



Monday, February 26, 2024

**STATEMENT OF JOSEPH KENNY
CHIEF OF DETECTIVES
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON PUBLIC SAFETY**

**COUNCIL CHAMBERS
FEBRUARY 26, 2024**

Good morning Chair Salaam and members of the Council. I am Joseph Kenny, Chief of the Detective Bureau of the New York City Police Department (NYPD). I am joined today by Neil Fenton, Executive Director of the Department's Investigative Support and Training Unit, Andrew Botelho, Executive Director of Special Projects & Operations, and Josh Levin, the Acting Director of the Department's Legislative Affairs Unit. On behalf of Police Commissioner Edward Caban, I would like to thank you for this opportunity to discuss the NYPD's commitment to ensuring the integrity of investigative procedures and our safeguards to prevent wrongful convictions.

To be clear, even one wrongful conviction is too many. It is counter to everything we stand for. When the wrong person is arrested and convicted, it is a failure of law enforcement and the criminal justice system. The horror experienced by a person wrongfully convicted not only impacts them, but their family, loved ones, and communities. The Department's mission is to ensure public safety and achieve justice for victims while working tirelessly to make sure that individuals being arrested, charged, and convicted of crimes are, in fact, guilty of those crimes. For that reason, the NYPD is committed to best practices regarding investigative procedures and techniques and works hand in hand with the conviction integrity units at prosecutors' offices when convictions are challenged. In partnership with the conviction integrity units, NYPD delivers evidence and files at their request, and makes resources available to support the critical work they do. Their efforts have our full support.

Consistent with those efforts, we have taken a variety of steps over the years to improve our investigative procedures and prevent errors as we build our cases, specifically in regards to eyewitness identifications, amongst others. Every day we rely on witnesses who come forward to tell us what they know and without the accounts of witnesses, most of our investigations would go nowhere. We understand that eyewitness identifications have proven to be unreliable in the past for myriad reasons. Because of this truth, the Department has implemented strict procedures regarding witness identifications to ensure their reliability and to guarantee that they are not unduly influenced by our investigators. For example, photo arrays are the primary way witnesses identify or exclude suspects during investigations. These are conducted using double-blind procedures, which is considered best practice. A detective provides the picture of the suspect, and a computer system generates five additional photos that look like the suspect to include in the array. Next, a second detective, who is not involved in the case, administers the array to the witness. This minimizes the risk that the detective will subtly or unintentionally influence a witness to identify the suspect, because the detective administering the array does not know which photo in the array belongs to the suspect. In addition, language is also important: our written protocols demand that only neutral

language may be used, and that the identification procedure itself be audio recorded. And of course the photo array must be provided in discovery, to be scrutinized by the prosecutor and defense attorney.

Traditional lineups like the ones you see on television and in movies, have played a smaller and smaller role in our investigations since the COVID-19 pandemic, but our policies and practices in those lineups are again designed to minimize the risk of influence on the witness. Detectives follow a strict, neutral script when administering a lineup to prevent bias and to maintain consistency across all investigations. As a further safeguard, the suspect's attorney is present during the lineup and may make suggestions regarding aspects of the lineup.

The collection and use of video recordings also plays an important role in our efforts to prevent wrongful convictions. So many interactions—and so many crimes—are now caught on video. That may be a video recording by a business, a bystander, a victim, or NYPD cameras. Drawing on video evidence, piecing together videos taken at different angles and moments, and tracing a criminal's movements before, during, and after a crime, can provide crucial evidence in a case. It can also help us to exclude suspects. There are times when a witness remembers an event a certain way, but the video evidence tells us otherwise. That is crucial for building good cases, and preventing errors.

Video evidence is important in another respect: it captures interactions between police officers and suspects. When patrol officers engage in enforcement activity, they are required to turn on their body-worn cameras. The circumstances of an arrest, including the search of the suspect and any conversation between the officers and the suspect, are recorded. When it comes to questioning by our detectives, state law requires us to video record interrogations of adults suspected of specific crimes. We impose additional requirements beyond those required by law, and require video recording of a range of additional felony interrogations, including all gun crimes. For juveniles, every interrogation is videotaped and subject to additional safeguards. We reach out to a parent or guardian before any interrogation can begin. If the parent or guardian seeks to discuss the matter with the juvenile, the detectives will provide them with a private room to do so. If at any point the parent or guardian says that they do not wish for the juvenile to talk with us, the questioning is over. If at any point the juvenile, or their parent or guardian, requests an attorney, the questioning is over. Safety of the juveniles in our custody is also critical, and they are not detained together with adults.

Let me end where I began: We care deeply about preventing wrongful convictions. We have to get this right the first time around, and that requires our dedicated officers and detectives to continue to implement safeguards relating to wrongful convictions. Thank you for the opportunity to speak with you today, and it is our pleasure to answer any questions you may have.



Testimony of

Sergio De La Pava

Legal Director

New York County Defender Services

Before the

Committee on Public Safety

Oversight Hearing – Examining NYPD Investigative Procedures
and Safeguards Relating to Wrongful Convictions

February 26, 2024

My name is Sergio De La Pava and I am the Legal Director at New York County Defender Services (NYCDS). NYCDS is a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court, Supreme Court, and Family Courts every year. Since opening our doors in 1997, NYCDS has represented more than 300,000 clients in their criminal matters and witnessed firsthand the myriad ways that the criminal legal system abuses and harms our clients. Thank you, Chair Salaam, for holding this important hearing and allowing us the opportunity to testify about steps that NYPD and other city agencies can take to prevent wrongful convictions going forward.

I. Background and Overview

New York is a national leader in wrongful convictions. Since 1989 more than 300 people have been exonerated in our state, resulting in a collective 3,068 years of life lost to wrongful convictions. Our state ranks third highest in the country in numbers of wrongful convictions, behind only Texas and Illinois.

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NYCDS is based in New York County, an epicenter of criminal convictions and wrongful convictions. No one understands this more keenly than Chair Salaam, the Council Member for Harlem, who is also one of the Exonerated Five. Exonerations occur in New York County every year, frequently from convictions obtained in the 1980s and nineties. Some recent exonerations include Eric Smokes and David Warren (2024), Jabar Walker and Wayne Gardine (2023), Steven Lopez (2022), Aziz A. Muhammad and Khalil Islam (2021), and Rafael Ruiz (2020).¹ But as trial attorneys on the front lines of the criminal legal system, we know that wrongful convictions are not a mere relic of the twentieth century.

Queens, for example, has recently produced two very troubling cases implicating New York's wrongful convictions problem. Prakash Churaman was only 15 years old when NYPD officers burst into his bedroom in 2014 and arrested him for a murder he did not commit. He was not exonerated by the Queens District Attorney until 2021.² Less fortunate is Chanel Lewis, a recent graduate from a high school for developmentally delayed students, who was convicted in 2019 of killing a Howard Beach jogger in 2016. Over 40,000 people have signed a petition demanding justice for him on the grounds that he is innocent. Yet Mr. Lewis is still fighting to clear his name.³ These cases are a powerful reminder that the injustice of wrongful convictions remains an ever-present threat that we must continue to fight against with every weapon at our disposal.

In 2021, the District Attorneys in Brooklyn, Manhattan, and the Bronx vacated hundreds of criminal convictions in cases where purported evidence of guilt had been produced by corrupt former NYPD Detective Joseph E. Franco.⁴ At the time, our office issued a statement urging all five DAs to review all of their convictions in which officers with histories of misconduct played a role.

Just a few months ago our office received notice from the Manhattan DA's Office about the removal of four criminalists from case work in the Office of the Chief Medical Examiner, Forensic Biology Lab, and the subsequent discovery that three of those analysts also violated certain procedures related to casework. These kind of bombshell disclosures are occurring with greater and greater frequency and increasingly they are not related to DNA. In this case, it was forensic biology. Previously, we received a similar disclosure related to latent fingerprints. In 2021 it was

¹ The National Registry of Exonerations includes 52 exonerations from Manhattan. These are the most recent additions to the list. National Registry of Exonerations, New York County Exonerations, available at <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={faf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7}&FilterField1=ST&FilterValue1=NY&FilterField2=County%5Fx0020%5Fof%5Fx0020%5FCrime&FilterValue2=New%20York&SortField=Exonerated&SortDir=Asc> (last viewed 2/23/23).

² Max Rivlin-Nadler, "Prakash Churaman, Locked Up for Years on Charges the Queens DA Has Since Dropped, Sues NYC for \$25 Million," *Hellgate*, Jan. 30, 2023, available at <https://hellgatenyc.com/prakash-churaman-lawsuit>.

³ Bill Parry, "Attorneys say Chanel Lewis' murder conviction in killing of Howard Beach jogger based on 'racial dragnet'," *QNS.com*, Aug. 23, 2023, available at <https://qns.com/2023/08/chanel-lewis-murder-conviction-howard-beach-jogger/>

⁴ Graham Rayman, "NYC Medical Examiner crime analysts suspended from casework in misconduct probe," *NY Daily News*, Dec. 14, 2023, available at <https://www.nydailynews.com/2023/12/14/nyc-medical-examiner-crime-analysts-suspended-from-casework-in-misconduct-probe/>.

a disclosure about a corrupt officer (Det. Franco). These high-profile instances of systemic malfeasance make evident that we need a statutory framework that truly appreciates the risk of innocent people being convicted and imprisoned and doesn't simply rely on the benevolence of District Attorneys offices, many of which do not even have conviction integrity units, to occasionally address these grave injustices.

NYCDS is committed to ending the scourge of wrongful convictions in New York State through legislation. We co-lead a campaign to pass the Challenging Wrongful Convictions Act (S.7548/A.2878A) which would create a working pathway to exoneration in New York State. But separately New York City can and should do more to prevent future wrongful convictions. So we offer the Council the following recommendations.

II. Policy Recommendations

A. Properly Fund and Implement Discovery Reform

One major reason New York State is among the leaders in wrongful convictions is that, until 2020, police and prosecutors were not required to turn over all of the discovery or evidence in a criminal case until a jury was sworn.⁵ Since only 2% of criminal cases in New York State end up going to trial, this meant that the vast majority of accused people were prevented from ever viewing the entirety of the evidence against them. Thus a great majority were forced to make a decision about pleading guilty with only incomplete information about the evidence in the case. The old discovery law was known in the community as the Blindfold Law because it forced people accused of crimes to make life-altering decisions while essentially blindfolded.⁶

In 2019, the legislature repealed the Blindfold Law and put in its place a new automatic discovery statute, Criminal Procedure Law Article 245. Under the new law, prosecutors are required by law to turn over all of the evidence in their case early and automatically. Now accused people and their counsel can review the evidence and make an informed decision about how to proceed, including whether or not to plead guilty.

While the law has been in place for more than four years now, implementation remains a challenge. One of the greatest challenges is cooperation and buy-in from the other primary actor besides prosecutors, the NYPD.

⁵ “The pre-reform discovery statute (CPL Article 240) required prosecutors to fulfill discovery obligations only after the defense attorney had made a demand in writing. In addition, it did not establish early time frames for when demanded materials should be turned over. For instance, regarding witnesses’ written statements, recordings, criminal records, and pending criminal actions, the pre-reform statute did not require prosecutors to turn over commencement of trial, which limits a defendant’s opportunity to properly investigate and respond to such information.” Krystal Rodriguez, *Discovery Reform in New York: Major Legislative Provisions* (Data Collaborative for Justice, 2022), p. 2, available at https://datacollaborativeforjustice.org/wp-content/uploads/2022/05/Discovery-Reform-in-New-York_Revised-2022_6.2_FINAL.pdf.

⁶ See, e.g., Robert Anello, “Blindfold Removed from Justice in State Criminal Cases in 2020,” *Forbes*, Jan. 8, 2020, available at <https://www.forbes.com/sites/insider/2020/01/08/blindfold-removed-from-justice-in-state-criminal-cases-in-2020/?sh=70f0aedb207c>.

A common experience for New York City public defenders is this: the prosecutor says that all of the discovery has been turned over. We therefore begin to proceed to trial. But on the eve of the trial we are provided with new discovery that the prosecutor says was not previously given to them by the NYPD. This places the defense in a difficult spot. Do we cut short our constitutionally-mandated investigation of this new evidence and proceed to immediate trial or do we ask for a continuance and prolong our client's pretrial detention on Rikers Island, further delaying their day in court and possibly harming their mental health and physical safety? It is a lose-lose situation, and it is one that our clients and their attorneys face regularly.

NYPD needs a better system in place to ensure that all discovery in their possession is turned over well before trial. Specifically, they must very early on fully gather and review all material related to an arrest and ensure that all of this information is immediately provided to the prosecutor. The fact that prosecutors so often show up with new evidence on the eve of trial suggests that far more needs to be done to ensure that NYPD complies with the law. As one expert put it, "Sharing more information requires more effort."⁷

Courts have been watching this issue (police compliance with discovery laws) very closely. In a 2023 opinion out of the Bronx, *People v. Chimborazo*, the Judge openly criticized the intentional roadblocks put in place by the NYPD to prevent the disclosure of evidence as required by statute. In that case, the judge ordered discovery to be turned over, but despite the judicial order, the NYPD then demanded that the prosecutor not only turn over the minutes from the hearing but also seek a protective order concerning the information in the documents. The judge ultimately denied the motion for the protective order, describing it as a "ransom payment to the NYPD." In so doing, Judge Bowen called out the actions of the NYPD explicitly:

"Also concerning is the People's self-admitted kowtowing to these purported NYPD demands. The People cannot be made to jump through a series of NYPD-crafted hoops to receive discoverable material that the New York State Legislature deems to be in the People's possession — unless the People allow themselves to be made to so jump. Whatever laudable intentions may be ascribed to the NYPD, e.g., a desire to proactively protect the privacy interests of its rank and file, the fact remains that its demand for concessions from the People in exchange for allowing material to "flow" is anathema to the discovery statute schema. Whatever the policy, bureaucratic, interpersonal, moral and/or other reasons undergirding the People's accommodating reaction to the NYPD's unauthorized demands, the court cannot be complicit in such a perversion of the statutory order."⁸

This hearing is an important step forward in holding NYPD to account for their actions in failing to disclose evidence as required by state law. But more must be done.

⁷ Rodriguez, *Discovery Reform*, p. 12.

⁸ *People v. Chimborazo*, 2023 NY Slip Op 23290, Bronx Crim. Ct, (decided Sept. 27, 2023), available at <https://law.justia.com/cases/new-york/other-courts/2023/2023-ny-slip-op-23290.html>.

B. Addressing the Technology Gap between Public Defenders and Police and Prosecutors

On January 29, 2020 I testified before the City Council Committee on Justice System on the need for increased funding for public defenders around technology. In that hearing, I advocated for defender offices like ours to receive funding to help us better defend our clients and prove their innocence. The hearing was held in response to a *New York Times* article about the Legal Aid Society's first-in-the-nation defender technology lab that invested \$100,000 in technology that allows defenders to make precise copies of computer drives or a person's phone in a format that holds up in court.⁹ Four years later that technology is still outside our reach.

In court, it is the prosecutor's burden to prove that an accused person committed the crime beyond a reasonable doubt. But in practice, and especially if trying to convince a prosecutor to dismiss a case, it falls on our clients to prove their innocence. This is especially hard for a person to prove when that person had nothing to do with the alleged crime. Technology like that discussed in the article and others are crucial tools in helping us to clear our client's names before we ever get to trial, but they require substantial funding investments. This would never bring us on par with the NYPD and their 5.5 billion dollar budget, but it would be a long-overdue step in the right direction.

C. Ensure POST Act Compliance with Additional Legislation

In 2020, the City Council passed the POST Act, which requires NYPD to disclose to the public the types of surveillance technology that they use against New York City residents. The law has failed to fulfill its promise, and we ask the Council to act again to pass legislation to shore it up.

NYCDS supports the legislation on the agenda of the 12/15/23 Committee on Public Safety Hearing, including Int. 1193-2023 (CM Farías), Int. 1195 (CM Hudson) and Int. 1207-2023 (CM Won). We urge passage of all three with the amendments recommended by the Legal Aid Society on pages 27-31 of their written testimony for the 12/15/23 hearing.¹⁰

D. Pass Reso. 0479-2023 (calling on the New York State Legislature to pass, and the Governor to sign, S215, the Challenging Wrongful Convictions Act, which would amend state law to provide an authentic legal pathway to criminal conviction exoneration)

The City Council should support passage of the Challenging Wrongful Convictions Act, a bill that would create a working pathway to exoneration in New York State. Fifty percent of New York

⁹ Kashmir Hill, *Imagine Being on Trial. With Exonerating Evidence Trapped on Your Phone*. N.Y. TIMES, Nov. 22, 2019, available at <https://www.nytimes.com/2019/11/22/business/law-enforcement-public-defender-technology-gap.html>.

¹⁰ New York City Council, *Hearing Testimony - Oversight Hearing – NYPD's Implementation of the Public Oversight of Surveillance Technology (POST) Act*, Dec. 15, 2023, available at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6420984&GUID=447408E8-05D2-4346-BD24-6D7ECCA1C37C&Options=&Search=>.

counties have never had an exoneration.¹¹ We know this cannot be true, but it exemplifies the challenges of successfully vacating a conviction in many counties across the state.

This legislation is long overdue to bring New York’s post-conviction law in line with other states. Specifically, the bill will fix the following issues with the existing law:

- In New York, 98% of convictions are the result of a plea deal, but the Court of Appeals ruled in *People v. Tiger* (2018) that people who pled guilty cannot qualify for relief without DNA evidence of innocence. This is the rule that left people like Steve Lopez precluded from relief for his wrongful conviction, even after the Exonerated Five case proved his innocence.¹² This shameful and harmful judicial decision requires a legislative fix.
- New York is one of five states without a right to counsel in post-conviction cases, behind states like Alabama and Texas.
- Discovery reform passed in 2019 did not provide for post-conviction discovery. This blindfolds people trying to prove their innocence and vacate wrongful convictions.
- The Challenging Wrongful Convictions Act includes a decriminalization fix, ensuring that people convicted of acts that are no longer crimes (such as gravity knife or marijuana possession) can seek vacatur post-decriminalization.

We strongly urge the Council to pass CM Hudson’s resolution in favor of the passage of this state law this session. The bill passed both houses of the legislature last year but shamefully, the Governor vetoed the bill, citing Republican talking points. The Council’s support is critical for bringing this law across the finish line to fix our broken post-conviction system.

E. Support the Youth Interrogation Act

All young people under the age of 18 deserve to have a lawyer if they are being questioned by the police. The experience of the Exonerated Five is a well-known, glaring example of how desperately our most vulnerable young people need more protection than is currently provided, but there are many others. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right.¹³ Add the stress and tension inherent in a custodial interrogation, and the prospect of a knowing, intelligent and voluntary waiver of the right to remain silent becomes a myth. Instead, young people will often say whatever they think will immediately get them out of the interrogation room.

¹¹ VOCAL-NY, *Fact Sheet: New York’s Piecemeal Exoneration Process is Inadequate and Fundamentally Unfair* (Aut. 24, 2023), available at <https://www.vocal-ny.org/resource/factsheet-new-yorks-piece-meal-exoneration-process-is-inadequate-fundamentally-unfair/>.

¹² Tandy Lau, “Guilty after proven innocent: the challenge of challenging wrongful convictions (Part II),” *Amsterdam News*, Jan. 25, 2024, available at <https://amsterdamnews.com/news/2024/01/25/the-challengens-of-challenging-wrongful-convictions-part-ii/>.

¹³ Zelle, H., Romaine, C. L. R., & Goldstein, N. E. S. “Juveniles’ Miranda comprehension: Understanding, appreciation, and totality of circumstances factors,” *Law and Human Behavior*, 39(3), 281–293. (2015). <https://doi.org/10.1037/lhb0000116>; see also <https://psycnet.apa.org/record/2014-55451-001>.

Despite young people's well-documented developmental incapacity, under New York law, police are still allowed to interrogate a child without a parent or guardian present, and to lie to a child to coerce them to waive their *Miranda* rights. Moreover, police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their *Miranda* rights, nor are police required to explain to the child – or the child's parent or guardian – what the police want to question the child about, or to advise the child, parent or guardian that the child can stop answering questions any time they choose.

As a result, approximately 90% of youth who are arrested waive the right to remain silent. This police practice - of interrogating youth without providing them an attorney - has a disproportionate effect on Black or Latinx youth from over-surveilled schools and low socioeconomic communities. These youth, who make up the majority of those interrogated, lack the protection provided to their more affluent peers who typically have hired attorneys. It is time to level the playing field and provide every youth under the age of 18 with an attorney before they are interrogated. Other states have already enacted similar legislation including California, Washington, Maryland, and Hawaii. New York State must do so as well.

The Youth Interrogation Act would provide the protection our children need. When police determine that interrogation of a child is necessary, the bill would require that the child first consult with counsel (by phone, video or in person) before any questioning could take place. Consultation with a lawyer would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the child.

In addition to safeguarding children's constitutional rights, this bill would help to protect the State and localities from expensive lawsuits by individuals who were wrongfully convicted based upon false confessions they made as children. Thirty-four percent of all exonerees who made false confessions from 1989 to 2020 were under 18 years old at the time of the alleged offense. Exonerees in New York who were wrongfully convicted for alleged offenses when they were under 18 have won almost \$77.5 million in compensatory civil damages since 2011.

Importantly, the NYPD could ensure that parents and counsel are available to youth during interrogations, but they choose not to do so. The City Council can urge the NYPD to change their tactics, regardless of a change in state law.

Additionally, we urge the City Council to throw their support behind the Youth Interrogation Act (S.1099A - Bailey/A.8923A - Hevesi) by passing a resolution in the bill's favor. The Youth Interrogation Act has garnered wide-spread support among members of both the Senate and the Assembly. It currently has 30 co-sponsors in the Senate and 48 co-sponsors in the Assembly. 2024 is the year for passage of this crucial legislation.

F. Protecting Evidence (Erie Basin Storage Facility Fire)

On June 20, 2023, NYCDS submitted written testimony related to the Erie Basin Storage Facility Fire for the City Council Committee on Public Safety Joint Oversight Hearing. The NYPD's handling of the Erie Basin Facility Fire in December 2022 raises deep concerns within our office about the safety and protection of all evidence in the NYPD's custody, not only at the Erie Basin

warehouse, but at police precincts and in other evidence storage facilities as well. In that testimony, we urged the NYPD to adopt evidence tracking systems successfully utilized by other jurisdictions.

NYCDS still demands that the NYPD disclose the full scope of the damage at the Erie Basin Storage Facility so that we may assess to what extent critical, possibly exonerating evidence in our clients' cases is permanently destroyed. More broadly, we demand to learn to what extent the Erie Basin fire was due to the NYPD's negligence. The Erie Basin Fire raises more serious concerns about the basic competence of the NYPD to safeguard vitally important evidence and property in its custody.

III. Conclusion

Thank you, Chair Salaam, for putting this hearing on the agenda and hearing our concerns about the ways that the NYPD continues to fall short of preventing wrongful convictions. We appreciate the Council's support in holding them to account and pushing them to do better by considering our policy recommendations.

If you have any questions about my testimony, please feel free to email policy@nycds.org.



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Presented before

New York City Council

Committee on Public Safety

Oversight - Examining NYPD Investigative Procedures and Safeguards Relating to Wrongful Convictions

February 26, 2024

My name is Jackie Gosdigian, and I am Supervising Policy Counsel at Brooklyn Defender Services (BDS). BDS provides comprehensive public defense services to approximately 22,000 people each year who are accused of a crime, facing the removal of their children to the foster system, or challenging deportation. As public defenders, we know that access to counsel is critical to prevent wrongful convictions. Zealous representation alone is not enough, the city must ensure accountability for the NYPD to prevent abusive tactics and opaque practices that cause wrongful arrests, false confessions, and lead to wrongful convictions. We thank the Committee on Public Safety and Chair Salaam for inviting us to address the Council about NYPD procedures relating to wrongful convictions.

For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

Importance of access to counsel in preventing wrongful convictions.

BDS' Criminal Defense Practice provides zealous legal representation to thousands of people arrested and charged with a crime in Brooklyn each year. From the first court appearance, our interdisciplinary defense teams advocate to keep people out of jail, address pre-trial issues, such as bail and orders of protection, and support clients who are detained. As we prepare cases for trial, we explore all opportunities for negotiated plea bargains to reduce additional consequences and advise our clients of their options. And, as we work towards the best outcome for the people we represent, we provide a wide range of support, including jail-based services for people who are detained, social work resources, and access to a wide range of legal services for issues like housing, benefits, education, and employment.

Access to counsel is critical to prevent wrongful convictions, but simply providing someone with a free lawyer is not enough. In addition to attorneys, at BDS those charged with a crime have access to investigators, social workers, DNA and forensic experts, and numerous team leaders and supervisors with years of trial experience. It's also imperative that public defense continue to attract new lawyers from top law schools around the country, lawyers who have a calling for public service, and genuinely want to fight for people's rights and reform the criminal legal system. This wrap-around, client-centered defense approach not only minimizes the risk of wrongful convictions but helps break the cycle of rearrest and legal system involvement.

All New Yorkers deserve high-quality representation regardless of their ability to pay for an attorney. But perpetual underfunding has contributed to a significant departure of staff from legal services organizations and widespread vacancies. The rising cost of living, skyrocketing inflation, and burden of student loans will only exacerbate the hiring and retention issues being faced. It is critical that the city budget not underfund and undervalue these essential legal services and constitutionally guaranteed rights. New York City must show that it values the work of public defenders fighting tirelessly to guarantee justice for their clients, by closing the pay parity gap and fully funding the staffing and operational needs of legal services organizations.

Access to discovery is a key element in preventing wrongful convictions.

In criminal cases, discovery is the process by which prosecutors share information with the defense. Much of this information comes from law enforcement: police reports, witness statements, video surveillance, body-worn camera footage, identification procedures, crime scene photos, 911 call recordings and transcripts, witness statements, and more. Even a note on a slip of paper is a part of discovery that could lead to exoneration.

Timely access to evidence is critical for defense attorneys to conduct the investigations, research, and analysis necessary for their clients to receive a complete defense. For many decades in New York, prosecutors and police were not required to provide discovery to people facing criminal allegations or their attorneys until the eve of trial. Instead, people were coerced to plead guilty

while blindfolded to the evidence, fueling mass incarceration and wrongful convictions. In 2019, New York enacted comprehensive discovery reforms to ensure that New Yorkers accused of crimes have timely access to the most important information in their case, bringing New York’s discovery law in line with those of the rest of the country.

Simultaneously, New York, like the rest of the country, has experienced a massive shift in the way that we store and access information, including discovery. Digital storage costs have declined significantly, and digital processing speeds have increased exponentially. Capitalizing on these technical achievements, the NYPD spent millions of dollars on document and case management systems, as well as data collection and storage products (often called surveillance technologies). Partnering with companies like Microsoft and IBM, the Department built multiple systems to store, organize, analyze and share collected data, including police reports, body-worn camera videos, and other digitally collected evidence.¹ Despite using multiple systems internally, modern computer science and data architecture make the sharing of information amongst those systems and database instances simple and able to be automated. The NYPD uses those data innovations daily to coordinate, collate, and analyze its numerous data sources. As the NYPD noted almost a decade ago, “[t]he amount of information available through [its] Crime Data Warehouse is astonishingly large and incomparable to other law enforcement and public safety agencies.”²

For external sharing, each of the NYPD’s data systems are designed to make the collection and sharing of information—particularly the kind of information required by New York’s discovery statute—quick, straightforward, and simple. However, **even though it has never been easier to disclose information electronically in a timely manner, turnover of discovery continues to be inexcusably delayed. These delays can be directly attributed to a fundamental lack of transparency about NYPD’s systems and NYPD’s failure to turn over their records to the District Attorneys**, causing pre-trial delays and backlogs in the court system.

Discovery is a critical tool for defenders to properly investigate a case. Access to discovery is necessary for someone to make an informed decision about their case, ensuring people have the information to decide about whether to go to trial or make an informed plea decision. And it is indisputable that access to discovery minimizes the likelihood of wrongful convictions.- We call on the City Council to investigate NYPD’s lack of transparency and delays in providing access to records, documents, data, and video content.

¹ Some of NYPD’s major internal systems include the NYPD Enterprise Case Management System, Omniform, Z FINEST, and the Domain Awareness System. The NYPD also contracts with outside companies for data collection and storage. For example, NYPD purchases its body-worn cameras and body-worn camera video storage from a company called Axon. Axon provides storage, sharing capabilities, and analysis via its cloud-based platform: evidence.com.

² NYPD Information Technology Bureau, [Developing the NYPD’s Information Technology](#).

Faulty forensics lead to wrongful convictions.

Errors in forensic analysis are one of the leading factors in wrongful convictions.³

New York City is not immune from the risks posed by irresponsible, unscientific, and invalid forensic methods being used in the criminal legal system. In the last year, our city has experienced two separate forensic scandals, and our state has been home to several more.

- *NYPD's Latent Print Section:* in April 2015, three examiners with the NYPD's Latent Print Section erroneously identified a New Yorker as the source of prints left at a crime scene. That forensic error was discovered the same year and was shared with at least one New York City prosecutor. The analysts involved were either transferred from the unit or retrained. One went on to become the sole and lead trainer for the entire Latent Print team, and falsely testified at at least one trial that he had never made an erroneous identification. But no systemic disclosure was made to defenders regarding these errors, the lab's quality assurance and quality control failures, or the later false testimony for eight years.

When these laboratory failures finally came to light, the problem had been left to fester. These analysts' work implicates thousands of cases. But the years and the lack of transparency have made it impossible to fully identify affected trials, pleas, and clients.

Further, both the initial failure and the laboratory's secretive handling of it point to deep-seated issues with quality assurance and quality control. Ultimately, QA/QC programs are the greatest line of defense against forensic failure and downstream wrongful convictions. Our city's failure to engage in a full forensic audit of the lab following this scandal publicly, independently, and fairly merely perpetuates the risk that past wrongful convictions will remain undiscovered and future wrongful convictions will come to pass.

- *OCME's Forensic Biology Section:* On December 22, 2023, for the first time in the history of Section 17-207 of the Administrative Code, the Office of the Chief Medical Examiner notified the Council of a "significant event," involving the "violation[] of standard operating procedures and accreditation standards," that required a root cause analysis. Specifically, a supervisor in the laboratory's Department of Forensic Biology "authored case report[s], different criminalists . . . electronically signed the case report[s] as the author[s], and the [supervisor] who had authored the case report . . . also performed the technical review of his own work."

This scandal raises numerous concerns. First, the fraudulent conduct was only discovered after these same staff cheated on a promotional examination. It was not identified by the lab's quality assurance and quality control (QA/QC) programs. It was not identified during any integrity-related process work targeting testing. This reflects extremely poorly on the reliability of

³ <https://nij.ojp.gov/topics/articles/impact-false-or-misleading-forensic-evidence-wrongful-convictions>

the laboratory's scientific functions, throughout the laboratory. A properly run QA/QC program *should* catch this kind of basic cheating on forensic tests.

Second, the fraudulent conduct was neither flagged nor prevented by the OCME's laboratory information management system (LIMS). To be clear, the supervisory staff member, who conducted the lab work under other's names, logged in to LIMS under his own credentials for the cases that OCME identified where this cheating happened. This raises two red flags: primarily, LIMS registered that the work of one person was being signed by another person, but it did not automatically alert QA/QC staff, supervisors, or others in the laboratory to this conduct. Secondly, this conduct highlights the laboratory's failure to think carefully and concretely about their QA/QC responsibilities in relationship to their technology and information systems. Specifically, for example, why is the LIMS set up in a way that allows one person to input the technical testing results and another person to sign off on that input work? Why is the LIMS set up in a way to then allow that first person to technically review their own input work? This is not the first time that Brooklyn Defenders has encountered this kind of technical structural failure, including having a case where exculpatory results were "accidentally" deleted from the OCME's computers or having learned that OCME's use of STRMix (the probabilistic genotyping software the lab uses to analyze DNA results) is not automatically tracked by LIMS. Perhaps, it is appropriate to permit this conduct to occur in LIMS so that it is tracked and caught, but the laboratory's failure to either structure their system to prevent this kind of misconduct or at the very least automatically flag the conduct is intensely troubling.

Third, the culture in the laboratory that led to a supervisor choosing to do the case work of less experienced staff should similarly cause significant pause. What motivated this conduct? Was it just friendship and helping out less skilled colleagues? Was it some kind of blackmail or coercion that pushed this supervisor to do this? Was it something more intrinsic to laboratory culture? The choice to do this by both the supervisor and the lower-level staff is both puzzling and troubling.

However, given the structural failures with the OCME both from a QA/QC perspective and a culture perspective, the OCME's solution to conduct an internal root-cause analysis is insufficient.

When other cities across the country have faced similar scientific failures, those cities have engaged in full-scale, transparent, independent audits. Washington, D.C., and Houston, Texas, both hired outside auditors, developed rigorous review processes, and publicly reported on the results. Both cities allowed their auditors to review the complete breadth of forensic practice in those jurisdictions. The results were breathtaking, but they were also essential and set those two cities on a path to more justice. The people of New York City deserve that kind of transparency, accountability, and scientific rigor. "Science and secrecy do not sit comfortably together."⁴ We

⁴ Sheila Jasanoff, *Transparency in Public Science: Purposes, Reasons, Limits*, 69 *Law and Contemporary Problems* 21, 21 (2006).

call on the City Council to demand a full, public audit of the city's forensic providers, including the NYPD and the Office of the Chief Medical Examiner.

Racially biased policing, technology, and data lead to wrongful convictions.

As a public defense organization, Brooklyn Defenders has witnessed firsthand the devastating impacts of both mass incarceration and the systemic racism of America's criminal legal system, specifically on the communities we serve in Brooklyn. New York City has invested more than \$1 billion in a twenty-year surveillance infrastructure building program.⁵ The city is blanketed in surveillance⁶ and no police department in the country has more military-grade surveillance resources than the NYPD. We are deeply concerned by the NYPD's use of surveillance technology that disproportionately collects personal data from Black and Latine New Yorkers.

Many of the people that we serve live in heavily policed and highly surveilled communities. These predominantly low-income and Black and Latine communities bear the brunt of our city's surveillance network, carrying a disparate proportion of surveillance load. Biometric identification technologies are deployed in public housing, on our public transit system, in our public benefits programs, and throughout our policing systems from the criminal legal system to the family regulation system and beyond. This technology is subject to racist malfeasance, as well as technological and analytic errors.

Despite NYPD's technology investments and deployments, the promise of enhanced public safety has not been realized. Instead, all this surveillance infrastructure has accomplished is to expand the burgeoning surveillance state, repeatedly infringe on New Yorkers' dignity, privacy, and First Amendment freedoms, and further entrench the systemic racism inherent in our criminal legal, family separation, and immigration systems. This reality has nothing to do with accuracy or the need for improvement. There is no way to construct a surveillance state in a way that honors our fundamental rights and dignity or builds real justice.

Racial bias in technology

The NYPD's surveillance policies ignore the different ways surveillance technologies are racially biased.⁷ For example, one form of racial bias associated with surveillance technologies occurs because the technology's programming and development itself has rendered it inherently biased against Black and brown people. This bias can either emanate from the invisibility of Black and brown communities or the hyper-visibility of those same communities. A prime

⁵ Ali Watkins, How the N.Y.P.D. is using Post-9/11 Tools on Everyday New Yorkers, NYTimes (Sept. 8, 2021) at <https://www.nytimes.com/2021/09/08/nyregion/nypd-9-11-police-surveillance.htm>

⁶ See, e.g., Amnesty International, Inside the NYPD's Surveillance Machine at <https://banthescan.amnesty.org/decode/>.

⁷ For a more comprehensive discussion of the ways in which law enforcement surveillance technologies may replicate, mask, transfer, and exacerbate racial bias, see Laura M. Moy, A Taxonomy of Police Technology's Racial Inequity Problems, 2021 U. Ill. L. Rev. 139, 154–75 (2021).

example of the invisibility effect has been facial recognition software. Study after study has demonstrated that the facial recognition systems used in the United States are least accurate when used on young Black women and most accurate when used on older white men.⁸ The reason for this bias lies in the choices made in developing the facial recognition system itself: the data sets used to train the facial recognition algorithms fail to include a diversity of images resulting in algorithmic bias.

Another dimension of racial bias infecting surveillance technologies is the impact of data sets biased in the other direction: hyper-visibility. A prime example of this hyper-visibility effect has been predictive policing algorithms. Given the NYPD's racist track record, such as its ongoing use of stop-and-frisk primarily against Black and Latine New Yorkers, the data sets used to train and develop any predictive policing system will inevitably reproduce racially biased outcomes.⁹ The reason for this garbage-in-garbage-out bias lies in the choices made in developing the predictive policing system itself: the data sets used to train the predictive policing algorithms were collected in a biased manner to begin.

Beyond the development of surveillance technology, another common racial justice concern arises in the deployment of the technology post-development. Specifically, the threat presents itself that the racism present within police departments will lead officers to use surveillance technologies in racially biased ways. A police department may, for instance, choose to deploy license plate readers in predominantly Black and brown neighborhoods, leading it to gather huge amounts of information on some neighborhoods but not others. This form of bias helps explain the state of the NYPD's "Gang Database," which consists almost entirely of Black and Latine New Yorkers.¹⁰

This reality makes clear what has come into alarming focus for us: the biggest threat posed by surveillance in our city comes not from any single piece of technology, but instead from NYPD's massive accumulation of data. And all of this has a direct impact on wrongful convictions, because these algorithms do not factor in the false positives produced by large numbers of arrests in specific communities, which ultimately leads to wrongful arrests and wrongful convictions.¹¹

⁸ Brendan F. Klare et al., Face Recognition Performance: Role of Demographic Information, 7 IEEE Transactions on Information Forensics and Security 1789, 1789 (2012); see also Perpetual Line-Up.

⁹ See, e.g., Rashida Richardson, et al., Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice, 94 N.Y.U. L. REV. ONLINE 192 (2019).

¹⁰ Nick Pinto, NYPD Added Nearly 2,500 New People to Its Gang Database in the Last Year, The Intercept (June 28, 2019), <https://theintercept.com/2019/06/28/nypd-gang-database-additions>.

¹¹ Innocence Project, How Racial Bias Contributes to Wrongful Conviction <https://innocenceproject.org/how-racial-bias-contributes-to-wrongful-conviction/>

Take ShotSpotter as an example. In 2021, the Chicago Office of Inspector General’s Public Safety Section investigated the accuracy and deployment of the ShotSpotter system in Chicago.¹² The Chicago OIG concluded: “from its analysis that CPD responses to ShotSpotter alerts can seldom be shown to lead to investigatory stops which might have investigative value and rarely produce evidence of a gun-related crime. Additionally, OIG identified evidence that the introduction of ShotSpotter technology in Chicago has changed the way some CPD members perceive and interact with individuals present in areas where ShotSpotter alerts are frequent.”¹³

The technology deployed in New York City is identical to that deployed in Chicago. NYPD’s public statements regarding ShotSpotter’s deployment here—namely that deployment targets “high crime areas”—mimics precisely the Chicago Police Department’s statements about deployment. Despite our city’s investment in these listening systems, the data indicates that ShotSpotter is not resulting in a reduction in crime, but instead is contributing to hyper-policing in Black and brown neighborhoods. New analysis of ShotSpotter locations from a leaked dataset nationwide suggests this targeting is systemic: “in aggregate, nearly 70 percent of people who live in a neighborhood with at least one SoundThinking sensor identified...as either Black or Latine. Nearly three-quarters of these neighborhoods are majority nonwhite, and the average household earns a little more than \$50,000 a year.”¹⁴

It is time for legislative solutions to focus on the data being collected, not merely the technologies being used. Legislative solutions must center on implementing limits on law enforcement’s ability to collect our personal data, on law enforcement’s repurposing of data that they had previously collected, and on law enforcement’s retention of that data for years, decades, and lifetimes.

Legislative solutions to curb police misconduct

False confessions are a leading cause of wrongful convictions and more safeguards by law enforcement are needed in this area. NYPD can implement common sense safeguards, including:

- ensuring all interrogations are recorded in every case and at any time in the police precinct, regardless of whether the person is “in custody”
- Requiring an attorney be present before young people subject to interrogation deciding to waive their rights;
- Modernizing evidence laws to protect against mistaken eyewitness identifications, another leading cause of wrongful convictions. NYPD must be required to follow well

¹² The City of Chicago’s Office of Inspector General, [The Chicago Police Department’s Use of Shotspotter Technology](#) (Aug. 2021).

¹³ *Id.*; In fact, the OIG’s analysis and a subsequent review by the Cook County State’s Attorney’s Office both fed the decision this month for Chicago to end its contract with ShotSpotter.

¹⁴ Dhruv Mehrota & Joey Scott. Here are the secret locations of ShotSpotter gunfire sensors. *Wired*. (February 22, 2024). <https://www.wired.com/story/shotspotter-secret-sensor-locations-leak/>

recognized best practices in the conduct of pre-trial line-ups and photo arrays. Law enforcement must also be required to record all identification procedures.

The Council should work with defenders, advocates, and impacted communities to ensure NYPD implements meaningful safeguards to prevent wrongful convictions.

Additionally, we urge the City Council to continue to work with your state partners to safeguard youth interrogations. We are grateful to the Council for passing a resolution last year in support of the **Right to Remain Silent Act (S.1099, A.1963)**, which would require youth under 18 have the opportunity to consult with counsel prior to police interrogation. Millions of children under the age of 18 have face-to-face contact with police in any given year and 90 percent of young people waive their Miranda rights prior to police interrogation.¹⁵ Youth are also more than three times as likely as adults to falsely confess. This legislation will help to remedy this increasingly harmful issue. We are grateful for your continued advocacy on this issue.

Legislative solutions to reduce coercive guilty pleas

The number of criminal cases that go to trial in New York state has steadily declined over the last three decades. And now 98 percent of cases are resolved by guilty plea. This high percentage of guilty pleas is “a troubling phenomenon that severely weakens the integrity of the justice system by circumventing juries.”¹⁶ The reason for this is the existence of Mandatory Minimum Sentencing which “serve to coerce defendants, innocent and guilty alike, to take plea deals rather than risk severe sentences for exercising a basic right assured to them by the Constitution.”¹⁷

Put another way, people are afraid to exercise their right to trial because they will likely serve a longer prison sentence if they are found guilty after trial than if they had just plead guilty. In many cases, people are coerced into pleading guilty with the promise of a lesser prison sentence or a non-jail sentence. What’s more is that mandatory minimum sentencing “has been shown to induce innocent accused persons to plead guilty.”¹⁸

¹⁵ <https://jlc.org/issues/access-counsel#:~:text=Miranda%20and%20the%20Adolescent%20Brain,if%20a%20confession%20is%20voluntary>.

¹⁶ National Association of Criminal Defense Attorneys, *The New York State Trial Penalty: The Constitutional Right to Trial Under Attack*, <https://www.nacdl.org/Document/NewYorkStateTrialPenaltyRighttoTrialUnderAttack#:~:text=As%20of%202019%2C%2096%25%20of,justice%20system%20by%20circumventing%20juries>.

¹⁷ Nancy Gertner, *Commentary: A former judge’s call to eliminate mandatory-minimum sentencing laws* <https://www.timesunion.com/opinion/article/Commentary-A-former-judge-s-call-to-eliminate-17697670.php>

¹⁸ National Association of Criminal Defense Attorneys, *The New York State Trial Penalty: The Constitutional Right to Trial Under Attack*, <https://www.nacdl.org/Document/NewYorkStateTrialPenaltyRighttoTrialUnderAttack#:~:text=As%20of%202019%2C%2096%25%20of,justice%20system%20by%20circumventing%20juries>.

Urge the State to End Mandatory Minimums

Even with available alternatives to incarceration, judges across the City and the State of New York are bound by mandatory sentencing guidelines set forth in the Penal Code. We must end mandatory minimum sentencing and we ask the Council to support and pass a resolution urging the enactment of the **End Mandatory Minimums Act (Myre S.7871/Meeks A.9166)**. In addition to mandatory incarceration, having a criminal record has lifelong insurmountable consequences for a person. Mass incarceration does not deliver justice, safety, or healing. It tears at the fabric of families and communities who lose loved ones, breadwinners, and caretakers to New York State prisons.

Lengthy mandatory minimums strip judges of their discretion when determining sentencing and serve as prosecutorial leverage in coercing plea deals. Two-strike laws further lengthen the sentence of an individual with a prior conviction, and three-strike laws condemn people to life in prison. The Eliminate Mandatory Minimums Act legislation would eliminate mandatory minimum sentences, allowing judges to consider the individual factors and mitigating circumstances in a case. In doing so, this legislation will finally undo the harm of the Rockefeller Drug Law era and provide for alternatives to incarceration that will address the root causes of criminal system involvement, breaking the cycle of arrest and incarceration, and reducing the risk of wrongful convictions.

Urge the State to Pass the Youth Justice and Opportunities Act

Young people in the communities we serve are particularly vulnerable to police interaction, especially when they are continuing to grow and mature into their mid-twenties and grappling with peer pressure and decision-making skills. Nationally and in New York, young people aged 18 to 25 make up only 10% of the population, but over 20% of all arrests. Nearly three quarters of those arrests in New York are of youth of color. A recent Sentencing Project report found that across the country, Black youth are five times more likely to be incarcerated than their white peers.¹⁹ Without the protections of youthful offender laws, young people are also subjected to harsh mandatory minimum sentences and are similarly being coerced into guilty pleas. We ask the Council to support and pass a resolution urging the enactment of the **Youth Justice and Opportunities Act (YJ&O) (Myrie S749A/O'Donnell A3536A)**. The Youth Justice & Opportunities Act would expand opportunities for programs and other alternatives to incarceration and immediate record sealing for young people up to age 25. By passing YJ&O, New York has the chance to lead the nation by protecting the futures of young people up to age 25, enhancing community well-being, and providing emerging adults the opportunity to move forward in their lives without the barrier of a criminal conviction. The Act would also reduce State and local spending on youth incarceration—money that should be invested in communities

¹⁹Joshua Rovner, Racial Disparities in Youth Incarceration Persist, February 2021. Available online at: <https://www.sentencingproject.org/fact-sheet/racial-disparities-in-youth-incarceration-persist/>

to alleviate poverty and homelessness, ensure quality education, and fund other needed resources. In turn, this bill would help stabilize communities, increase public safety, and reduce the risk of wrongful convictions.

Conclusion

We thank the council for the opportunity to testify today and look forward to continuing to work with the council to prevent wrongful convictions, to ensure those with criminal legal system involvement have access to zealous representation regardless of their ability to pay, and to invest in our communities, rather than police them, to ensure individuals and families have access to the resources they need.

Amanda Wallwin, Innocence Project
Testimony to the Public Safety Committee of the New York City Council
On NYPD Investigative Procedures and Safeguards Relating to Wrongful Convictions
26 February 2024

I want to thank the Public Safety committee for looking into how police investigative procedures can contribute to wrongful convictions in New York City. At the Innocence Project, we see firsthand the devastation wrought by wrongful convictions. After fighting for years for their freedom, our clients suffer the impact of their wrongful convictions and incarcerations for the rest of their lives. The repercussions of a wrongful conviction are broader than just a single individual; they ripple out, affecting families, friends and entire communities.

My testimony today will touch on a variety of ways that police investigations can lead to wrongful convictions, and I'll provide concrete solutions that NYPD and the City Council can pursue to reduce wrongful convictions in New York City.

Eyewitness Identification Procedures

Mistaken eyewitness identification is a leading factor in wrongful conviction. 128 of New York's 348 exonerations to date involved a mistaken eyewitness identification. The use of best practices during eyewitness identifications can reduce the incidence of these errors and, consequently, reduce wrongful convictions.

The Innocence Project recommends four core reforms for a high-quality eyewitness identification statute:

- **Double blinded administration:** A "double-blind" lineup is one in which neither the administrator nor the eyewitness knows the identity of the suspect. If that is not practical at agencies with limited staff or in high profile cases, a "blinded administration" technique may be used in which the officer knows the suspect's identity but is prevented from seeing which photograph the eyewitness is viewing at

a given time. This prevents the administrator from providing inadvertent or intentional cues to influence the eyewitness to pick the suspect.

- **Line-up composition description:** Non-suspect photographs and/or live lineup members (fillers) should be selected based on their **resemblance to the description provided by the eyewitness** - as opposed to their resemblance to the police suspect. In addition, the suspect should not noticeably stand out from among the other fillers.
- **Pre-lineup instruction:** “Instructions” are a series of statements issued by the lineup administrator to the eyewitness that deter the eyewitness from feeling compelled to make a selection. One commonly recommended instruction is the directive that the **suspect may or may not be present in the lineup.**
- **Witness confidence statement:** Immediately following the identification procedure, the eyewitness should be asked to provide a statement, in his or her own words, that articulates the level of confidence in the identification made. It is important to capture the level of certainty at the time the identification is made because eyewitness confidence tends to increase over time.

Additional eyewitness identification best practices supported by the Innocence Project include:

- **Documenting the procedure:** Ideally, the lineup procedure should be video recorded. If this is impracticable, there should be an audio or written record of the procedure.
- **Regulating show-up identifications:** Eyewitness identification procedures should include regulated protocols for reducing suggestiveness in show-up identifications, in which a single eyewitness is presented with a single live suspect.
- **Avoiding multiple identification procedures:** Ideally, only one identification procedure should be used for each eyewitness. Multiple procedures can create a ‘commitment’ effect in which the eyewitness recognizes a lineup member from a previous identification procedure rather than from the crime scene.

These reforms largely mirror what was recommended by the New York State Justice Taskforce in 2009, but have never been enacted statutorily.

For the NYPD, eyewitness identification procedures are guided by Procedure Number 208-24 in the NYPD Patrol Guide. None of these recommendations are followed in the Patrol Guide’s procedures. In fact, the Patrol Guide directly contradicts the

recommendation that fillers should resemble the witness' description rather than the suspect.

Statewide reform of New York's eyewitness identification statute is an important goal, but the City Council can legislate changes for New York City and the NYPD can voluntarily update their procedures to follow best practices.

Evidence Preservation

Properly preserved evidence is key to exonerating the innocent, and can help solve cold cases. Preserving biological evidence from crime scenes is critically important because DNA can provide the best evidence of innocence – or guilt – upon review of a case. None of New York's 57 DNA exonerations would have been possible had the biological evidence not been available to test. Had the evidence been destroyed, tainted, contaminated, mislabeled, or otherwise corrupted, the innocence of these individuals would never have come to light. However, because we lack robust statewide and citywide evidence preservation systems, access to that evidence is not equally and reliably available, but rather based upon luck.

In investigating cases, Innocence Project attorneys have reported a variety of problems with evidence preservation in New York City:

Lack of consistent information: A Pearson Place representative will tell an inquiring lawyer that the evidence being sought is being held in a borough facility, while a representative from that facility will direct the evidence seeker back to Pearson Place.

Lack of standardized cataloging system: There is no central repository for information about the location of evidence. Evidence custodians must check handwritten ledgers, multiple files, and an untold number of storage areas in order to locate evidence. Innocence Project staff attorneys have been told that there is no system in which records are updated after evidence is initially brought into the Pearson Place facility. Therefore, if evidence is moved in the intervening years following a trial, it is nearly impossible to locate.

Antiquated organization system: Because all pieces of evidence are stored by either a voucher number or a borough storage number, as opposed to the name of the party and a case number, and most of these numbers were recorded either by hand or with a manual

typewriter, if one digit was mis-transcribed or is illegible, it is almost certain that the property will not be found.

Missing or confusing ledger information: At times, a bin number is not specified in the ledger. In such cases, save for a physical search of all of the property, the evidence will not be located. As well, a single case may yield multiple ledger listings that correspond to numerous pieces of evidence located at various locations.

Missing records: Oftentimes, there is no record of destruction of evidence. Without proof of the destruction of evidence, our staff attorneys spend limitless hours petitioning for the testing evidence that is gone. In addition, there is no proof that the evidence was actually destroyed, leaving lingering innocence claims forever unanswered.

Lack of documented inventory policy: There is no documentation or explanation of policies, especially pertaining to old cases. It is unclear how far back in time the evidence has been preserved.

The City Council knows the importance of evidence preservation - it's why you held a hearing into the impact of the Erie Basin fire last year. Unfortunately, since then, no changes have been made. I won't reiterate everything from that hearing, but there are some concrete actions that the council can take to improve the state of evidence preservation in New York City.

The Innocence Project recommends that a minimum of four provisions be included in any evidence preservation statute. Evidence should be (1) automatically preserved (2) regardless of plea (3) at least for the length of the convicted person's incarceration (4) for homicide, rape, felony assault, kidnapping and robbery charges. 22 states and the District of Columbia have statutes that meet these basic requirements, however New York is not one of them. While, according to CPL § 440.30, the People must bear the burden of showing what evidence does exist and whether it is available in suitable quantities to make testing possible, there is no articulation of the required period of preservation. This leaves open a window of time between conviction and requests for postconviction testing that, in essence, allows evidence entities to destroy evidence.

There is no reason, however, that New York City can't take the lead and enact a citywide statute that meets or exceeds these requirements. Beyond the four basic components of an evidence preservation scheme, a gold-standard statute would also:

- Preserve biological evidence in all cases where it may be probative, for as long as a sentence or collateral consequence of a conviction is in effect.
- Preserve biological evidence in all cases where it is connected to an unsolved crime, until the statute of limitations toll, so that it is readily available to law enforcement officers investigating old cases.
- Contain appropriate remedies for failure to preserve evidence

In addition to a city or state statute, implementation is paramount. There is no reason why a task force in New York City cannot be established to address the details of an evidence overhaul plan. While some aspects can be specifically addressed in the statute, several of the following significant details can be delegated to a to-be-formed task force, which, through a deliberative process, can implement a plan:

Centralized entity to administer evidence system: Identify a central entity that would be charged with administering a re-cataloging process, including the establishment of standards regarding the proper collection, retention and retrieval of biological evidence.

Accounting of relevant evidence facilities: Identify all of the facilities (police agencies; courthouses; hospitals; laboratories; DA's Offices; etc.) where old evidence is currently stored.

Inventory evidence: Provide a brief description of the evidence located in each facility.

Repackage evidence: Repackage, as necessary, all relevant biological evidence that may be vulnerable to degradation.

Organize and catalog evidence by case: Identify and inventory all voucher, borough property, and property receipt numbers associated with evidence, link all to the specific pieces of evidence to which they correspond, ensuring that all pieces of evidence associated with a particular case are grouped together, and identify a means through which that evidence can be readily located. This can be accomplished through a bar coding system.

Enter evidence into a modern database system: The central entity charged with administering the process will also oversee the creation of an integrated database that would establish chain of custody and allow easy access to old evidence.

Clearly articulated policies and procedures/training: Finally, the administering entity will create training programs for law enforcement and other relevant employees that are charged with preserving and retrieving biological evidence.

Recording of Interrogations

63 of New York's 348 exonerations involved a false confession. Researchers who study false confessions have determined that the following factors contribute to or cause false confessions:

- Real or perceived **intimidation** of the suspect by law enforcement.
- **Use of force** by law enforcement during the interrogation, or perceived threat of force.
- **Compromised reasoning ability of the suspect**, due to exhaustion, stress, hunger, substance use, mental limitations or illness, and youth.
- **Interrogation techniques**, such as untrue statements about the presence of incriminating evidence.
- **Fear** on the part of the suspect that failure to confess will yield a harsher punishment.

Statutes requiring mandatory electronic recording of custodial interrogations provide safeguards against false confessions and wrongful convictions. They protect the innocent by:

- Ensuring that the **suspect's rights are protected** in the interrogation process.
- Creating a **deterrent against improper or coercive techniques** that might lead to false confessions.
- Alerting investigators, judges and juries if a **suspect has mental limitations or other vulnerabilities** that might make him or her more susceptible to falsely confessing.

These statutes also help law enforcement by:

- **Substantiating authentic confessions** by creating an irrefutable record of what occurred during closed-door interrogations.

- **Preventing false claims** of officer misconduct during the interrogation.
- Allowing officers to **better prepare for trial**, which might occur weeks or months after the interrogation, by playing the tape of the interrogation instead of having to piece together notes.
- **Capturing subtle details** that may be lost if unrecorded, which help law enforcement better investigate the crime.
- **Enhancing public confidence** through transparency.

Procedure number 502-30 in the NYPD Detective's Guide details the Department's guidelines for electronic recording of custodial interrogations and procedure number in the NYPD Patrol Guide details the Department's guidelines for electronic recording of custodial interrogations of juveniles. Per these procedures, NYPD only records interrogations for selected charges, including some A-1 felonies, some article 130 felonies and a handful of other charges, as well as all interrogations of juveniles that take place in an OCA-approved juvenile room.

The Innocence Project recommends recording interrogations regardless of crime category. The cost of each recording is far outweighed by the value of having the recording. Additionally, charges can change over the course of a case's life, rendering a charge-based scheme likely to not capture some situations in which an interrogation should have been recorded. We also recommend policies on retention at least until conviction is final and all appeals have been exhausted, ensuring that the recording will be available for the entirety of the case's life. These procedures can be improved either through policy change or Council legislation.

Discovery Compliance

The path from poor discovery practices to wrongful convictions is a short and obvious one. No defense attorney can properly prepare their case and no defendant can reasonably consider a plea offer without an understanding of the evidence in the case, resulting in necessarily ineffective representation and coerced pleas. In 196 of New York's 348 exonerations, exculpatory evidence was withheld, resulting in millions of dollars in settlements to the wrongfully convicted, many true perpetrators who escaped detection, and most importantly, 196 innocent New Yorkers who suffered unimaginably from wrongful convictions and incarceration. District Attorneys across the state have reported that they have had difficulty meeting their discovery burden because they haven't received evidence

from police partners. This simply cannot happen. Discovery compliance is not an option, it is a legal requirement of the district attorneys as well as NYPD. While we cannot recommend that the Council passes a new statute to fix this, as this is already a statutory obligation, we do hope that the Council continues to use its oversight powers to ensure NYPD complies with this law.

Deception in Interrogation

In 63 of New York's 348 exonerations, the exonerated person falsely confessed to the crime of which they were wrongfully convicted. A leading driver of false confessions is deception in interrogation. "Deception" refers to the form of interrogation in which investigators lie to a person about evidence linking them to a crime, penalties they could suffer, or leniency they could be offered in order to coerce a statement or confession to the crime being investigated.

Courts, national law enforcement organizations, officer training agencies, interrogation researchers, and even high-value detainee interrogators have advocated against the use of deceptive tactics because of the risk they pose in producing false confessions and the proven reliability of other techniques. Wicklander-Zulawski & Associates, the second largest trainer of law enforcement in the U.S., has long disavowed deception as an unreliable method and trains agencies in more effective interrogation techniques.

Vulnerable populations are especially susceptible to falsely confessing in response to deceptive interrogation techniques. Juveniles and people with intellectual and developmental disabilities are disproportionately affected by this tactic. 9 states explicitly ban the use of deception in the interrogation of juveniles. Illinois also protects people with severe or profound intellectual disability.

When an innocent person's freedom is taken, the public is also put at risk by allowing actual perpetrators to remain free. Of the first 375 exonerations based on DNA evidence, the true perpetrators were subsequently detected in 50% of those cases. These 165 people committed an additional 154 violent crimes while an innocent person took their place in prison.

NYPD's Patrol Guide provides no guidance against the use of deception in interrogations, despite the overwhelming evidence that deception is not an effective interrogation tactic. The Innocence Project recommends a full statutory ban of deception in interrogation, however, even a ban on deception in interrogation of vulnerable people through legislation or policy change would have a tremendous impact on wrongful convictions in New York City.

Field Drug Tests

The widespread use of presumptive field drug tests is generating tens of thousands of wrongful arrests in which innocuous substances are misidentified as illegal drugs, leading to the arrest and conviction of innocent people. A recent study by the Quattrone Center at Penn Carey Law at the University of Pennsylvania suggests that this is the largest generator of wrongful convictions in the country and has a disproportionate harm on communities of color. Moreover, the risks associated with these tests are well-known and well-documented, exposing jurisdictions around the country to the risk of civil liability and class action litigation.

In fact, a national survey conducted in 2023 by the Quattrone Center suggests that tests like these – presumptive drug tests used in the field vs. controlled tests in a crime lab – are used in half of America's 1.5 million drug arrests and that the rate of error from these tests is far greater than ever imagined by the many police agencies that regularly use them. As a result, it appears that these drug tests are the single largest known cause of wrongful convictions in the United States by a huge margin, and that on a per capita basis, Black people are falsely arrested as a result of inaccurate drug field tests at a rate three times higher than white people.

According to the National Registry of Exonerations, 531 of the 3,396 known exonerations involved a wrongful drug arrest for substances that were not drugs. These numbers represent the tip of the iceberg. After all, up to this point, it has been rare for a jurisdiction to audit its own presumptive field test results. But when it does, the results can be devastating. Police departments that continue to use these error-prone presumptive tests will continue to see high rates of wrongful arrest and wrongful conviction, with people of color overwhelmingly bearing the brunt. It will also lead to the deterioration of the community's trust in law enforcement and civil exposure to jurisdictions that deploy these tests in their communities.

The City Council can and should ban the use of presumptive field tests or, short of a pure ban, prohibit, at a minimum, the use of particularly problematic colorimetric presumptive drug tests. Legislation that requires “cite and release” and conditional plea policies, as well as regular audits with publicly available assessments, should be considered if the tests are to remain in use. In instances where the error is identified in specific cases, the person convicted of the crime and their attorney of record should be notified through certified delivery of the error and consideration of restitution/ expungement, and a “clean slate” provision should be included.

Beyond legislation, the NYPD should:

- Conduct a confirmatory test of any substance recovered in an accredited forensic toxicology laboratory under controlled conditions prior to arrest or charging.
- Coordinate with its forensic lab, whether it is internal or external, to conduct regular blind audits of cases where presumptive tests have been used to establish error rates based on the type of testing kit employed, contextual factors, and conditions in the region.
- Colorimetric field tests, which have the highest error rates of all the field tests, should be replaced with a more accurate and reliable field test technology.
- Officers should receive periodic in-service training on how to administer and analyze the results of the test, as well as environmental conditions that might impact the test’s validity. That training should explicitly include information about the frequency of false positive rates.

Local DNA Index System

NYPD’s Local DNA Index System is an illegal, unregulated rogue DNA database. State law authorizes a single state database, subject to both state and federal oversight, that only collects DNA from people who have been convicted of a crime. However, NYPD, in conjunction with the Office of the Chief Medical Examiner, has maintained its own unauthorized database, collecting and keeping DNA from New Yorkers, including children as young as 12 and people who have never been convicted of, prosecuted for, or even charged with, a crime.

Aside from the privacy violations inherent in maintaining a permanent database of DNA samples of people who have never been convicted of a crime, experts in the use of DNA

evidence make it clear that a database this extensive isn't even useful for solving crimes. A DNA database that contains samples from numerous innocent people is a database that increases the likelihood that those samples will be erroneously connected to crimes.

Understanding this, in February 2020, NYPD agreed to overhaul this database and remove profiles that weren't connected with a conviction or an investigation after two years. When the promise was made, the database held approximately 32,000 DNA profiles. The last published review of the database, in November 2022, lists the database as holding 32,350 profiles. Clearly, NYPD has not lived up to even their own promise to limit the use of their illegal database.

City Council should continue using its oversight power to demand that NYPD stop the use of this illegal, unregulated, counterproductive database.

Gang Database

The use of gang databases flies in the face of the concept of individualized justice. Police investigations are intended to use the specific evidence of a crime to lead officers to the individual or individuals who committed that crime, not to maintain a database of people who are permanently under criminal suspicion, can be attached to crimes haphazardly and who can be punished more harshly because of their inclusion in this database.

Further, who is added to these databases is subject to the unfair discretion of law enforcement officials. According to NYPD itself, none of criteria for being added to the gang database are criminal behavior, but a variety of vague indicators, including wearing colors associated with gangs, associating with other supposedly known gang members, and using hand signs that are associated with gangs.

Unsurprisingly, people of color are overrepresented in this database. The New York City chief of detectives testified that 99% of the 17,200 people in the NYPD's gang database in 2018 were people of color.

Police are generally not required to inform people that they have been added to any database, and there is little transparency around how these databases are managed and used. But we do know that innocent people are swept into these databases and wrongly

arrested because of them. In 2016, the NYPD arrested 120 people in the Bronx on gang-related charges, but it later turned out that dozens of them were not in gangs.

City Council must continue to demand the end of the NYPD gang database.



Council Member Yusef Salaam
Chair, Committee on Public Safety
New York City Council

Dear Mr. Salaam,

We are writing to request that the Public Safety Committee hold a hearing to address the NYPD's management of public protests in New York City, in light of recent events that have endangered New York City residents.

At the hearing on Public Safety held by your committee on February 26, 2023, numerous people from the Jewish community testified that they no longer feel safe in New York City. Following the horrific violent terrorist attack, rape, and slaughter of civilians in Israel, by Hamas on October 7, 2023 (the political group in power in Gaza) groups have waged rallies in New York and around the country, against Israel's right to defend itself against Hamas. Many of these protests have not been peaceful, and have perpetrated hateful speech and acts, incitement to, and threats and acts of violence toward Israel and our Jewish community, and there has been significant damage to public property. Some activists have singled out protest targets just for being Jewish.

hearing, including lawful behavior were outlined in great detail by witnesses who testified at the hearing, including protestors following and threatening young children for being Jewish, calls for the destruction of the State of Israel, displays of swastikas and hateful antisemitic signs and slogans, as well as protests which cut off access to bridges and other roads , endangering New

Yorkers who may need emergency services and falsely imprisoning people caught on barricaded streets.

In a city as densely populated and diverse as New York, government has the right and obligation to ensure that civil protests do not put residents and pedestrians at risk. Protests that obstruct streets and sidewalks, stop traffic, impede bridge, and tunnel crossings, endanger the safety of New Yorkers.

Witnesses expressed concern that NYPD is not responding adequately to these protests, putting the public at risk. The reasons for NYPD's response to these protests must be examined to ensure that best practices are being followed. Hopefully, a hearing will help to establish guidance and clarity to NYPD so that future protests are managed appropriately. Clear guidelines are needed to assure equal content neutral treatment of protestors. Clarifying legislation to ensure that police tactics used to monitor protests are both consistent with the civil rights of protestors, and the public's rights in shared public spaces, may be needed.

OCR Urges the Committee to establish guidelines that empower NYPD to follow best practices for safe protests, consistent with time, place and manner restrictions that have been upheld as constitutional by the US Supreme Court as follows:

- Protesters must observe police instructions to permit the orderly flow of vehicular, pedestrian and cyclist traffic on streets, sidewalks, and bike lanes to ensure public safety and the unobstructed flow of critical emergency traffic of first responders and ambulances.
- Protesters must be prohibited from using amplified sound without a permit. Amplified sound can be damaging to the elderly and people with disabilities and should be limited to appropriate times and places.
- Permits are necessary for large protests in public parks or plazas, including privately owned public spaces.
- Protests that target or harass specific New Yorkers just because they are Jewish (or members of any identity group) is a form of hate speech that must be called out and discouraged as not consistent with the values of a pluralistic society. Protests that call for violence against Jewish people (or members of any identity group) must be closely monitored and there must be swift and serious consequences when protestors engage in violence.
- Specific city streets, avenues, and bridges that are essential for unimpeded transportation must be designated as prohibited for protests, and protestors must be notified that they will face civil fines and arrest if they engage in protests in those locations. They may also face civil liability for false imprisonment if individuals are prevented from leaving their vehicles.

- The grant or denial of permits must be content neutral to pass constitutional muster. For this reason, the City Council must consider an appropriate mechanism for granting permits that will ensure fairness and a timely response. Permits for large group gatherings are needed so that organizing groups remain financially responsible for damage to property that might occur at a protest.

Finally, we hope that New York City Council's public safety committee will acknowledge. It is support of NYPD, to disabuse violent or disruptive protesters of the notion that such behavior is acceptable. Violent and disruptive protests are not constitutionally protected, and it is the Council's obligation to ensure that the message is clear, unambiguous, content neutral and evenly applied.

Thank you for your service to New York City.

Respectfully submitted,

Maria Danzilo
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New York City Council
Committee on Public Safety
February 26, 2024

Testimony of Bruce Bryan – Client Advocate – Queens Defenders

Good morning, Chairperson Salaam, and members of the Committee on Public Safety. My name is Bruce Bryan, and I am a Client Advocate for Queens Defenders. Prior to this role, I was wrongfully convicted and served over 29 years in prison. Thank you for the opportunity to speak today. Before I begin, I wish to commend the New York City Council for overriding Mayor Adams' Veto on the How Many Stops Act. Your leadership on this issue is an important step toward protecting our city's marginalized communities from over-policing and abuse by law enforcement authorities.

I am here today to offer my story as an example of how nefarious tactics in police investigations do not serve public safety – they only create wrongful convictions and an adverse relationship between the police and the community. The Innocence Project notes that: “Black people account for 40% of the approximately 2.3 million incarcerated people in the U.S and nearly 50% of exonerees – despite making up just 13% of the US population. This is in large part, because they are policed more heavily, often presumed guilty, and frequently denied a fair shot at justice.”

My story and wrongful incarceration for nearly 30 years echoes these statistics. My life could have – and should have – had a different outcome and I am calling on the New York City Council to take action to prevent the practice of NYPD officers being given carte blanche to lie; to manipulate; and deceive people who they are interviewing.

When I was 23 years old, I was arrested and charged with a murder that I did not commit. There were multiple things that the NYPD did during that arrest and investigation that contributed to my wrongful conviction.

When I was arrested, I was represented by counsel who specifically invoked my 6th Amendment rights. Despite this, I was still placed in an in-person lineup without my attorney being notified or present to protect my rights. As a result of that lineup, I was misidentified as the perpetrator and charged, beginning a 29-year nightmare that finally ended when I received clemency in 2022.



In my case, the death of a young person occurred because of a drug related shootout. This involved multiple parties firing numerous shots. I was not one of the shooters and I never possessed a gun that day. Despite this, the NYPD only collected two (2) shell casing that were used to incriminate me. There is no doubt in my mind that this was an intentional and selective act by the investigators who were intent on pinning this crime on me.

Further, one of the people who identified me had an extensive criminal background. He was compensated by the NYPD to make the identification. He was never a credible or reliable witness in my case. In fact, he had a strong motivation to please law enforcement by telling them what they wanted to hear.

Now that I have had this experience, I am horrified to see so many other young black and brown people having their rights violated during police investigations, and tragically and irrevocably interrupted through wrongful incarceration. On the State level, we are seeing momentum with the Challenging Wrongful Convictions Act and the Right 2 Silence Act which guarantees legal counsel to juveniles. Here in New York City, we can and must enact meaningful legislation to ensure that another life is not lost to a wrongful conviction and protect the rights and lives of Black and Brown residents who are so often the victims of deceitful and nefarious police tactics.

Today, I am working as a Client Advocate at Queens Defenders leading innovative youth programming for our young court-involved clients that helps them make better life decisions and pursue meaningful and engaging educational and career goals. We also work to ensure that young people are made aware of their rights under the 4th, 5th and 6th Amendments and understand how to have safe interactions with the police. Programs like ours can only achieve so much without legislative action that provides police accountability and protects against the absolute injustice of incarceration for a wrongful conviction. I can only hope that we can collectively work together to protect the next generation and to make our system fair for everyone.

Bruce Bryan

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New York City Council
Committee on Public Safety
February 26, 2024

Testimony of Gina Mitchell – Attorney-in-charge of Law Reform and Policy – Queens Defenders

Good morning, Chairperson Salaam, and members of the Committee on Public Safety. My name is Gina Mitchell and I am the Attorney in Charge of Law Reform and Policy for Queens Defenders. Thank you for the opportunity to testify today.

Queens Defenders is a Public Defender organization in Queens, New York. Since, 1996, our lawyers have helped over 450,000 people in cases involving homicides and major trials, in treatment courts, domestic violence and youth felony parts and immigrants charged with criminal offenses. We have legal offices in Kew Gardens, Jamaica and we operate our Rockaway Community Justice Center (RCJC). The RCJC works with the office of Queens District Attorney Melinda Katz and community-based organizations, police, elected officials, civic leaders, and residents to provide restorative justice based solutions to crime.

The scope of the problem: Wrongful Convictions

As of 2023, the National Registry of Exonerations has recorded 3,465 cases of wrongful convictions in the United States¹. New York specifically has a serious wrongful conviction problem. More than 390 people have been exonerated in New York since 1989². New York ranks as the third highest in the number of wrongful convictions in the nation, trailing behind Texas and Illinois. Every one of these exonerations represents a gross miscarriage of justice that should weigh heavily on each of us and motivate us to ensure that these failures do not happen again.

¹ Equal Justice Initiative <https://eji.org/issues/wrongful-convictions/> (accessed 2/20/2024) citing National Registry of Exonerations <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (accessed 2/20/2024).

² Latest data from the National Registry of Exonerations lists 393 cases from the State of New York.



Of the approximately 390 exonerations in New York, Queens County has had 47 exoneration cases between 1992 and 2023³. In May 2020, the Queens District Attorney announced the creation of a new Conviction Integrity Unit that was created in January of 2020. As of May 5, 2020, the unit stated that they had received 46 cases for review. The cases that have been reviewed and which have resulted in convictions being overturned, tell a cautionary tale.

In November 2020, the murder conviction of Ernest “Jaythan” Kendrick, who had been incarcerated for nearly 26 years was vacated. Developments in DNA analysis were used to prove Mr. Kendrick’s innocence. This exposed the fact that the original identification witness’ evidence (a 10 year old child) was deeply flawed. Investigating police overlooked the fact that the young witness originally identified someone else when he viewed a live lineup that included Mr. Kendrick. Other flaws in the NYPD investigation led to a grave miscarriage of justice occurring in that case⁴.

In March 2021, a state judge in Queens exonerated three men, Gary Johnson; George Bell and Rohan Bolt, and admonished prosecutors for withholding evidence that would have cast serious doubt on their guilt. These men spent 24 years behind bars before the case eventually fell apart⁵. This case resulted in the city having to pay a record \$17.5 Million settlement to George Bell⁶. While the financial incentives for preventing wrongful convictions are clear, the moral imperative is even clearer. Each wrongful conviction represents a gross miscarriage of justice and a life squandered and stolen.

Similarly, in August 2021, the Queens District Attorney agreed to vacate a murder conviction for Carlton Roman who was incarcerated for 32 years.

³ National Registry of Exonerations <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (accessed 2/20/2024).

⁴ Queens District Attorney, Press Release “Queens District Attorney Melinda Katz file joint motion with defense to vacate murder conviction and release a man incarcerated for nearly 26 years” 11/19/2020 <https://queensda.org/queens-district-attorney-melinda-katz-files-joint-motion-with-defense-to-vacate-murder-conviction-and-release-a-man-incarcerated-for-nearly-26-years/> (accessed 2/24/2024).

⁵ Closson, Troy *New York Times* “They Spent 24 Years Behind Bars. Then the Case Fell Apart” 3/5/2021 <https://www.nytimes.com/2021/03/05/nyregion/queens-wrongful-convictions.html> (accessed 2/23/2024)

⁶ Meko, Hurubie *New York Times* “City to Pay Record \$17.5 Million Settlement After Wrongful Conviction” 11/16/2023 <https://www.nytimes.com/2023/11/16/nyregion/queens-murders-exonerated-settlement.html> (accessed 2/23/2024)



Mr. Roman was tried, convicted and sentenced to 43 and 1/3 years “for a crime based solely on the testimony of ...two witnesses”.⁷ Once again the NYPD investigation was found to be profoundly flawed.

As Public Defenders we bear witness to the systems and processes that lead to wrongful convictions that destroy lives. Many of these flaws relate to how the NYPD conduct their investigations which inevitably set the foundation and tone for the conduct of the entire prosecution of a case.

Mistaken eyewitness identifications

Eyewitness misidentification occurs when an eyewitness incorrectly identifies an innocent person as the perpetrator of a crime. According to the Innocence Project, 60% of DNA exonerations involve eyewitness misidentification⁸. Obviously, this statistic does not account for other cases where the wrongfully convicted person does not have the good fortune of having exculpatory DNA evidence upon which to base their legal challenge.

The Innocence Project has identified two factors that contribute to misidentifications: “Estimator variables are those outside the control of the criminal legal system. They include gaps in an eyewitness’s memory, how far away the eyewitness was from the crime scene, the level of stress or trauma the eyewitness experienced while observing the crime, visibility conditions, and challenges associated with cross-racial identification.”⁹ However, they also refer to: “System variable are those controlled by the criminal legal system, such as law enforcement procedures related to recording an eyewitness’ memory, the administration of lineups and photo arrays, and more¹⁰.”

⁷ Queens District Attorney, Press Release “Queens District Attorney to File Joint Motion with Defense to Vacate Conviction in Murder & Attempted Murder Case and Release a Man Incarcerated for 32 Years” 8/9/2021 <https://queensda.org/queens-district-attorney-to-file-joint-motion-with-defense-to-vacate-conviction-in-murder-attempted-murder-case-and-release-a-man-incarcerated-for-32-years/> (accessed 2/24/2024).

⁸ The Innocence Project “The Issues: Eyewitness Misidentification” <https://innocenceproject.org/eyewitness-misidentification/> (accessed 2/22/2024).

⁹ The Innocence Project, *ibid.*

¹⁰ The Innocence Project, *ibid.*



Nationally, eyewitness misidentification played a role in 71 percent of wrongful convictions that were later overturned with DNA in the United States¹¹.

As Public Defenders we know that law enforcement often either do not understand or do not care about the way that the human memory functions and the inherent problems with identifications based on eyewitness testimony. Human memory is highly malleable and prone to suggestion and contamination¹². Additionally, as Public Defenders we routinely see cases where lineups and photo array procedures are not recorded. In fact, most of our attorneys have never seen a recorded identification procedure in their careers because it is an unofficial norm that these procedures are not recorded. This is because the standard form that the NYPD complete for an identification procedure asks the witness if they will consent to the procedure being recorded. Invariably, the box for a 'NO' response is ticked with no further explanation. There is no incentive on the NYPD to encourage, support or facilitate the recording of identification procedures. This creates a perfect storm whereby it becomes increasingly difficult to scrutinize and assess the reliability and credibility of eyewitness investigations.

False confessions

False and coerced confessions continue to be a major contributor to wrongful convictions. While the average person might find it very difficult to understand why a person would confess to a crime that they did not commit, research demonstrates that due to a variety of law enforcement practices, false confessions occur regularly. Deceptive and coercive interview methods that include police manipulation; intimidation; force; and other coercive tactics such as isolation and police officers lying about evidence continue to be used to this day.

The 'Central Park Jogger' case involved clearly coerced false confessions: "That was a case [involving] five kids, 14, 15, and 16 years old, each of

¹¹ The Innocence Project, "Minnesota Adopts Landmark Eyewitness ID Law: New measure prevents wrongful convictions by requiring scientifically-based lineup procedures" 5/19/2020 < <https://innocenceproject.org/minnesota-adopts-landmark-eyewitness-id-law/> > (accessed 2/22/2024).

¹² Albright, Thomas D "Why eyewitnesses fail" Proc Natl Acad Sci USA, 2017 July 25; 114(30): 7758-7764 < <https://www.pnas.org/doi/full/10.1073/pnas.1706891114>> (accessed 2/22/24).



them [was] led to believe that he would get to go home if he confessed. Each one calculated – given that they had been there from 14-30 hours of interrogation under tremendous pressure – that it was in his own best interest to cooperate”¹³. Similarly, the Queens District Attorney in consenting to vacate the convictions of Reginald Cameron and Armond Mcloud acknowledged that their “confessions in a 1994 deadly shooting were unreliable because they were elicited by a detective connected with two other false confession cases.”¹⁴ Manipulative, deceptive and coercive practices in police questioning are not a thing of the past. Queens Defenders attorneys continue to see these kinds of coercive police tactics used on our clients in 2024.

Specifically, we have urged state legislators to support legislation proposed by the #Right2RemainSilent campaign through the passage of legislation (S. 2800/A. 5891) that will codify young New Yorkers’ right to counsel before a police interrogation¹⁵. Currently, confessions in New York are only required to be voluntary to be used at trial. The reliability of a confession, including whether it was obtained through coercion and deception is not considered. Queens Defenders urges state legislators to support and pass S. 324, introduced by State Senator Zellnor Myrie, which would ban police deception in the interrogation room while requiring that courts evaluate the reliability of confession evidence before allowing it to be used.

Official police misconduct

The Innocence Project has noted that “[p]olice and prosecutorial misconduct is a leading contributing factor in a significant number of recorded exoneration cases since 1989.”¹⁶ Police officers committed misconduct in more than a third of exoneration cases since 1989 according to the National

¹³ Nesterak, Evan, “Coerced to Confess: The Psychology of False Confessions” *Behavioral Scientist*, October 21, 2014 <https://behavioralscientist.org/coerced-to-confess-the-psychology-of-false-confessions/> (accessed 2/22/2024).

¹⁴ Manna, Victoria, “Queens District Attorney vacates three wrongful convictions” 8/24/2023 [Queens district attorney vacates three wrongful convictions \(ny1.com\)](https://www.ny1.com/news/queens-district-attorney-vacates-three-wrongful-convictions/) (2/24/2023).

¹⁵ See an example of the problem discussed in The CITY “A Brooklyn teen refused to waive his Miranda Rights. But the NYPD’s Questioning Didn’t Stop There, Video Shows”, 10/12/2023 < <https://www.thecity.nyc/2021/03/03/state-bill-to-give-new-york-kids-more-miranda-protection-nypd/>> (accessed 2/22/2023).

¹⁶ Innocent Project, “Official Misconduct” < <https://innocenceproject.org/official-misconduct/#:~:text=Police%20and%20prosecutorial%20misconduct%20is,that%20are%20more%20heavily%20policed.>> (accessed 2/22/2024).



Registry of Exonerations¹⁷. On November 8, 2021, the Queens District Attorney's office moved to vacated 60 convictions for cases that "relied on work by three former New York Police Department detectives who were later convicted of perjury, sexual assault and official misconduct"¹⁸.

The repeal of New York Civil Rights Law §50-a which required the concealment of disciplinary records of police officers from the public was an important step towards ensuring accountability in New York. Another positive development came in the form of the introduction of Criminal Procedure Law §245¹⁹ which mandates automatic discovery disclosure to defense counsel including: "(d) The name and work affiliation of all law enforcement personnel whom the prosecutor knows to have evidence or information relevant to any offense charged or to any potential defense thereto" and "(k) All evidence and information, including that which is known to police or other law enforcement agencies acting on the government's behalf in the case, that tends to: ... (iv) impeach the credibility of a testifying prosecution witness". There now exists explicit appellate authority holding that underlying impeachment records are discoverable pursuant to this provision²⁰. It is imperative that the city council and state legislators vigilantly protect the discovery laws in New York. Discovery is vital in ensuring that defense counsel can adequately represent and protect the rights of defendants and to guard against wrongful convictions. While some District Attorney's offices have complained that discovery laws have overburdened their staff and resulted in high levels of attrition²¹; we must remain vigilant in our commitment to protecting discovery laws that are so fundamentally important in preventing wrongful convictions and the integrity of our legal system.

Additionally, Queens Defenders applauds the New York City Council for demonstrating leadership and overriding Mayor Adams' veto on

¹⁷ Innocence Project, *ibid*, citing the National Registry of Exonerations

¹⁸ Davis O'Brien, Rebecca, *New York Times* "60 Criminal cases are thrown out because of 3 Detectives' Misconduct" 11/8/2021 <[60 Cases Are Thrown Out in Queens After Misconduct by 3 NYPD Detectives - The New York Times \(nytimes.com\)](#)> (2/24/2024).

¹⁹ Herein referred to as "the Discovery Laws".

²⁰ See *People v. Hamizane*, 2023 NY Slip Op 23233 (2nd Dep't, App. Term 2023); *People v. Rodriguez*, 77 Misc.3d 23 (1st Dep't, App. Term 2022); *Matter of Jayson C.*, 200 A.D.3d 447 (1st Dep't 2021).

²¹ Bromwich, Jonah E; Meko, Hurubie; and Ashford, Grace. *New York Times* "Why 3 Liberal New York D.As Want to Change a Law Backed by Progressives" April 25, 2023 <https://www.nytimes.com/2023/04/25/nyregion/discovery-laws-ny.html> (accessed 2/22/2024).



Introduction 586 and Introduction 538 known as the “How Many Stops Act”²². Despite the fact that the NYPD has been under federal monitorship for a decade because of their unconstitutional “stop question and frisk” practices, these patterns and practices persist. According to a recent federal monitor report at least 24% of stops made by Neighborhood Safety Teams were unconstitutional²³, and 97% were of Black and Latinx New Yorkers. In NYCHA, one-third of stops are unconstitutional and 70% of them are of Black New Yorkers²⁴. This law will have a particularly important impact in Queens New York which is commonly referred to as “The World’s Borough” because of its status as the most ethnically diverse large county in the country. As Public Defenders staffing the Queens criminal court arraignment part on a daily basis, Queens Defenders attorneys get a front row seat to the racial disparities evident in NYPD stops in our borough. Additionally, we have voiced concern about NYPD practices of targeting fake license plates which serves to criminalize poverty in our borough²⁵. The passage of How Many Stops is an important step in holding the NYPD accountable.

Deeply flawed forensic evidence

The impact of so-called “junk science” on wrongful convictions can not be underestimated. The Innocence project reports that the misapplication of forensic science contributed to more than half of the wrongful conviction cases and nearly a quarter of all wrongful conviction cases since 1989. They specifically describe the following investigation methods as being deeply problematic: Bite mark analysis; Hair comparisons; Tool mark evidence; Arson investigation; Fingerprint analysis; Dog scent evidence; Comparative

²² This bill will require the NYPD to provide quarterly reports detailing information on level one, two and three investigative encounters between the police and civilians, including the race/ethnicity, age and gender or the civilian approached by the police, the factors that led to the interaction, and whether the interaction led to a summons or use of force incident. The first such report is due within 30 days of the quarter ending September 30, 2024 per Bill Summary at The New York City Council <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5725293&GUID=C4781093-1108-4E04-848D-473B2E47BD2E&Options=ID|Text|Other|&Search=Int.+586> (accessed 2/22/2024).

²³ Kilgannon, Corey, *New York Times* “ NYPD Anti-Crime Units Still Stopping People Illegally, Report Shows” June 5 2023 <https://www.nytimes.com/2023/06/05/nyregion/nypd-anti-crime-units-training-tactics.html> (accessed 2/22/2024).

²⁴ NYPD Federal Monitor, 17th Report, 10/17/2022 < <https://www.nypdmonitor.org/wp-content/uploads/2022/10/2022.10.17-Dkt.-894-Seventeenth-Report-of-the-Independent-Monitor.pdf>> (accessed 2/22/2024).

²⁵ Lowens, Etha, *AMNY* “Op-Ed: Cracking down on fake license plates is criminalizing poverty” 8/7/2022 (accessed 2/22/2024).



bullet lead analysis; Shaken baby syndrome diagnosis; Bloodstain pattern analysis. At Queens Defenders, our Homicide and major trials attorneys continue to see the use of many of these investigatory methods. Action is required to educate law enforcement, judges, prosecutors, forensic experts and other systematic actors as to “the limitations of certain forensic methods, and urge them to examine scientific evidence for accuracy and reliability”²⁶. No person should ever be convicted based on unreliable and misleading pseudo-scientific evidence.

Racism and implicit bias in Policing

It is impossible to understand the way that race and implicit bias in policing impacts wrongful convictions, without taking a close look at US history. Both the Constitution and the Bill of Rights were written to apply only to “propertied white men”²⁷. Furthermore, the earliest creation of a police force in America was motivated by the desire to monitor and control slaves and to ensure segregation and disenfranchisement of freed slaves²⁸. The Innocence Project notes that it is not surprising then that: “Black people account for 40% of the approximately 2.3 million incarcerated people in the U.S and nearly 50% of exonerees – despite making up just 13% of the US population. This is in large part, because they are policed more heavily, often presumed guilty, and frequently denied a fair shot at justice.”²⁹

Racism and implicit bias continue to impact police investigations to this day. In particular, Queens Defenders attorneys are deeply concerned about the increased use of facial recognition technology as method for identification of suspects. Increasingly, we see cases where the NYPD use facial recognition software to obtain an identification of an alleged perpetrator. The NYPD’s own website confirms that “Since 2011, the NYPD has successfully used facial recognition to identify suspects whose images have been captured by

²⁶ Innocence Project, “Misapplication of Forensic Science” < <https://innocenceproject.org/misapplication-of-forensicscience/#:~:text=Misapplied%20forensic%20science%20contributed%20to,wrongful%20conviction%20cases%20since%201989.>> (accessed 2/22/2024).

²⁷ ACLU “The Bill of Rights: A Brief History” 3/2/2022 <https://www.aclu.org/documents/bill-rights-brief-history> (accessed 2/22/2024).

²⁸ Waxman, Olivia. *TIME* “How the U.S. Got Its Police Force” 5/18/2017 <https://time.com/4779112/police-history-origins/> (2/22/2024).

²⁹ Innocence Project, “How Racial Bias Contributes to Wrongful Conviction” 7/17/21 <https://innocenceproject.org/how-racial-bias-contributes-to-wrongful-conviction/> (accessed 2/22/2024).



cameras...”³⁰. The NYPD maintain that facial recognition is only used as an investigative tool and that it alone “does not establish probable cause to arrest or to obtain a search warrant, but serves as a lead for additional investigative steps”³¹. The reality is that this technique is often used in cases where a suspect can not be readily identified from footage or a still image because of the quality of the image or some other impediment. Facial recognition software is then used to obtain a “match”. What we commonly see is that law enforcement will then arrange a so-called “confirmatory identification” from a witness who has some prior knowledge of the suspect. The resulting “identification” is inevitably tainted by the use of deeply flawed facial recognition software and the circumstances of these so-called “confirmatory” identifications are often highly suggestive. The deficiencies of facial recognition technology in identifying black and brown people have been well documented³². By utilizing a flawed algorithm to make an initial (investigative) identification, any misidentification by the software inevitably flows through the entire identification procedure. Queens Defenders urges the Council to take action to limit and to regulate the use of facial recognition software by law enforcement in New York to prevent wrongful convictions.

Inadequate funding for Public Defenders

It is commonly noted that public defenders are overworked and underpaid. The profession is more than a job; it is a calling for practitioners committed to serving the least privileged and the most downtrodden members of our society. The Innocence Project notes that “lawyers who represent poor people often lack the resources necessary to investigate and defend against the evidence marshaled by robust police departments, prosecutor offices, and crime labs”³³. The connection between wrongful convictions and lack of defense resources makes it painfully clear that justice can be bought for

³⁰ NYPD, “NYPD Questions and Answers Facial Recognition” <https://www.nyc.gov/site/nypd/about/about-nypd/equipment-tech/facial-recognition.page> (accessed 2/22/2024).

³¹ NYPD, *ibid.*

³² Johnson, Thadeus L and Johnson Natasha N. *Scientific American* “Police Facial Recognition Technology Can’t Tell Black People Apart: AI-powered facial recognition will lead to increased racial profiling” 5/18/2023 <https://www.scientificamerican.com/article/police-facial-recognition-technology-cant-tell-black-people-apart/#:~:text=Own%2Drace%20bias%20creeps%20in,recognize%20people%20of%20other%20races.> (accessed 2/22/2024)

³³ Innocence Project, “Inadequate Defense” < <https://innocenceproject.org/inadequate-defense/> > (accessed 2/23/2024)



those who can afford it. Whilst Queens Defenders are committed to delivering excellent results for our clients, there are financial realities that cannot be ignored. We thank the New York City Council for joining our call to increase funding for public defenders³⁴ and we call on the Council to continue to advocate for increased funding for all public defenders as a strategy to prevent wrongful convictions that deeply undermine the quality of our legal system.

Conclusion

Queens Defenders urges the New York City Council to take urgent action to hold the NYPD accountable for their practices that contribute to and create wrongful convictions in Queens and across all of New York City. The core integrity of our criminal legal system is at stake. Thank you for your time and the opportunity to testify regarding this important matter of significant public interest.

Gina Mitchell

Attorney in Charge of Law Reform and Policy
Queens Defenders

³⁴ Kaye, Jacob, *Queens Eagle* "Council calls on mayor to increase funds for public defenders" 6/21/2023 <https://queenseagle.com/all/2023/6/21/council-calls-on-mayor-to-increase-funds-for-public-defenders> (accessed 2/23/2024)



**The New York City Council
Committee on Public Safety
Chair: Council Member Yusef Salaam**

**Examining NYPD Investigative Procedures and Safeguards
Relating to Wrongful Convictions**

February 26, 2024

Presented by:

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The Legal Aid Society
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Thank you for the opportunity to testify about the NYPD's investigative procedures and the desperate need for safeguards to end wrongful convictions.

In this testimony, we highlight (1) the entrenched resistance by the NYPD to facilitate adequate evidence sharing as required by our state's discovery laws; (2) the rogue databases kept by the NYPD that can contribute to wrongful arrest and conviction; (3) the need for reforming the NYPD's methods of interrogating young people; (4) the NYPD's failure to discipline or terminate officers who make false sworn statements or commit other serious misconduct; (5) and the Adams administration's underfunding and undermining of the Civilian Complaint Review Board (CCRB) — the only independent agency tasked with investigating police misconduct.

Part 1: The NYPD Refuses to Share Complete Evidence with District Attorneys as Mandated by the Discovery Laws.

One cause of wrongful convictions is the failure of police officers and prosecutors to share evidence with the person accused and their attorney. It is crucial that all evidence be shared with the defense because otherwise certain lines of inquiry or scientific testing may never occur. While there are horrifying examples of prosecutors willfully withholding exculpatory evidence from the defense, the non-disclosure of evidence more frequently results from incompetence and insufficient communication between police officers and prosecutors.

Prosecutors rely heavily—often too heavily—on the word of the police officers who investigate the cases that they prosecute. This reliance extends to a prosecutor's belief that the police have shared all the information and evidence gathered in a case with them. That is problematic because it ignores the possibility that the police might hide inconvenient evidence from the prosecutor or might not be thorough in preserving all the evidence they collect. Another problem with this reliance is that the NYPD's policies and systems for collecting evidence are not designed to ensure that all information is actually obtained and stored in a central location. And prosecutors can't check to ensure that all relevant evidence was provided because the NYPD places unnecessary limits on a prosecutor's ability to directly access their files.

Until 2020, our state's regressive discovery laws, aptly named "the blindfold law" prevented the person accused from obtaining basic information, much less all of the evidence, in their case until the day of their trial. This prevented defense attorneys from interviewing certain witnesses and probing the reliability of evidence in a meaningful way, often leading to wrongful convictions. It also meant that we at The Legal Aid Society had much more limited insight into the evidence-gathering and -sharing practices of the NYPD.

In 2019, the state legislature passed "Kalief's Law" – a set of new discovery and speedy trial laws designed to ensure that those accused of crimes have early and equal access to the evidence against them. These laws were modeled after the "open file" discovery laws embraced by the majority of other states, and they sought to reduce prosecutorial discretion in determining what

information and evidence must be shared with the defense. This presumption of openness was intended to prevent the withholding of evidence that could be favorable to the defense. But these powerful new laws that make up Kalief's Law only work as well as they are complied with. Compliance with Kalief's Law requires prosecutors to provide the defense with all materials possessed by the police and other witnesses against the accused person before they are permitted to declare that they are ready for trial. Therefore, compliance should be straightforward and easy: the NYPD and other law enforcement agencies simply share their full files with prosecutors and prosecutors share the contents of those files with the defense. In practice, this process does not work as simply as it should.

From our experience litigating these issues, we have noted several obstacles to compliance that trace back to the NYPD. First, although the NYPD has several electronic databases for the storage of investigative materials, the NYPD's Patrol Guide does not require that all investigative information or material possessed by officers be stored in these databases. Second, to the extent that evidence is stored in these databases, there are insufficient safeguards in place to ensure that evidence that relates to a particular case is identifiable as such. And third, and perhaps most confoundingly, most of these databases are inaccessible to prosecutors so prosecutors only receive the materials contained in these databases that officers choose to share with them. These systemic obstacles to compliance with Kalief's Law directly threaten the success of discovery reforms and fail to protect New Yorkers accused of crimes from wrongful convictions.

a. The NYPD's Patrol Guide does not require that all information or material possessed by officers be stored in electronic databases where they may be easily identified.

Although there is no publicly available list of all NYPD databases, through our practice, we have become familiar with several of the databases used to store case information and evidence. For example, there is an NYPD database (the Enterprise Case Management System) used by detectives and officers from specialized units where officers are required to document their investigative activities in a case. There is also an NYPD database that is for the storage of police forms filled out in connection with an arrest called the Finest Online Management System. If officers were diligent about using these databases to store all information they obtain, these databases would be fairly effective. The problem, however, is that the Patrol Guide does not require that all evidence be kept in these databases nor does the NYPD hold officers accountable when they fail to do so. For example, if an officer receives an email or text message from a witness or takes notes during a witness interview, there should be a policy that requires the officer to immediately upload that communication to a folder associated with that case. This policy would eliminate the potential for information and material to get lost and would remove any discretion from individual officers in determining what materials should be sent to a prosecutor.

The NYPD must impose clear guidelines in its Patrol Guide that direct officers to upload all investigative information and materials in its databases to preserve and share them with prosecutors. And the NYPD must discipline officers who fail to abide by these guidelines.

b. There are insufficient safeguards in place to ensure that evidence that relates to a particular case is identifiable.

Another common problem that increases the risk of wrongful convictions due to incomplete discovery is that evidence in NYPD databases is often not always identifiable as related to a given case because there are insufficient systems in place to ensure that the evidence is properly categorized and labeled. One frequent reason for this is that the officers who respond to a crime scene and investigate the case may work in a different precinct or unit from the officers who ultimately arrest the accused. Another reason is the arrest took place long after the underlying incident. Even though all NYPD officers are governed by the same Patrol Guide, there is often a breakdown in communication and information sharing between groups of officers. If the arresting officer does not obtain the materials generated or obtained by the officers who responded to the crime scene and spoke to witnesses, those materials may never be shared with the prosecutor because the arresting officer is typically the officer responsible for communicating with the assigned prosecutor and sharing materials with them. These communication failures lay the groundwork for potential wrongful convictions.

The NYPD's inability to properly categorize all Body Worn Camera (BWC) footage exemplifies the problem of insufficient safeguards. BWC footage from officers who respond to a crime scene and speak to witnesses or collect physical evidence is often not shared with the defense because the NYPD's method for tagging and transmitting BWC footage to prosecutors is so flawed. The NYPD requires each officer assigned a BWC to upload their footage at the end of each shift and log into the BWC database (evidence.com) to tag their footage. When an officer is involved in an arrest, they are required to tag the footage with the arrest number. If on the other hand, an officer responds to a 911 call, and speaks to people at the scene of a crime, but no one is immediately arrested for the crime, the officer is merely instructed to tag their footage with the "pertinent details." Then, after a person is arrested, the arresting officer is responsible for identifying all BWC footage associated with the case and sharing it with the prosecutor. Since there is no uniform method for tagging footage not associated with an arrest number, the footage that captures the crime scene and witness accounts may never be obtained by the arresting officer to be shared with the prosecutor. So, when the arrest and the incident do not occur on the same day or when the tag used by the officer is not clear, the common result is that the prosecutor will not be provided with BWC video that could be the source of exculpatory or favorable evidence. If this is not noticed by a prosecutor or defense attorney before the BWC footage is set to expire, it will be lost forever.

The NYPD could easily resolve these evidence-labeling issues by requiring that, at the end of a shift, each NYPD officer is required to tag and upload all investigative materials, including BWC

footage captured on their camera that day, according to the complaint number – the first identifying number generated – rather than relying on the arresting officer to identify relevant materials. The NYPD could also require that a supervisor periodically reviews the officers’ tags to ensure that they are properly entered.

c. The NYPD does not provide prosecutors with direct access to their databases or electronic files.

The new discovery statute explicitly requires local law enforcement agencies to “make available to the prosecution a complete copy of its complete records and files related to the investigation of the case or the prosecution of the defendant.” N.Y. Crim. Proc. Law (“CPL”) §245.55(2). It further requires that prosecutors’ offices “ensure that a flow of information is maintained between the police and other investigative personnel and his or her office sufficient to place within his or her possession or control all material and information pertinent to the defendant and the offense or offenses charged.” CPL § 245.55(1).

The logical means of meeting this requirement would be for the NYPD to provide local prosecutors with direct access to their electronic databases (if the NYPD implements the changes addressed above to ensure that all materials are stored in electronic databases and properly labeled). Currently, however, the NYPD does not provide prosecutors with direct access to their files. Rather the NYPD selects which files to share with the prosecutors on a case-by-case basis. If they fail to share a file generated and stored in a database, the prosecutor will not obtain it unless they request it from the NYPD. Although prosecutors must do this to fulfill their obligations under the law, the potential for things to be missed is immense.

For example, all NYPD service members under the rank of Captain must record their daily activities and take notes in an electronic activity log they access on their department cell phone. These activity logs are an important source of discovery. Although they are kept electronically, prosecutors do not have access to them unless the individual officer shares their activity log entries from the day in question upon request. Similarly, prosecutors must be granted access to BWC footage even though it is all stored on evidence.com. If prosecutors had direct access to the footage, they could avoid the issues discussed above.

d. The NYPD’s culture of resistance to transparency is at the heart of these obstacles.

The problems and solutions outlined above are simple and this begs the question why they haven’t been addressed. The NYPD has the financial resources to make these changes and has incredibly innovative and advanced technological capacity. In fact, between 2007 and 2020, the Department spent \$2.7 billion on surveillance and technology services and products.¹ Despite this unprecedented investment in technology, prosecutors in local criminal and superior courts

¹ The NYPD has fought to keep the details of these expenditures from the public and from this council. <https://subscriber.politicopro.com/article/2023/10/nypd-spent-2-7b-on-technology-a-court-ruled-for-it-to-release-the-details-00124282?source=email>

frequently cite transmission errors and the inaccessibility of material maintained by the NYPD as their explanation for their failure to timely obtain discoverable material. The NYPD is clearly resisting the mandates of Kalief’s Law and is not dedicating their extensive resources to comply with them. In short, it is a deeper problem than identifying solutions in a bureaucracy—it is an apparent resistance to change based on principle.

This resistance is best exemplified by the NYPD’s lack of transparency and resistance to sharing records of police misconduct with prosecutors. Not only is the NYPD not transparent about their processes for investigating police misconduct and imposing discipline, but they keep the records relating to police misconduct hidden from the public and even from prosecutors. Thanks to the new discovery law and the 2020 repeal of Civil Rights Law 50-A, the law that for decades kept police disciplinary records confidential, these records are now a part of the evidence that prosecutors must share with defense attorneys. The accused person is entitled to know about the prior misconduct of the officers who are set to testify against them. Prosecutors and the NYPD have been resistant to accepting these changes to the law, and the NYPD has in many cases refused to comply. In fact, the NYPD legal bureau and other officers responsible for gathering these materials for disclosure will impermissibly withhold records requested or heavily redact them without a legal basis. In *People v Chimborazo* (2023 NY Slip Op 23290), the NYPD went so far as to refuse to disclose Internal Affairs Bureau (IAB) materials unless the prosecutor first sought a protective order from the court to prevent the defense from accessing them. The court denied the prosecutor’s protective order application and characterized the prosecution’s attempts to withhold discovery as a “ransom payment to the NYPD.”²

Although there are remedies built into the discovery law to aid the defense when the government has failed to comply with the law in a timely manner, in many cases police failures to preserve and share evidence are unknowable to the defense. The NYPD’s present evidence sharing practices make it difficult to know if all the evidence collected by officers has indeed been shared and preserved. And this uncertainty reveals a high risk of wrongful convictions within New York City. Because of incomplete discovery, particularly discovery materials that would exonerate the accused, individuals are more likely to accept pleas to lesser charges for crimes they did not commit to avoid the threat of mandatory minimum sentences.

The NYPD’s resistance to transparency and to developing logical tech solutions to its flawed systems has also become apparent through Legal Aid’s post-conviction litigation. Our colleagues in Legal Aid’s Wrongful Conviction Unit (“WCU”) advocate for the exoneration of our clients

² In addition to the resistance to existing laws, it is important to note that statutory discovery protections do not currently extend to young people prosecuted in family court. Even though an appellate court in Matter of Jayson C., 200 A.D.3d 447 (1st Dept. 2021), has held on equal protection grounds that young people accused of crimes in juvenile delinquency proceedings are entitled to police disciplinary records, there is still resistance to this court ruling. NYPD continues to attempt to provide only summaries of past misconduct, frustrating the spirit of the discovery law and in defiance of the Court’s decision. We encourage the Council to support A1320/S2120, a State bill that would extend discovery protections to young people subject to family court proceedings.

after they have already spent decades, incarcerated for crimes they did not commit. Because there is currently no law mandating post-conviction discovery, our WCU colleagues must resort to FOIL litigation to obtain the most basic police records.³ While the prosecutors' offices often take months to disclose or deny such material – followed by time consuming appeals -- NYPD is far more recalcitrant in their compliance with the FOIL laws than the prosecutors' offices. It typically takes over a year to get a substantive response to FOIL requests from NYPD, and the answer is often, if not mostly, a denial of the request. Litigants then must resort to the same appellate process, only to be told for the first time that NYPD cannot find the requested documents.

Even when they successfully litigate these requests and are entitled to access to files, the lack of consistent record keeping and preservation of evidence by the NYPD hampers their efforts.

Mr. Wayne Gardine was our Wrongful Conviction Unit's most recent exoneration. in November of 2023.⁴ In Mr. Gardine's case, he was exonerated after an eyewitness recanted testimony. But the reinvestigation of the case also uncovered that NYPD detectives never bothered to take note of or investigate the easily verifiable alibi Mr. Gardine put forth at the time of his arrest. According to the National Registry of Exonerations, of the 3,478 people who have been exonerated since 1989, the leading cause of wrongful convictions is perjury or false accusations. Approximately 63% of exonerated persons were wrongfully convicted based on perjury or a false accusation. The next highest factor contributing to wrongful convictions, at 60%, is official misconduct. Both factors contributed to Mr. Gardine spending twenty-nine years in prison for a crime he did not commit. As discussed above, NYPD's culture of secrecy and failure to disclose critical information has been and continues to be a major contributing factor to wrongful convictions in New York City.

After nearly five years from the passage of Kalief's Law and after the NYPD received millions of dollars earmarked for technology to support the sharing of evidence, the NYPD's continued intransigence to adapt to statutorily mandated evidence sharing must end.

Part 2: The NYPD Maintains Rogue Databases and Outdated Interrogation Procedures.

Another NYPD procedure that must end is the curating of unchecked, unregulated, internal NYPD databases containing the DNA and information of New Yorkers taken without their consent and without an accompanying conviction.

A. Ending the Gang Database

³ The Challenging Wrongful Convictions Act ("CWCA"), passed by the New York State Legislature but vetoed by Governor Hochul, includes a provision for post-conviction discovery.

⁴ *see* National Registry of Exonerations, DAVE ANTHONY GARDINE, available at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6708>

The notorious “Gang Database” acts as a dragnet for young people from Black and brown communities; it is a racist tool used for oversurveillance: 99% of the people in the database are Black or Latino. It promotes harmful policing and leads to unwarranted arrests. Tens of thousands of New Yorkers are added to this database for things as innocuous as wishing a friend happy birthday on social media or living in NYCHA (New York City Housing Authority) housing. The Gang Database targets young people ages 17 to 27 but includes children as young as 11. There is no specific criteria used when adding people to the database leading to the frequent use of stereotypes and generalizations such as choice of music or the community you live in. Once added, you remain in the database indefinitely without notification or an opportunity to dispute the label.

Being added to the Gang Database causes community members and their families to experience unwarranted increased police encounters and over-surveillance result in wrongful arrests that can lead to loss of housing and ICE detainers for immigrant New Yorkers. Compounding this problem, prosecutors frequently make more punitive offers to community members for no reason other than their name appearing in the database.

The Gang Database is dangerous and must be abolished. Intro-360, sponsored by Council Member Althea Steven, will ensure that this destructive, racist database is dismantled, and the bill prevents the creation of any successor databases. We are grateful for the support from many city council members for this bill, and we urge you all to pass the bill this year.

B. Ending the Rogue DNA database

The NYPD maintains an unregulated DNA database of mainly Black and brown New Yorkers, including many who have never been convicted of a crime and children as young as 11 years old. The Legal Aid Society filed a class action lawsuit to end this rogue DNA database against the City of New York as well as the New York City Police Department (NYPD) and the Office of Chief Medical Examiner (OCME) challenging the illegal, secret seizure and storage of DNA material from New Yorkers whom the police suspect have committed a crime without obtaining a warrant or court order.⁵ Unlike federal and state DNA databases, the NYPD’s database lacks any legislative authorization, empowering the NYPD to treat thousands of New Yorkers as perpetual criminal suspects. Thousands of New Yorkers, most of whom are Black and brown, and many of whom have never been convicted of any crime, are illegally in the city’s rogue DNA database, which treats people as suspects in every crime involving DNA.

⁵ see reporting in *The New York Times*, “This Database Stores the DNA of 31,000 New Yorkers. Is It Illegal?” by Troy Closson March 22nd, 2022 available at <https://www.nytimes.com/2022/03/22/nyregion/nyc-dna-database-nypd.html>

The database has come under fire in recent years for the tactics the police use to collect DNA samples, often without a person's consent. The NYPD's Detective Guide instructs detectives to offer a water bottle, soda, cigarette, gum or food to someone being questioned in connection with a crime whose DNA is sought – and to collect the item once they leave. Once filed in the database, DNA profiles are then put in a perpetual “genetic lineup” and compared to DNA evidence taken from practically any past or future investigation – all without obtaining a warrant or court order, and in blatant contradiction of New York State law, which prohibits the indexing of a person's DNA unless they have been convicted of a crime.

By illegally seizing DNA from thousands of New Yorkers, the NYPD's mass DNA collection efforts support the use of its new and invasive investigatory technique that can be used to investigate individual suspects, including children as young as 11 years old.

This database operates virtually unchecked, and despite promises from the City to reduce its size, the database has continued to grow at the expense of communities of color. Because of the risk of DNA contamination, this kind of unregulated genetic database can lead to wrongful arrest and of course, flowing from that, wrongful conviction. DNA transfers easily from persons to surfaces, and DNA contamination makes it difficult to determine what DNA is relevant in crime scene evidence. For example, [Terry Gills](#)⁶ was wrongfully arrested and jailed pretrial for about six months because his DNA was found on a touchscreen at a Dunkin Donuts store that was robbed. Despite evidence that pointed at the robbery being part of a string of similar robberies, Mr. Gills was prosecuted solely based on the DNA match, and he was acquitted at trial.

The NYPD has long shown it cannot police itself, and while our lawsuit seeks judicial review of these destructive practices, we call on the City Council to conduct the oversight and pass the legislation necessary to stop this overreach and end this rogue database. We also urge the Council to pass a resolution in support of the state legislation that would end this rogue database, sponsored by Senator Hoylman-Sigal and Assembly Member Zinerman.⁷

Part 3: The NYPD Must Reform Its Methods of Interrogating Children.

It is a well-established truth⁸ that during interrogations, police use techniques that break down a person's resistance to admitting guilt. Police routinely lie about the existence of persuasive evidence in order to persuade youth that there is no way out and that confessing will improve the situation. Interrogators can lie to the person being questioned by telling them that they will

⁶ *The New York Times*, “Can DNA Evidence Be Too Convincing? An Acquitted Man Thinks So” by Eli Rosenberg, May 16, 2017 available at <https://www.nytimes.com/2017/05/16/nyregion/can-dna-evidence-be-too-convincing-an-acquitted-man-thinks-so.html>

⁷ [S998/A1877](#)

⁸ Richard A. Leo & Steven A. Drizin, *The Three Errors: Pathways to False Confession and Wrongful Conviction*, in *Police Interrogations & False Confessions* 9 (G. Daniel Lassiter & Christian A. Meissner eds., 2010), available at http://papers.ssm.com/sol3/papers.cfm?abstract_id=1542901.

receive a higher charge or harsher punishment if they do not confess (and conversely, that they will receive a lesser charge or punishment if they do). The interrogator may also wear down or distress the person to the point where they believe they have no choice but to confess.

Because of their developmental stage, young people are especially susceptible to these interrogation tactics and studies have shown that youth falsely confess at more than three times the rate of adults.⁹ To address this rate of false confession, California, Hawaii, Maryland and Washington State all prohibit interrogation of minors without first providing them with a lawyer to assist them in deciding whether to waive their right to remain silent. However, here in New York no such mandate exists. In fact, members of the NYPD regularly use parents to try to extract statements from minors. The NYPD's internal policy also suggests that while the Family Court Act mandates that they hold young people only in the designated juvenile room, they allow interrogation to take place in an adult room.¹⁰

We must end this NYPD abuse of our children and young people and ensure that a child under age 18 may only be interrogated by law enforcement after the young person has consulted with counsel, thereby ensuring any waiver of rights under *Miranda* is genuinely knowing, voluntary, and intelligent.

The statute already authorizes interrogations only when “necessary.” A bill pending in the state legislature would require that young people in police custody are provided with lawyers to explain their Miranda rights before interrogation can begin. If counsel is not provided, any statement elicited from a young person would be inadmissible as evidence against them.

This bill, S.1099-A/A.8923-A, backed by the statewide #Right2RemainSilent coalition, would ensure that all youth, including the predominantly Black and Latinx youth who are too often the targets of police interrogation, have the benefit of an attorney protecting their right to remain silent. We are grateful to the Council for passing Resolution No. 473-2023 calling on our State elected leaders to enact this critical measure.

Part 4: The NYPD Must Address and Prevent Routine Police Misconduct.

Police officers make false statements. They make false statements in official documents, in conversation with prosecutors and on the witness stand while under oath. Those false statements—

⁹<https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20FINAL%20CHART.pdf>.)

¹⁰ FCA 305.2 only permits law enforcement to take a minor to a place designated by the chief administrator of the courts as a suitable place for the questioning of children if they are not sending them home or taking them to the courthouse. NYPD policy appears to suggest they consider it ok to interrogate youth in an adult room, even though they “hold” them in the juvenile room. (Chief Det. Memo 3, dated June 1, 2021).

lies—have life-changing consequences for our clients, their families, and their freedom. Police lies also have a devastating impact on public trust.

A 2019 report conducted by a prominent federal prosecutor and district court judge found that the NYPD failed to hold officers accountable for making false statements. The report further concluded that NYPD’s system of internal discipline was too lenient when it charged officers with making false statements, if it charged officers at all. Such a permissive system allowed most officers to avoid termination entirely, even in cases where they clearly lied.¹¹

A 2019 report by the Citizens Commission to Combat Police Corruption¹² came to similar conclusions, finding that only 9 of 144 officers who faced allegations related to false statements, were charged under the strictest rule. From 2010 to 2018, the CCRB referred 81 false statement cases for discipline.¹³ IAB substantiated only two.¹⁴ In the remaining 79 cases, IAB found no wrongdoing or found the officer guilty of lesser conduct.¹⁵

For too long, officers have been able to lie without consequence. Rather than being reprimanded, or prosecuted for perjury, offending officers have received promotions.¹⁶ District attorney offices maintain lists of officers with credibility issues, yet those officers are rarely subjected to any meaningful investigation. In fact, prosecutors’ reluctance to investigate may even allow offending officers to evade credibility lists altogether.¹⁷ And even when an officer is included on a district attorney’s list, they will rarely suffer consequences. Police lying is so prevalent that it has earned the moniker “testilying.”¹⁸ Prosecutors almost never pursue charges against officers whom they have worked with or relied upon in other cases. In some cases, prosecutors may even proactively protect officers with well-documented histories of lying.¹⁹

¹¹ Mary Jo White, Robert L. Capers & Barbara S Jones, *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* (2019), <https://www.independentpanelreportnypd.net/assets/report.pdf>.

¹² Nineteenth Annual Report, Commission to Combat Police Corruption (December 2019) available at <https://www1.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf>

¹³ Goldstein, *infra* note 26

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Joseph Goldstein, *Promotions, Not Punishments, for Officers Accused of Lying*, NY TIMES (March 19, 2018) <https://www.nytimes.com/2018/03/19/nyregion/new-york-police-perjury-promotions.html>

¹⁷ Stern, *supra* note 24 (“One NYPD officer, David Grieco—commonly known as Bullethead—has been sued at least 32 times...for civil rights violations, including excessive force and fabrication of evidence. Yet Grieco was promoted and prosecutors continued to call him to the stand long after a slew of his victims blew the whistle on his violent and lawless behavior. Judges continued to rely on his word to lock up defendants. And Grieco’s name did not appear on Brooklyn District Attorney Eric Gonzalez’s long-secret list of officers with known credibility problems.”)

¹⁸ Joseph Goldstein, *Testilying by Police: A Stubborn Problem*, NY TIMES (March 18, 2018) available at <https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html>

¹⁹ George Joseph and Ali Winston, *When Prosecutors Bury NYPD Officer’s Lies*, Gothamist (Sept. 17, 2019) <https://gothamist.com/news/when-prosecutors-bury-nypd-officers-lies>

The NYPD's refusal and systematic inability to hold police officers accountable for false statements, and overall misconduct, fosters wrongful convictions. Instead of creating a transparent system that appropriately disciplines cops for wrongdoing, the NYPD consistently chooses to protect and empower rogue and abusive officers. This frequently leads to the innocent being wrongfully convicted and the destruction of communities of color.

Joseph Franco was a New York City police officer from May 2000 until June 2020. During his 20 year tenure, while pledging to serve and protect, he lied and framed at least 300 innocent people. The NYPD was aware of Detective Joseph Franco's myriad of acts of misconduct and failed to take any disciplinary action against him until he was charged criminally for his lies and wrongdoings. Despite having multiple complaints of violent and threatening behavior, he rose through the ranks of the NYPD and was promoted to Narcotics Detective, where he continued to ruin the lives of hundreds of innocent community members and their families.

The NYPD's current system fails to effectively track police misconduct and to impose appropriate discipline on officers found to have committed misconduct. A review of 2022 CCRB data and reports²⁰ unearthed a notable increase compared to even previous years of the Police Commissioner deviating or departing to less serious penalties for officers found to have engaged in punishable misconduct. In fact, the Police Commissioner engaged in a downward departure from CCRB recommendations on 425 complaints in 2022 with very little accounting for many of these decisions. This continues to signal to officers that NYPD does not take discipline seriously.

When our clients are falsely arrested, there is a litany of devastating consequences—consequences that affect their employment, housing, and immigration status. Meanwhile, when an officer's false statements that led to a wrongful arrest are exposed, it is rare that anything more than a dismissal of criminal charges occurs. Officers are protected and remain on the street to do it again.

Hundreds of New Yorkers have been impacted directly by Det. Franco's lies, and the city has paid damages of nearly two million dollars in civil lawsuits for this officer alone. In 2022, the NYPD's misconduct settlements cost taxpayers \$121 million.²¹ While the Conviction Integrity Unit in the District Attorney's Office of New York County should be commended for proactively identifying cases in which Det. Franco was involved for review, the victims who have been wrongfully convicted based on police lies are often met with procedural barriers. Those who are wrongfully convicted should not be retraumatized and forced to bear the burden of proving that a known lying officer again lied in their case – there should be a presumptive conclusion, and the state must carry the burden. The NYPD should be required to complete an audit and review of all identified officers, including all their arrests and involved cases.

²⁰ Letter from the Legal Aid Society to Mayor Eric Adams, March 15, 2023 available at <https://legalaidnyc.org/wp-content/uploads/2023/03/2023-3-14-Letter-to-Mayor-re-NYPD-Discipline-Departures.pdf>

²¹ <https://www.nytimes.com/2023/02/02/nyregion/new-york-police-department-misconduct-settlements.html>

Part 5: The Adams Administration Must Commit to Funding and Empowering the Civilian Complaint Review Board.

Mayor Adams' administration must commit to full and thorough investigations of police misconduct by independent and impartial investigators and invest funding and resources to carry out these investigations. For years, the CCRB – the only separate and independent oversight agency that investigates individual officer misconduct – has been consistently and frequently underfunded. While the CCRB's abuse of authority jurisdiction was expanded in recent years to include false official statements – in part due to the NYPD's inability to effectively hold officers accountable – the agency was recently forced to suspend investigations into several categories of misconduct, including false official statements, due to budget cuts mandated by Mayor Adams. These kinds of constraints on the CCRB undermine accountability, particularly for false statements, and enable a culture of lying within the NYPD.

To end these constraints on the CCRB's authority, the Adams administration must reinstate the CCRB's full funding so it can carry out its oversight role. The City Council should also invest additional funds to allow the CCRB to conduct investigations into all categories of officer misconduct, including false official statements, and allow it to broaden its investigatory capacity.

RECOMMENDATIONS

The Legal Aid Society urges the City Council to exercise its oversight authority to protect community members from the increasing risk of wrongful convictions. Police officers like Joseph Franco, and the practices that have enabled officers like him to thrive in the NYPD, have wrongly deprived too many people of their freedom. We urge the Council to ensure NYPD holds their officers accountable by regular audits and oversight of reported instances of officer misconduct, including discipline and changes to officer duties. Addressing the unchecked misconduct rampant in the ranks of the NYPD will help prevent future wrongful convictions.

We also encourage the City Council to conduct inquiries and oversight hearings into the NYPD refusal to be compliant with our state's discovery laws. The unnecessary obfuscation and frequent refusal to share full case files and the disciplinary records that bear on officers' truthfulness directly contribute to future wrongful convictions. We ask that the Council continue to scrutinize the NYPD's robustly funded technology budget, which should be used to expand electronic databases for evidence collection and to create systems that grants prosecutors more effective and unfettered access to those databases – rather than robot dogs and subway robots – so that all evidence is disclosed to the defense attorneys who represent New Yorkers accused of crimes.

We welcome the Council's endorsement of bills pending at the state level, such as the bill to End Rogue DNA Databases, the #Right2RemainSilent bill, and A1320/S2120, the bill to statutorily extend discovery obligations to Family Court. We also encourage this committee and the Council

to take up and pass the pending city legislation to end the NYPD Gang Database as envisioned in Intro 360.

We encourage this committee to recommend increased budget allocations to the independent Civilian Complaint Review Board as well as to consider broadening the scope and power of its review and findings so that true accountability is present for officers who disregard department rules and trample the constitutional and privacy rights of people in our communities.

Finally, we'd be remiss not to point out that the most effective way to prevent wrongful convictions is to shift our overreliance on policing as a cure-all to social problems and invest instead in proven alternatives that keep people out of the criminal legal system. The NYPD cost taxpayers over \$121 million dollars in misconduct settlement money in 2022²² alone. To save taxpayer money and prevent wrongful convictions, we encourage the Council to shift additional resources, both human and fiscal, to investments in critical infrastructure like housing, mental health care, and public education, which create conditions of safety for everyone in our city.

Thank you for your oversight and your time and consideration of this testimony.

²² <https://legalaidnyc.org/wp-content/uploads/2023/02/City-Data-Payouts-on-NYPD-Misconduct-Lawsuits-for-2022-Balloon-to-Over-121-Million-Highest-in-at-Least-Five-Years.pdf>

TESTIMONY OF THE PERLMUTTER CENTER FOR LEGAL JUSTICE AT CARDOZO LAW
New York City Council
Committee on Public Safety
Hearing on *Oversight - Examining NYPD Investigative Procedures and
Safeguards Relating to Wrongful Convictions*
February 29, 2024

We express our gratitude to Public Safety Committee Chair Yusef Salaam for holding the February 26, 2024 hearing and for opening a citywide conversation to examine how the NYPD's investigative procedures may contribute to wrongful convictions and to discuss safeguards to guard against these risks.

The Perlmutter Center for Legal Justice at Cardozo Law (PCLJ) is a multifaceted center that seeks to empower the next generation of lawyers to fight for freedom for those unjustly serving time. We envision a world where racial equity, fairness and integrity are the guiding principles of our criminal justice system, where forensic evidence is well-grounded, verifiable and used to prevent convictions—not hand them out—and where every person has equal access to justice. To accomplish these goals, we offer the Freedom Clinic which trains law students in the proper use of scientific evidence, focuses on how its misuse contributed to wrongful convictions, and integrates this knowledge into real casework. We also train attorneys on the underlying scientific issues in forensic science to support more robust litigation in our Forensic Science Education Program and pursue policy solutions that ensure forensic and investigative methods and technologies are more accurate, accountable, and justly and equitably implemented.

During the hearing, the Committee sought an examination of NYPD practices to identify investigative strategies that have historically contributed to wrongful conviction and identify reforms and policy changes that can mitigate or reduce the risk of wrongful convictions. This statement provides our reflections and continuing questions regarding three topics raised during the hearing: forensic science, custodial interrogations of children, and identification procedures.

Forensic Science

NYPD is responsible for all nonbiological forensic science testing. We acknowledge and appreciate that the NYPD is accredited to perform a vast expanse of forensic

testing including latent print, crime scene investigation, document examination, fire debris and explosives, firearms and toolmarks, footwear impressions, trace materials analysis, and seized drugs analyses.¹ However, accreditation is not a panacea—it plays an important role in providing a framework to produce quality forensic evidence, but it cannot guarantee it.² In Texas, forensic science service providers (FSSPs) are overseen by the Texas Forensic Science Commission (TFSC), a regulatory body. This commission conducts “retroactive reviews of evidence (beyond accreditation), independent investigations, opportunities for FSSPs to learn when these investigations occur, collaborative efforts to notify defendants when forensic science problems are discovered,” and other activities accreditation cannot offer.³ While one of the nation’s oldest state forensic science commissions operates in New York State, it is established primarily to oversee the state’s forensic accreditation program and manage its DNA database—it does not have the statutory power to conduct retroactive reviews and independent investigations.

During the hearing, questions were also raised regarding the 2015 latent print misidentification.⁴ Public defenders serving NYC have called for an independent, external audit of historical casework conducted by the three NYPD detectives involved in the false positive error.⁵ Currently, NYPD is working with the city’s elected district attorneys to review latent print analyses conducted by these three detectives from 2015-2019.⁶ NYPD shared at the December 15, 2023 meeting of the New York State Commission on Forensic Science (NYS CFS) that NYPD latent print examiners

¹ ANAB, *Scope of Accreditation to ISO 17025: 2017, New York City Police Department Police Laboratory, Forensic Testing*, (2023), https://search.anab.org/public/organization_files/New-York-City-Police-Department-Police-Laboratory-Cert-and-Scope-File-12-07-2023_1701962554.pdf (last visited Feb 28, 2024); ANAB, *Scope of Accreditation to ISO 17020: 2012, New York City Police Department Crime Scene Unit*, (2023), https://search.anab.org/public/organization_files/New-York-City-Police-Department-Crime-Scene-Unit-Cert-and-Scope-File-01-11-2024_1705004110.pdf (last visited Feb 28, 2024); 1. ANAB, *Scope of Accreditation to ISO 17020: 2012, New York City Police Department Latent Print Section*, (2023), https://search.anab.org/public/organization_files/New-York-City-Police-Department-Latent-Print-Section-Cert-and-Scope-File-08-02-2023_1690980284.pdf (last visited Feb 28, 2024).

² National Research Council. (2009). *Strengthening Forensic Science in the United States: A Path Forward*. National Academies Press. <https://doi.org/10.17226/12589>

³ Juan Hinojosa & Lynn Garcia, *Improving Forensic Science Through State Oversight: The Texas Model*, 91 Texas Law Review 19 (2012); Sarah P. Chu, *Quality Management and Oversight of Texas Forensic Science Service Providers*, CUNY Academic Works (2023), https://academicworks.cuny.edu/gc_etds/5459.

⁴ *NYPD Disclosure Letter*. (2023, July 13); available at: <https://legalaidnyc.org/wp-content/uploads/2023/11/Notification-Letter-07.13.2023-1.pdf>

⁵ *Public Defender Letter re 2023 Belated Disclosure of the NYPD Latent Print Misidentification in 2015*. (2023, December 1). legalaidnyc.org. <https://legalaidnyc.org/wp-content/uploads/2023/12/FINAL-NYPD-LPS-Letter-12-1-23v2.pdf>

⁶ George Joseph & Yoav Gonen, *Prosecutors Review Dozens of Cases After NYPD Informed Them — Eight Years Later — of a Detective’s Fingerprint Mistake*, The City, Aug. 31, 2023, <https://www.thecity.nyc/2023/8/31/23854293/prosecutors-review-cases-nypd-detectives-fingerprint-mistake> (last visited Sep 25, 2023).

conducted a review of the pre-2015 cases using the same methodology that was in place at the time of the 2015 errors. We know this methodology was inadequate for ensuring high quality latent print examinations because the latent print section protocols were significantly revised after NYPD consulted external experts.⁷ We acknowledge the significant resources that NYPD invested in the pre-2015 case review, but without providing additional documentation, it is not possible to assess its accuracy and efficacy.

NYPD Executive Director of Investigative Support and Training Neil Fenton stated during the hearing that the latent print section is accredited and that root cause analyses and investigations of nonconforming work are conducted within the laboratory by its own examiners. While a laboratory's quality management system is intended to identify errors and nonconforming work, conduct root cause analyses, and remediate problems, the rigor and efficacy of these processes are variable and depend on the laboratory's specific standard policies. Executive Director Fenton also recognized at the hearing that the latent print error was "significant."⁸ In Texas, any "significant irregularity in the laboratory" must be self-disclosed to the TFSC which will publicly review each submission and decide whether or not to undertake an investigation. Between 2016-2020, the TFSC received 98 self-disclosures and opted to investigate 10% of them.⁹ The United States Department of Justice also sponsors the Paul Coverdell Forensic Science Improvement Grants Program, a grant program for crime laboratories that requires awardees to certify that "[a] government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount."¹⁰

The concerns raised by these pre-2015 cases will not subside until all constituents of the criminal legal system are provided with more information. To date, NYPD has referenced, but has not shared documentation from the pre-2015 audit. We recommend that NYPD convene a working group that is representative of multiple

⁷ Commission on Forensic Science 12/15/2023, (2023), <https://www.youtube.com/watch?v=utsMciAje1M> (last visited Feb 28, 2024).

⁸ Texas Forensic Science Commission, *Texas Forensic Science Commission Guidelines for Laboratory Self-Disclosure*, (2023), <https://www.txcourts.gov/media/1440404/fsc-lab-disclosure-form-english.pdf>.

⁹ Sarah P. Chu, *Quality Management and Oversight of Texas Forensic Science Service Providers*, CUNY Academic Works (2023), https://academicworks.cuny.edu/gc_etds/5459.

¹⁰ U.S. Department of Justice Bureau of Justice Assistance, *FY 2024 Coverdell Forensic Science Improvement Grants Program Certification as to External Investigations*, <https://bja.ojp.gov/funding/fy24-coverdell-cert-external-investigations.pdf>.

perspectives of the NYC criminal justice community and with expertise in forensic science to review the documentation from the pre-2015 latent print case review. If the concerns of this working group are not satisfied, we ask City Council to support an independent external case review to be conducted by latent print experts selected by the working group.

Unlike biological testing conducted at the New York City Office of Chief Medical Examiner (NYC OCME), NYPD has not met the same level of transparency with its forensic practices. In 2013, City Council passed Local Law 85 (Intro 1051-2013) to establish root cause analysis practices and their dissemination, as well as Local Law 86 (Intro 1058-2013) to require posting of important quality management documents online at the NYC OCME.¹¹ In 2016, the National Commission on Forensic Science passed a recommendation calling on the Attorney General to direct Department of Justice (DOJ) FSSPs to make their quality management documents readily accessible to the public and posted online.¹² Today, the FBI, DEA, and ATF post their quality management system documents on the DOJ website.¹³ As a matter of good government, it seems unbalanced for transparency measures to be required of some but not all forensic services in the city. For this reason, we recommend that City Council consider a bill to expand the requirements of Local Laws 85 and 86 from 2013 to the forensic science services provided by NYPD.

In the wake of the discovery of the 2015 latent print error, NYPD held a series of “stakeholder meetings” with prosecutors in the city. When asked by a NYS CFS commissioner whether institutional defenders could be included among these constituent groups, the NYPD representative could not commit to their inclusion and needed to consult legal counsel. Science should not be partisan and it is very difficult to build public trust across the system if some constituents are selected to receive information while others are excluded. We recommend that NYPD expand its “stakeholder meetings” to include institutional defenders and other organizations that

¹¹ Maria Del Carmen Arroyo et al., A Local Law to Amend the Administrative Code of the City of New York, in Relation to Establishing Procedures for the Office of Chief Medical Examiner to Conduct a Root Cause Analysis., (2013), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1442875&GUID=C60DBA6E-A3ED-43AA-9690-09A75D0C4BF9&Options=&Search=> (last visited Jan 31, 2019); Julissa Ferreras-Copeland et al., A Local Law to Amend the Administrative Code of the City of New York, in Relation to Transparency of the Office of Chief Medical Examiner., (2013), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1442884&GUID=078AAE30-150F-4B45-9452-036094C6918A&Options=&Search=> (last visited Jan 31, 2019).

¹² National Commission on Forensic Science, *Recommendation to the Attorney General Transparency of Quality Management System Documents*, (2016), <https://www.justice.gov/archives/ncfs/page/file/839706/download> (last visited Sep 2, 2020).

¹³ U.S. Department of Justice, *Office of Legal Policy | Forensic Science*, (2018), <https://www.justice.gov/olp/forensic-science> (last visited Feb 29, 2024).

provide postconviction counsel to ensure informational parity regarding the remediation of the latent print error.

Lastly, we bring to you our concern regarding the unauthorized DNA database that is hosted at NYC OCME but overseen by NYPD. The Committee on Public Safety held a joint hearing with the Committee on the Justice System on this topic on February 25, 2020. New York State Executive Law §995 authorizes the retention of DNA profiles from people convicted of specific crimes in a database maintained by the state. However, NYC operates a DNA database outside of the law that retains DNA profiles from people who were not convicted of crimes. At one point, this database included over 30,000 DNA profiles, some of which were confirmed to have come from children as young as 12 years old.¹⁴ In 2020, NYPD promised to revise its policies with regard to retention and expungement as well as provide the unauthorized database's demographic information to the public. To date, this information has not been released and we urge the Committee to revisit this issue at a future hearing.

Custodial Interrogations of Children

During the hearing, Chief of Detectives Joseph Kenny stated that current NYPD Procedures require video recording of all interrogations of children, that attempts are made to notify a parent or guardian before an interrogation begins, parents and children are provided with rooms to have private discussions, and questioning ceases the moment parents decline to proceed or when the parent or child invokes the right to counsel. The NYPD Detective Guide (Procedure 502-31) instructs detectives to "ensure" these provisions and does not use "shall" or "must" language. Rather, the guide states, "if the parent/guardian objects to the questioning or requests an attorney for the juvenile, no questioning *should* occur." The same guide also states that if a child invokes their right to silence that the following exceptions apply:

If conversation is initiated by the subject, uniformed members of the service *should* commence Electronic Recording of Custodial Interrogation. If a uniformed member of the service wishes to reengage

¹⁴ Rocco Parascandola, *NYPD Falters on Promise of DNA Database Demographic Transparency, Advocates Say*, New York Daily News, Feb. 27, 2023, [https://www.nydailynews.com/2023/02/27/nypd-falters-on-promise-of-dna-database-demographic-transparency-advocates-say/#:~:text=Three%20years%20after%20promising%20transparency.for%20minorities%20to%20trust%20police;Eileen%20Grench,A%20Measure%20Set%20to%20Be%20Introduced%20to%20the%20City%20Council%20Thursday%20Aims%20to%20Restrict%20What%20One%20Lawmaker%20Called%20%20Genetic%20Stop-and-Frisk%20of%20Minors%20Taken%20into%20Custody.,THE%20CITY%20-%20NYC%20News%20\(2020\),http://www.thecity.nyc/2020/10/13/bill-would-clamp-down-on-cops-collecting-dna-from-kids/](https://www.nydailynews.com/2023/02/27/nypd-falters-on-promise-of-dna-database-demographic-transparency-advocates-say/#:~:text=Three%20years%20after%20promising%20transparency.for%20minorities%20to%20trust%20police;Eileen%20Grench,A%20Measure%20Set%20to%20Be%20Introduced%20to%20the%20City%20Council%20Thursday%20Aims%20to%20Restrict%20What%20One%20Lawmaker%20Called%20%20Genetic%20Stop-and-Frisk%20of%20Minors%20Taken%20into%20Custody.,THE%20CITY%20-%20NYC%20News%20(2020),http://www.thecity.nyc/2020/10/13/bill-would-clamp-down-on-cops-collecting-dna-from-kids/) (last visited Feb 29, 2024).

the subject in conversation, a minimum waiting time of two hours must be scrupulously honored.

These exceptions appear to offer pathways that permit interrogation of children without video recording and even after they invoke their right to silence. Given the special sensitivity of holding children in custody, their vulnerability, and the fact that parents are not attorneys, we recommend that NYPD strengthen the prohibitions against interrogating children without video recording, interrogating children when they have invoked the right to silence, and interrogating children without counsel, even if their parents or guardians are present. We also recommend that a system be established to monitor and report statistics regarding the number of times children are interrogated in custody.

One topic that was not raised during the hearing was the fact that police are allowed to use deception in their interrogations of children. New York State still permits the use of deceptive tactics when questioning a minor, but this practice is outlawed in Delaware, Illinois, Oregon, and Utah. Colorado, Indiana, and Nevada render a child's statement inadmissible if deceptive tactics are used.¹⁵ These prohibitions were passed with the acknowledgement that children are vulnerable because the decision-making and reasoning parts of their brains are not fully developed, leaving them more vulnerable to self-incrimination. The National Registry of Exonerations reported that the proportion of children under 18 years old who falsely confessed is 34% and that rate increases among children under 14 years old to 78%.¹⁶

The Brooklyn District Attorney's Office's Conviction Review Unit's recent exoneration of Steven Ruffin is an example of how children are vulnerable to deception tactics and why we cannot substitute parents for legal counsel. Mr. Ruffin was 17 years old when he was accused of a murder he did not commit. After using coercive interrogation tactics on the young Ruffin, Detective Louis Scarcella brought in his father, an NYPD officer, to coerce his confession. Mr. Ruffin spent 14 years in prison and had been trying to clear his name for 30 years.¹⁷ In New York State, guilty pleas by innocent people are especially concerning. People who plead guilty are barred from actual innocence claims if their cases did not involve DNA evidence as a result of the New

¹⁵ Kate Bryan, *Recent State Laws Strengthen Rights of Juveniles During Interrogations*, National Conference of State Legislatures, Jan. 10, 2024, <https://www.ncsl.org/state-legislatures-news/details/recent-state-laws-strengthen-rights-of-juveniles-during-interrogations> (last visited Feb 29, 2024).

¹⁶ National Registry of Exonerations, *Age and Mental Status of Exonerated Defendants Who Confessed*, (2022), <https://www.law.umich.edu/special/exoneration/Documents/Age%20and%20Mental%20Status%20FINAL%20HART.pdf>.

¹⁷ Jennifer Peltz, *A Man Cleared in a 1996 Brooklyn Killing Said for Decades He Knew Who Did It. Prosecutors Now Agree*, AP News, Jan. 19, 2024, <https://apnews.com/article/wrongful-conviction-exoneration-brooklyn-steven-ruffin-3af9b74e5f79d1d99994fe44e22f9067> (last visited Feb 29, 2024).

York Court of Appeals decision in *People v. Tiger*. In the absence of state legislative activity, we recommend that City Council consider a bill to prohibit the use of deceptive tactics when questioning or interrogating children.

Identification Procedures

During the hearing, one of the council members raised a concern that the use of close nonmatches in photo arrays made identification confusing. NYPD Acting Director of Legislative Affairs Josh Levine, Chief of Detectives Kenny, and the NYPD Detective Guide (Procedure No. 505-03) described the use of an automated program to select fillers to be as similar as possible to the person of interest. This practice and the Councilmember's concern reflects a problem known in research on human face recognition. People tend to have difficulty recognizing unfamiliar faces and when presented with faces of different people who are similar in appearance, study participants were more likely to erroneously classify them as the same person.¹⁸ The current evidence-base recommends a more fair lineup that optimizes eyewitness identification performance by utilizing fillers in photo arrays who match the description of the person of interest, but are otherwise dissimilar in appearance.¹⁹ We recommend that NYPD consult cognitive psychologists with expertise in human face matching and eyewitness identification procedures to update the NYPD Detective Guide (Procedure No. 505-03) to reflect the current scientific evidence base on photo lineup procedures.

This scientific concern regarding NYPD's current photo array procedure creates a legal concern. Defendants have a Sixth Amendment right to have an attorney present during a lineup procedure and the NYPD Detective Guide (Procedure No. 505-06) allows the person of interest's attorney to view the fillers and make requests regarding the lineup procedure. However, there is currently no such right to counsel during a photo array. Given the potential risks of misidentification, a person of interest should have an attorney present to review the fillers produced by the automated photo management system. This is especially important given NYPD's testimony that the vast majority of lineups are now conducted using photo arrays. We recommend that NYPD amend its Detective Guide (Procedure No. 505-03) to reflect the right to

¹⁸ Megan H. Papesh, Laura L. Heisick & Karyn A. Warner, *The Persistent Low-Prevalence Effect in Unfamiliar Face-Matching: The Roles of Feedback and Criterion Shifting*, 24 *Journal of Experimental Psychology: Applied* 416 (2018); Allyson Rice et al., *Unaware Person Recognition from the Body When Face Identification Fails*, 24 *Psychological Science* 2235 (2013); David White et al., *Crowd Effects in Unfamiliar Face Matching*, 27 *Applied Cognitive Psychology* 769 (2013).

¹⁹ Melissa F. Colloff et al., *Optimizing the Selection of Fillers in Police Lineups*, 118 *Proceedings of the National Academy of Sciences* e2017292118 (2021).

counsel and the preparation of Lineup Defense Counsel Reports for photo array procedures.

Conclusions

Data from the National Registry of Exonerations identified 348 people who were exonerated in New York. Of these exonerations, 69% were wrongfully convicted in New York City. Of these innocent New Yorkers, 89% were classified as Black and Hispanic and 12% were under the age of 18 years at the time of conviction.²⁰ As a matter of justice and equity, we urge City Council and the NYPD to take disproportionate measures to remedy disproportionate injustices against people of color and vulnerable children. We recognize the work NYPD has done to date to revise its investigative practices when errors or problems are uncovered. To truly ensure that every person has equal access to justice, proactive and preventative action must be taken. We thank you for your consideration of our recommendations and look forward to working with both the City Council and NYPD to strengthen investigative safeguards to remedy and prevent wrongful convictions.

²⁰ National Registry of Exonerations, *Exoneration Detail List*, (2024), <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last visited Feb 29, 2024).

[REDACTED]

[REDACTED]

Begin forwarded message:

From: Carla Rabinowitz <rabinowitzcarla@yahoo.com>

Date: February 27, 2024 at 11:53:32 AM EST

[REDACTED]

Subject: [EXTERNAL] Fwd: Carla Rabinowitz testimony

[REDACTED]

Subject: Carla Rabinowitz testimony

To whom it may concern,

I am sending this testimony on behalf of Carla Rabinowitz (cc'd) regarding the "Committee on Public Safety."

I'm Carla Rabinowitz. I started 20 years ago at Community Access as part of the peer program counselling people who had experienced upset after 9/11. Community Access is a place of healing.

I had 3 strokes. I'm alive and now I have aphasia. I'm still passionate about peers not police and I want to share my story with you.

More than 27 years ago I became very ill after I was admitted to practice law. From 1996 to 2001 I got progressively sicker. I went in and out of hospitals, and was all but lost to myself. I was screaming on the street. I was walking the city streets at 3:00 am. Very unlike me.

I describe this time as my werewolf from London time. I was unrecognizable to myself. At one time I was screaming so hard and so often, I bought a boxer's mouthpiece to stop myself from screaming. It didn't work. I just spit out the mouthpiece and continued screaming.

I lost my law license due to my severe mental illness.

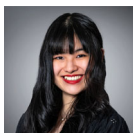
I had to go see a psychiatrist and I was finally rewarded my law license back after lots of hard work.

I want to show how mental illness affects the world. I had some bad experiences with the police during this time.

But luckily, I wasn't arrested. In my 20 years working at Community Access I learned about 19 deaths by the NYPD. The NYPD needs to stop killing people. There should be peers not police who respond to mental health emergencies.

Peers helped me a lot. I got support from peers and they helped me find a home, live independently in a co-op and find myself again.

Kind regards,



Grace Ji Yan Tsang

Speech-Language Pathologist, Open Lines Speech and Communication, P.C.

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LINES



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Good morning to all Council members and Chair. My name is Christopher Jeffries and I'm the Youth Advocate at BronxConnect. As a non-profit/faith based program BronxConnect does phenomenal work by working with at-risk youth who find themselves in trouble with the law. We are an alternative to incarceration and oftentimes work directly with the court system by giving at-risk youth opportunities at getting a second chance. The issue of wrongful convictions have plagued black, brown, and impoverished neighborhoods for ions now. New York has a serious wrongful conviction problem. More than 300 people have been exonerated in New York since 1989, resulting in a collective 3,068 years of life lost to wrongful convictions. Our state ranks third highest in the number of wrongful convictions in the nation, trailing behind Texas and Illinois. The Challenging Wrongful Convictions Act overhauls Criminal Procedure Law 440 to ensure that all New Yorkers have a working pathway to exoneration. New York City and state is known as one of the best places in the world, yet we have so many flaws in our laws. The amount of pain and devastation caused when someone is wrongfully convicted is unspeakable. The wrongfully convicted are taken away from their families and communities, sent to prison where they'll be forced into cheap hard labor. Meanwhile, the real perpetrator of the crime remains free and unscathed; giving the perp a chance to commit more crimes against our communities. In closing I just want to remind everyone that it is our responsibility as a community to not only rectify these issues, but to put protections in place as soon as possible, to assure wrongful convictions never happen again. Thank you Chair and Council for your time and patience today.

[REDACTED]

From: Devra Block <devrablock@icloud.com>
Sent: Wednesday, February 28, 2024 3:44 PM
To: Testimony
Subject: [EXTERNAL] Public Safety Committee Meeting 02/26/2024

[REDACTED]

Quote from James Baldwin, a great American author, a black man, a civil rights activist, he was gay, he was born in 1924 in Harlem:

“Not everything that is faced can be changed, but nothing can be changed until it is faced. There are so many ways of being despicable, it quite makes one’s head spin. But the way to really be despicable is to be contemptuous of other people’s pain.”

The Jewish people of NYC are in pain- they are harassed, intimidated, physically attacked for being Jewish by the “Mob” of pro terrorists, namely, Hamas supporters.
This Council, except for members of the Common Sense Caucus, is collaborating with terrorists who call for the GENOCIDE of the Jewish people. This must stop NOW!

These outrageous and unlawful Mob riots effect ALL New Yorkers.

The NYPD must be able to do their jobs-you must allow them to use force to stop the incitements to immediate violence and arrest the perpetrators.

As citizens, our civil rights and human rights are completely infringed upon. In your zeal to protect your voting base, you stomp on the rights of your constituents to move about freely, to be free from discrimination, to the constitutional right to life, liberty and the pursuit of happiness, the right to assemble and the right to exist without fear of harm and the calls for the mass murdering of Jews and those who support Israel.

We want to be free from terrorism, false imprisonment, destruction of our property, trespassing, violations of protest laws and failure to prosecute.

We want oversight of the protestors, the equivalent of the Handshu Commission where civilians are appointed by the mayor to monitor police behavior towards Hamas and anti-Israel rioters. We want a Jewish Commission to oversee the behavior and punishment of Hamas supporting rioters NOW!

We want the Mob to be reigned in and to abide by the law. NOW! Examples of recent terroristic tactics used by Hamas supporters:

Lunar Parade, Bari Weiss at the 92nd Street Y, Brooklyn Bridge blockade, Grand Central takeover, Rockefeller Tree Lighting, etc..

Remember, Council members, don’t take your base for granted, and don’t alienate the other side, someday you may want their vote.

USE YOUR OFFICE AS THE MORAL FORUM WHICH IT CAN AND SHOULD BE. These civil rights issues are not just political but also moral.

We want the Public Safety Committee to schedule a hearing SPECIFIC TO THE ANTI-ISRAEL PROTESTS. NOW!

Devra A. Block, Esq.

Sent from my iPhone

NYC City Council
Public Safety Hearing Testimony

Feb 26, 2024

Dear Committee:

Since the October 7th massacre of 1200 Israeli civilians by Hamas terrorists in Gaza, and the ongoing war between Israel and the Hamas terrorists hiding in Gaza, hate speech against Zionism, Israel, and, by extension, Jewish people has become tolerated in our city. We do not need to tolerate this any longer.

When pro-Hamas protesters congregate outside Memorial Sloan-Kettering Hospital and scream at the building and the patients inside, because the hospital is supported by charitable donations from "Zionists", by which they mean Jews, it is clear that no distinction is made between Jews and Zionists. Attacks against Jews have risen tremendously since Oct 7th, and were it not for the support of the NYPD, the incidence would be higher. Clearly, the public is not able to tell a Zionist apart from a Jew.

Those who call for the destruction of Israel today would not have supported the creation of the Jewish homeland in 1948, a state built in the ashes of a true genocide of 6 million Jewish people in the Holocaust and the unanimously held belief in the need for 1 sanctuary in the world where Jews could be safe, after centuries of multiple genocides. Jews are the only group in the world to have been the subject of so many different genocides over the centuries, by many different perpetrators.

Israel was established by a UN vote in 1948 in the land that was the British Mandate of Palestine. Those who call for the end of Israel ("From the River to the Sea...") deny history. Though there were different occupiers in the land throughout history, there was always a Jewish presence and it was always the Jewish homeland.

No other country in the world needs to explain their existence. Those who call for the end of Israel do not seek peace, they do not seek a compromise, they do not seek a two state solution. They are not protesting against government action in Gaza. They are against the entire existence of Israel. They foment hatred and feed the irrational belief that, by protesting Israel, Israel will disappear.

Hate speech infects anyone listening to it. Hate speech inflames already angry, disgruntled people and gives them something to scream about. Hate speech against blacks, Latinx, LGBTQ, or any other protected group would not be tolerated. Hate speech against Israel, the Jewish homeland, should not be tolerated either. It is within your rights to express protest against actions by the government, and to call for a ceasefire. It is not, however, within your right to call for the destruction of Israel, which is what is meant by "From the River to the Sea..." or to spread misinformation, such as calling Israel an apartheid country or accusing Israel of

slavery. If a group decided to call China a backward apartheid genocidal country who kills innocent babies, we would not be okay with that.

Additionally, they are better off protesting outside the UN, outside embassies, or in Washington, where they can maybe be more effective in changing policy.

Not at the Museum of Natural History.

Not at the Shops at Columbus Circle.

Not at the 92nd Street Y.

Not at Memorial Sloan Kettering.

Please ensure that these chaotic and disruptive protests do not take place without permits, and that they do not take place in museums, malls and other places where people go to take a break from life. It is dangerous, disruptive and selfish.

Thank you-

Esther Williams

[REDACTED]

From: Ingrid Jean-Baptiste <ingrid@chelseafilm.org>
Sent: Wednesday, February 28, 2024 8:36 AM
To: Testimony
Subject: [EXTERNAL] Public Safety Committee Hearing about Protests

[REDACTED]

To Whom It May Concern:

My name is Ingrid Jean-Baptiste, I am the Founder & Executive Director of the Chelsea Film Festival in New York. I attended the Public Safety Committee Hearing on Monday (02/26) and would like to request a Public Safety Committee Hearing specifically about the anti-Israel protests. What we all have been experiencing since October 7th in the streets of New York City is outrageous and unprecedented.

I come to you today as a producer of a major New York City event, that welcomes thousands of guests every year. My staff and I would like to be able to organize an event where we all feel safe while at work.

Next week, the Chelsea Film Festival is hosting the NY Premiere of a feature documentary that speaks about the horrific attacks of October 7th at the NOVA festival, that occurred in Israel. Considering the recent attacks on Jews and the high rise of antisemitism in NYC, we have had to take extreme and costly precautions and measures (i.e. undisclosed location, extra security, etc.) in order to remain safe and protect our guests from expected potential attacks and lawless, violent protesters.

We should not be living in fear in a city like New York. There have been way too many lawless protests in the past 4 months. We look forward to the day when the law will be enforced and everyone can live in peace in New York!

Best regards,
Ingrid Jean-Baptiste

Ingrid Jean-Baptiste | Co-Founder & Artistic Director
[Chelsea Film Festival](#) | ingrid@chelseafilm.org | [REDACTED]

CHELSEA FILM FESTIVAL

[REDACTED]

From: Neurophysiology Made Easy [REDACTED]
Sent: Monday, February 26, 2024 11:31 PM
To: Testimony
Subject: [EXTERNAL] Written testimony for the Public Safety Committee Hearing 2/26

[REDACTED]

Written testimony for the Public Safety Committee Hearing on 2/26

Dear Members of the Council

Thank you for the opportunity to speak regarding the public safety matter

My name is Nadya Gutorova

I am a resident of New York

I am Jewish and as a Jewish woman living in here

I would like to share with you how racing of Jew hatred impacted my personal life -i am really afraid these days to show my identity .I am hiding my star of David while among people , I am afraid to come to a regular grocery store and ask about kosher items . Me and the members of my community are afraid to be harassed or injured due to Jewish hatred being growing from day to day .

As a mother of one year old i am concern about future safety of my child . I want to give him a Jewish education and want to know that in our city he will be safe and protected and not threatened and harassed for being a Jew .

Please , take an appropriate actions to remedy this situation and make this city equally safe for Jews and for everyone else .

In addition , I would like to ask from Public Safety Committee to schedule a hearing about the anti -israel protests .

Thank you !

Sincerely ,

Nadya Gutorova

Good morning Chair and Council. My name is Sekou and I am a proud member of the Youth Council at BronxConnect. BronxConnect is a useful program. It has a lot of benefits and resources to help young people better themselves. Wrongful convictions are very bad because officers are arresting people without evidence or proof. We need better public defenders/lawyers. In closing, I feel like wrongful convictions happen mostly in poor neighborhoods where crime is high due to poverty and over-policed. Changes can be made like having the Youth Interrogation Act passed into law. Thank you for your time.

Good morning Chair and Council. My name is Staesy Ventura and I am a member of the Youth Council at BronxConnect. The best thing about BronxConnect is that the program offers a safe space for young people to congregate and discuss issues that affect our communities such as politics, bills, and events. I'd like to address the issue of wrongful convictions, especially youth. Currently, 34% of youth are wrongfully convicted in NYC because they are being interrogated without a lawyer being present. The Youth Interrogation Act, better known as The Right To Remain Silent Bill is devised to protect minors from waiving their Miranda Rights unwillingly and unknowingly. The passing of this bill will eliminate wrongful convictions amongst minors. Thank you for your time and have a great day.

From: Dr. Tawanna Gilford <drtawannagilford@gmail.com>
Sent: Tuesday, March 12, 2024 9:12 AM
To: Testimony
Subject: [EXTERNAL] Two pieces of legislation: Integrity and Accountability in Reporting and Conviction Review Unit
Attachments: Integrity and Accountability in Reporting 2024.docx; Conviction integrity unit 2024.docx

Dear NYC Council public safety hearing testimony,

I am Dr. Tawanna Gilford: I write to you not only as a NYS licensed psychologist and public servant (servicing our most vulnerable residents of New York), but also as the sister and advocate of a man who was incarcerated for six and a half years for a crime that he did not commit.

Since my brother's arrest in 2013 (and subsequent sentencing in 2015), my family and community has endured the challenges supporting a loved one through a wrongful incarceration. Throughout my own journey of raising awareness about the issue of false reporting, wrongful persecution/prosecution, and wrongful conviction, I have met a number of individuals that have directly and vicariously experienced false allegations in criminal court, family court, immigration court, and also have also faced scrutiny in their relationships and in the workplace.

Turning my pain into purpose, I worked alongside of elected officials and community leaders, to call for laws that serves as a deterrent against false reporting. Not only have I pursued and continue to push for justice on the front end of a wrongful arrest/conviction (by asking for legal deterrents in order to prevent bad actors from making false reports), but I also call for greater access to conviction integrity reviews for those that have been unjustly convicted. See the two attached pieces of legislation that I have modified, in order to contextualize the lived experiences of those wrongly accused, wrongly convicted, and for those seeking remedy for the injustice they have experienced. These modifications are based on my own personal and professional experiences and also represents the experiences of those that have joined me on the frontlines in the fight for justice.

Please strongly consider co-sponsoring/signing onto the two modified pieces of legislation that have been attached to this email. The original versions of the legislation are embedded in the links:

- Conviction integrity unit Act (Dickens/Assembly-A03898): <https://nyassembly.gov/leg/?bn=A03898&term=2023>
- Conviction integrity unit Act (Cleare/Senate-S5908): <https://www.nysenate.gov/legislation/bills/2023/s5908>
- New York Accountability in Reporting Act (Senate-S1772-A): <https://www.nysenate.gov/legislation/bills/2023/s1772>
- New York Accountability in Reporting Act (Assembly-A05341-A): <https://nyassembly.gov/leg/?bn=A05341&term=2023>

Because of my role as a public servant for the people of New York State, I am limited in my ability to travel to Albany regularly to meet with legislators and their respective staff members. However, I am available for a 15-30 minute zoom meeting to discuss any questions, concerns, or suggestions you may have. Please feel free to contact me by replying to this email or by calling/texting [REDACTED].

Thank you in advance for your time. I look forward to future correspondence.

Respectfully,

Tawanna T. Gilford, Ph.D

Licensed Psychologist

Cofounder of the Universal Stop False Police Reporting Initiative

INTEGRITY AND ACCOUNTABILITY IN REPORTING

By: Dr. Tawanna Gilford

DrTawannaGilford@gmail.com • 

BACKGROUND

The cost of false reporting has a devastating emotional, financial, physical, and spiritual effect on individuals, their loved ones, colleagues, and the community as a whole. Innocent individuals take time off from their daily routines to face and fight wrongful allegations. In order to fight, one must take time away from employment, serving their communities, spending time with their children, spouses, and other relatives, and just plainly, taking time away from the things to improve their health and overall wellbeing. When one hears the phrase, “stop false police reporting,” the bottom line is not always clear that the goal is to increase overall public safety. Detering false police reporting is indeed a “checks and balance system” to prevent civilians, law enforcement, and prosecutors from weaponing false allegations to incarcerate or penalize innocent individuals.

Imagine this...

- *SCENARIO 1:* You are walking down the staircase and a police officer are lying in wait to stop and frisk random individuals in the apartment building. You are stopped at time 1 and then another individual is stopped at time 2, while you are waiting to be cleared to proceed. The officer then finds drugs on person 2 and submits a false report indicating that he witnessed a drug transaction.
- *SCENARIO 2:* You are a well-intentioned single mother, living below poverty level. You receive income through public assistance and receive a meager \$250 cash benefit every two weeks and \$500 in food stamps every month for a for four children. Near the end of the month, when resources are running low, a bitter relative, holding a grudge, contacts ACS, to report that you have no food in your home and is neglecting the children. Prior to the call, the relative had threatened to take custody of the children because “they can get a monthly stipend of \$1,000 per child” and other incentives as a foster parent.
- *SCENARIO 3:* You are recently paroled to the community has been experiencing conflict in your relationship and verbalizes intent to leave. Feeling jilted, after “holding you down during your bid,” your significant other calls your parole officer to falsely report violation of curfew, drug use, and abuse. You are subsequently rearrested due to violation of parole. A parole violation is levied and the individual is returned to prison for 3 months.
- *SCENARIO 4:* You are riding in a car as a passenger and the vehicle is stopped on the grounds of “excessively tinted windows.” The officer(s) orders you to exit the car and you refuse. You are subsequently arrested and charged with excessively tinted windows, possession of a forged instrument, and resisting arrest. You are made an offer and plead guilty to disorderly conduct, so that you can return home to your newborn and finish your semester in college. While complying with parole for a youthful offender charge, you are detained at the parole office by ICE officials and subsequently deported to another county.
- *SCENARIO 5:* You are public official preparing for re-election in a prominent role. In the midst of a heated campaign, allegations arise of fraud, embezzlement, and misuse of campaign funds. These reports cause a media frenzy. You suspect that this was an attack from your opponent and you maintain your innocence. However, the issue seemingly becomes a distraction from your public service, so then you resign. After a lengthy court battle and use of significant resources to finance your defense, your charges are dropped. However, your previous position, fracture relationships, and public persona, has not been restored.

In sum, we have no legal protections in place to deter civilians and law enforcement from false reporting. To date, there are no laws in place to prevent what happened to Emmett Till, the Exonerated Five, and the aforementioned individuals depicted in the scenarios, from occurring again.

The legislation below has been inspired based on Senator Kevin Parker's 2020 "Reporting Non-Emergency" Bill (S8492). The intent of this proposal is to strengthen Senator Parker's previous legislation, so that both civil and criminal penalties can be lodged against individuals who weaponize false reports.

The new name of this legislation- Integrity and Accountability in Reporting- is all encompassing because it not only covers reports made to and by the police, but it also covers false reports made to other regulatory and oversight agencies, such as child and adult protective services, public assistance, NYC probation, NYS parole, and to the individual's employer.

Proposed amendment:

1. **PENALTY FOR PERJURY**: Signed acknowledgement of truth and penalties for perjury.
 - a. Just above the signature line (written in italics) forms and official reports will have the acknowledgement of understanding that reference the law and the penalty.
 - b. Fines and criminal charges will be levied
 - i. If a public servant is involved in defending against intentional false allegations, then fines are doubled.
 - ii. Victims of false reporting will receive compensation from reporter for time lost.
 - iii. Restitution paid will go into the NYS victim services fund.
2. **PROTECTED CLASS**: Adding legal status, mental disability, financial status, and immigration status to the list of protected classes against discrimination.
3. **IMMIGRATION**: Accounting of cases handed over to ICE by NYPD and Parole.
 - a. Yearly disciplinary/personnel checks for local police officers who engage in two or more contacts per calendar year with immigration/customs/detention/border agents.
4. **PRE AND POST CONVICTION INTEGRITY**:
 - a. Pre-conviction, an officer's background should also be investigated along with all leads and key exculpatory evidence when charges are brought against the defendant. For post-conviction, our initiative will require that the District Attorney's office have an active and established conviction integrity unit within their department, that undergoes annual review.
5. **PERJURY REGISTRY**:
 - a. Officers and civilians that have been found to have made false reports should be listed on a federal "false report" registry listed by state. Individuals will be listed as (Officer or Civilian by last name, date of birth, state, and photo).

For more information or to schedule a meeting, please contact me at DrTawannaGilford@gmail.com or 917-741-5435.

New York State Conviction Integrity Review Act (S5908 and A03898)

Modified by Dr. Tawanna Gilford

DrTawannaGilford@gmail.com • [REDACTED]

Background:

Each year, there are hundreds of thousands of arrests across New York State. While there is a presumption of criminality with each arrest, there are also hundreds of cases of wrongful arrests that subsequently lead to wrongful convictions. Every arrested individual has an option to plead guilty or fight the charges against them. There are instances where individuals maintain their innocence since initially being detained, after the arrest, throughout trial, and even after they are convicted, sentenced, and imprisoned. Many of those individuals are not fortunate to have an opportunity at appeal, which can be costly to the individual/family. Many organizations are not likely to appeal non-DNA convictions. Those cases are generally based on credibility, and can be perceived as challenging, especially when the individual maintaining innocence has had prior involvement with the justice system, gives the impression of guilt based on phenotype, behavior, attire, and geographic markers (e.g. living in public housing). Those factors coupled with being compared against an arresting officer, whose background (and history of complaints) were once shielded from public view until the repeal of 50-A. Take for example, Detective Louis Scarcella a Brooklyn Detective, where dozens of his convictions were overturned based on tampering with evidence, tampering with witnesses, and falsifying official reports. Add yet another example of misconduct, where Detective Joseph Franco, whose questionable work as a narcotics detective, led to his subsequent arrest and the overturning of 300 cases overseen by the Special Narcotics Prosecutor and other district attorneys across the city.

The legislation has been developed to raise awareness about the impact of wrongful convictions, to ensure accountability in crime reporting, and also to establish integrity in prosecution and convictions.

Proposed amendment:

- Establishes conviction integrity units;
- Conviction integrity units must outline how they are distinct from prosecutorial units;
- Establishes a guideline for effective assistance of counsel (e.g.- exculpatory evidence stated by defendant must be pursued by defense);
- Units must ensure no overlap of staff;
- Special prosecutorial offices will reassign their integrity reviews to the county's conviction integrity unit to ensure objectivity (for example, NYC Special Narcotics Prosecutor will reassign their conviction review cases, to the borough-based state district attorney);
- Creates definition of the weight of evidence not available at trial;
- Provides that a prosecution agency may create a conviction integrity unit to review convictions;
- Provides that a conviction integrity unit may make recommendations for changes in convictions and sentences obtained by the prosecution agency;

- Grants the prosecution agency discretion regarding the conviction integrity unit's recommendations;
- Requires notice to the victim of the instant offense if a petition is filed by the prosecution agency;
- Gives the superior court the discretion to provide relief;
- If initial decision was upheld, must explicitly state the factors considered in denying the application;
- Must submit annual reports for numbers of applications of review received and number of reviews where initial decisions were reversed;
- Maintain a database and public registry of officers and civilians with multiple complaints or that are connected to cases, where innocence is maintained;

Original text (Sponsors- Assemblymember Inez Dickens and Senator Cordell Cleare):

Establishes conviction integrity units; describes conviction integrity units; creates definitions; provides that a prosecution agency may create a conviction integrity unit to review convictions; provides that a conviction integrity unit may make recommendations for changes in convictions and sentences obtained by the prosecution agency; grants the prosecution agency discretion regarding the conviction integrity unit's recommendations; requires notice to the victim if a petition is filed by the prosecution agency; gives the superior court the discretion to provide relief.

For more information or to schedule a meeting, please contact me at DrTawannaGilford@gmail.com [REDACTED].

[REDACTED]

From: Susan Gottlieb <wsuebill@aol.com>
Sent: Tuesday, February 27, 2024 4:56 PM
To: Testimony
Subject: [EXTERNAL] Fwd: Testimony at public safety committee meeting on February 26, 2024

[REDACTED]

Below email contains my testimony at 1000 meeting on 2/26/24.
Thank you
Susan Gottlieb MD
Sent from my iPhone

Begin forwarded message:

From: Susan Gottlieb <wsuebill@aol.com>
Date: February 27, 2024 at 4:52:27 PM EST
To: testimony@council.nyc.gov
Subject: Testimony at public safety committee meeting on February 26, 2024

- I am a NYC citizen, I live uptown .The opportunity to speak.
- I came today to express my fear for in our city. NYC antisemitic attacks s the vicious attacks in Israel and it ha significantly higher than in previous y there have been 193 anti semitic inci nearly double the amount during the year.
- The fear felt by members of the Jewish palpable. Many are afraid to wear J clothing which expose our faith .
- On MLK day a huge angry crowd o marched through my neighborhood c jews and intifada (uprising) .It felt lik 1938; not America in 2024!! My neigh the threat of violence from this angry that our children would be hearing ha LIES toward their own people such state” that is committing “genocide” w defending itself in a war that it didn’t :
- THis is not an issue of free speech. It and threat against a minority group !
- These anti Israel demonstrations ha

Please schedule a committee meeting as soon as possible to discuss the anti-Israel demonstrations as they are endangering Jewish lives! Please let me know when this can be scheduled, it is of utmost importance!

Susan Gottlieb MD

Sent from my iPhone

[REDACTED]

From: tammy cohen <tjcohen@hotmail.com>
Sent: Tuesday, February 27, 2024 5:38 PM
To: Testimony
Subject: [EXTERNAL] For: Public Safety Committee - 2/26

[REDACTED]

Dear City Council,

Thank you for the opportunity to present this testimony. I attended the public safety hearing yesterday and was not given the opportunity to speak. I was advised to send my testimony to this email.

I'm going to talk about the descent of the city, lack of protection, lawlessness and not feeling safe, especially as a Jew.

I, my mother and grandparents, may the rest in peace, were born in NYC. I attended Suny Albany and received my MBA from Baruch College. My 3 grown sons were born and raised in Manhattan. My great great aunts and extended family lived and continue to reside on the lower east side. They were staunch labor activists and leaders in their community.

My family served in the US Army from 1942 through Afghanistan and both IraqWars.

I have deep roots in this city. I always felt like I belonged here and that I was safe. I never felt unsafe or that there was no protection and no law.

No matter what decade starting from the late 70's. I was out and about in the city., Yes I knew what areas were considered less safe but I was never scared, even during the blackouts and demonstrations, even during 9/11. I was not. I felt protected

I was always a proud New Yorker. But this feeling started unraveling when NYC became the home to violence, hate, propaganda and indoctrination. It has become a place where the government is more about limiting police protection and not allowing them to enforce the law than actually protecting citizens, unless you are a one of the council's protected groups. I was deeply troubled by seeing the NYPD have to defend itself at yesterday's hearing too.

I remember the sense that the city was starting to unravel in January 2020 with Bail Reform --within one month 11 Jews had been attacked, one murdered in their home. But us Jews assembled **peacefully** downtown. Nothing really changed but there was a sense that the government and people of this city cared.

I remember being shut down with my sons at home while BLM protesters controlled the city and proceeded to destroy businesses. I did not sleep listening to the windows being broken in my building and I know what it seemed like to me as my father was a holocaust survivor. Kristallnacht marked the start of the holocaust when the Nazis broke the windows and destroyed Jewish businesses and establishments.

The BLM protests led to cities burning and rampant crime without consequences. The only thing that defunding the police brought about is the breakdown of safety, high crime and drug use on the streets and a huge decline in the quality of life in the city.

However, it is nothing compared to what is going on now with the Palestinian Pro Hamas Terror embargo of this city and the hold it has in our school system from Kindergarten through college .

Anti-Israel demonstrators call straight out for the death, destruction and genocide of my people and Israel. They continually harass, attack, intimidate, assault and disrupt - and vandalize. It us a constant that goes unchecked and without consequence.

Jews are afraid to wear Kippahs on their head, or anything that would mark them as Jewish. My husband wears a Kippah, and we own a Kosher restaurant, the stress of wondering if he will be attacked or if the protesters will enter the restaurant is staggering.

How many Jews have to get beaten up, attacked, harassed, intimidated and how many Jewish businesses must be vandalized before the police will be able to do the job that we as taxpayers pay for?

How many police must be attacked? How many celebrations and events must be disrupted and violated ? How many transportation systems should be halted? What about government property being destroyed? Do protesters have more rights than everyone else? When is it enough? When will the rule of law be upheld?

Jews are the real minority. There are 8 billion people in this world and less than 16 million are Jews. Wrap your head around this. We are a religious minority and we come in all colors and sexual orientations. We faced tremendous anti Semitism and discrimination in the US and NY. Yet we rose above it and contributed. We have always contributed.

Would you accept the activities of groups such as the Peoples Forum if they were organizing protests and calling for the destruction and death of all African Americans and Africa? Or death to all Muslims, women or LGBTQ groups. I doubt it very highly

My Ask is for you the Public Safety Committee to do something about the extreme threat to public safety that occurs during Anti-Israel protests. Stop promoting lawlessness and allow the NYPD to enforce the existing hate crime, hate speech, civil rights and discrimination laws, harassment and verbal abuse laws, and laws that prohibit the incitement of others to riot. Allow the police to protect the citizens of the city. It is a rational request and as government officials managing the city you should want the people to be safe and protected.

The Jewish community just like other minority groups must be protected. **I ask for a hearing specifically on Anti- Israel Protests to be scheduled as soon as possible to continue this critical discussion.**

Thank you,
Tammy Cohen

PORTSIDE (//)

Material of Interest to People on the Left

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Lessons from the FBI's Secret War on Activism

The FBI had played its role as the “political police of the national government,” Noam Chomsky wrote and the government maintained to the bitter end that it had a right to undermine an organization just because of its ideas.

February 15, 2019 Michael Steven Smith /

THE INDYPENDENT (HTTPS://INDYPENDENT.ORG/2019/02/LESSONS-FROM-THE-FBIS-SECRET-WAR-ON-ACTIVISM/)

Printer friendly  (https://portside.org/node/19356/printable/print)



Photo: A Feb. 19, 1970 anti-war demonstration turns violent following the conviction of the Chicago 8. Photographer unknown.,

The Federal Bureau of Investigation tried to destroy left organizations and the black freedom movement during the last major upsurge in radical politics in this country, in the 1960s. It looks like they are trying to do it again.

The bureau's Cointelpro (Counterintelligence Program) was a secret operation the bureau carried out against left-wing groups from 1956 to 1971. It first targeted the Communist Party, and was expanded to the Socialist Workers Party (SWP) in 1961 and the "New Left" in 1968. In a secret 1968 memo, longtime FBI director J. Edgar Hoover directed his agents to "expose, disrupt and otherwise neutralize the activities of various New Left organizations. We must frustrate every effort of these groups and individuals to consolidate their forces or to recruit new or faithful adherents."

Hoover directed his venom especially at the Black movement, writing

college campuses. It helped organize some of the largest demonstrations against the Vietnam war.

MADE HOMELESS BY EVICTIONS

The 1986 trial took three months. What was proved? The FBI had used 300 infiltrators and 1,300 informers over a 15-year period, and burglarized SWP offices and members' homes more than 200 times. Wiretaps had been employed for 20,000 days and listening devices for 12,000. Landlords were contacted in an effort to get people evicted and workplaces were visited in order to get people fired.

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The agents were also instructed to stir up mistrust in the movement and create antagonistic factions inside the party, such as by sending anonymous letters to a prominent black SWP member insisting that he and his fellow "party monkeys" should leave and join the Black Panthers. Agents tried to get the party to engage in illegal activities, such as by handing out flyers at an antiwar demonstration calling the SWP and other organizers cowards for not wanting to get "battle wounds" fighting the "pigs."

The 1986 victory was historic. The federal court decision held that advocating for socialism and being in a socialist organization were legal, ruling that "these disruption operations were directed at the kind of political activities that the SWP had a constitutional right to carry out."

"For the first time the FBI's disruptions, surreptitious entries and use of informers have been found unconstitutional," the *Nation* magazine wrote. "All in all, it amounted to a domestic *contra* operation against

movement constitutional litigator of his time. In 1986, a federal judge in Manhattan awarded the party \$264,000 in damages. The case is extraordinarily important today, when socialist ideas are growing in popularity and socialists are getting elected to office for the first time in almost 100 years.

The FBI first investigated the SWP in 1940. When the bureau added it to Cointelpro in 1961, a secret memorandum said the party had been “openly espousing its line on a local and national basis through running candidates for public office and strongly directing and/or supporting causes such as Castro’s Cuba and integrations problems... in the South.”

The discovery aspect of the SWP lawsuit took eight years and yielded an astounding 10 million pages of documents. The judge told Boudin, “You are not going to believe what’s in these documents.”

***Socialist Workers Party v. The Attorney General* is extraordinarily important today, when socialist ideas are growing in popularity.**

The SWP was a Trotskyist group which traced its origins back to the anti-World War I left wing of the Socialist party led by Eugene Victor Debs. It advocated for a democratic form of socialism unlike what existed in the Soviet Union. At its peak, it had 3,000 members including its youth group. It had a weekly newspaper, a monthly magazine, an international news service, a publishing house and owned a five-story headquarters in an old ship repair building in the West Village. It had chapters in most major cities and on many

24 Years After New Orleans Officer Had Her (EXECUTED) Killed , Kim Groves' Children to Receive \$1.5M Settlement



Full Story | News

24 Years After New Orleans Officer Had Her Killed, Kim Groves' Children to Receive \$1.5M Settlement

By Tanasia Kenney | Published on: April 29, 2018 #



After nearly 24 years, the City of New Orleans has agreed to a \$1.5 million settlement to the children of a Black woman whose murder was orchestrated at the hands of a corrupt police officer.

The lawsuit over Kim Grove's murder was settled last Thursday, while a signed



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The New York Times

<https://www.nytimes.com>

Jury Calls for Execution of Ex-Policeman

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Police Civil Liability and the First Amendment: Retaliation Against Citizens Who Criticize and Challenge the Police

NCJ Number: 161377

Journal: *Crime and Delinquency* Volume: 42 Issue: 1 Dated: (January 1996) Pages: 50-75

Author(s): M S Vaughn

Date Published: 1996

Length: 26 pages

Annotation

This article explores the civil liability of police officers who retaliate against citizens exercising their first amendment rights.

Abstract

The right to free expression and law enforcement's desire to control dissent and challenges to authority pose vexing problems for police officials. By combining police sanction concepts, citizen demeanor literature, and case law on civil liability, the author shows how police officers

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BRANDY WATSON

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718 254-7000 AND SAY STOP THE ATTACKS

MY EMAIL: TOSTOPATTACKINGME@GMAIL.COM

Please stop or control the out of control pro Palestinian and pro Hamas demonstrations in NYC! They violent, frightening and interfere hugely with the safety of the city's residents. They block traffic, including ambulance and emergency services. Thank you.

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Name: Shelli Scott (PLEASE PRINT)

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I represent: _____ 10/30

Address: _____

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Date: 02.25.24

Name: CHARLES Z BORNISKEIT (PLEASE PRINT)

Address: [redacted] W. 56th St. [redacted]

I represent: FIFTH AVE S. WASHINGTON

Address: 5 E. 62nd St -



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I represent: [REDACTED]

Address: [REDACTED] NY 10026

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Address: _____

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Name: Monique Silverman

Address: [REDACTED] 5th Avenue

I represent: _____

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Date: 2/26/24

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Name: Exec. Director Andrew Botelho

Address: _____

I represent: NYPD

Address: _____

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Name: Chief of Detectives Joseph Kenny

Address: _____

I represent: NYPD

Address: _____

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Name: GADI SCHLEIDER

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Name: Acting Director Josh Levin

Address: _____

I represent: NYPD

Address: _____

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I represent: NYPD

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Name: Ingrid Jean-Baptiste

Address: [redacted] Norfolk St.

I represent: _____

Address: _____

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Date: Feb 26th 2024

(PLEASE PRINT)

Name: Sophie Carson

Address: _____

I represent: _____

Address: _____

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Name: T.J. Cohen

Address: _____

I represent: _____

Address: _____

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Date: 2/26/24

(PLEASE PRINT)

Name: Betsy Smolar

Address: [redacted] central park west NY 10025

I represent: _____

Address: _____

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Date: 3/26/24

(PLEASE PRINT)

Name: Beth Schwartz

Address: West 90th St

I represent: _____

Address: _____

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Date: FEB 25/2024

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Name: Jacque Gosdignian

Address: 177 Livingston St, BK

I represent: Brooklyn Defender Services

Address: _____

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Date: 2-26-24

(PLEASE PRINT)

Name: Jeanne SPRENGER

Address: Dutch Street

I represent: _____

Address: _____

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Date: Feb 26 2024

(PLEASE PRINT)

Name: JAN

Address: [REDACTED] LEXINGTON AVE

I represent: _____

Address: _____

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Date: Feb 26, 24

(PLEASE PRINT)

Name: Yofra

Address: [REDACTED] W. 58th St.

I represent: _____

Address: _____

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Date: Feb 26, 2024

(PLEASE PRINT)

Name: Bruce Bryan

Address: 118-21 Queens Blvd, Forest Hills

I represent: Queens Defenders

Address: 118-21 Queens Blvd, Forest Hills NY

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Name: Andrew

Address: _____

I represent: SELF

Address: _____

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Date: _____

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Name: SUSAN COLLIER

Address: East 90th St

I represent: CITIZENS

Address: _____

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Date: _____

(PLEASE PRINT)

Name: Debra Black

Address: York Ave. NY 10028

I represent: Myself

Address: _____

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Date: 2/26/24

(PLEASE PRINT)

Name: Sarah Chel

Address: [REDACTED] 57th St, 10075

I represent: Perlmutter Center for Legal Justice at Cardozo Law

Address: 55 Fifth Ave, 10003

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Date: _____

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Name: Masha Gutorko

Address: [REDACTED] E 25 St, Brooklyn NY 11238

I represent: _____

Address: _____

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Date: 2/26/24

(PLEASE PRINT)

Name: Ceeste Garson

Address: [REDACTED]

I represent: _____

Address: _____

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Date: 2/26/24

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Name: Sergio DELAPARRA
Address: New York County Defender Services

I represent: _____

Address: 100 William Street

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Name: EUDAR MAIDER
Address: _____

I represent: _____

Address: _____

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Name: Coral Mel

Address: _____

I represent: _____

Address: _____

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Name: Aby Volcovich

Address: _____

I represent: _____

Address: _____

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