out. So there's never a
17 finding of wrong-doing. So what the court finds out
18 is that these are just accusations, right? So you
19 could have 50 lawsuits against one particular officer
20 and they've all settled for \$100,000 each. That does
21 not sway some judges. Now my understanding is that
22 the NYPD did some kind of report or there was an
23 Inspector General report where what they were going
24 to do was, they were going to have a demarcation line
25 of a certain number of lawsuits would then indicate
that the officer needed to be retrained in some way.

3 So if the officer had-- I don't know what the number
4 was, but if the officer had seven lawsuits or 10
5 lawsuits, that there was some training. So,
6 therefore, if they were supposed to have some
7 training, one would likely be able to say that there
8 must be something in his personnel record because
9 there was some level of wrongdoing found at that
10 point, because he or she would have to be retrained.
11 But these are bars that we cannot meet. Besides the
12 fact of what I said before, which is there's lots of
13 information that would be useful for all of us, but
14 the District Attorney's Offices dismiss cases without
15 saying this case was dismissed because it was a lying
16 cop. They just won't say it. I mean, how do you
17 come up with a situation like testa-lying [sic]
18 everybody knows what that means, and yet you only
19 have 45 people out of 30,000 officers, whatever how
20 many years is charged with perjury? And yet, we all
21 know that testa-lying [sic] exists all the time every
22 day? It just boggles my mind.

22 CHAIRPERSON LANCMAN: So, yesterday I was
23 outside City Hall with a number of who had been
24 wrongfully convicted. Their names would be familiar
25 to you. Some cases spent decades in prison and at

3 the root of their wrongful conviction were a variety
4 of common flaws in our criminal justice system which
5 you know better than anyone else. How important is
6 it to get this information to be able to prevent
7 wrongful convictions? And I don't mean it has to be
8 a wrongful murder conviction where someone spends 30
9 years in prison, but a wrongful conviction for a
10 relatively low-level offense that still can have an
11 extraordinary impact on someone's life?

12 CYNTHIA CONTI-COOK: It is not only
13 extremely important, because police misconduct is one
14 of the leading causes of wrongful convictions. It is
15 merely impossible to make a 440 application, so the
16 type of application you have to make where you can't
17 get discovery. So, the Court of Appeals in December
18 said that the public has no right to police
19 misconduct information whatsoever, that the only
20 context in which we can ask for is in ongoing
21 litigation. That means it's impossible if you're
22 doing a 440 application for someone who is seeking
23 finding of wrongful conviction, you're in a public
24 posture at that point. There is no existing
25 litigation for you to ask for that information.

3 CHAIRPERSON LANCMAN: The filing of your
4 440 motion doesn't create litigation to satisfy the
5 New York Civil Liberties Union case?

6 CYNTHIA CONTI-COOK: It would if it got
7 that far, but often those cases are dismissed on the
8 papers. And so if the attorneys were doing an
9 investigation prior to filing that 440 motion and
10 trying to make a really strong case on behalf of
11 their client so that it will stick and they'll get in
12 the door and they can get more discovery, they often
13 can't get even-- can't even get in the door because
14 they haven't been able to access the information
15 through Freedom of Information requests.

16 UNIDENTIFIED: I'd like to speak to this
17 from a trial level, because obviously I think it'd be
18 extremely important for our clients not to get
19 convicted and then have to go through this appeal
20 process. What it looks like when you don't get the
21 documents after you file this Gissendanner motion
22 pursuant 50A is you're left with these lawsuits.
23 Practically, what that does for you at trial is it
24 gives you the opportunity to ask the officer about
25 the lawsuit, and the off-- and you're not-- you're
bound by the officer's answers. You can say, "Well,

3 isn't it true on such and such a day you assaulted
4 this individual?" And because this lawsuit has
5 settled without any admission of wrongdoing, the
6 officer is going to say no, and there's nothing I can
7 do at that point. I can't impeach him. I have no
8 access to their disciplinary records. So what it
9 looks like is I'm asking an officer a question about
10 something I don't know the answer to. I know the
11 answer. I have the lawsuit. I know it was settled,
12 but I'm not permitted to talk about how much it was
13 settled for. I'm not permitted to impeach him on the
14 fact this lawsuit was settled or with his
15 disciplinary record, which I don't have access to.
16 And so what happens is when I have a case that's
17 based entirely on the credibility of a police
18 officer, which are so many of our cases, I can't
19 effectively impeach this police officer because I
20 don't have access to these disciplinary records, and
21 you end up with wrongful convictions that way, and
22 then you end up in this appeals process that Conti is
23 talking about.

24 CHAIRPERSON LANCMAN: Okay, thank you
25 very much.

3 CHAIRPERSON RICHARDS: Alrighty, thank
4 you. Alright, Joo-Hyun Kang, or Carolyn Martinez
5 Class [sp?], Communities United for Police Reform,
6 Kylynn-- Kylynn Grier, Girls for Gender Equity/CPR,
7 Darian X, Make the Road New York/CPR, Michael
8 Sisitsky, New York Civil Liberties Union, and Nahal
9 Zamani-- forgive me if I butchered your name-- Center
10 for Constitutional Rights.

11 DARIAN X: Awesome. Peace and good
12 afternoon, Council Members. My name is Darian. I'm a
13 youth organizer for Justice and Community Safety at
14 Make the Road New York. For far too long, young
15 people in this city have faced harm and abuse by the
16 hands of police, with the burden of scrutiny always
17 being placed on them instead of the NYPD. Young
18 people, specifically, are exceptionally vulnerable to
19 the violence that the police commit in our
20 communities. For instance, on our streets
21 unconstitutional stops continue to happen every day.
22 And just because the NYPD has not been documenting
23 stops doesn't mean they have changed their practices.
24 This violence is also very real in our in schools
25 where we are supposed to feel the safest. As recent
Buzzfeed articles report, hundreds of officers have

3 abused their powers from lying on official documents
4 to sexual harassment, and they continue to work in
5 our communities. Over two dozen of those officers
6 work in our schools, where students and families have
7 no idea who is patrolling their hallways. Safety for
8 young people of color has been precariously held in
9 the hands of those who routinely criminalize their
10 neighborhoods and in some cases, like those
11 previously aforementioned today, kill people who look
12 like them. Not only can we no longer allow this to
13 be the context through which young people live their
14 lives, but we can no longer allow the harm and
15 misconduct committed by the NYPD to be hidden behind
16 blue walls of silence. Despite the rhetoric that the
17 NYPD has displayed earlier today and throughout their
18 history, despite this rhetoric that they have somehow
19 been completely re-trained and transformed, that is
20 far from the reality and we know that this exists as
21 just a form of political gas lighting for our
22 communities. Police misconduct, abuse, and sexual
23 harassment continues to happen with little or no
24 consequences for officers. What videos and high
25 profile incidents like we have seen do is bring to
light to what's in the shadows throughout black and

3 brown communities. The calls to provide transparency
4 and accountability from communities most impacted by
5 police violence has never been louder, and it is this
6 council's duty to answer those calls. The Council--
7 this council must urge and fight for a discipline
8 matrix with swift and severe consequences if we are
9 going to mitigate abuse of power in an agency that
10 continues to police itself. I would add that this
11 discipline matrix also needs to be fully transparent
12 and fully public to our communities as well.

13 Supporting a full repeal of Civil Rights Law 50A must
14 also be a priority for this council, and the fact
15 that the NYPD continuously attempts to broaden the
16 scope of this legislation should be alarming to
17 everyone. 50-A was one of the sole reasons Ms. Carr
18 was unable to identify whether officers involved in
19 killing her son held a history of misconduct; though
20 we later did find out this misconduct about Daniel
21 Pantaleo through leaks, confirming again what our
22 communities always known through our day to day
23 experiences with the NYPD. I'll end here in just
24 saying that we urge this council to really stand with
25 young people of color and to stand with communities
and to prioritize these issues. Thank you.

1 COMMITTEE ON PUBLIC SAFETY JOINTLY WITH
2 COMMITTEE ON THE JUSTICE SYSTEM

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3 CHAIRPERSON RICHARDS: Thank you.

4 KYLYNN GRIER: Good afternoon, Council
5 Member Donovan Richards, Chair Richards and Chair
6 Lancman. I work-- My name is Kylynn Grier and I work
7 with Girls for Gender Equity. We work daily with
8 young women and trans and gender-nonconforming youth
9 of color who are policed at every juncture of their
10 lives, on the way to school by the NYPD, in school by
11 NYPD School Safety Agents, and while accessing city
12 services as seen in the case of Jazmine Headley at
13 the Department of Social Services. Young women and
14 trans and gender-nonconforming youth of color young
15 people are criminalized for normal adolescent
16 behavior, often times hypersexualized due to
17 historically located racialized and gender-based
18 stereotypes, and their bodies are regularly policed
19 because of their race, ethnicity, sexual orientation,
20 gender identity, and gender expression. Girls for
21 Gender Equity applauds the introduction of Resolution
22 3709, the repeal 50A resolution calling on the New
23 York State Legislator to pass full repeal of New York
24 State's Civil Rights Law 50A. This would make
25 certain information from police personnel records--
make certain information from police personnel

3 records available to the public such as reports as
4 misconduct. As an organization that has worked to
5 address gender-based violence for 16 years, we
6 understand that acts of gender-based violence are
7 often patterned and repetitive. Frequently sexual
8 harassment and sexual assault are not a one-time or
9 isolated incident. As with other forms of police
10 misconduct against community members, officers often
11 have disciplinary records that reflect former
12 complaints of misconduct against alleged officers.
13 Survivors who report sexual misconduct by police
14 officers are met by a disciplinary system that
15 benefits from hiding repeated misconduct from the
16 public eye. Girls for Gender Equity also stands with
17 Anna Chambers, an 18-year-old girl who was raped and
18 sexually assaulted by two NYPD officers in Brooklyn
19 and who is one of many survivors of NYPD gender-based
20 violence, including police sexual violence. These
21 experiences and narratives are often unheard in the
22 mainstream media on conversations about policing.
23 This silence exists alongside multitude of systemic
24 barriers to reporting: survivor supports and often
25 victim blaming and criminalization of survivors. This
is absolutely and unequivocally rooted in racial and

3 gender-based discrimination. In February 2018, the
4 Civilian Complaint Review Board agreed to begin
5 phasing in taking reports of police sexual misconduct
6 against members of the public. Since the adoption of
7 this policy, the Civilian Complaint Review Board has
8 reported 130 incidents of sexual misconduct with 50
9 reports-- with 50 complaints of sexual assault sent
10 to the DA's offices. Located in the landscape where
11 very few people report experiences of gender-based
12 violence and with limited public awareness of CCRB's
13 recent adoption, this number is significant. Still,
14 survivors must still participate in a dual process
15 [inaudible] the NYPD Internal Affairs Bureau where
16 survivors are treated in deeply de-humanizing ways
17 and the NYPD has ultimate decision-making authority
18 over disciplinary outcomes. As a city we must enable
19 CCRB to make final disciplinary discipline
20 determination in cases that they already prosecute
21 through the administrative prosecution unit, and in
22 cases where the NYPD Commissioner deviates from a
23 CCRB recommendation, that the Commissioner-- and the
24 Commissioner should also publicly make available why
25 he made that dissenting decision. And finally, I
think it's important to name that NYPD School Safety

3 Agents-- any complaints that a young person may have
4 about NYPD School Safety Agents, it is referred to
5 the Internal Affairs Bureau of the NYPD. So young
6 people are expected to be interviewed in a way that
7 is deeply dehumanizing and treated as if they are the
8 person who did something wrong, and there's no reason
9 for this. Actually, CCRB should have absolute
10 mandate over these peace officers, and in particular,
11 NYPD School Safety Agents. Thank you.

12 CHAIRPERSON RICHARDS: Thank you so much
13 for your testimony.

14 MICHAEL SISITZKY: Good afternoon. Thank
15 you Chairs Richards and Lancman. My name is Michael
16 Sisitzky. I'm lead Policy Counsel with the New York
17 Civil Liberties Union. Today's hearing and the bills
18 before these committees are critically important.
19 The report that was issued last week on NYPD
20 discipline confirms many of the issues with the NYPD
21 that the NYCLU has been raising for years, including
22 the lack of transparency within disciplinary
23 processes, the Commissioner's complete authority to
24 decide outcomes in all disciplinary cases. The
25 public's trust in police is diminished every time an
officer is not held accountable and brought to

3 justice for misconduct, and it's further diminished

4 when Departments like the NYPD actively resist

5 sharing even the most basic information about the

6 rules that they purport to follow, and even the most

7 basic data on what happens when complaints start

8 winding their way through the disciplinary system.

9 The bills before the committee today are not enough

10 to eliminate all the flaws in the NYPD disciplinary

11 system, but they are critical first steps, and our

12 written testimony goes into more detail with comments

13 and suggestions on each, but I do want to highlight

14 the importance of the resolution calling for repeal

15 of Civil Rights Law Section 50A. The NYCLU strongly

16 supports passage of this resolution and is actively

17 working with our partners to repeal 50A through the

18 state legislature in Albany. 50A is anti-democratic

19 embrace of state secrecy. It permits Police

20 Departments to cover up their inaction on past

21 allegation of officer misconduct when they're

22 confronted with demands for accountability. It

23 inflicts additional and continuing harm and trauma on

24 police abuse victims and grieving family members who

25 have lost loved ones to police killings, denying them

closure, denying them any real sense of whether

3 justice was served in their cases. And it has been
4 twisted to justify withholding everything from body
5 camera footage to completely anonymized use of force
6 data. And New York City bears no small part of the
7 responsibility for this provision's shameful
8 expansion in recent years. It's a state law, but New
9 York City has really made this a pressing problem. A
10 few years ago, the NYCLU submitted a FOIL request for
11 redacted decisions from the NYPD's trial room. Our
12 goal was to gain a better understanding of the
13 analysis underlying the decision-making in those
14 cases, and we specifically did not seek any
15 identifying information on individual officers. The
16 NYPD denied our request from brought litigation
17 challenging that decision, but in December, the New
18 York State Court of Appeals issued a sweeping ruling
19 in dispute denying our request for those records and
20 expanding the reach of 50A so dramatically that it
21 now operates unlike any other exemption in the State
22 Freedom of Information Law, categorically banning the
23 disclosure of these records and declaring redactions
24 unavailable. New York is one of just two states to
25 elevate records of police misconduct to the level of
state secrets, and we do this despite the fact that

3 there's already robust protections built into FOIL
4 that are fully capable of balancing legitimate
5 officer privacy concerns with the public's right to
6 know how government agencies respond when public
7 employees violate the public trust. And in the
8 exchange earlier this morning, the NYPD despite their
9 insistence that there are specific concerns that
10 undermine the importance of 50A essentially admitted
11 that there are exceptions in FOIL that address every
12 concern that they have raised. In the exchange with
13 Council Member Cohen, the NYPD acknowledged that FOIL
14 has an exemption for personal privacy. It has an
15 exemption to redact information and withhold records
16 when there are legitimate concerns about safety.
17 Those records can be handled just like any other
18 record under Freedom of Information Law request.
19 There is no reason to assign this special level of
20 secrecy and protection specifically to police
21 personnel records, when these are the records that
22 communities are most vitally in need of seeing. So,
23 with that, I will conclude my testimony.

24 CHAIRPERSON RICHARDS: Thank you.

25 JOO-HYUN KANG: Good afternoon. My name
is Joo-Hyun Kang with Communities United for Police

3 Reform. I'm representing some of our members who were
4 not able to make it today. Rather than go through
5 written testimony, I'm just going to actually make
6 three points. First, on some of the myths that were
7 put forward today by the NYPD. One myth-- so I'll do
8 myths. I'll do a few additional examples of
9 disciplinary problems. So, three myths. One is that
10 they have to wait for a criminal legal process to
11 conclude before they can move forward on discipline.
12 We know that this is factually and historically
13 incorrect. There are two examples that I would
14 raise. One is when Anthony Baez was murdered by the
15 NYPD. Francis Lovoti [sp?] who was the officer who
16 put him in a chokehold 20 years before Eric Garner
17 was actually put through the NYPD disciplinary system
18 and fired before the DOJ prosecuted Lovoti [sp?].
19 That is the only case in the past several decades
20 where an NYPD officer has bene prosecuted by the Feds
21 and convicted and sentenced, and when that federal
22 case happened, they were able to rely on the NYPD
23 trial for being able to assess where there was
24 perjury and other issues that were helpful in the
25 federal case. So, I want to make that point really
clear. That's a choice that they make. It's not a

3 rule. It's not a law. the second example is when
4 Anna Chambers, the 18-year-old who goes by the name
5 publicly, Avana [sic] Chambers, that Kylynn from
6 Girls for Gender Equity mentioned, who was raped by
7 two NYPD officers. After she was raped, the Brooklyn
8 DAs office, before they moved forward on the case--
9 and that's still actually in pretrial motions-- the
10 NYPD immediately scheduled a disciplinary trial for
11 those two officers. Those two officers, those two
12 Brooklyn detectives ended up resigning so that they
13 wouldn't have to go through the NYPD disciplinary
14 trial, but it shows you another example from a recent
15 period where if the NYPD chooses to, they will move
16 forward a case. And so hearing from the families
17 that we heard earlier with Ms. Malcolm talking about
18 her case with her son, Ramarley, as well as Eric
19 Garner, Saheed Vassell, as well as Delrawn Small,
20 these are all cases that should not be going on year
21 after year, and they're not the only cases we're
22 talking about. Second, the second myth is NYPD
23 represented today and said that when 50A is amended
24 they will be able to be more transparent and release
25 more data I actually think that all of you certainly
Council Member Richards and Council Member Lancman

3 know for sure that that's actually just not what's
4 going on right now. The bills that are in the
5 package that the Council has put forward are all
6 bills about aggregate data. That data can be
7 released tomorrow with no revision to 50A. So what's
8 happening right now and we want to just make really,
9 really clear is that the NYPD is running game.
10 That's all it is. They're running game. They're
11 using 50A as a rhetorical way to be obstructionists
12 about just being transparent about misconduct and
13 discipline. The second part of that is that they
14 talked about all of the advocacies that they will be
15 doing on 50A amendment. We've heard this for the
16 past two years. That has not happened, and you know,
17 we're curious to see what the modification bill looks
18 like that they're proposing. The last thing I'll
19 just say is that this idea about 50a-- repealing 50A
20 risking officer safety is really just about fear
21 mongering and that it's not a factual piece as
22 Michael said. The FOIL already actually excludes
23 personal information. They can redact addresses and
24 personal addresses, phone numbers, etcetera of
25 officers. Other stuff will be in written statement.
Thanks so much.

3 CHAIRPERSON RICHARDS: Thank you.

4 NAHAL ZAMANI: Good afternoon. My name
5 is Nahal Zamani, and I'm the Center for
6 Constitutional Rights, and I'd like to thank you guys
7 again for holding this very important panel and
8 committee hearing following the heels of the
9 introduction of bills as well as the final report of
10 the independent panel. I wanted to spend about 30
11 seconds addressing some of the confusing points from
12 earlier today. First, on the relationship between the
13 CCRB and the NYPD. I was a bit confused about the
14 statistics that were cited by the Department.
15 Looking at the CCRB's annual and semiannual reports,
16 from 2017 and APU cases, there was only a 27 percent
17 level of concurrence. The first half of 2018, 26
18 percent. So unless the rest of 2018 was dramatically
19 different, I'm a little bit confused about the
20 statistics that were cited, particularly with regards
21 to APU cases. There's some slight differences with
22 the other swath of cases that don't represent the
23 most serious penalties ascribed by this board, but
24 some clarity I think is needed. Second, we know that
25 there is some incongruence or lack of accord between
the CCRB and the NYPD as confirmed in the Page 26 of

3 the Discipline Panel and the report talking about the
4 downward departure of the Commissioner. Third, I am
5 again a little bit confused about why the NYPD cannot
6 publish aggregated information, particularly as it's
7 broken down by precinct, which is a very useful tool
8 for future intervention and concern, particularly
9 because they regularly post this information with
10 regards to use of force, and that's on their website.
11 Fourth, with regards to stop and frisk. My
12 organization, the Center for Constitutional Rights,
13 along with some other organizations in the room today
14 is involved in litigation around this issue, and the
15 Federal Monitor in our case confirmed the stops are
16 still racially discriminatory. They lack reasonable
17 suspicion, a portion of them, and a number of them
18 are not documented. So, merely the number of stops
19 going down does not demonstrate that the issue has
20 been solved. I wanted to of course appreciate the
21 package of bills you guys have introduced, including
22 increased public reporting and the resolution to
23 appeal 50A, and commend the independent panel for
24 their recommendations in their report, particularly
25 the recommendation 9C around reducing the DAO's
request around reconsideration reports. Two things

3 that I think are really important that will come
4 about if your bills are passed, and of course, as the
5 panel recs are implemented, is showing why the NYPD
6 continues to prefer lower-level penalties, and how
7 much this occurs. And two, when-- and the NYPD does
8 not pursue any disciplinary action, and I would urge
9 the council that in any bills that are ultimately
10 passed, you include this clause around no pursuit of
11 disciplinary actions as something that should be
12 measured so that we can have a wider understanding of
13 this. I'd like to conclude by just reiterating oen
14 thing that we found in the course of our litigation
15 that was reported on by the Federal Monitor. The
16 Internal Affairs Bureau currently investigates
17 allegations of racial profiling. They have never
18 substantiated an allegation of racial profiling. That
19 means that there's a whole swath of cases where
20 members of service are not appropriately being
21 sanctioned. So we should consider that when we're
22 discussing very disturbing findings of the panel and
23 as the Council itself has found, as advocates have
24 been raising for years about the systemic failures
25 within the NYPD disciplinary process. Thank you.

3 CHAIRPERSON RICHARDS: Thank you, and
4 we'll have a lot more to say about that eventually,
5 but thank you. Thank you all for your testimony.
6 I'm going to call the next panel: Shaniqua Charles
7 [sp?], Roberto Cavanias [sp?] Charlotte Pope [sp?],
8 Kate McDonald [sp?]. Everybody here? Shaniqua
9 Charles, Roberto Cavanias, Charlotte Pope, Kate
10 McDonald. Alright, ladies first. Shaniqua, you want
11 to go first? Okay.

12 SHANIQUA CHARLES: Greetings, family. On
13 November 18th, 2018, I was assaulted by police on the
14 corner of my block in the Bronx, which by the way is
15 the poorest congressional district in the country,
16 only feet away from where my, at the time, eight-
17 year-old daughter stood. While having a conversation
18 with someone, I was man-handled, dragged, hair
19 yanked, arm cut, and thrown into the back of a 52nd
20 precinct squad car. As I screamed for my life at
21 that point because I was not under arrest, there were
22 three different points during this interaction where
23 I quite literally thought I would not make it back to
24 my daughter, Miracle. I thought I was going to die.
25 Officer Cappellan [sp?] and his cronies made sure to
divest from the protection in those moments,

3 particularly after over eight officers took my body
4 and did what they wanted. I was never placed under
5 arrest. I was never told that I brought any laws.
6 The only law that came to mind was walking while
7 black in America, as these officers who refused to
8 give any information to my Goddaughter nastily drove
9 off, I kept asking if I was under arrest. To which
10 they continued to respond that I was not. Being
11 kidnaped that day caused emotional trauma and
12 physical scars. What is the point of this story? My
13 name is Shaniqua Charles, and I'm the Executive
14 Director of Miss Abbie's Kids, a Youth Development
15 Nonprofit Organization servicing the northeast Bronx
16 and beyond, and the Co-founder of Never Be Caged, a
17 newly formed organization to end mass incarceration
18 through investment in our youth. And the point is
19 that tirelessly working on criminal justice issues
20 daily to correct the ills that impact communities of
21 color and communities experiencing poverty does not
22 even keep us as humans safe when police want to
23 engage in negative behavior. These bills that are
24 proposed would not only force police officers to have
25 to think more deeply before terrorizing the
communities they're supposed to serve and protect but

3 would also begin a record of responsibility that
4 officers would have to adhere to. If you want to
5 speak truth to power, then holding officers
6 accountable to their actions of misconduct is a large
7 piece of that puzzle, right? Not only this, but also
8 holding the department responsible for actions that
9 are being taken to respond when people are nastily
10 violated like myself and the countless others that
11 also unfortunately end in death. Secondly, T2019 is
12 a must, particularly in our city where black and
13 brown bodies are over-sentenced and much due to the
14 unrelenting power that prosecutors wield during
15 arraignment processes and sentencing. We have
16 staunch evidence of poor choice and targeted
17 prosecutorial practices when we have a stain on New
18 York City like Rikers Island where 89 percent of the
19 population are black and brown bodies, when we know
20 that we only make up about 25 percent of the city.
21 Where Craig and Johnny can commit the same exact
22 crime, have the same background, and Johnny goes home
23 perhaps never even being arrested, and Craig
24 surrenders the rest of his life to being caged like
25 an animal for the next 25 years. Something must
change and these bills are a strong start in

3 addressing the two most powerful players in this
4 heart-wrenching, rights violating game of how many
5 folks can we eliminate through mass incarceration.
6 So thank you for introducing those. About 20 seconds
7 more. Thank you for introducing those and also making
8 sure that the people who are directly impacted by
9 these ills every day are not only heard, but
10 supported, the grassroots people and the boots-on-
11 the-ground people. Our ancestors didn't jump off of
12 ships to be free for us to still be enslaved. We
13 need healing. We need reconciliation. We need
14 empathy. We need change, and we need change now. We
15 need to continuously honor the work of our boots on
16 the ground, grassroots, directly impacted humans that
17 have the lived experience of what's wrong with our
18 current system which we all know is not broken, and
19 creating community around these issues based on love
20 and humanity. Peace and blessing and thank you so
21 much for the opportunity.

22 CHAIRPERSON RICHARDS: Thank you so much
23 for your testimony.

24 KATE MCDONOUGH: Afternoon. My name is
25 Kate McDonough, and I'm the Director of Dignity in
Schools Campaign, New York which is multistate

3 corridor [sic] coalition of over New York City based
4 organizations that work for education justice and the
5 end to the school to prison pipeline. I'm here today
6 because systematic racism is leading to the gross
7 over policing of our coalition members in school.
8 For example, research has shown that while black and
9 Latinx students do not misbehave more frequently than
10 their white peers, they are more likely to be
11 punished harshly for their actions. For example,
12 black and Latinx students make up 92 percent of all
13 arrests and 91.7 percent of students getting
14 summonses, yet only make up 67.1 percent of the
15 student population. So while white students may get
16 into a fight have an opportunity to get at the root
17 of the issue and receive support and guidance, black
18 and brown students are placed in handcuffs and
19 traumatized. We support the Council's steps towards
20 accountability and transparency through the
21 legislation that was proposed today so that our young
22 people can get the justice they deserve. We also
23 support the repeal of 50A. I think it's also
24 important to note, though, that this is a system of--
25 a symptom of a larger issue, which is state
sanctioned silence against black and brown young

3 people. Right now there are more NYPD School Safety
4 officers in our schools than there are guidance
5 counselors and social workers combined. Currently
6 the City gives over 300 million dollars of the DOE's
7 budget to the NYPD School Safety Division. As we saw
8 the NYPD's budget grow, we also-- for the School
9 Safety Division, we also saw funding for restorative
10 justice in Fiscal Year 19 decrease, which is
11 something that's proven to build positive school
12 climates and reduce the criminalization of black and
13 brown young people. So you get what you pay for.
14 So, in addition to taking these steps, we do urge the
15 Council to divest from the silence and invest in the
16 success of our young people. We need funds to be
17 reallocated from the NYPD to the DOE to enable
18 guidance counselors and social workers be in every
19 school. We need funds to enable restorative justice
20 to be expanded citywide. So we have a choice. As we
21 propose-- as we work towards this legislation we can
22 also be looking towards how to continue to invest in
23 success of our young people and their wellbeing. I
24 also just want to uplift that our young people are
25 thriving. They're amazing young folks who
unfortunately can't be here right now, but it's not

1 COMMITTEE ON PUBLIC SAFETY JOINTLY WITH
2 COMMITTEE ON THE JUSTICE SYSTEM

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3 because of the system; it's in spite of it. And I
4 know that together we can create the schools that
5 they want and they deserve. Thank you.

6 CHAIRPERSON RICHARDS: Thank you for your
7 testimony.

8 CHARLOTTE POPE: Good afternoon. My name
9 is Charlotte Pope. I'm with the Children's Defense
10 Fund New York. We're also a member of the Dignity in
11 Schools Campaign. I'm also here to bring attention
12 to policing students as they attend school. According
13 to data made available through the Council's Student
14 Safety Act, young people experience 10,000 police
15 interventions in schools during 2018. Patrol
16 officers and detectives who function outside of the
17 School Safety Division are also policing schools, and
18 were responsible for 74 percent of all school-based
19 arrests, and 57 percent of all Criminal Court
20 summonses during 2018. Students in-school
21 experiences of policing are far-reaching and the
22 consequences of our-- and the consequences of or
23 potential for relief from daily conflict or
24 harassment fails to be transparent to students and
25 their families. The Buzfeed database shows 206 cases
involving a School Safety Agent, a representative of

3 the School Safety Division, substantiated charges
4 included 52 instances of physical contact with
5 students, including unnecessary and excessive force
6 against a student, wrongful searches, and engaging in
7 a physical altercation with a student all resulting
8 in forfeiture of vacation days. Students repeatedly
9 attest to instances where SSAs and the police
10 entering schools escalates incidents that could have
11 otherwise been resolved or mitigated by an educator
12 or counselor. CDF New York supports requiring the
13 Police Department to submit reports on complaints of
14 police misconduct, and we insist on the need to bring
15 greater transparency to complaints originating from
16 school-based incidents and to disaggregate complaints
17 by command in order to identify trends. For the
18 introductions requiring reports on arrests for
19 resisting arrest, assault in the second degree, and
20 obstructing governmental administration, we ask that
21 they include whether the person was arrested in an
22 area operated in whole or in part by the Department
23 of Education. Finally, we urge the City to move away
24 from police in our schools, especially as policing
25 students is not a substitute for investing in

3 counselors, social workers, and other life-sustaining
4 resources. Thank you.

5 CHAIRPERSON RICHARDS: Thank you so much.

6 ROBERTO CABANAS: Good afternoon,
7 Chairperson Richards, Chairperson Lancman. Thank you
8 for providing us with an opportunity to testify
9 today. My name is Roberto Cabanas, and I'm the
10 Coordinator for the Urban Youth Collaborative, and
11 also part of Dignity in Schools Campaign. UYC is a
12 coalition of youth-led organizations all across New
13 York City. Our young people are youth of color from
14 Make the Road New York, Rockaway Taskforce, Sisters
15 and Brothers United, and Future of Tomorrow. Every
16 day members of our organizations deal with the harsh
17 and dehumanizing precincts [sic] of police in our
18 schools. While their mere presence creates
19 detrimental impacts on young people, the frequent
20 displays of abuse compound these harms. Across the
21 city, approximately 95 percent of all police
22 interactions in schools are students of color despite
23 only making up 67 percent of the student population.
24 The discriminatory use of policing in our schools
25 means that this is also very likely that black and
brown students are the students most regularly abused

3 by the NYPD and their schools. Our members have
4 shared stories of physical and verbal abuse of School
5 Safety Agents and other NYPD personnel in schools.
6 Had I known this hearing would go this long, our
7 young people would have organized to be here. I know
8 they would have loved to talk to both of you today,
9 and the other Council Members that are here. When
10 this type of abuse occurs by police and School Safety
11 Agents, young people do not know where to turn. The
12 complaint system is incredibly difficult for them to
13 navigate. Most schools do not even know how students
14 can file complaints against the NYPD personnel and
15 who the police are in their schools. Some students
16 have still been able to file complaints despite the
17 excessive hurdles they face to do so. In the last two
18 years there have been nearly 300 force abuse of
19 authority, discourtesy, offensive language complaints
20 lodged against School Safety Agents. We know based
21 on the barriers young people face in filing these
22 complaints, that this number vastly undercounts the
23 true scope of abuse occurring in our schools, and
24 yet, that's almost a complaint in every school every
25 day. The rate of abuse appears to be on the rise.
Just yesterday, data came out about the complaints

3 from quarter four of 2018. The complaints was
4 approximately 57 percent higher than the same quarter
5 of data in 2017. But once a complaint is filed,
6 there is no transparency as to what if any
7 disciplinary action is taken against the NYPD
8 personnel. On average, complaints remain open more
9 than 50 days and some are often even more, open more
10 to 100 day. During that time, as the complaints are
11 issued, SSAs still remain in schools and are still
12 interacting with our students. Young people must
13 feel safe and supported in their schools. When we
14 permit SSAs to stay in schools who have abused their
15 authority, used force against young people, or are
16 disrespectful, we tell young people-- the message
17 we're sending young people is that they don't matter.
18 We tell that this-- we tell them if they are abused,
19 we will not support them. I'm just wrapping up. We're
20 asking you to change that. The City must provide a
21 transparent disciplinary process so that all New
22 Yorkers, if they file a complaint against the NYPD
23 personnel, their complaint will be taken seriously
24 and appropriately, appropriate disciplinary action
25 will be taken. SSAs with complaints against them
should not be able to work in schools. And we also

3 support the repeal of 50A. Students, parents, and
4 community members at large need to have the
5 opportunity to understand the disciplinary histories
6 of people who are around our city's young people
7 every day. Thank you.

8 CHAIRPERSON RICHARDS: Thank you so much.
9 Thank you all for your testimony. We're going to go
10 to the last panel: Devon Woodley [sp?], Towaki
11 Komatsu [sp?]- it's not me, it's your handwriting--
12 Kelly Price, Kelly Grace Price, and Stephanie Benhami
13 [sp?], Benham [sic]. I'm going to ask you to begin,
14 sir, and I'm going to ask you-- I know you're a
15 regular here. Mind your language. Okay. Thank you.
16 You know what? Ladies first. I will continue this.
17 Young lady, you begin. Push your button. It's going
18 to light up red. There you go, and you'll just state
19 your name for the record and everything, and you may
20 begin.

21 STEPHANIE BENHAM: Good afternoon. My
22 name's Stephanie Benham [sp?] and I am a member of
23 the Close Rikers Campaign and supporting our partners
24 at Communities United for Police Reform. I am here
25 because I understand that being a police officer is
not an easy job. I understand that police officers

3 put their lives on the line by taking an oath to
4 protect and service communities that are entrenched
5 with violent crime and drug abuse, but we the people
6 who live in these communities do not feel protected
7 by the police at times. Too many innocent black and
8 brown kids are dying by the hand of police officers.
9 My younger brother, best-- my younger brother, best
10 friend, and college roommate, Danroy [sp?] DJ Henry
11 was shot and killed by a Pleasantville, New York
12 police officer Aaron Ness [sic] on October 17th,
13 2010. DJ was a senior and football athlete at Pace
14 [sic] University who decided to go out one night with
15 one of-- another friend to a local bar when
16 Pleasantville police were called to the scene for an
17 alleged fight. An innocent young man who was only 20
18 years old at the time was shot by a police officer
19 all because he was told to move his vehicle from the
20 fire lane. This officer, Aaron Ness, was promoted
21 within Pleasantville Police Department that same year
22 that he shot and killed DJ Henry. My brother is
23 still not healed from the loss of his best friend,
24 and I'm not healed because that could have been my
25 younger brother in that car with him. The fact that
Officer Ness was not held accountable for the

3 unlawful shooting and was able to keep his job deeply
4 affected how my brother views local police officers
5 as being discriminatory against black and brown
6 people, and I want to be able to let him know that we
7 are fighting for police reform so that NYPD follow
8 the law moving forward, and he does not have to fear
9 for his life or wait for justice that will never
10 come. New York City spends millions of dollars of
11 tax payers' funds to settle cases of police
12 misconduct which involve allegation of wrongful
13 imprisonment and police brutality. Why are tax
14 payers being held accountable by paying of settlement
15 civilian complaints against NYPD police officers for
16 police misconduct? Should police officers be held
17 accountable for their crime? Who's policing the
18 police? These are some of the questions that comes
19 to mind when I see how black and brown low-income
20 communities are deeply impacted by police misconduct.
21 I am here to testify in support of bill introduction
22 1105 in relation to requiring the Police Department
23 to submit reports on complaints of police misconduct.
24 I believe this bill will make NYPD disciplinary
25 process more transparent. The City Council's ability
to obtain frequent [inaudible] report from NYPD

3 offices is a starting point to break through the lack
4 of transparency surrounding police misconduct. The
5 rate of police misconduct complaints have increased
6 and the all-time within five years, and the number
7 keeps rising. The number one issue regarding public
8 safety in our community is how police are policing
9 our community. Black and brown people are mostly
10 targeted by police using physical force, or even
11 worse, deadly force causing death against citizens.
12 Police shootings have impacted black and brown
13 communities that should be protected by the police
14 who are there to serve the community. It should be
15 mandatory for police officers to report every police
16 shooting and use of force in every department so
17 there can be tighter control over their discretion.
18 Police officers should also be penalized if they do
19 not report their action because I shows
20 accountability. This bill calls for a change that
21 will create space for a real tangible police reform.
22 It will require that NYPD be accountable for any
23 misconduct and ensure that our communities have
24 access to vital information to support our calls of
25 justice-- for justice.

3 CHAIRPERSON RICHARDS: Thank you. Thank
4 you.

5 TAMIKA GRAHAM: Good afternoon. My name
6 is Tamika Graham, and I'm sitting in for Devon
7 Woodley who had to leave in an emergency. I'm going
8 to give his testimony, that way he doesn't go
9 unheard. He says: "Most people assume the District
10 Attorneys are keeping us safe. This is far from the
11 truth. The sad reality is that people who are
12 standing and/or awaiting trial are contributing tax
13 payers, essentially paying racist prosecutors to lock
14 them up based off of the crime they allegedly
15 committed without a fair understanding of the person
16 standing trial. That gives them the room to operate
17 in the dark. We trust them because we have to and
18 because the people elected them. If we, the people,
19 elected them into office and are paying them to do
20 their jobs, then we have the right to transparency.
21 We have the right to know what they know. It is our
22 duty and our right to hold them accountable for their
23 false accusations, their racist tactics, their
24 insensitivity to black and brown communities, and
25 most importantly protecting our due process in a fair
and speedy trial. Nobody should wield the power to

3 take someone's freedom and neglect their humanity
4 without begin accountable to our communities.

5 Accountability is the foundation for reforms.

6 Remember that District Attorneys could on their own

7 enact significant pretrial reforms without waiting

8 for Albany to act. Here in Manhattan, DA Cyrus

9 Vance's office practices open file discovery whenever

10 they feel like it. They will drastically reduce

11 court delays if they practiced early and open

12 discovery in every single case that they prosecuted.

13 Five years ago I was fighting an assault charge. I

14 had never been pulled over, and never had any

15 warrants for my arrest. I was in college. I was

16 working two jobs to support myself and my daughter,

17 and was privileged to post an outrageous 10,000-

18 dollar bail through the love and support of my family

19 and friends. But instead of explaining the man I was,

20 the District Attorney office made me out to be an

21 irredeemable monster with a suspected history of

22 violence or violent tendencies with no prior

23 engagement with me other than the police report and

24 probation assessment they gathered. Instead of

25 getting to know me as the man I was and who my family

and loved ones knew me to be, an upstanding, tax-

3 paying, contributing member of society, the
4 prosecution decided to call me "monster, a menace,"
5 and convinced the judge that I had no regard for
6 public safety. The DA's office made me look less
7 than my worth and lie to the courts, depicting me as
8 a boy who had been born into a life of crime and knew
9 nothing but wreaking havoc and causing pain. The
10 insensitivity, the injustice, and the racial
11 profiling must stop now. DA accountability and
12 transparency are what we need now. In order for
13 reform to work, we must reform the system. Thank
14 you.

14 CHAIRPERSON RICHARDS: Thank you.

15 KELLY GRACE PRICE: Hi, I'm Kelly Grace
16 Price, and I just wanted to thank Ms. Graham for
17 raising the specter of DA accountability. This has
18 been my crusade for the better part of a decade. I
19 won't bore you with what happened to me with Cy
20 Vance, but I wanted to make a few comments
21 specifically about the DA reporting bill, and then I
22 wanted to talk about sexual assault investigations in
23 the NYPD and in the CCRB. And I'm going to try and
24 make this super quick. I've submitted my written
25 testimony to all of you via email. I beg your pardon,

3 I don't have access to a printer. So, some general
4 comments about the specifics of Intro T20093704. I'm
5 not going to go through everything. I'm already
6 tired of the sound of my voice. My service dog is
7 exhausted. But I really want to emphasize that we
8 need more reporting on sexual violence and how our
9 city DA's treat us when we turn to them in our
10 darkest hours. If the Me Too movement has taught us
11 anything is that our DAs are egregiously behind in
12 servicing this segment of the population. I think
13 that a few additional requirements could be very
14 easily added to this bill to specifically the needs
15 of sexual assault and harassment survivors. I think
16 we need the number of cases of IPV, rape, sexual
17 abuse and sexual harassment that have been sent to
18 the DAs from the NYPD, we need those numbers. I'm a
19 member of the Downstate Coalition Against Sexual
20 Violence, and we've sked numerous times all of the
21 parties for those numbers including the Mayor's new
22 Commissioner of the Office Against Gender-based
23 Violence. She doesn't have-- she doesn't have this
24 number. She doesn't have a clue. We really need the
25 numbers of how many, not just 61's, but how many
cases of rape and sexual assault are submitted to the

3 DAs for prosecution. I was at an event with the
4 Reverend Q English [sic] last summer, and the former
5 Commissioner of the Office Against Gender-based
6 Violence, Rose Pierre Louis [sp?] showed up, and she
7 threw off the top of her head that there were over
8 85,000 complaints in Manhattan alone in the previous
9 year of rape, sexual assault or sexual harassment.
10 But then I literally heard Cy Vance the next month
11 say that his office only prosecuted about 4-5,000.
12 That's ridiculous. So, without going ad nauseam
13 through all of my reporting requirements, you have
14 them submitted. I also-- this is whimsical, but I
15 also have a deep desire to have additional reporting.
16 Your bill, Councilman Lancman, 3706 specifically asks
17 for the NYPD to turn over its records to the DA about
18 discipline. We need the same kind of disciplinary
19 records about District Attorneys made transparent. I
20 really don't need to go through the nauseating
21 reporting on bad DA's around town. There's the
22 Brooklyn ADA who was spying on her lover. There's
23 the nanny cam scandal. There's Eli Trukowski's [sp?]
24 kid or Michael Trukowski's kid who choked out a girl
25 in a bar. There's the alleged pimp that was working
in the Investigative Unit of the DA's office.

3 There's so much reporting, but we have absolutely no
4 transparency. Jeffery Schlenger [sp?], the former
5 Chief of Staff for Cy Vance, his best buddy, had to
6 leave in shame because he was allegedly accused of
7 sexual violence by an intern. Now he's the General
8 Counsel for the NYPD. I actually like Mr. Schlenger.
9 He tried to really help me when he worked for Cy
10 Vance. But so-- you know, what's good for the goose
11 is good for the gander. My time is up, but please if
12 you can take my recommendations and try and get some
13 kind of reporting about-- and also, the DAs don't
14 investigate themselves. They have the Brooklyn-- If
15 someone in Cy Vance's office had done misdeeds, his
16 office doesn't investigate it. It's been Darcel
17 Clark, but the latest one got punted to Brooklyn, but
18 the public has no feedback on where those-- on how
19 those investigations turn out. Anyway, please--
20 thank you for letting me go almost last again.

21 CHAIRPERSON RICHARDS: Thank you, again.
22 Thank you for being here.

23 TOWAKI KOMATSU: Hi, my name is Towaki
24 Komatsu. I've testified to you previously. In I
25 guess talking to me when our first interaction
occurred, you imposed a prior restraint on my first

3 amendment speech. My testimony today is not for
4 anyone in this building. It's instead for Federal
5 Judge Larner Schoefiled [sp?], the Second Circuit and
6 Federal Judges assigned to the Federal Courthouse in
7 Brooklyn. I'm going to play some videos of public
8 meetings starting one-- with one on September 26th of
9 2017 where NYPD officer Raymond Drolla [sp?], the
10 Mayor's NYPD Security Detail, illegally kept me out
11 of a public town hall meeting in violation of New
12 York Penal Code 175.25. As a District Attorney
13 candidate, Mr. Lancman, you should actually do
14 something in terms of enforcing applicable law.
15 Second video I'm going to play for your benefit as
16 well as the people in this room is a public meeting
17 that the Mayor held on October 25th of 2017 in
18 Brooklyn where defendant Howard Redman [sp?] of the
19 Mayor's Security Detail, again kept me out of a
20 public meeting so that I couldn't engage in
21 whistleblowing. So, Judge Schoefield, this is for
22 your benefit to establish that there is indeed
23 linkage between my existing claims in my federal
24 lawsuit and the additional claims that I seek to add
25 to it. Here we go. [playing video]

3 CHAIRPERSON RICHARDS: Okay, thank you.

4 Your time is up. Time is up.

5 TOWAKI KOMATSU: Let me just--

6 CHAIRPERSON RICHARDS: You could wrap up.

7 TOWAKI KOMATSU: So, Letitia James, an
8 attorney for the assist-- the Attorney General of New
9 York State, she filed papers on January 11th of this
10 year in my federal lawsuit claiming that if there's a
11 public hearing, people don't have a protected first
12 amendment right to attend a public meeting. Do you
13 agree with that?

14 CHAIRPERSON RICHARDS: I'm not going to
15 comment on--

16 TOWAKI KOMATSU: [interposing] Should if
17 you're a leader.

18 CHAIRPERSON RICHARDS: what the State
19 Attorney General says. I have not had a
20 conversation. So, I thank you for your testimony.
21 Thank you for coming out today. Thank you all for
22 coming out today. I want to especially thank the
23 staff who worked on this particular hearing, Daniel
24 Aides [sp?], Casey Addison, Nevin Sing [sp?]. I know
25 the Committee of Justice, Maxwell Kompfner [sp?]
Williams, Cashorn Deny [sp?], Monica Pepple [sp?]. I

3 hope I got all your names right. Want to thank you
4 all for the work you've done to put this hearing
5 together. I also want to acknowledge the work once
6 again of the Blue Ribbon Panel, Mary Jo White,
7 Barbara Jones, and Robert Capers, and the NYPD for
8 coming out, and most importantly the members of the
9 public who came to testify today, and especially
10 those families who came out to give testimonies on
11 unfortunate incidents that happened in their
12 particular lives. With that begin said, this hearing
13 is now closed.

14 [gavel]

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1 COMMITTEE ON PUBLIC SAFETY JOINTLY WITH
2 COMMITTEE ON THE JUSTICE SYSTEM

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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 March 27, 2019