

COMMITTEE ON OVERSIGHT AND INVESTIGATIONS JOINTLY WITH
COMMITTEE ON PUBLIC SAFETY 1
CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON OVERSIGHT AND
INVESTIGATIONS JOINTLY WITH
COMMITTEE ON PUBLIC SAFETY

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June 20, 2023
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B E F O R E: Gale Brewer, Oversight and
Investigations Committee
Chairperson

Kamillah Hanks, Public Safety
Committee Chairperson

OVERSIGHT AND INVESTIGATION COUNCIL MEMBERS:

Rita C. Joseph
Marjorie Velazquez

PUBLIC SAFETY COUNCIL MEMBERS:

Robert F. Holden
Erik D. Bottcher
Tiffany Caban
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Justin L. Brannan
Joann Ariola
Althea V. Stevens

COMMITTEE ON OVERSIGHT AND INVESTIGATIONS JOINTLY WITH
COMMITTEE ON PUBLIC SAFETY 2

A P P E A R A N C E S

Michael Clarke, Director of Legislative Affairs
for the New York City Police Department

Kristine Ryan, the Deputy Commissioner of
Management and Budget for the New York City
Police Department

John Breslin, Commanding Officer of the
Property Clerk Section for the New York City
Police Department

Neil Fenton, Executive Director of our Legal
Bureau's Investigative Support Unit for the New
York City Police Department

Elizabeth Felder, Head of the Wrongful
Conviction Unit at Legal Aid Society

Elizabeth Daniel Vasquez, Director of the Science
and Surveillance Project at Brooklyn Defender
Services

Rebecca Brown, Policy Director with the Innocence
Project

Marty Tankleff, adjunct professor at Georgetown
University in the Law Center and Special Counsel
to Barkett, Epstein, Kearon, Aldea, and LoTurco

Sheila Howeff

SERGEANT-AT-ARMS: This is a radio check
for the Committee on Public Safety joint with
Oversight and Investigations. Recorded on June 20,
2023, in the City Hall Chambers by Jazal (phonetic)
Rivera.

SERGEANT-AT-ARMS: Take a seat, please.
We're getting ready to begin.

SERGEANT-AT-ARMS: Good morning and
welcome to the New York City Council hearing of the
Committees on Public Safety jointly with Oversight
and Investigations.

At this time, can everyone please silence
your cell phones.

If you wish to testify, please go up to
the Sergeant's desk to fill out a testimony slip.

Written testimony can be emailed to
testimony@council.nyc.gov. Again, that is
testimony@council.nyc.gov.

At this point and going forward, no one
is to approach the dais. Thank you for your
cooperation.

Chairs, we are ready to begin.

CHAIRPERSON BREWER: [GAVEL] Good morning.
I am Council Member Gale Brewer, Chair of the

1
2 Committee on Oversight and Investigations. We're here
3 today with my wonderful Colleague, Chair Hanks, and
4 the Public Safety Committee for a joint hearing
5 examining the impact of the NYPD Erie Basin Storage
6 Facility fire, and I would add hurricane.

7 Thanks to my Colleagues who will join us
8 very, very soon.

9 The Erie Basin warehouse fire was
10 shocking, but it should not have been surprising.
11 Hurricane Sandy flooded the evidence storage site and
12 contaminated it so badly it could not be cleaned or
13 repaired. For years, the facility languished with
14 band-aid fixes like relying on temporary generators
15 for power while the City tried to set up new evidence
16 warehousing. During that long stretch of time,
17 protecting the contents of Erie Basin was apparently
18 not a priority. When the warehouse finally went up in
19 flames, it was the result not of freak occurrence or
20 malice but years of neglect, and many people,
21 according to the material I have, said it was thanks
22 to the generator that had been there since the flood.
23 Lost and destroyed evidence can present a serious
24 obstacle to the pursuit of justice. Detectives
25 investigating cold cases and individuals pursuing

1
2 appeals of criminal conviction often rely on retests
3 of old evidence, often with new state-of-the-art
4 methods and equipment. Obviously, when the evidence
5 in question has been destroyed, investigators and
6 appellants can't conduct those tests for closing
7 possibilities of both long-sought charges and release
8 from incarceration, and there was an example of the
9 importance of having this material in the material
10 that I read. It is not infrequent. Unfortunately, for
11 many in those positions, they can't even tell whether
12 they were affected by two disasters. The NYPD's
13 Property Evidence Tracking System, known as PETS,
14 lacks the basic functions necessary to say how many
15 cases were affected by the fire. A 2021 Comptroller
16 report on the police's evidence and forfeiture system
17 found PETS was obsolete more or less as soon as it
18 was launched in 2012 right before Hurricane Sandy,
19 and then it was never populated with information on
20 older evidence in storage. The system developed by
21 outside contractor, Capgemini, was not designed to
22 aggregate evidence data. At one point, local media
23 reported that the NYPD couldn't even say how much
24 cash it had seized during arrests because doing so
25 would crash the system. Of course, there was also

1 information I had, I'm not quite clear when the paper
2 system went to something that was more
3 technologically sophisticated. Long-term evidence
4 storage can be a thankless task. Of thousands and
5 thousands of pieces accumulated over the decades,
6 only a few dozen or a few hundred may actually be
7 needed for a cold case or appeal. There may be little
8 momentum to catalogue and safeguard these items in an
9 unlikely possibility that some day they may be
10 relevant to an investigator or attorney, but for
11 those cases or appeals where individuals do need to
12 take another look at piece of physical or biological
13 evidence, losses are devastating, and neglect to at
14 least survey damage adds insult to injury.

16 Before we begin, I'd like to thank
17 Oversight and Investigations' Committee Staff,
18 Legislation Counsel Nicole Cata and Policy Analyst
19 Alex Yablon, and most particularly Sam Goldsmith from
20 my office.

21 Now, I'll turn it over to the great
22 Council Member Hanks, Chair of Public Safety.

23 CHAIRPERSON HANKS: Thank you so much,
24 Chair Brewer.

I would like to commend you and your Staff Members from both Committees who worked hard to put together today's joint hearing on the impact of the NYPD Erie Basin storage facility fire.

I want to thank the members of this Administration and public who have joined us today. We have also been joined, I would like to acknowledge Council Member Bottcher has joined us.

After Hurricane Sandy caused extensive damage to the Erie Basin warehouse in 2012 including the destruction of the critical physical and DNA evidence, it is deeply concerning that NYPD was not in a better position to track and compile a comprehensive inventory of the evidence stored at Erie Basin before the fire occurred at the end of last year. As a result of the fire and inadequate tracking, defense attorneys, advocacy groups, and even those trying to, they have been wrongfully convicted and have raised questions that need to be addressed as they seek to determine the impact on specific cases. The loss and damage of evidence not only hampers the pursuit of justice but also raises doubts about the integrity of the criminal investigations and potential wrong convictions.

1
2 The absence of effective evidence
3 preservation laws in New York further compounds these
4 challenges. Reports indicate that New York State
5 falls behind 35 others in enacting legislation to
6 ensure the proper storage and management of
7 biological evidence. Today's discussion is critical
8 as we seek a better understanding of the shortcomings
9 in evidence storage and management within NYPD, the
10 measures necessary to safeguard our facilities and
11 evidence, and the changes required to protect the
12 rights of the accused to ensure a fair and just
13 criminal justice system for those accused of crime
14 and those who have been victims of crime.

15 Our goal here today is to find effective
16 solutions, identify necessary reforms, and provide a
17 critical support to our law enforcement agencies to
18 maintain the integrity of evidence and protect the
19 rights of all New Yorkers.

20 Thank you so much for being here. With
21 that, I will turn it back to Chair Brewer. Thank you.

22 CHAIRPERSON BREWER: Thank you very much.
23 I know you'll be sworn in. I also want to thank the
24 Innocence Project.

COMMITTEE COUNSEL CATA: Thank you,
Chairs. We will now hear testimony from the
Administration. We'll hear from Michael Clarke,
Kristine Ryan, Neil Fenton, and Captain John Breslin.

Before we begin, I will administer the
affirmation. Panelists, please raise your right hand.

Do you affirm to tell the truth, the
whole truth, and nothing but the truth before this
Committee and to respond honestly to Council Member
questions?

DIRECTOR CLARKE: I do.

DEPUTY COMMISSIONER RYAN: I do.

CAPTAIN BRESLIN: I do.

EXECUTIVE DIRECTOR FENTON: I do.

COMMITTEE COUNSEL CATA: Thank you. You
may begin.

CHAIRPERSON BREWER: We also have on Zoom
Council Member Holden. Thank you.

DIRECTOR CLARKE: Good morning, Chair
Hanks, Chair Brewer, and Members of the Council. I
am Michael Clarke. I am the Director of Legislative
Affairs for the New York City Police Department,
and I'm joined here today by Kristine Ryan, the
Deputy Commissioner of Management and Budget, John

1
2 Breslin, the Commanding Officer of the Property
3 Clerk Section, and Neil Fenton, Executive Director
4 of our Legal Bureau's Investigative Support Unit.
5 On behalf of Police Commissioner Keechant L.
6 Sewell, I am here to testify before your
7 Committees regarding the impact of the unfortunate
8 fire at the Department's Erie Basin facility in
9 Red Hook, Brooklyn.

10 On December 13, 2022, a three-alarm
11 fire tore through the Department's Erie Basin
12 evidence warehouse for many hours until it could
13 be contained by the valiant efforts of the Fire
14 Department. Unfortunately, the fire rendered the
15 facility almost a complete loss. The warehouse
16 at the Erie Basin facility at the time of the
17 fire was primarily used to store items
18 containing biological evidence from crimes.
19 These items were stored in biological evidence
20 containers, or BECs, which are cardboard or
21 paper barrels that are the most effective way to
22 store biological evidence as their materials and
23 design are best equipped to limit the moisture
24 contamination. Storing biological evidence in
25 plastic or metal containers can cause

1 degradation of the biological samples. To be
2 clear, all of the biological evidence which was
3 stored at Erie Basin was collected and invoiced
4 prior to Hurricane Sandy in 2012, and much of
5 that evidence had already been significantly
6 damaged by floods as you noted. It is also
7 important to note that evidence from sex assault
8 evidence collection kits were not stored at Erie
9 Basin.
10

11 At the time the evidence was
12 collected, the District Attorneys, the NYPD, and
13 the Office of the Chief Medical Examiner
14 determined which pieces may have be relevant to
15 any given investigation, and items were tested
16 using state-of-the-art procedures at the time.
17 As a result, much of the evidence had already
18 been tested, and the results of those DNA tests
19 were not destroyed by the fire.

20 Much has changed about our evidence
21 collection and storage practices since Hurricane
22 Sandy. All biological evidence that has been
23 taken into custody since Sandy for long-term
24 storage is stored in a warehouse in Brooklyn,
25 which is above the flood plain. Moreover, the

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2 evidence is stored on the sixth floor of this
3 location and is fully equipped with a modern fire
4 suppression system. We have since modernized our
5 evidence tracking system as well. Each item of
6 evidence, when taken into custody, is assigned a
7 unique electronic invoice number in the
8 Department's FORMS system, which each officer
9 accesses through Department computers or
10 Department-issued smart phones. This system allows
11 evidence to be assiduously and easily tracked
12 through every step of the process to ensure the
13 chain of custody is documented at every turn, from
14 the initial collection to its movement between
15 different storage and testing facilities to
16 ultimately its use in court. As I stated earlier,
17 all of the biological evidence stored at Erie Basin
18 predated Hurricane Sandy in 2012, and
19 unfortunately at that time the Department was
20 still using a paper invoicing system. We had just
21 switched to electronic. It has been impractical to
22 comb through the entire library of invoices to
23 determine each item of evidence that was being
24 stored at the Erie Basin warehouse. Additionally,
25 given the age of the evidence, with at least ten

1
2 and a half years having passed since even the
3 newest evidence was invoiced and stored at Erie
4 Basin, it would be expected that a significant
5 number of the items would be associated with
6 criminal cases which have been sealed pursuant to
7 state law. Together with the fact that much of
8 this evidence may also be connected to sexual
9 assault cases, raises obvious privacy concerns.
10 Much of this information simply cannot or should
11 not be released to the public or to attorneys
12 where there is no indication that they represent
13 an individual with an interest in the case or a
14 piece of evidence. The most effective, efficient
15 and relevant path forward given the challenges
16 posed by the fire, is for individuals or their
17 attorneys who feel they may have an interest in a
18 particular case or piece of evidence to make a
19 request as to the status of that piece of evidence.
20 That is why the NYPD has dedicated a team to
21 liaise with the District Attorneys' offices in
22 order to expedite the Department's response to any
23 concerns and requests from those who feel their
24 cases, open or closed, may have been affected by
25 the fire. Requests by these individuals or their

1
2 attorneys are fast-tracked. While this evidence is
3 connected to older cases, an invoice number may no
4 longer be at hand to individuals, any small pieces
5 of information such as a time frame or a name
6 associated with the case can be used to identify
7 relevant invoices.

8 Thank you for the opportunity to testify
9 about these important issues, and we look forward to
10 answering any questions you may have.

11 CHAIRPERSON BREWER: Thank you very much.
12 Council Member Caban is on Zoom, and Council Member
13 Velazquez is here. I just want to add that to the
14 discussion.

15 Thank you. One of the questions I have is
16 in the material that I have before I ask
17 specifically, it indicated, and you said something
18 about the sixth floor in Brooklyn, but how many
19 warehouses does NYPD have and are there ones that you
20 would feel are sufficient and up-to-date, just
21 generally the number of warehouses and where material
22 is stored.

23 DEPUTY COMMISSIONER RYAN: We have 12
24 property clerk facilities so we have two auto pounds,

1
2 we have five borough offices, one in each borough,
3 and five warehouses.

4 CHAIRPERSON BREWER: So you have five
5 warehouses?

6 DEPUTY COMMISSIONER RYAN: Yes.

7 CHAIRPERSON BREWER: Okay, and that
8 includes the one in Brooklyn where you said it's on
9 the sixth floor or whatever?

10 DEPUTY COMMISSIONER RYAN: Yes.

11 CHAIRPERSON BREWER: Okay. The ones that
12 you described, they are not going to be flood-prone,
13 fire-prone, etc.?

14 DEPUTY COMMISSIONER RYAN: We, for the
15 most part, do have fire suppression in these
16 facilities, and, where we don't, we are looking to
17 upgrade that, and we make an effort to make sure that
18 the evidence is as high as it can be, either on an
19 higher floor as it is in Brooklyn which is where we
20 are now taking all of the long-term storage for our
21 biological evidence or on higher shelves if it's on a
22 lower floor, but all of the long-term storage of our
23 biological evidence is now on the sixth floor of that
24 facility in Brooklyn.

25

1
2 CHAIRPERSON BREWER: Okay. When you say we
3 are working toward fire suppression, in other words
4 other places still need fire suppression. It's a
5 little scary to listen...

6 DEPUTY COMMISSIONER RYAN: There's one
7 location, there's only one location that doesn't have
8 fire suppression.

9 CHAIRPERSON BREWER: Okay, and you're
10 working to do something about that before there's a
11 flood or a fire?

12 DEPUTY COMMISSIONER RYAN: Yes. In
13 addition, I just think it's important, we do
14 recognize that we do have some challenges with our
15 facilities, not only some of the age of the
16 facilities but also just having that disparate system
17 of storing the property which is why we did request
18 of OMB and the Council and received funding for a new
19 consolidated state-of-the-art facility.

20 Unfortunately, the funding for that facility was
21 removed from our budget as part of the significant
22 cuts that were taken in 2020. We have reinvigorated
23 the conversations with OMB requesting that that
24 funding be restored because we understand how

1
2 important it is to really have a state-of-the-art
3 facility to maintain this important evidence.

4 CHAIRPERSON BREWER: Okay. Because I know
5 that the municipal library, also known as DORIS, has
6 a brand new warehouse. It came in under the previous
7 Administration. I'm a big fan of archives. Maybe you
8 could partner with them. I'm just saying as a
9 discussion point. Have you talked to them at all?

10 DEPUTY COMMISSIONER RYAN: We haven't
11 about this specifically, but we do work with DORIS on
12 our retention of our materials.

13 CHAIRPERSON BREWER: Okay. Are they in all
14 five boroughs?

15 DEPUTY COMMISSIONER RYAN: Yes, we have
16 property clerk facilities in all five boroughs.

17 CHAIRPERSON BREWER: Okay. I'm not going
18 to get into tow pounds. Manhattan doesn't have one.
19 We will talk about that at a different hearing.

20 What factors determine which evidence is
21 stored at a given facility? Is it to do with what has
22 the sixth floor or what has fire suppression or not?
23 How do you determine today, in 2023?

24 DEPUTY COMMISSIONER RYAN: Again, the
25 long-term storage all goes to one location. The

1
2 property moves through the system at different points
3 so it may spend some time at the borough-based
4 facilities and then the longer-term storages. As we
5 indicate, we try to identify the best location we
6 have within our facilities.

7 CHAIRPERSON BREWER: What division of NYPD
8 makes that determination?

9 DEPUTY COMMISSIONER RYAN: It's the
10 property clerk section.

11 CHAIRPERSON BREWER: Okay. Can you just
12 describe the process that evidence comes in, can you
13 describe the process, how it works?

14 DEPUTY COMMISSIONER RYAN: I'm going to
15 have Captain Breslin address that.

16 CHAIRPERSON BREWER: Thank you, Captain.

17 CAPTAIN BRESLIN: Yes, how are you. Good
18 morning, everyone.

19 When an officer or detective comes in
20 possession of property that needs to be vouchered and
21 stored within one of our facilities, they will
22 voucher it at the local command in our FORMS property
23 system. It will be signed..

24 CHAIRPERSON BREWER: At the precinct? Is
25 that what you're saying?

1
2 CAPTAIN BRESLIN: Everything usually
3 starts at the precinct or a transit district or
4 police PSA, and it will be signed a specific voucher
5 number. If it's a large item and cannot fit into one
6 of our storage bags which has a bar code, it will be
7 assigned a bar code, and everything will be tracked
8 to that one voucher number. We can fit about 20 items
9 on one voucher. Then from there, depending on
10 specifically what the type of property is, again, if
11 it's something that needs lab exam, that will be sent
12 directly to the lab on a midnight tour. If it's
13 regular general property, each precinct or patrol
14 borough has their own schedule when they will bring
15 it to the borough facility, which, again, we have
16 five borough facilities. They will bring that
17 property to the borough facility who will intake it
18 at the borough facility and then it'll either be
19 stored there. If it's a very large item, it will have
20 to go to one of our warehouses.

21 CHAIRPERSON BREWER: What would be an
22 example of a large item?

23 CAPTAIN BRESLIN: A large item could be
24 such large intakes from like warrants, things like
25 that. It could be kitchen sinks. It could be

1 anything, something very, very large that just won't
2 fit in one of our facilities so we have a big
3 warehouse. I'm trying to think of something that's
4 very big but...

6 DEPUTY COMMISSIONER RYAN: Kind of like a
7 couch...

8 CAPTAIN BRESLIN: Couches, yes, again,
9 anything that just won't fit in a small facility.

10 CHAIRPERSON BREWER: Is this the kind of
11 process that needs to be updated or do you feel that
12 this is a process that works? Is this typical around
13 the country, for instance?

14 CAPTAIN BRESLIN: I believe our system is
15 working. We upgraded to the FORMS property system so,
16 yes, I think we're going in the right direction with
17 this and, where we're storing it, again, as the
18 Commissioner mentioned, some of our facilities are a
19 little older and just need slightly upgraded, but,
20 again, having one state-of-the-art type facility
21 would probably be the best way going forward.

22 CHAIRPERSON BREWER: The Mayor should pay
23 for it, not the City Council. I'm just saying.

24 CAPTAIN BRESLIN: Yes, again, going
25 forward, because that definitely would assist and be

1
2 able to consolidate everything, and we wouldn't be
3 spread out through the city.

4 CHAIRPERSON BREWER: Okay. I know you
5 mentioned that the Erie Basin didn't have storage of
6 rape kits, but I'm wondering, obviously that's a
7 particular interest, how are they properly stored,
8 safeguarded, and maintained? That's obviously a
9 particular concern.

10 DEPUTY COMMISSIONER RYAN: The sexual
11 assault kits, the rape test kits are stored at a
12 warehouse in Queens, and they are also, like all of
13 our biological evidence, we make sure that we're
14 storing it in the proper containers, which is very
15 important to make sure that we don't have any
16 degradation of the materials so it's paper bags in
17 paper barrels, which is important to make sure that
18 there is no contamination or ability for bacteria, to
19 mitigate against bacteria growing, so we follow the
20 guidelines for the storage of sexual assault kits.

21 CHAIRPERSON BREWER: Okay. I'm going to
22 turn it over to Council Member Hanks.

23 Council Members De La Rosa and Justin
24 Brannan are both here.

1
2 CHAIRPERSON HANKS: Thank you so much,
3 Chair Brewer.

4 Just for a point of clarity, how much was
5 requested by OMB for the additional cost of storage?

6 DEPUTY COMMISSIONER RYAN: The original
7 funding that we had that was cut was 425 million
8 dollars. We added escalation to that so what we would
9 need now would be over 600 million dollars, but we
10 would be talking about quite a large facility that
11 not only had all of the state-of-the-art building
12 systems in the facility but also a system that, in
13 addition to our current electronic tracking system,
14 you may have seen in (INAUDIBLE) shelving that you
15 can identify when something's removed from the
16 shelving, a real sort of state-of-the-art IT system
17 within the facility as well so it is a hefty price
18 tag, but that's a facility that would serve the
19 Department and the City for decades to come so I do
20 think it is a worthy investment.

21 CHAIRPERSON HANKS: Thank you for that.
22 Currently, are all of the buildings where you have
23 evidence stored City-owned?

24 DEPUTY COMMISSIONER RYAN: We have a few
25 leased properties. Actually, the facility in Brooklyn

1
2 that we were discussing where the material is on the
3 sixth floor, that is a leased facility.

4 CHAIRPERSON HANKS: What other agencies
5 and entities are responsible for storing evidence
6 other than NYPD?

7 DIRECTOR CLARKE: I think for long-term
8 storage, it is us. Obviously, OCME does have a piece
9 when the items go to OCME for testing, they're
10 storing it with their protocols, but, when they're
11 done, it typically comes back to us.

12 CHAIRPERSON HANKS: Thank you. You
13 mentioned that you lease space. Are the facilities
14 locked and restricted to limited personnel to
15 maintain the integrity of the evidence?

16 DEPUTY COMMISSIONER RYAN: Yes.

17 CHAIRPERSON HANKS: And what safety
18 protocols are put in place to limit that?

19 DEPUTY COMMISSIONER RYAN: Do you want to
20 speak to that, Captain?

21 CAPTAIN BRESLIN: Sure. All the warehouses
22 and borough facilities are manned during the day,
23 again personally for public service, and then later
24 on in the evening they'll be shut, alarmed, and they
25 have security cameras.

CHAIRPERSON HANKS: Are they all NYPD or
civilians who are providing security?

CAPTAIN BRESLIN: Providing service...

CHAIRPERSON HANKS: Or service (INAUDIBLE)

CAPTAIN BRESLIN: Service is all members
of the NYPD.

CHAIRPERSON HANKS: Excellent. Thank you.
Are the facilities temperature controlled given that
the DNA evidence must be properly preserved and to
prevent degradation?

DEPUTY COMMISSIONER RYAN: We have full
temperature control HVAC in some of our facilities
but not all, so we are looking to upgrade where we
need to to ensure we have full temperature control.

CHAIRPERSON HANKS: What would you say, I
know that you gave a price tag of 425 million at the
low side and 600+ million on the high side, what
would you need right away to maintain the integrity
of evidence now? Is it only 425 million or is there
an ask that's taking care of the things that are
necessary right now?

DEPUTY COMMISSIONER RYAN: It would be the
630 is what we'd need for that new facility. We're
pricing out some of the costs to upgrade the HVAC

1
2 systems and the climate control in some of the
3 facilities. It would be several million dollars. It
4 could be up to 5 to 10 million.

5 CHAIRPERSON HANKS: Do we take into
6 consideration the locations of these facilities? Are
7 they near flooding? Are they environmental hazards?
8 Are they susceptible to the weather?

9 DEPUTY COMMISSIONER RYAN: Along with the
10 decision to make sure we're keeping facilities on the
11 sixth floor, in other facilities we're trying to
12 avoid having things on the lower floors, or,
13 unfortunately, that's the only solution, we're making
14 sure that anything that would potentially be most
15 susceptible to flooding would be on higher shelves,
16 but our practice now is to have this type of material
17 really all in that location on the sixth floor.

18 CHAIRPERSON HANKS: Thank you. Erie Basin
19 was flooded during Hurricane Sandy. Sergeant John
20 Capozzi of the NYPD property clerk division testified
21 that OSHA shut down access to Erie Basin after the
22 storm due to concerns of contaminated floodwaters.
23 Ten inches of water flooded the bottom level of Erie
24 Basin according to Sergeant Capozzi. What was the

1
2 damage to the facility and the evidence housed inside
3 after Hurricane Sandy? Can you answer that for me?

4 CAPTAIN BRESLIN: Most of the biological
5 evidence on the first and second level was considered
6 contaminated. The cardboard barrels filled with water
7 and had not been remediated, and then, again, the
8 system did knock out the electricity so, yes, the
9 facility was running on generator. Other than that...

10 CHAIRPERSON HANKS: Thank you. News
11 outlets reports that between 5,000 and 10,000 barrels
12 of evidence were destroyed because of Hurricane
13 Sandy. Is this true and, if so, what was lost?

14 CAPTAIN BRESLIN: During Hurricane Sandy,
15 there was about 5,000 barrels in Erie Basin, and
16 there was about 1,100 barrels in Kingsland Avenue
17 warehouse so a total of approximately about 6,000
18 barrels were contaminated during that time period.

19 CHAIRPERSON HANKS: Thank you so much. I
20 would like to recognize Council Member Ariola has
21 joined us, and I would like to pass it back to Chair
22 Brewer and my Colleagues who may have questions.
23 Thank you.

24 CHAIRPERSON BREWER: I just want to know
25 generally what was the accounting of the evidence

1
2 that was lost because of Sandy and then, of course,
3 you had the fire after that. It is strange that Sandy
4 took place and then there was a fire and it wasn't
5 addressed before the fire so what was lost because of
6 Sandy? How do you keep track of that or if you did?

7 DEPUTY COMMISSIONER RYAN: We do have
8 information with regard to which barrels were in
9 which location, but, unfortunately, everything prior
10 to the PETS system that you mentioned which came
11 online really at the end of 2011 or early 2012 was
12 paper-based, and the entry of retroactive information
13 into the system had not taken place. In 2021, we
14 upgraded that so you've heard us refer to FORMS so we
15 now use an IT system which is FORMS Property which is
16 a more advanced system with more enhanced elements so
17 that allows us more electronic and technologically
18 based ability to track those facilities, but,
19 unfortunately, everything that was in the warehouse
20 was in paper logbooks.

21 CHAIRPERSON BREWER: So in your other
22 facilities, is it still paper, is it all digitized?
23 Obviously, some of that material has been there for a
24 while. What's the status of the tracking in the other
25 facilities?

1
2 DEPUTY COMMISSIONER RYAN: Everything that
3 comes in now and everything...

4 CHAIRPERSON BREWER: Now, but what's
5 there, I know everything coming in now is digitized,
6 but previously.

7 DEPUTY COMMISSIONER RYAN: Anything before
8 2012 is not digitized. We are working with a vendor
9 to see what it would cost and what it would take to
10 digitize those prior paper records so that we have
11 everything in digital format.

12 CHAIRPERSON BREWER: All right. Council
13 Member, go ahead.

14 CHAIRPERSON HANKS: Thank you, Chair
15 Brewer. I just have a couple more questions.

16 How has the NYPD ascertained what was
17 destroyed in the Erie Basin warehouse fire?

18 CAPTAIN BRESLIN: As we mentioned before,
19 everything was stored in the paper-based system so we
20 know how many barrels were there, we know
21 specifically what barrels were there and what was in
22 those barrels, but we only know that because we have
23 to check the paper-based system so, again, if someone
24 was looking for a specific piece of evidence, we'd
25 have to refer to these logbooks, comb through the

1
2 paper-based system and let you know which property
3 was in there.

4 CHAIRPERSON HANKS: What is the condition
5 of Erie Basin facility now?

6 DEPUTY COMMISSIONER RYAN: Essentially the
7 entire warehouse was in such a state of disrepair
8 after the fire that it was demolished so it's gone.

9 CHAIRPERSON HANKS: Thank you so much.
10 I'll pass it back to Chair Brewer.

11 CHAIRPERSON BREWER: Council Member Justin
12 Brannan has a question.

13 COUNCIL MEMBER BRANNAN: Thank you, Chair.
14 Last March, I know NYPD had made a request to OMB for
15 424 million dollars to fund and build a new state-of-
16 the-art property storage facility. Could you tell us
17 where we're at with that request?

18 DEPUTY COMMISSIONER RYAN: We actually had
19 funding in our budget of 424, 425 million which we
20 received I think in 2015 or 2016. That was cut in
21 2020. We have since gone back to OMB to request the
22 escalated value of that funding, which is about 630
23 million dollars, and those discussions are ongoing so
24 we are looking for that funding to be restored so
25

1
2 that we can move forward with building a state-of-
3 the-art consolidated facility.

4 COUNCIL MEMBER BRANNAN: Okay. So the
5 original funding request was for how much and when
6 was it made?

7 DEPUTY COMMISSIONER RYAN: Originally it
8 was 425 million dollars, which was I think Fiscal
9 Year 2015 was when we first had the discussions and
10 that funding added to our budget. First, there was
11 some funding for design and site acquisition then
12 there was funding for the actual construction, and we
13 were working toward that new facility and getting
14 started on that when the funding was cut in 2020.

15 COUNCIL MEMBER BRANNAN: Okay. Is Erie
16 Basin still running on backup generator power?

17 DEPUTY COMMISSIONER RYAN: It is at this
18 time. We have just commenced the project to do the
19 restoration. We now have the full contract and the
20 funding for that. It's going to take about a year.

21 COUNCIL MEMBER BRANNAN: Okay, and it's
22 been on backup generator power since, for how long?

23 DEPUTY COMMISSIONER RYAN: Since

24 (INAUDIBLE)

COUNCIL MEMBER BRANNAN: Since Hurricane Sandy?

DEPUTY COMMISSIONER RYAN: Yes.

COUNCIL MEMBER BRANNAN: So why for that long?

DEPUTY COMMISSIONER RYAN: There were a lot of different pieces to that unfortunately. One, it was securing the funding, which involved working with the federal government, FEMA guidelines. When we got that funding, we were then in a place where the lease for that facility was within a timeframe that required us to renew it. We then had to go through ULURP, and the ULURP process was unfortunately protracted during that time. We couldn't do any of the construction on the site if we didn't have confirmation that we were actually going to have an extended lease as that wouldn't have been a good use of that funding so that process took a significant period of time, and then once that ULURP came through, there were additional things that had to be done with the federal government. Unfortunately, it's one of those things where you go back and you look at it, and every step of the way things sort of broke to the left when you would've wanted them to break to

3 the right so we are in the place now to move forward
4 with that upgrade, but I understand that it's been
5 quite a long time.

6 COUNCIL MEMBER BRANNAN: How much of that
7 money is City funding? You said there's some FEMA
8 money there.

9 DEPUTY COMMISSIONER RYAN: Yeah, the
10 majority of the funding is actually federal funding,
11 it's FEMA funding.

12 COUNCIL MEMBER BRANNAN: What's the total
13 cost?

14 DEPUTY COMMISSIONER RYAN: That I'll have
15 to get back to you on.

16 COUNCIL MEMBER BRANNAN: Okay. I'm most
17 interested to know what the City portion of that
18 would be.

19 DEPUTY COMMISSIONER RYAN: Okay.

20 COUNCIL MEMBER BRANNAN: Okay. Thank you,
21 Chair.

22 CHAIRPERSON BREWER: Thank you. Just a
23 question about wooden barrels and cardboard boxes
24 because to the layperson that sounds not like a good
25 storage mechanism. Can you just describe is that
storing evidence in different kinds of containers or

1
2 that's the right kind of container that is normal to
3 be storing?

4 EXECUTIVE DIRECTOR FENTON: Good morning,
5 Council Member.

6 CHAIRPERSON BREWER: Good morning.

7 EXECUTIVE DIRECTOR FENTON: With respect
8 to the cardboard packaging, they're known as BECS,
9 biological evidence container system, and based on
10 our investigations, based upon dealing with the
11 Office of the Chief Medical Examiner and storing of
12 biological evidence, we, in order to prevent
13 contamination, were advised to put that in paper
14 packaging so it's not exposed. It doesn't create
15 contamination later on, degradation.

16 CHAIRPERSON BREWER: Same thing with the
17 barrels? That's the same idea?

18 EXECUTIVE DIRECTOR FENTON: Same idea.

19 CHAIRPERSON BREWER: Okay. The question
20 also, just back to the fire, I guess there were
21 contractors at Erie Basin on December 13th. We want
22 to know were they supposed to be there, were they
23 licensed. We don't know exactly I think why the fire
24 started. Some say the generator, some say electrical
25

1
2 work. Can you be more specific about why it did
3 start, what were the contractors doing there, etc.?

4 DEPUTY COMMISSIONER RYAN: The contractors
5 were there to do some work at the facility, but they
6 were not doing any work in the facility in the
7 portion of the location where the fire...

8 CHAIRPERSON BREWER: They were at the tow
9 pound I assume?

10 DEPUTY COMMISSIONER RYAN: Yes.

11 CHAIRPERSON BREWER: Okay, so can you be
12 specific as to why, again, the fire did start if you
13 know?

14 DIRECTOR CLARKE: Our understanding, the
15 fire was started, it was an electrical fire that was
16 started, not...

17 CHAIRPERSON BREWER: Not the generator?

18 DIRECTOR CLARKE: Nothing has been told to
19 us that connected to the generator. It was electrical
20 wiring in the wall.

21 CHAIRPERSON BREWER: Okay. Are there plans
22 to relocate evidence from Erie Basin during the
23 electrical work project, especially because it was
24 civilians accessing a space where evidence was
25 supposed to be secured. Now, maybe that was or not,

1
2 you indicate that they were not there, but I still
3 want to understand a little bit more about the fire.
4 Was there a time period when contractors were around
5 during that time period?

6 DEPUTY COMMISSIONER RYAN: We have
7 contractors at various facilities who work on various
8 aspects of things that need to be done that we can't
9 do in-house. We ensure that they're licensed, that
10 they're properly bonded, and everything needs to be
11 done contractually. There is nothing to indicate that
12 anything tied to contractor work contributed to the
13 fire.

14 CHAIRPERSON BREWER: Okay. You indicated
15 FEMA money, was there any insurance that is also
16 available?

17 DEPUTY COMMISSIONER RYAN: Yeah, so the
18 landlord...

19 CHAIRPERSON BREWER: Going back to the
20 Chair of Finance's question, the money.

21 DEPUTY COMMISSIONER RYAN: Yeah, so the
22 landlord has insurance, and we're working with the
23 landlord on, because we are extending the lease of
24 the site, not to be storing this type of evidence but
25 obviously we still use this for vehicles, and we'd

3 like to continue to do that so we're having ongoing
4 discussions with the landlord about rebuilding the
5 building and that will be covered hopefully in full,
6 but at least in part by insurance.

7 CHAIRPERSON BREWER: And what will the
8 building be used for when it's rebuilt by FEMA and
9 insurance and I guess some City money?

10 DEPUTY COMMISSIONER RYAN: We haven't made
11 a final determination on that, but I think we'd be
12 looking to have it be for certain vehicles that need
13 to be inside. Sometimes we have evidentiary vehicles,
14 bikes, and things of that nature.

15 CHAIRPERSON BREWER: We have evidentiary
16 vehicles all over the neighborhoods at fire hydrants
17 and places. We would love to get rid of them.

18 DEPUTY COMMISSIONER RYAN: We are also
19 working on that as well and have actually...

20 CHAIRPERSON BREWER: Not on this hearing,
21 I understand, but just so I can add it to the
22 discussion.

23 DEPUTY COMMISSIONER RYAN: Understood.

24 CHAIRPERSON BREWER: I saw a whole bunch
25 this weekend.

1
2 I guess I also want to know when you talk
3 about a new facility and it's costing up to 600
4 million, do you have a location, because that's very
5 big facility to have to site.

6 DEPUTY COMMISSIONER RYAN: We don't have a
7 location at this time, although as we are always
8 looking for different sites for different things, we
9 often identify through our searches and through DCAS'
10 searches private developers and things like that
11 where they're looking to build raw space so there are
12 a couple of different sites that have sort of the
13 size and would potentially work for this, but,
14 because we don't have the funding yet in the budget,
15 we can only go so far in any of those discussions.

16 CHAIRPERSON BREWER: Okay. Obviously, tow
17 pounds at the same time in Manhattan, just throwing
18 that out.

19 Does this system upgrade allow for
20 looking at records in aggregate which PETS could not
21 do?

22 CAPTAIN BRESLIN: Again, with regard to
23 getting a facility, it wouldn't change the system
24 that we have. It would just enhance our ability to
25 store and retrieve property to give to the public or

1
2 for the property to go to court. Again, we are, as
3 the Commissioner mentioned, looking into possibly
4 digitizing the paper-based system so that's
5 something, but, again, a new facility would just make
6 it easier for us to store and retrieve our property
7 that we already have.

8 CHAIRPERSON BREWER: Yeah, it just needs
9 600 million and a site.

10 Council Member Ariola.

11 COUNCIL MEMBER ARIOLA: Thank you, Chairs.
12 What efforts, if any, has the NYPD made to
13 communicate to the people whose cases involved
14 affected evidence, their attorneys, victims in cold
15 cases, and/or the public about what was destroyed?

16 EXECUTIVE DIRECTOR FENTON: Good morning,
17 Council Member. We have been working with the
18 District Attorneys offices if there are open
19 questions regarding a wrongful conviction allegation
20 or, for that matter, a cold case that deals with a
21 specific case that the District Attorney wants to
22 move forward on. They contact us, and we have been
23 asking for the list and the voucher numbers, and
24 we've been able to make a determination, number one,
25 if the property was part of that destroyed at Erie

1 Basin during the fire, and, furthermore if it is
2 available, then we get back to them hopefully within
3 two and three weeks.
4

5 COUNCIL MEMBER ARIOLA: Thank you very
6 much.

7 CHAIRPERSON BREWER: Just back to the
8 aggregate system and what PETS cannot do, is there a
9 software issue here? I am concerned about the
10 technology, both for current and for future and just
11 generally.

12 DEPUTY COMMISSIONER RYAN: The current
13 system we're using replaced PETS...

14 CHAIRPERSON BREWER: Right.

15 DEPUTY COMMISSIONER RYAN: So it's FORMS
16 Property, and it does have built-in reporting
17 functions that aggregate property by type and by
18 activity so it's relatively new. It's been in place,
19 we've been using it since about 2021, but it does
20 have that functionality.

21 CHAIRPERSON BREWER: Okay. Does it work
22 from the precinct level all the way to the pathway
23 that the Captain described?

24 DEPUTY COMMISSIONER RYAN: Yes.
25

CHAIRPERSON BREWER: All right, and have you gotten any complaints about it, the new system? People always complain about everything.

CAPTAIN BRESLIN: Complaints from who?

CHAIRPERSON BREWER: Officers or people using the system. They are allowed to complain.

CAPTAIN BRESLIN: The complaints from the officers are more probably user error. Someone who didn't know how to do one thing so we help them navigate through the system.

I know under the Comptroller's audit there were some things that were identified, and we have corrected those (INAUDIBLE)

CHAIRPERSON BREWER: Okay, what were some examples of what the challenges were?

CAPTAIN BRESLIN: One of the issues were the scanning of the claimant's ID at the precincts. We have created a policy and done training, created a training bureau memo which was sent out so that's one of the things that was identified during the Comptroller's audit. Also, there was the found property letter, and we have created one. A form letter is in the system, and we are now sending those out to the found property. Again, those are some

1 things we have identified or were identified through
2 the Comptroller's audit and we have corrected.

3
4 CHAIRPERSON BREWER: Okay. I assume that
5 places like the Chief Medical Examiner, are they also
6 coordinated on the same system? In other words, the
7 other agencies that you might interact with, are they
8 working on the same system?

9 CAPTAIN BRESLIN: Yes.

10 CHAIRPERSON BREWER: So it's a total
11 coordination or seamless...

12 CAPTAIN BRESLIN: Yes.

13 CHAIRPERSON BREWER: Supposedly.

14 CAPTAIN BRESLIN: Yes.

15 CHAIRPERSON BREWER: Okay. Let's see if I
16 have any other questions. Did you find that as a
17 result of Hurricane Sandy and the fire that there
18 were cases that had been brought to your attention
19 where storage was an issue? I know there's a lot of
20 feeling that it was older evidence, wasn't
21 necessarily needed, but were there either attorneys
22 or cases that came to your attention where there was
23 lack of evidence so to speak because it was no longer
24 there?

1
2 DIRECTOR CLARKE: I think it's fair to
3 say, especially in the early years after Sandy, there
4 was much more evidence at the time of Sandy that was
5 active cases, right, significant active cases so we
6 were having people testify at trial a lot about the
7 unavailability of the evidence. That has slowed down
8 over the years. I think there was zero in 2021
9 whereas it might have been 90-something, actually,
10 give me a second and I can probably pull it up, in
11 2013, we testified 94 times. By 2020, it was zero
12 based on the property stored at Erie Basin.

13 CHAIRPERSON BREWER: Okay. Just out of
14 curiosity, how much of NYPD's budget is allocated for
15 this evidence tracking and how much for preservation?

16 DEPUTY COMMISSIONER RYAN: I don't have
17 that number on me, but I will get that to you.

18 CHAIRPERSON BREWER: Okay. It would be
19 helpful to know.

20 Do you have a tracking system when
21 something is missing because obviously that could be
22 true, I guess with this new system you'll have a
23 better sense of it than you did in the past, it sure
24 beats the paper anyway.

1
2 CAPTAIN BRESLIN: Yes, ma'am. Evidence at
3 every point and every turn when it goes from one
4 facility to another, a PTR is created, which is a
5 property transfer receipt, so it's documented
6 wherever it's going, so if it's going from the
7 precinct to one of my facilities or if it goes from
8 one of my facilities out to court or to the lab, it
9 is tracked and documented in that system.

10 CHAIRPERSON BREWER: Okay. To the best of
11 your knowledge, this is current, not necessarily in
12 the past but current?

13 CAPTAIN BRESLIN: This is absolutely
14 current, yes.

15 CHAIRPERSON BREWER: Okay. Is there a
16 difference in protocol for storage for felony versus
17 misdemeanors or is it the same process if needed?

18 CAPTAIN BRESLIN: It's still the same
19 process. It's just our retention guidelines are
20 slightly different.

21 CHAIRPERSON BREWER: Okay, and what are
22 the difference in the retention guidelines, how long
23 they are there I assume?

24 CAPTAIN BRESLIN: Yes, how long they're
25 there so if you have general property for a felony,

1
2 we'll keep that for at least 151 days. It also
3 depends on if it's pled guilty or is convicted. If
4 someone is convicted, it will be 3/4 of their
5 sentence, we will hold onto that property. Pled
6 guilty, then it's 151 days or then if there's a
7 request for it then it's an additional 270 days. Then
8 you go to misdemeanors where it'll be kept for 18
9 months. Again, biological evidence, completely
10 different. We keep that at least for five years.

11 CHAIRPERSON BREWER: Thank you very much.
12 That's very helpful. Go ahead.

13 EXECUTIVE DIRECTOR FENTON: I just would
14 like to add with respect to the property retention
15 guidelines we also do keep murders, rape cases, cases
16 with no statute of limitations, we keep that
17 indefinitely as well as some other categories that
18 are classified by the NYPD.

19 CHAIRPERSON BREWER: Okay, so that would
20 mean a different storage facility depending on the
21 time or it has nothing to do with the timeframes?

22 EXECUTIVE DIRECTOR FENTON: It mostly has
23 to deal with the statute of limitations and whether
24 or not the case would be pending. There's no statute

25

1 of limitations on murder or rape cases. As such, the
2 Department keeps that indefinitely.
3

4 CHAIRPERSON BREWER: You need a big
5 storage space.

6 EXECUTIVE DIRECTOR FENTON: Agreed.

7 CHAIRPERSON BREWER: Council Member
8 Ariola.

9 COUNCIL MEMBER ARIOLA: Thank you. I'm
10 just asking a question for my Colleague, Council
11 Member Holden, who is on Zoom.

12 He just was interested in knowing why
13 there wasn't a sprinkler system installed in the
14 facility.

15 DEPUTY COMMISSIONER RYAN: There was, in
16 fact, a sprinkler system at Erie Basin.
17 Unfortunately, it was not adequate to address the
18 heat of this fire.

19 COUNCIL MEMBER ARIOLA: Thank you.

20 CHAIRPERSON BREWER: We're also joined by
21 Council Member Stevens.

22 I want to know, after the fire were you
23 able to communicate to people or maybe you didn't
24 know whose cases were affected or their attorneys.
25

1
2 Obviously, these are often cases that were quite
3 dated.

4 EXECUTIVE DIRECTOR FENTON: Council

5 Member, we didn't communicate directly to the people.
6 We communicated via the District Attorney's office so
7 if the District Attorney's office had indicated there
8 was a cold case investigation or, for that matter,
9 there was an allegation of wrongful conviction, they
10 would put the inquiry as to the specific request, and
11 they would also indicate whether or not that person
12 or attorney who was requesting was authorized to make
13 that request.

14 CHAIRPERSON BREWER: Okay. The other

15 question I have is in the future, god forbid,
16 something like this should happen, do you have a way
17 of communicating? Hopefully, you'll have less paper,
18 they'll be a better system for tracking and so on,
19 but would there be some system for communicating, god
20 forbid, this should happen in the future?

21 DIRECTOR CLARKE: I think having it in the

22 computer-based system certainly would make this a
23 much easier lift. There are still some legal issues
24 where we can't communicate sealed records to people,
25 but I think that's something we'll have to, hopefully

1
2 this is a never-happen-again, but we'll have to think
3 about the best way going forward.

4 CHAIRPERSON BREWER: Do you think there's
5 any legislation, I know the answer will be no to
6 this, that would implement evidence retention
7 requirements and, if so, what factors do you think
8 should be part of such legislation and requirements?
9 I know Mr. Clarke is going to say no, please don't
10 give me any more legislation, but you do need some
11 guidelines I think.

12 DIRECTOR CLARKE: Right. I think we do
13 have some evidence retention guidelines, and, if
14 there's legislation, we're always willing to work
15 with the Council on pieces of legislation, but I
16 don't have anything right now.

17 CHAIRPERSON BREWER: Okay.

18 CHAIRPERSON HANKS: Thank you, Chair. I
19 just want to acknowledge Corona Arts and Science
20 Academy School is here. Thank you so much for being
21 part of the political process and welcome to the
22 People's House. Thank you.

23 CHAIRPERSON BREWER: The final question is
24 just in terms of procedures, you obviously have a
25 very-informed police department in terms of these

1
2 issues, but how the procedures and practice and
3 protocols, are they available to the public so the
4 public understands what they are? You're obviously
5 describing them here today, and we appreciate that,
6 but is there some indication of how it's communicated
7 to the public?

8 DIRECTOR CLARKE: You mean the procedure
9 on holding property?

10 CHAIRPERSON BREWER: Yes.

11 DIRECTOR CLARKE: There's some in the
12 patrol guide, but I don't believe we have a procedure
13 specifically (INAUDIBLE)

14 CHAIRPERSON BREWER: You articulated it
15 extremely well, sir.

16 CAPTAIN BRESLIN: Again, for retrieval
17 property, when someone gets a receipt for their
18 property, all the information is on that receipt so
19 they can, and again we are on the website so if
20 they're looking for our facilities, what time we're
21 open, everything else, or our phone number,
22 everything is on there as well.

23 CHAIRPERSON BREWER: Okay. We're always
24 looking for real-time information, but I understand
25

1 it's on the piece of paper. Real-time is something
2 that I feel strongly in.
3

4 All right, I don't have any more
5 questions. Anybody have any other questions?

6 Thank you very much. We appreciate very
7 much your input.

8 DEPUTY COMMISSIONER RYAN: Thank you so
9 much.

10 COMMITTEE COUNSEL CATA: Thank you,
11 Chairs.

12 In one minute, we will turn to public
13 testimony. We will be limiting public testimony today
14 to three minutes each.

15 For in-person panelists, please come up
16 to the table once your name has been called.

17 For virtual panelists, once your name is
18 called, a Member of our Staff will unmute you and the
19 Sergeant-at-Arms will set the timer and give you the
20 go-ahead to begin. Please wait for the Sergeant to
21 announce that you may begin before delivering your
22 testimony.

23 If anyone is here in person who has not
24 yet signed up to testify, please visit the Sergeant's
25 table and complete a witness slip now.

2 We will now hear from our first in-person
3 panel. We'll hear from Elizabeth Felber, Elizabeth
4 Daniel Vasquez, Rebecca Brown, Martin Tankleff, and
5 Sheila Howeff (phonetic).

6 Thank you so much. If Elizabeth Felber is
7 here, you may begin when ready.

8 ELIZABETH FELBER: Good morning. My name
9 is Elizabeth Felber. I head the Wrongful Conviction
10 Unit at the Legal Aid Society. While the Erie Basin
11 fire was not an intentional act of sabotage, it
12 follows a pattern of negligence by the NYPD when it
13 comes to preserving property. The mass destruction of
14 vouchered evidence from criminal cases has occurred
15 now three times, in 1995 at Pearson Place, in 2012 at
16 Sandy, and now 2022, and while listening to the prior
17 speakers talk about their ongoing communications with
18 the District Attorney offices, they have ignored us.
19 We have written to them twice asking for an
20 accounting and which ones of our clients' cases have
21 been effected, and they've never responded. Their
22 lack of transparency with us, the defense community,
23 speaks volumes. The unanswered questions about what
24 steps, if any, they took to prevent this disaster and
25 what property were destroyed, for us at least, are

1
2 unfortunately not surprising given NYPD's repeated
3 failure to produce vital evidence for cases where the
4 conviction integrity units at our requests to retest
5 or test DNA.

6 I just want to point to something that
7 was said by Council which is most of the cases were
8 sealed. This is not true. At least the cases where we
9 seek to have DNA tested, they are largely murder
10 convictions where our clients are serving life in
11 prison and, unfortunately, most are from the 1990s
12 when mass incarceration began, and so it was well
13 before 2012 and we are reliant on paper logbooks.
14 Perhaps that is why once we've convinced CIUs to test
15 or retest DNA where we have provided them evidence
16 that our clients are actually innocent or wrongfully
17 convicted, in each case NYPD has told them that the
18 evidence is either lost or destroyed. This has
19 extremely grave consequences for our clients who
20 remain incarcerated as a result or in part as a
21 result.

22 For the sake of time, I'll just give you
23 two example. One client is in his 36th year of
24 incarceration. The CIU agreed to retest after we
25 provided them with numerous affidavits of people

1
2 attesting to another person being the actual shooter,
3 including the sisters of the actual shooter. However,
4 NYPD told the CIU that the evidence was destroyed.
5 This is interesting because they said it was Sandy
6 and, up here, they told us that Sandy was for active
7 cases. This was a conviction from 1987, and we
8 learned this year that it was destroyed in Sandy.

9 Another client served 40 years while
10 maintaining his innocence, and he would still be
11 incarcerated today had he not been granted clemency.
12 The CIU in that case agreed to test the murder weapon
13 found at the scene. If his DNA had been excluded,
14 which we believe it would be, he would likely be
15 exonerated. Again, NYPD told that CIU that the
16 evidence cannot be located. We now know that all of
17 the evidence collected before 2012 was tracked in
18 paper logbooks. There needs to be transparency for
19 why it's so hard to locate this evidence and why
20 sufficient protocols were not in place before the
21 Erie Basin fire destroyed so much evidence and, with
22 it, our clients' opportunities to exonerate
23 themselves. Thank you.

24 ELIZABETH DANIEL VASQUEZ: Good morning.

25 My name is Elizabeth Daniel Vasquez. I'm the Director

1
2 of the Science and Surveillance Project at Brooklyn
3 Defender Services.

4 What we heard this morning was emblematic
5 of what we've seen from the NYPD as it relates to
6 evidence collection, processing, maintenance, and
7 retention over the last 20+ years. The program that
8 the NYPD has in place is pure chaos. We had an
9 instance back more than 15 years where a gentleman
10 named Alan Newton brought suit against the New York
11 City for the very fact that the City did not keep
12 track of evidence in cases. He spent years trying to
13 find the evidence in his case in order to have it
14 tested and couldn't. He brought suit against the City
15 for its recklessness and negligence in maintaining
16 evidence systems, and he won. The City was held
17 liable. There was a moment of discussion here about
18 what are we going to do in order to do better in
19 terms of evidence tracking, making sure that we know
20 where evidence is and that it's being safely kept,
21 and then nothing happened. Sandy comes. Entire swaths
22 of evidence get destroyed. There's no clear
23 communication from the NYPD about what's been lost.
24 There's no clear communication to clients who are
25 actually going to trial about what has happened to

1
2 the evidence in their cases. There is a discussion,
3 there is a moment of we need to do something about
4 this, things need to change, and then nothing
5 happened. We're here again. The NYPD has said for the
6 last 10 years that they are going to build an Amazon-
7 style warehouse that is a one-size-fits-all solution
8 to this problem, they've said they had a site,
9 they've said they were going to put technology in
10 place to solve this, and then nothing happens. I have
11 clients going to trial right now in homicide cases
12 where we do not know whether the evidence was lost in
13 the Erie Basin fire or not. That should not be the
14 case. So what we are asking for is an evidence
15 tracking system in this City that matches what
16 happens in other cities. We are asking for the NYPD
17 who admits that they are the entity that is in charge
18 of keeping track of evidence, we are asking for them
19 to actually know what they have and where it is. They
20 have had the ability to build massive surveillance
21 technology systems that keep track of data about my
22 clients that I wish they wouldn't, and yet they can't
23 keep track of the evidence that they are responsible
24 for. They've told this Council that their FORMS
25 system that they came online with in 2021 is a

1
2 technological solution to the problem. When you were
3 asking them whether or not there were complaints
4 about the system, what they didn't tell you is that
5 they had a coding error when they came online with
6 the system that caused them to lose track of evidence
7 for a significant period of time. When they sent
8 evidence to the Office of the Chief Medical Examiner,
9 it was sent out as a batch within the FORMS system,
10 but the OCME tests evidence consecutively. When they
11 sent a case back, it caused the FORMS system to track
12 every item of evidence that was sent to the OCME at
13 that time as having been sent back to the NYPD when
14 it had not so there was evidence sitting at the OCME
15 that the FORMS systems said that the NYPD has. They
16 have not been clear about the problems that they have
17 had with their technological solutions. What they
18 were clear on was that they had a budget in order to
19 do something about this for years and yet nothing
20 happened, and so what we are asking for is for the
21 NYPD to actually take seriously their responsibility.
22 This is one action that they are obligated to
23 control, they are obligated to know where evidence
24 is, they are obligated to know how it has been
25 stored, and they are obligated to be able to tell us

2 if a catastrophic event like a fire occurs that the
3 evidence in your case is gone. They need to do
4 better, and we would ask the Council to help us call
5 on them to actually maintain their duty in this area.

6 REBECCA BROWN: Good morning. My name is
7 Rebecca Brown. I'm the Policy Director with the
8 Innocence Project. I've been with the Project for 18
9 years, and, throughout that time, we have been
10 mystified by the evidence preservation system here in
11 New York. We're known to be sort of the organization
12 that really transformed sort of the power of DNA, yet
13 in our home state we don't even have evidence rules
14 that are consistent across jurisdictions, across
15 boroughs, and despite great progress in the nation,
16 and there really has been, New York lags behind the
17 rest of the country. In fact, in the last two years
18 the states of Utah and Indiana, not particularly easy
19 states to pass these types of laws in, have passed
20 statewide laws requiring the uniform retention of
21 biological evidence. I can't even overstate the human
22 cost of this. There was reference to Alan Newton. In
23 our written testimony, we've provided a couple of
24 other examples. Two men whose evidence was found by
25 pure serendipity. One was because there was a lab

1 merger at some point, and we just suddenly were able
2 to find the evidence literally in another state, and,
3 in Alan Newton's case, this man was filing pro se for
4 12 years and told that his evidence was lost for
5 different reasons, asbestos, just different reasons
6 over time, and, at the end of the day, the evidence
7 was found. It excluded him. This was insane. This was
8 12 years lost, taken from his life, and there are so
9 many other examples that I could provide you with,
10 but I did want to really focus on Chair Hanks'
11 solutions. We want to be solution-oriented. I was a
12 member of a 22-member technical working group that
13 was funded by the Department of Justice, administered
14 by the National Institute of Standards and Technology
15 that looked for over two and a half years at evidence
16 retention practices across the country, issued a set
17 of very clear recommendations. I can tell you what
18 they are very quickly. That could be implemented at
19 the City level. It should certainly be also
20 implemented at the State level, but it requires the
21 retention of biological evidence for at minimum the
22 length of time that a person is incarcerated,
23 regardless of plea, in the following five categories.
24 It's rape, murder, felony assault, kidnapping, and
25

1 robbery. I thought it was very interesting hearing
2 the testimony before that if somebody pleads guilty
3 it's as though we shouldn't be concerned about the
4 evidence anymore. We should be very concerned about
5 the evidence. There are 3,300 people that have been
6 demonstrated innocent in this country since 1989, a
7 full 25 percent of them pled guilty to crimes they
8 didn't commit, so we must retain that evidence in
9 plea cases, and that was actually one of the core
10 recommendations from the Department of Justice
11 working group on this very issue. Also, inventorying
12 evidence. That evidence must be inventoried. Pre-
13 2012, those are the majority of our cases, and we
14 have a paper-based system for that or we don't where
15 that evidence is still. This is unconscionable. I
16 really want to say governments can be forgiven,
17 right, for not anticipating the probative value of
18 DNA, but today we know, and there is no excuse for
19 not having a uniform consistent system for locating
20 evidence, tracking it, and frankly for sanctions and
21 remedies, well, really remedies for people whose
22 evidence has been destroyed. I'll close there but
23 happy to answer any questions. Thank you.

CHAIRPERSON HANKS: Thank you so much. I definitely would like to speak offline.

MARTIN TANKLEFF: Good morning. My name is Marty Tankleff. I'm an adjunct professor at Georgetown University in the Law Center. I'm also Special Counsel to Barkett, Epstein, Kearon, Aldea, and LoTurco. Prior to that, I was 90T3844. I was in imprisoned wrongfully in New York State for almost 18 years. Thankfully, in my case, there was evidence that was actually properly stored, and we discovered it and it helped lead to my exoneration, but, since my freedom, I've had the opportunity to walk innocent men out of prison, but during that time I've frankly been ashamed of working with the NYPD, and I think one of the statements that I was struggling with today was when I heard Captain Breslin say I believe our system is working. As somebody as high-ranking as Captain, there shouldn't be belief. We should know whether or not the tracking system of evidence is working. We shouldn't think about it. We should know. Currently, I am working on a case of a man named Raymond Santana where I have an evidence voucher and there's a voucher number for a piece of evidence. For almost six years, I still have not been able to

1 obtain that piece of evidence. Why? Why? I get the
2 runaround from NYPD. I get different pieces of
3 evidence that's provided to me, and that is because
4 their tracking system isn't adequate. I think the
5 people who running the system are not properly
6 trained in doing this. Also frustrating to hear is
7 that there is also a dollar amount put on lives. When
8 we hear how many innocent men are wrongfully
9 convicted and how much money the City pays out for
10 those wrongful convictions, imagine if NYPD and the
11 prosecutors in this State did it right from the
12 beginning. All that money that was spent on the
13 payouts, if they would just do their jobs from the
14 very beginning, we could have warehouses, we could
15 have people who are properly trained, and we wouldn't
16 have innocent men and women in prison. We see this
17 time and time again. Last year, we had the highest
18 number of exonerations of this nation, almost 230
19 innocent people. That number should scare people.
20 Imagine if there was evidence at the Basin that was
21 destroyed that could lead to somebody's exoneration,
22 will that person languish in prison. Imagine it. Like
23 everybody said, Alan Newton spent decades before he
24 was exonerated. For countless years, Alan kept saying
25

1 where is the evidence, where is the evidence. Alan is
2 not alone in this cause. There are many more Alan
3 Newtons in the prison system who are just trying to
4 find evidence to be tested. If we can't find the
5 evidence, we are allowing innocent men to languish in
6 prison for countless years. Those people deserve
7 better, and I hope this Council will help us achieve
8 that. Thank you.
9

10 CHAIRPERSON BREWER: Thank you all very
11 much.

12 I think the one question I have is we
13 heard some suggestions, but do you have ideas from
14 other states as to what they're doing correctly,
15 etc.?

16 REBECCA BROWN: Sure. I can share actually
17 an example from a municipality, Charlotte, North
18 Carolina, which went back and inventoried all of the
19 evidence in their possession currently with bar codes
20 basically. It was like a UPS system, and so they're
21 able to scan it, easily locate it in their facility.
22 Yes, this took manhours, it does have a cost to it,
23 but they were able to literally bar code every piece
24 of evidence and, during that process, were able to
25 solve many unsolved cases, including rapes, and so,

1
2 by the way, one of the things I should also note is
3 that the technical working group also recommended
4 retention of biological evidence because, Chair
5 Brewer, you mentioned the importance of sexual
6 assault evidence for the length of the statute of
7 limitations minimally, so they were able to suddenly
8 be able to test things that they couldn't find
9 before. They were able to settle over 15 innocence
10 claims and solve multiple, multiple violent crimes.

11 CHAIRPERSON BREWER: Does anybody want to
12 add to that?

13 ELIZABETH FELBER: I would just say as an
14 example of an effective preservation law, the State
15 of Connecticut requires that evidence be preserved
16 for the length of a person's sentence and, since most
17 of our clients are serving life in prison, we
18 wouldn't have to worry about whether the evidence was
19 still there.

20 CHAIRPERSON BREWER: Okay. Do you know if
21 other parts of the State of New York have anything
22 different or are they just as backward as our City?

23 REBECCA BROWN: It really depends. That's
24 part of the problem here is it's a patchwork of
25 policies agency-by-agency as opposed to uniformity,

1
2 which is really what we're seeking when we look for
3 these statewide laws but, certainly at the City
4 level, we should have uniformity as well, but just to
5 say the smaller jurisdictions, it's often easier just
6 because they have less evidence in their possession,
7 but it's shocking because a lot of the evidence, 80
8 percent of evidence rooms is largely misdemeanor
9 evidence that really can be cleared out over a short
10 period of time, but there's nobody in there sort of
11 re-inventorying the evidence so this is a problem
12 across the country, but many states have taken it own
13 and said, listen, at this stage, right, we have to
14 inventory what's in our possession, we can get rid of
15 the evidence we don't need anymore, but we need to
16 save in these serious violent crime categories, and
17 we need to save it for minimally the length of
18 incarceration. Some states go farther and say for the
19 length of time that someone's subjected to collateral
20 consequences like sex offender registration or parole
21 or probation, and I would recommend that. Frankly,
22 that's our recommendation, and the reason that the
23 Department of Justice, that working group, narrowed
24 the crime categories was because they understood you
25 can't save every piece of evidence in every case, we

1
2 get that, but let's focus on the serious violent
3 crime and let's save regardless of plea minimally for
4 the length of incarceration for adjudicated cases and
5 for unsolved cases minimally for the statute of
6 limitations.

7 CHAIRPERSON BREWER: It is shocking to
8 hear about the paperwork in general in the City of
9 New York. Council Member Hanks.

10 CHAIRPERSON HANKS: Yes, thank you so much
11 for your powerful testimony. I don't think many
12 understand the severity of the situation so I really
13 appreciate you coming out and enlightening us. One of
14 the questions I have is you mentioned that there are
15 other states that are doing this kind of work. When
16 you look at the price tag of 425 million or to 630
17 million, does that seem rational as opposed to what
18 other states are doing with the vast amount of, we
19 have a police force of 33,000, we have one of the
20 largest in the country, in the world, so what do you
21 think about the financial ask?

22 REBECCA BROWN: Sure. I mean I think what
23 they're offering is a more permanent solution, which
24 I support. I mean I think, again, all of these
25 systems, a lot of them are paper-based, they're in

1 various entities, it's hard to locate this. Also,
2 this evidence can be with court clerks, it can be
3 with hospitals, I mean this is a way to kind of
4 collect all the evidence, have it in one place. We
5 are supportive of that conceptually. However, it is
6 not like that is the only option. There is also an
7 option to just say preserve what is currently in your
8 possession in these five crime categories, that is
9 the recommendation, and inventory those five crime
10 categories. I mean in other words, there are various
11 ways that you could graduate this solution. I would
12 say, however, that we would certainly not oppose a
13 state-of-the-art solution because I think it would
14 solve to this overtime. That said, there are things
15 you could do tomorrow that include just inventorying
16 key evidence and being able to locate it in an
17 electronic system. The fact that we have a paper-
18 based pre-2012 system is petrifying because that's
19 why we can't evidence.

21 CHAIRPERSON HANKS: Thank you.

22 CHAIRPERSON BREWER: Are you not getting
23 even to this day responses about Erie Basin or other
24 storage questions? Obviously, this came up in your
25 testimony. Go ahead.

3 ELIZABETH FELBER: Yes, that's correct. We
4 have not heard anything, and we sent two letters. In
5 the second letter we said you didn't answer our first
6 letter.

7 CHAIRPERSON BREWER: I think Mr. Clarke
8 will be responding to you I hope. I see him sitting
9 in the back, and I appreciate him still being here,
10 and I know him to be a person of good faith so I'm
11 sure he will be responding. Thank you.

12 Thank you very much. We are intent on
13 following up. Thank you.

14 COMMITTEE COUNSEL CATA: Thank you very
15 much for your testimonies. We will know hear from
16 Sheila, last name begins with H.

17 Once again, if we inadvertently missed
18 anyone who would like to testify in person, please
19 visit the Sergeant's table and complete a witness
20 slip now.

21 SHEILA HOWEFF: I'm here on behalf of my
22 son who is incarcerated in Green Haven Correctional
23 Facility 25 to life. It started with the detectives
24 who came out. NYPD went to North Carolina, brought
25 him back here on a wrongful conviction. Until this
day, he's been incarcerated 29 years. They have no

1
2 evidence. They only had a witness which was 14 years
3 old at the time. They brought her to court when she
4 was 16. In the case of my son, he had an appeal, but
5 there were so many different people that had
6 components in him serving his time that I guess they
7 didn't want to involve these people to bring them out
8 so they kind of like covered it and he lost his
9 appeal, which was in I think 2015 if I'm not
10 mistaken. He's incarcerated right now, Green Haven
11 Correctional Facility as I said. He's now in court
12 with the 440 motion that someone had put together for
13 him, and they keep postponing it, and one of the ways
14 we found out that his records were destroyed was
15 because we went to get his records so that we could
16 prepare the 400, and they said they were destroyed
17 and that there's nothing that can be done about that
18 so he's had about five to six adjournments on his
19 case. Again, there's no evidence. There's just the
20 14-year-old witness that was out at 3:30 in the
21 morning and said that she heard that it was him that
22 had killed the correctional officer? The lawyer's
23 wife worked with the correctional officer. There are
24 so many different facets to this, it's unbelievable.
25 The story is just like something which you would

1 never believe, and I've been hurting because my son
2 has been brought here and he could've said he didn't
3 want to come, fought extradition, but he came because
4 he said he was innocent, and the end result, he's in
5 Green Haven in the honor block, not giving any
6 problems, whatever, and I'm just trying to figure out
7 what's going to go on on the 18th of August, which is
8 his next court date, because he's had a 90-day
9 adjournment, another 90-day adjournment, a 60-day
10 adjournment, and another 60-day adjournment, and it's
11 coincidental that the fire took place like a day
12 before he was going to court in March so I don't
13 know, whether his records or whatever records they
14 needed were among that fire, I don't know why they
15 keep adjourning it, but I just say there should be
16 some better system going on because it's not just my
17 son. There are so many, as they would attest to, so
18 many wrongful convictions, and it's hurting parents
19 out here. I did a Zoom meeting with the person with
20 the post-conviction office, and we had a Zoom meeting
21 about my son's case, and we waited another 60 days
22 for her to inform me that anything that we brought up
23 in the 440 should've been brought up during his
24 appeal. Well, if we didn't have that evidence then,
25

1
2 how would we know? You lost his records. He has no
3 record. The records are destroyed. I was told by the
4 court clerk that it's normal for them to destroy the
5 records after a certain period of time. Who does
6 that? I don't understand how someone could just take
7 someone's life and just say you're done, you're
8 guilty and you're done, like there's no recall,
9 there's no chance of him coming back trying to fight
10 for his coming home again. I'm really, really upset.
11 I'm talking kind of fast, but I'm just really praying
12 that something can be done that will correct this
13 system that is so corrupt, there are so many people
14 that took place in him being able to be sentenced.
15 The 14-year-old is now a lawyer in Washington so I
16 know, I get it, everybody that lied to get my son's
17 conviction, they don't want these names to be heard,
18 they don't want the judge, they don't want the DA,
19 they don't want the lawyers, they don't want none of
20 these names to come forth, and I don't have anyone
21 bold enough to stand up and say this is wrong.
22 Something has to be done about this system. My
23 husband was laying in a hospital bed when he was
24 talking on the phone with Zoom for the DA's office,
25 he was laying up in a hospital bed on Zoom, and all

1
2 we got was a letter stating that there's nothing that
3 can be done because whatever you presented to us now
4 should've been presented during his appeal. We didn't
5 know this information then. All this is now coming
6 because we had someone investigate and get all this
7 together. This young woman now will not come, I asked
8 her to come, please just tell them that they forced
9 you to say what you said, you're the only witness.
10 There was thousands of people on 125th Street that
11 evening. This is a case that stemmed from a rap
12 video. My son was in a rap video. They used nine rap
13 videos to convict my son, which had nothing to do
14 with him. He was on a (INAUDIBLE) video that took
15 place two years before this situation happened. They
16 made the jurors believe that the video was ran behind
17 what he had done, that this is how they presented the
18 video, which means (INAUDIBLE) should be on the
19 stand, not my stand. He didn't write those lyrics.
20 I'm just asking and I'm praying that something can be
21 done, not just for my son but for the many people
22 that have been wrongfully convicted, that they just
23 take so lightly to just toss their records and toss
24 them aside like discarded garbage. That's my son. I
25 love him, and, regardless, he has been a model

1
2 prisoner. For no other reason, he shouldn't be in
3 jail to this day. They ran his sentence consecutive
4 instead of concurrent. Another tactic. They don't
5 want him out because if they let him out they have to
6 expose each and every person that caused him to be
7 there, and that would bring lots of money and lots of
8 lawsuits because every person that's connected with
9 these detectives, and these lawyers and DAs will all
10 have a chance because of my son, and I know that, and
11 I don't care how it hurts if he has to do time after
12 August 18th when he goes to court, he'll finish his
13 time. I just thank God that He's keeping him the
14 whole time he's there.

15 CHAIRPERSON HANKS: I just want to thank
16 you for coming out here today to tell us your story,
17 and I want to say to the NYPD that testified your
18 story is the reason why we're here and you should
19 listen to what's being said because it's not just
20 losing evidence, it's losing lives, and so I'm really
21 very glad that you're still here, but these are the
22 testimonies we don't want to hear. For every piece of
23 evidence that you lose or you mishandle, these are
24 the stories, people's lives, and you have to think of

1
2 it as if it's your children in that spot, and so
3 we'll be talking offline as well. Thank you.

4 SHEILA HOWEFF: Thank you so much.

5 CHAIRPERSON BREWER: Thank you very much.

6 I concur, and he's got a great mom, and I'm glad
7 you're here today because a lot of people are
8 listening, hearing, and I hope it goes well in
9 August. If we can help in any way, we will. Thank you
10 very much.

11 SHEILA HOWEFF: Thank you so much. God
12 bless you all.

13 CHAIRPERSON BREWER: Council Member Joseph
14 also is here. Thank you.

15 COMMITTEE COUNSEL CATA: Thank you very
16 much for your testimony.

17 We have now heard from everyone who has
18 signed up to testify.

19 Once more, if we inadvertently missed
20 anyone who would like to testify in person, please
21 visit the Sergeant's table and complete a witness
22 slip now.

23 If we inadvertently missed anyone who
24 would like to testify virtually, please use the raise
25

1
2 hand function in Zoom, and I will call on you in the
3 order of hands raised.

4 Seeing no one else, I would like to note
5 that written testimony, which will be reviewed in
6 full by Committee Staff, may be submitted to the
7 record up to 72 hours after the close of this hearing
8 by emailing it to testimony@council.nyc.gov.

9 Now, I would like to turn it back over to
10 Chair Brewer.

11 CHAIRPERSON BREWER: Thank you very much.
12 Working with the amazing Council Member, Chair Hanks,
13 we are concluding this hearing but not concluding the
14 work that needs to follow up.

15 Thank you all who testified, and there is
16 much more to follow.

17 Thank you all very much. [GAVEL]

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C E R T I F I C A T E

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



Date June 29, 2023