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COMMITTEE ON JUSTICE SYSTEM

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON JUSTICE SYSTEM

December 12, 2018  
Start: 1:22 p.m.  
Recess: 3:14 p.m.

HELD AT: Council Chambers - City Hall

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

COUNCIL MEMBERS:

ANDREW COHEN  
ALAN N. MAISEL  
DEBORAH L. ROSE  
ERIC A. ULRICH

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

Insha Rahman  
Program Director at the Vera Institute of Justice

Aubrey Fox  
Director at Centre for Justice Innovation at the  
Criminal Justice Agency, CJA

Dawit Getachew  
Criminal Defense Attorney and the Associate  
Special Counsel to the Criminal Defense Practice  
At the Bronx Defenders

Joshua Norkin  
Staff Attorney with the Legal Aid Society Special  
Litigation Unit

Dave Long  
Executive Director of the Liberty Fund

Sarah Cassel  
Program Manager at the Mayor's Office of Criminal  
Justice, MOCJ

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[gavel]

CHAIRPERSON LANCMAN: Good afternoon. I'm Councilman Rory Lancman, Chair of the Committee on the Justice System and I'm Chairing this hearing examining recently established or expanded programs designed to mitigate the damage of our existing money bail system. We are joined by Council Members Debi Rose from Staten Island and Alan Maisel from Brooklyn. today on Rikers Island there are thousands of inmates who are free to walk out the door to their freedom, back to their families, their jobs, their schools but only if they come up with the money to pay their bail. Our current money bail system is an abomination and no doubt future generations will look back on it with the same disdain that today we look back on debtors' prisons and the practice of putting people in stocks. Although the legislation should abolish money bail, our district attorneys should stop seeking money bail and our judges should cease setting money bail, city government is not without its own leverage at limiting the scope and impact of money bail. Today we will examine two such efforts funded by city tax payers, one specifically at the initiative of the city council. The first is the Vera

1  
2 Institute for Justice's bail assessment pilot and the  
3 other is the Criminal Justice Agency's newly expanded  
4 bail expedition or BEX program. Between, between the  
5 two, we are seeing huge potential for rewriting the  
6 traditional bail script. New York's current bail  
7 statute allows for nine possible forms of bail to be  
8 set and it requires that the... that bail be set with  
9 consideration of a defendant's financial  
10 circumstances. The different kinds are cash bail, the  
11 commercial bail bond, a credit or debit card, an  
12 appearance bond where the defendant promises to pay  
13 the whole of amount of the bond if they fail to  
14 return to court, or a surety bond where another  
15 person like a friend or family member makes the same  
16 promises on behalf of the defendant. Both appearance  
17 and surety bonds come in three types; secured,  
18 partially secured, or unsecured which can require  
19 collateral, a small refundable deposit to the court  
20 or some indication of ability to pay the full amount  
21 in the future like an expected paycheck if the  
22 defendant fails to appear but will require little to  
23 no money up front to secure release. However, until  
24 recently only two forms of bail were regularly set by  
25 the court; cash and commercial bail bond and rarely

1  
2 if ever did anyone ask a defendant if he or she could  
3 actually pay the bail that was being set. That is why  
4 so many people spend time on Rikers Island for  
5 seemingly small amounts of bail; 500 dollars or a  
6 thousand dollars. For many New Yorkers 500 dollars  
7 may as well be five million dollars. Cash and  
8 commercial bail bonds are the simplest for courts to  
9 set but the hardest for defendants to pay. They leave  
10 defendants scrambling to pull together the full bail  
11 amount immediately to pay in cash or relying on  
12 commercial bail bond agents who at best charge  
13 nonrefundable fees and at worse take tremendous  
14 advantage of vulnerable people in need. Vera's bail  
15 assessment pilot along with its previous efforts to  
16 increase the use of so-called alternative forms of  
17 bail is demonstrating how a little information can go  
18 a long way. By performing a quick interview and  
19 documenting an individual's income and expenses  
20 including housing, child care or child support,  
21 medical bills, student loans and basic necessities  
22 Vera calculates how much money a defendant can afford  
23 to pay and makes an on the record.. on the record  
24 recommendation to the judge. More than just the  
25 amount, Vera also emphasizes the availability of so-

1  
2 called alternative forms of bails like partially  
3 secured or unsecured bonds. These options require  
4 little or no money up front allowing a defendant to  
5 avoid a life destabilizing pre-trial stint at Rikers  
6 Island but full payment if the defendant does not  
7 return to court. Vera's results have been promising  
8 in the Bronx where they have been operating since  
9 March and we are excited that they have recently also  
10 launched in Queens. The BEX program has existed far  
11 longer but it has recently taken an even larger role  
12 in Vera reform efforts. The criminal justice agency  
13 helps those with bail set and navigate... helps those  
14 with bail set navigate a complicated system. CJA can  
15 now hold an individual at the courthouse for up to 12  
16 hours while trying to get in contact with friends or  
17 family who might be able to post bail before an  
18 individual is sent to Rikers and put through a long  
19 expensive and often unnecessary intake process. With  
20 the expansion of the BEX program, CJA has also  
21 increased its ability... its eligibility threshold to  
22 help those with bail of up to 5,000 dollars. The data  
23 from these programs demonstrate how relatively minor  
24 interventions can significantly change outcomes for  
25 those with bail set making defendants more likely to

1  
2 be released quickly, decreasing our jail population  
3 and focusing attention on the injustices of our  
4 current cash bail system. Maintaining and expanding  
5 these important programs, building upon their  
6 successes and learning from their collected data will  
7 help countless people while educating the public,  
8 prosecutors and especially judges about the essential  
9 reforms we need. I look forward to hearing today from  
10 organizations and advocates devoted to working  
11 towards a new conception of bail about their efforts  
12 and how the city can help. With that we look forward  
13 to hearing testimony from our friends from Vera and  
14 CJA, if you would raise your right hands so we can  
15 swear you in and we can get to your testimony. Do you  
16 swear or affirm the testimony you're about to give is  
17 the truth, the whole truth and nothing but the truth?  
18 Terrific, do you want to go first?

19           INSHA RAHMAN: Little... oh, there now it's  
20 working, I turned the light on. I've never been known  
21 to be quite but still. Good afternoon and thank so  
22 much for this opportunity to come and speak with the  
23 Council about the... about our bail assessment work.  
24 Now we launched this project because we were curious  
25 about three key questions. The first was what would

1  
2 judges do if they had individualized specific  
3 information about a person's ability to afford bail  
4 when making their bail decision. The second is what  
5 would judges do if they were provided with  
6 information about the forms of bail that a person  
7 could afford beyond cash or insurance company bail  
8 bond. And the third question we were curious about is  
9 what impact that would have for individuals who are  
10 accused of a crime and their ability to make bail and  
11 go back to their homes, their families and their jobs  
12 and preserve their presumption of innocence while  
13 fighting the charges against them. And so earlier  
14 this year we launched the bail assessment pilot in  
15 the Bronx where we've been operating for a little  
16 over six months and then more recently in Queens and  
17 we are in the day arraignment part on Tuesdays and  
18 Thursdays in the Bronx and on Wednesdays and, and  
19 Fridays in Queens and we actually started this  
20 project based on another study that we had done with  
21 the Office of Court Administration over a year ago  
22 where we encouraged public defenders to ask for  
23 partially secured and unsecured bonds and we trained  
24 judges on these so called alternatives, I will call  
25 them more affordable forms of bail that are easier

1  
2 for people to afford and what we found in doing that  
3 study where we tracked 99 cases over the course of  
4 three months in which judges set unsecured bonds  
5 where the defendant actually didn't have to pay  
6 anything to be released, it was a promise to pay if  
7 the person didn't appear in court or if judges set a  
8 partially secured bond where the person was  
9 responsible for paying ten percent, no more of the  
10 bail amount and then they were released with the  
11 understanding that if they didn't come back to court  
12 and bail was forfeited then they would be liable for  
13 that remaining 90 percent. And so we followed these  
14 99 cases for over a year to find out what happened  
15 when judges actually used these forms of bail and to  
16 our knowledge this was the first time that an effort  
17 had been undertaken in such a sort of robust way to  
18 get judges to actually use these forms of bail  
19 building upon the work that certainly our public  
20 defenders at the Legal Aid Society, Bronx Defenders,  
21 Brooklyn Defender Services, and other offices across  
22 the city have been working on for years to get judges  
23 to consider all nine forms of bail available under  
24 our bail statute. And here's what we found in this  
25 study is we found that when judges set unsecured and

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2 partially secured bonds, people were able to afford  
3 bail at much higher rates and that comes as no  
4 surprise to any of us as being able to afford ten  
5 percent of a bail amount or simply a promise to  
6 return to court is far less onerous for a person than  
7 having to pay the full bail amount or to go a bail  
8 bonds company where even if you put only ten percent  
9 down that's ten percent of the bail amount that your  
10 family will never see again, ten percent that's  
11 essentially lost. The difference with partially  
12 secured bonds is that money is actually paid to the  
13 court but its returned at the end of the case  
14 regardless of whether the person is convicted or  
15 acquitted, or the case is dismissed. So, that's money  
16 that's essentially a deposit but is returned. And  
17 what we also found is when judges use partially  
18 secured and unsecured bonds basically the sky didn't  
19 fall down, people returned to court at the exact same  
20 rates that they do if they make the full money bail  
21 amount or a... an insurance company bail bond and also  
22 no... there were no increases in re-arrests during the  
23 pre-trial period. And from our court observations  
24 during this three month study what we also found is  
25 that the reason why judges would consider a partially

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2 secured or an unsecured bond is when they actually  
3 had a little bit more information about the case in  
4 front of them and so we noticed that when public  
5 defenders said your honor, I've spoken with my client  
6 and this is how much they earn in a week and this is  
7 the two jobs that they're working and this is how  
8 much they pay in transportation and child support and  
9 this is how much they pay to... in rent every month  
10 that's when judges actually set these alternative  
11 forms of bail in part because I think they were moved  
12 by the information that was specific and  
13 individualized to that particular case. And so,  
14 building off of that we launched this project in the  
15 Bronx and Queens to see if we provide that kind of  
16 individualized, specific information in front of a  
17 judge every single time they are making a bail  
18 determination what actually happens. And so, I want  
19 to share a little bit of data from our first six  
20 months of operation in the Bronx. This data set  
21 includes 112 cases and it ranges from misdemeanor to  
22 felony cases including some violent felony cases. We  
23 have no restrictions on the kinds of cases that we  
24 will take and assess and provide this information to  
25 the court in part because we believe that somebody's

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2 ability to afford bail doesn't change based on  
3 whether you're charged with jumping the turnstile or  
4 you're charged with something much more serious and  
5 so this is available to anybody who is at risk of  
6 having bail set. And here's how the project works is  
7 our bail specialist sits in the front row of the  
8 courtroom and if the defense attorney picks up a case  
9 and thinks I think this is a case where bail is  
10 going to get set they come and speak with our bail  
11 specialist and she conducts an interview in the  
12 interview booth in the arraignment court room with  
13 the individual, with the defendant and she asks a  
14 series of 30 questions and we'll be submitting in our  
15 testimony the bail calculator that is used to ask  
16 these questions and they essentially ask questions  
17 about the person's sources of income from their  
18 employment, their sources of in, income from public  
19 assistance and then their financial obligations such  
20 as rent, child care, food, transportation, the things  
21 that you need to get by and based on that information  
22 we calculate a monthly disposable income that's  
23 available to this person and from that which  
24 proportion of their disposable income should go  
25 towards bail payment and the reason that we developed

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2 this particular calculator and this particular  
3 formula is because we firmly believe and the research  
4 suggests that when people do have to pay for an  
5 emergency such as paying bail or for a debt all of  
6 their disposable income should not go towards bail  
7 payment because inevitably that's coming out of money  
8 that they otherwise would spend on rent or on food or  
9 on other necessities and so we were very careful to  
10 actually work with a social science research lab at  
11 Duke University to make sure that we were calculating  
12 a person's ability to pay appropriately so that while  
13 it certainly would still be squeeze especially on  
14 families in the Bronx, which is one of the poorest  
15 congressional districts in this country, it wouldn't  
16 be so much of a squeeze that bail was unaffordable  
17 for individuals as we know it currently is in our  
18 current practice. And so, of those 112 cases that we  
19 have assessed so far, here's what we found. One sort  
20 of shocking statistic at least to me and I was a  
21 public defender in the Bronx so this should actually  
22 come as no surprise but it still really floored me  
23 was that over 50 percent of the individuals that we  
24 assessed had no ability to pay and in fact many of  
25 them were operating in the red and that shouldn't be

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2 surprising again given sort of the circumstances that  
3 people in the Bronx are in and how many people are  
4 not employed or underemployed but still I think  
5 that's an important statistic for the City Council to  
6 hear thinking about the future of money bail and  
7 whether or not money bail feels fair even if it is  
8 done in a individualized and considered way. Of the  
9 folks who had no ability to pay, our bail specialist  
10 asked, do you have any body else who can make bail  
11 for you and in cases where people said yes I do have  
12 somebody, here's there's contact information, our  
13 bail specialist's job is to persist in getting a hold  
14 of that person before the case is called in  
15 arraignment to give that person a fighting chance to  
16 actually be able to make bail if bail is in fact set  
17 and what we found is when there's somebody whose  
18 dedicated job it is to get a hold of friends and  
19 family members we actually succeed. In cases where we  
20 had a contact information for somebody 90 percent of  
21 the time we were able to contact that person and see  
22 if they're able to help with bail and so again for  
23 the practice and Aubrey and I have spoken about this  
24 before, for the practice of arraignments and making  
25 sure that we are getting a hold of friends and family

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2 members who can help with bail I think this is a  
3 really important finding for us. Now of folks who had  
4 some ability to pay, another statistic that really  
5 floored me was how little bail people can afford even  
6 when they have some ability to pay. And so in the  
7 cases where we did assess people as having some  
8 ability to pay bail by and large we actually assessed  
9 the person as being able to afford a partially  
10 secured bail because they had a little bit of money  
11 right now but they would have money coming in usually  
12 through a job that they would get a paycheck in two,  
13 three weeks and therefore they could pay ten percent  
14 now and would be on the hook for that other 90  
15 percent but if the judge set that full bail amount  
16 that would be beyond what they could afford in that  
17 moment at arraignments. And so what we found on cases  
18 where we assessed the parson as being able to afford  
19 a partially secured bond the range was from 50  
20 dollars partially secured bond to 8,000 dollars  
21 partially secured bond meaning there was somebody who  
22 had five dollars available to them now and did have  
23 the other 45 dollars they could get that over the  
24 course of a couple of months but if the judge  
25 actually set 50 dollars cash bail which is an

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2 absurdly low amount for judges to set mind you but  
3 even if they did that would be too much bail for this  
4 particular individual... for this particular individual  
5 which is why we recommended 50 dollars partially  
6 secured bond. On the other hand there was a family  
7 that was in court and they did have 800 dollars  
8 available to them and also had income coming in and  
9 they could afford a, a greater amount and on a  
10 particular case which happened to be a very serious B  
11 felony charge the assessment was that this person and  
12 their family members could afford an 8,000 dollar  
13 partially secured surety bond. So, again that shows  
14 the range of the different kinds of recommendations  
15 that we're making to the court in doing this  
16 assessment. Now what impact does it have on judges to  
17 actually hear both the amount of bail that somebody  
18 can afford as well as the forms of bail they can  
19 afford. What we found is in the cases where we did an  
20 assessment and we provided that information on the  
21 record, in almost a third of those cases judges in  
22 the Bronx sat a partially secured option and for  
23 those of you who have been in the Bronx courtrooms  
24 for a number of years you know that that's a very  
25 recent phenomenon and I do attribute it to the

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2 incredible advocacy from the defender community in  
3 the Bronx who have really taken up this program and  
4 used it relentlessly when we are there on Tuesdays  
5 and Thursdays and it also speaks to the willingness  
6 of the bench in the Bronx to actually hear new  
7 information and do arraignments in a different way.  
8 Before we started the program in the Bronx in April  
9 we actually trained all of the criminal court judges  
10 and it's a fairly new bench there and they were  
11 wonderfully open and willing and asked great  
12 questions about how does this calculator work, what  
13 am I supposed to do with this information, what if I  
14 sat bail at an amount higher than what the calculator  
15 assesses, they had very good questions for us about  
16 what does this mean for their own practice as judges  
17 and we really are grateful for the partnership of the  
18 Office of Court Administration as well as the  
19 supervising judges in the Bronx and Queens for  
20 helping us to launch this project in the ways that it  
21 has been for the past couple of months and we hope to  
22 continue and to expand and really build upon the  
23 foundation that we have laid. Finally, of those cases  
24 where partially secured bond options are set what we  
25 know is that it gives people a fighting chance to

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2 actually make bail. In cases where a partially  
3 secured bond option was set in the pilot, 86 percent  
4 of individuals made bail which is a pretty remarkable  
5 statistic compared to citywide otherwise the ability  
6 of people to make bail when cash bail or insurance  
7 company bail bonds is set and we actually have a  
8 comparison number for you in our sample which is of  
9 the cases where individuals were only given a bail  
10 option that was cash or insurance company bail bond,  
11 the more traditional options, 57 percent made bail  
12 compared to 86 percent. And so that really tells us  
13 that we are onto something as long as we have a money  
14 bail system providing... [coughs] excuse me... this kind  
15 of individualized information and making that become  
16 part of the bail record is incredibly important to  
17 New Yorkers and the ability to actually afford bail  
18 and to be at liberty pre-trial. Now we are following  
19 all of the cases that we have assessed throughout the  
20 pendency of those cases to be able to say something  
21 about court appearance as well as case disposition  
22 and pre-trial re-arrest, all factors that we know are  
23 really important the functioning of our justice  
24 systems as well as information that the City Council  
25 cares about and I think is really instructive to

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2 these forms of bail and how they're used. And I'll  
3 stop with just three, three points that I would like  
4 the Council to consider in where do we go from here.  
5 For one, I think that we, we know now from the data  
6 that this is something that works, it moves judges,  
7 it moves the culture of the courtroom in terms of  
8 bail and how bail is used and it's something that we  
9 should figure out as a city as long as we have a  
10 money bail system how do we make sure that every  
11 single bail decision is made only after a judge has  
12 the ability to consider a person's financial  
13 circumstances and the forms of bail that are most  
14 appropriate for this person. The second thing is how  
15 to make sure that judges and public defenders as well  
16 as district attorneys are familiar with all of the  
17 forms of bail and that they are open and receptive to  
18 its use, its been in our bail statute since 1971 but  
19 we know that its only in very recent years that  
20 there's been any traction at all and we've made some  
21 headway but there's a lot of headway left to be made.  
22 And so the City Council should invest in that  
23 training in oversight and accountability to make sure  
24 that judges have to consider these forms of bail and  
25 that its part of the routine practice of bail

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2 decisions in the courtroom and then finally I want to  
3 go back to the statistic that I raised about 86  
4 percent of people being able to afford bail when a  
5 partially secured option was given. That's still 14  
6 percent of New Yorkers where in theory a judge set a  
7 partially secured bond because they wanted this  
8 person to make bail, right, otherwise they might have  
9 defaulted to what they usually do which is that a  
10 cash or an insurance company bail bond option, yet  
11 that's still 14 percent of New Yorkers who given that  
12 opportunity for a more affordable form of bail  
13 couldn't actually make it which I think again goes to  
14 the question of how much utility and how much  
15 fairness can we truly get out of the cash bail  
16 system. Thank you.

17 CHAIRPERSON LANCMAN: Be, before we move  
18 to BEX I just want to just get the numbers right on,  
19 on your program... [cross-talk]

20 INSHA RAHMAN: And Council Member...  
21 [cross-talk]

22 CHAIRPERSON LANCMAN: So... [cross-talk]

23 INSHA RAHMAN: ...we'll be submitting those  
24 numbers to you, we've shared them with your Council  
25 so...

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2 CHAIRPERSON LANCMAN: Okay... [cross-talk]

3 INSHA RAHMAN: ...you do have them but  
4 yeah... [cross-talk]

5 CHAIRPERSON LANCMAN: Thank you. Thank  
6 you. So, there were 133 assessments, the 133  
7 defendants that you assisted?

8 INSHA RAHMAN: Yes.

9 CHAIRPERSON LANCMAN: Okay and... [cross-  
10 talk]

11 INSHA RAHMAN: Higher now, yep.

12 CHAIRPERSON LANCMAN: ...70 percent of them  
13 had bail set?

14 INSHA RAHMAN: Yeah...

15 CHAIRPERSON LANCMAN: So, in 133 cases  
16 you said to the judge what's in... this is what this  
17 person can afford, or this is a mechanism that they  
18 could meet so in 70 percent of the cases some form of  
19 bail was set, the other 30 percent were released on  
20 their own recognizance or there was a supervised  
21 release?

22 INSHA RAHMAN: Yeah.

23 CHAIRPERSON LANCMAN: Okay, of the 70  
24 percent that were... where bail was set 30 percent of  
25 those were partially secured bond?

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2 INSHA RAHMAN: Yes.

3 CHAIRPERSON LANCMAN: While insurance  
4 company bond and cash, parenthesis 55 percent was the  
5 most common, common combination of bail set, I... so,  
6 just explain that, that math for me I don't  
7 understand?

8 INSHA RAHMAN: Sure, sure it doesn't add  
9 up to 100... [cross-talk]

10 CHAIRPERSON LANCMAN: Right... [cross-talk]

11 INSHA RAHMAN: ...so the remainder was  
12 where judges sat insurance company bail bond, cash  
13 bail and credit card bail.

14 CHAIRPERSON LANCMAN: Got it, so of the...  
15 of the 70 percent 30 percent of those had partially  
16 secured?

17 INSHA RAHMAN: Yes.

18 CHAIRPERSON LANCMAN: The other 70  
19 percent had some combination or... of either cash,  
20 which might have been cash that you set... [cross-talk]

21 INSHA RAHMAN: Full amount, right...  
22 [cross-talk]

23 CHAIRPERSON LANCMAN: Right but... [cross-  
24 talk]

25 INSHA RAHMAN: Yeah... [cross-talk]

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2 CHAIRPERSON LANCMAN: ...based on your  
3 recommendation, right?

4 INSHA RAHMAN: Yes, although the, the  
5 number of cases in which judges set exactly the  
6 amount and the form assessed is low, of this sample  
7 it was five cases in total where judges sat bail at  
8 the exact amount assessed and in the form of bail.  
9 One of the fascinating things we have found here is  
10 that we are seeing judges agree more to set partially  
11 secured bonds, we have not yet I, I would say broken  
12 the barrier of judges setting lower amounts of bail.  
13 In a handful of cases judges have been willing to do  
14 that but what we are seeing and our hunch and we're  
15 looking at this in the data is that judges might be  
16 setting a lower amount of bail than they originally  
17 would have set so instead of say a thousand dollars  
18 bail maybe they're willing to set 750 or 500 but what  
19 they are willing to do as a concession if you will to  
20 hearing this information, is to set a partially  
21 secured option and our hunch is that of the 86  
22 percent of folks who are able to afford a partially  
23 secured bond they're stretching more than our  
24 assessment would suggest or recommend but they are in  
25 fact being able to make that form of bail. One thing

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2 I also want to clarify Council Member is of the cases  
3 where we did an assessment there are a handful of  
4 cases where we actually did not go on the record or  
5 that information wasn't given to the judge because it  
6 was clear from the arraignment proceeding that the  
7 judge was going to release that person and so there  
8 is a... that... what you always have to account for given  
9 that we have defense attorneys being the gatekeeper  
10 is there might be a defense attorney who believes  
11 this is a case where might get set when in fact bail  
12 wasn't set and if it looks like the case will be  
13 ROR'd we certainly will... won't inject... you know  
14 interject with, with information if not necessary.

15 CHAIRPERSON LANCMAN: Got it. So, what's  
16 this... more than two thirds of the participants in  
17 bail set cases were able to subsequently post the  
18 bail?

19 INSHA RAHMAN: Yes.

20 CHAIRPERSON LANCMAN: So, the other third  
21 even with whatever the court was willing to do they  
22 couldn't meet that, right and, and why not since you  
23 were recommending to the judge something that the  
24 defendant could meet, are those... the, the third of  
25

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2 the cases where the judge said I don't care what you  
3 say?

4 INSHA RAHMAN: Yes, there's a, a  
5 significant number of cases in which judges sat  
6 higher bail than what was assessed and certainly that  
7 third falls into that category.

8 CHAIRPERSON LANCMAN: Right, I, I know  
9 we're just getting into it... to the... to the... [cross-  
10 talk]

11 INSHA RAHMAN: Yeah... [cross-talk]

12 CHAIRPERSON LANCMAN: ...meat of it, sorry,  
13 just indulge us. So, why... what were the reasons or  
14 the rationales that either were expressed or you...  
15 [cross-talk]

16 INSHA RAHMAN: Uh-huh... [cross-talk]

17 CHAIRPERSON LANCMAN: ...could, you know...  
18 [cross-talk]

19 INSHA RAHMAN: ...we can observe... [cross-  
20 talk]

21 CHAIRPERSON LANCMAN: ...observe or infer  
22 for why the judge would say too bad?

23 INSHA RAHMAN: Yeah, I don't want to pine  
24 just yet because we're sort of in the process of  
25 sorting through the data but I wonder if the cases

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2 where judges were more likely to set bail higher than  
3 the assessed amount have to do with charges or with  
4 prior histories, right and we're collecting that data  
5 for each and every case; prior convictions, prior  
6 failures to appear, current charge and my hunch is  
7 that if we look at more serious charges, at felony  
8 cases that's where judges are perhaps less likely to  
9 go along entirely with the assessed amount.

10 CHAIRPERSON LANCMAN: And so, you know  
11 you talked about it and this is very important and,  
12 and frankly a motivation behind the council funding  
13 this program, we're talking about moving the culture  
14 of, of, of the courtroom... [cross-talk]

15 INSHA RAHMAN: Uh-huh... [cross-talk]

16 CHAIRPERSON LANCMAN: ...and getting judges  
17 away from using money bail as either a form of  
18 punishment or, or a form of preventative pre-trial...  
19 [cross-talk]

20 INSHA RAHMAN: Yeah... [cross-talk]

21 CHAIRPERSON LANCMAN: ...detention for,  
22 for, for its own sake... [cross-talk]

23 INSHA RAHMAN: Yeah... [cross-talk]

24 CHAIRPERSON LANCMAN: Is, is that mindset  
25 being moved and, and, and I know you said that the

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2 data will be forthcoming and, and you've got to do  
3 your own analysis and more time has to spool out...  
4 [cross-talk]

5 INSHA RAHMAN: Yeah... [cross-talk]

6 CHAIRPERSON LANCMAN: ...but at least with  
7 those cases where, where the judges were open to and,  
8 and did set bail according to your recommendations is  
9 that culture changing?

10 INSHA RAHMAN: It is and what we're  
11 seeing is we're tracking cases by a judge and there  
12 are judges who are setting partially secured options  
13 because that's what the assessment suggests and also  
14 on days where we are not in the courtroom we're  
15 hearing those judges are actually setting partially  
16 secured bonds even when there is no Vera assessment  
17 being put on the record, that to me is actually huge  
18 culture change. It is giving people a chance to post  
19 bail in forms that they never had a chance to even  
20 just two, three years ago so that part of the culture  
21 change is truly happening in the Bronx and it's not  
22 just one or two judges but in fact several judges, I  
23 think there's a lot more work to be done to sort of  
24 keep that pressure and that feedback loop on judges  
25 to actually show here's what happens when you sort of

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2 go beyond traditional bail practices and use these  
3 alternative forms of bail. The other piece of culture  
4 change that is almost, I would say as important as  
5 the judges, is the defense bar and in the Bronx we  
6 have seen the defense bar just really take this on  
7 wholesale in a way that Queens because Queens is a  
8 different courtroom, it has different culture, it has  
9 definitely been more of a lift and so again what,  
10 what would address that I think it is much more  
11 oversight, much more training, much more  
12 accountability, we're certainly talking with our  
13 colleagues on the defense bar, advocates so how can  
14 that pressure be applied from all places, we're  
15 certainly doing it from within the courts but where  
16 can there be pressure elsewhere as well.

17 CHAIRPERSON LANCMAN: So, so the, the  
18 courtroom culture is influenced by the defense, the  
19 district attorneys, the, the judges, maybe the court  
20 officers... [cross-talk]

21 INSHA RAHMAN: Sure...

22 CHAIRPERSON LANCMAN: Is... you, you had  
23 focused... you had... you had mentioned the defense in,  
24 in Queens, are you... are you... is this project not  
25

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2 being embraced by legal aid and Queens law associates  
3 and whatever private attorneys show up?

4 INSHA RAHMAN: Its being embraced in, in  
5 that they invited us in to come do trainings, we've  
6 shared materials, the sort of the uptake has not been  
7 quite as robust as in the Bronx and I think there are  
8 a lot of reasons for that. One is in Aubrey and I  
9 spoke about this very recently is CJA's supervised  
10 release program has been longstanding in Queens and I  
11 think has a lot of trust, Queens is I would say and I  
12 say this with some love that was the very first  
13 courtroom I ever practiced in as a student attorney,  
14 it's, it's a little provincial and people do what  
15 they know and are comfortable with and so we're  
16 speaking more with CJA to figure out how can we use  
17 their credibility in Queens to help this become part  
18 of the drinking water as much as supervised release  
19 is there.

20 CHAIRPERSON LANCMAN: Uh-huh and, and  
21 then culturally... well let me just ask you directly,  
22 are you satisfied with the cooperation that you're  
23 getting from the district attorney in the Bronx and  
24 in Queens, are you satisfied with the cooperation  
25

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2 that you're getting from the, the judiciary in the  
3 Bronx and in Queens?

4 INSHA RAHMAN: As to the district  
5 attorneys, yes, we spoke with both the Bronx DA's  
6 office as well as the Queens DA's office in launching  
7 and we haven't gotten any push back or anything that  
8 causes any concern. With the judges its.. this program  
9 has been up and running for longer in the Bronx and  
10 we are really grateful for how much they've let us  
11 try this out and in fact have it become part of the  
12 culture at least in the days that we're there. I  
13 think there's more work to be done in Queens and  
14 we're working with Judge Johnson, the supervising  
15 judge to make sure that again in six months we see  
16 ourselves in a place that we are in the Bronx.

17 CHAIRPERSON LANCMAN: Yeah and I want to  
18 ask you about the particular concern that the defense  
19 community had a, a valid concern, I, I understand it  
20 that your presence and the availability of reduced  
21 bail in some shape or form might actually induce the  
22 court to set bail more often because... [cross-talk]

23 INSHA RAHMAN: Yes, because we're...  
24 [cross-talk]

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2 CHAIRPERSON LANCMAN: ...well there's...

3 [cross-talk]

4 INSHA RAHMAN: ...available, right and...

5 [cross-talk]

6 CHAIRPERSON LANCMAN: Yeah, right...

7 [cross-talk]

8 INSHA RAHMAN: ...there's, there's that  
9 information, there's always that sort of option. So,  
10 we, we worked very closely with the defense bar to  
11 come up with the defenses attorneys as gatekeeper  
12 model which is the model of supervised release as  
13 well and we think that is working effectively  
14 although I would love for you to pose that question  
15 to our friends from the defense bar who will be  
16 testifying after us. I think that is one really  
17 important safeguard and we are not sort of picking  
18 and choosing cases or sort of suggesting to the  
19 defense attorneys hey do you have this case, this  
20 particular charge or whatever we're just not doing  
21 that in part because we really do want to respect the  
22 autonomy of the defense bar and which cases come to  
23 us. With that said we might try and be a little bit  
24 more proactive so that there aren't cases that we're  
25 missing or that defense attorney doesn't get to

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2 ignore us or forget about us so that's a... that's a...  
3 it's a difficult balance and one that I don't think  
4 we have figure out just yet. The other... the other  
5 thing though is one of the concerns was what if  
6 somebody actually has a pretty high ability to pay  
7 and is... has a lot of resources how do we make sure  
8 that we're not making an assessment of their ability  
9 to pay that is above what a judge would set on that  
10 particular kind of case, that's a very real concern  
11 as well and so what we did to make sure that that  
12 wouldn't happen is we actually did an analysis of the  
13 bail setting on... by charge based on Department of  
14 Correction data for both the Bronx and Queens and we  
15 created essentially a range of if we know that on...  
16 for example turnstile jumps the sort of... 75 percent  
17 of bail in the Bronx are set at a thousand or less  
18 and we decided that third quartile sort of cutoff  
19 would be our cutoff based on charge so that just  
20 because somebody could afford say 4,000 dollars  
21 partially secured bond on a turnstile jump that we  
22 wouldn't make that assessment because we don't want  
23 to have the unintended consequence of inflating bail  
24 amounts or actually sort of changing the culture in a  
25 way that we don't intend to change it. I will say

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2 happily that I don't think that we've needed to pull  
3 out that maximum bail chart that we created ever in  
4 the Bronx because it really speaks to how little in  
5 the way of resources people who are coming through  
6 the Bronx have, I have the feeling we'll be using  
7 that chart a little bit more often or consulting with  
8 it in Queens where we've seen in the cases that we've  
9 assessed there just more range and availability of  
10 resources to defendants who are charged there.

11 CHAIRPERSON LANCMAN: The last one,  
12 what's, what's the lowest cash bail that you have  
13 recommended and has been set?

14 INSHA RAHMAN: Cash or partially secured  
15 bond?

16 CHAIRPERSON LANCMAN: Both.

17 INSHA RAHMAN: I don't know what the  
18 lowest cash bail is because we don't recommend it  
19 often, people don't have that much cash. The lowest  
20 partially secured bond is 50 dollars, the person had  
21 five dollars in their pocket.

22 CHAIRPERSON LANCMAN: And that person  
23 went home?

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INSHA RAHMAN: We don't... I don't actually know if that person was able to make bail, but I can pull that out and I'll let you know.

CHAIRPERSON LANCMAN: If not... [cross-talk]

INSHA RAHMAN: If not that really says something... [cross-talk]

CHAIRPERSON LANCMAN: ...that person went... [cross-talk]

INSHA RAHMAN: ...right... [cross-talk]

CHAIRPERSON LANCMAN: ...to Rikers Island for five dollars.

INSHA RAHMAN: Yeah. So, here's the thing is that was our assessment and that case I don't believe the judge sat bail at that amount and in the form of bail, I'll look it up though and I'll, I'll let you know.

CHAIRPERSON LANCMAN: Yeah, I'd love to know what the lowest amount is. Okay...

INSHA RAHMAN: Of, of what judges sat in terms of... [cross-talk]

CHAIRPERSON LANCMAN: Yeah and that... [cross-talk]

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2 INSHA RAHMAN: ...bail amounts... [cross-  
3 talk]

4 CHAIRPERSON LANCMAN: ...someone made and  
5 what the lowest that was set and what wasn't made.

6 INSHA RAHMAN: Yep. I will look that up  
7 and I will get back to you.

8 CHAIRPERSON LANCMAN: Great. Okay, great.  
9 Sorry.

10 AUBREY FOX: It's okay, so first thanks  
11 to the council for the opportunity to talk about my  
12 agency's bail expediting program and for your support  
13 of our program. So I work at the New York City  
14 Criminal Justice Agency, I think you're familiar with  
15 what we do but we have staff who work 24/7 in each of  
16 the city's five main courthouse buildings and two  
17 community courts and we provide a, a range of pre-  
18 trial services to defendants, everything from we  
19 interview nearly every arrestee before they see a  
20 judge, we make release recommendations to the judge  
21 and try to promote release on recognizance. We are  
22 the agency that's responsible for notifying every  
23 defendant of their upcoming court date to try to keep  
24 New York City's already very high court appearance  
25 rates as high as they can be. We do a lot of research

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1  
2 and data collection, I'm going to share some of that  
3 data with you today and then we operate this bail  
4 expediting program which as Chair Lancman pointed out  
5 now works with defendants who receive bail of 5,000  
6 dollars or less. So, I wanted to make kind of five  
7 main points here and there's more detail in the, the  
8 written testimony but I wanted to draw out what I saw  
9 as some of the, the highlights that you might find  
10 interesting. We have been operating since 1977 as an  
11 agency and our goal since our founding has really  
12 been to try to reduce the use of money in making pre-  
13 trial decisions and so one thing I... one thing that I  
14 think is really remarkable is if, if you look back  
15 either a few years or a few decades and I would  
16 describe this as a piece of encouraging context bail  
17 is actually used far less often than it was in the  
18 past so even if you compare say to 2013, in 2013 for  
19 a case that was continued in arraignment meaning the  
20 defendant was arrested and they had their first court  
21 appearance in arraignment judges set bail a total of  
22 52,000 times in 2013 but as of mid-December we're  
23 looking at judges setting bail only about 30,000  
24 times in 2018. So, that's about a 40 percent

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2 reduction in the use of bail which is a significant  
3 drop in, in the six period.

4 CHAIRPERSON LANCMAN: Yeah, but there  
5 have been fewer arraignments, no?

6 AUBREY FOX: So, a big part of that drop  
7 is the fact that the number of cases coming into the  
8 system... [cross-talk]

9 CHAIRPERSON LANCMAN: And what, what  
10 percentage of cases are judges setting bail and how  
11 does that compare between... [cross-talk]

12 AUBREY FOX: Yep... [cross-talk]

13 CHAIRPERSON LANCMAN: ...2013 and 2018?

14 AUBREY FOX: Great question, so there's  
15 been a 30 percent drop in continued cases so that is  
16 the largest contributor to that drop in total bails  
17 set, however, as a percentage of cases continued at  
18 arraignment bail was imposed... has been imposed 23  
19 percent of the time in 2018 versus 30 percent of the  
20 time in 2013 and what has taken its place is greater  
21 use of release on recognizance and supervised release  
22 and so what you find this year which I think is  
23 really remarkable is that for the first time since  
24 we've started gathering this data and I would imagine  
25 perhaps the first time in New York City history

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2 you're three times more likely to get a release on  
3 recognizance at arraignment than you are to receive a  
4 sentence of bail so New York City really does stand  
5 out as a... as a city that relies far more on a release  
6 on recognizance, it does not require you to pay bail  
7 to secure your release than any other city in the  
8 country and I think that there are a lot of reasons  
9 why that's true but I... it is important to point out I  
10 think that bail is being used much less frequently in  
11 the system. So, a little bit about our program as, as  
12 Chair Lancman pointed out we work with defendants  
13 citywide who have bail set at 5,000 dollars or less  
14 and just in terms of the big picture and I think this  
15 could be described as in a... one sense discouraging  
16 news but also in another sense slightly encouraging  
17 news. If you look at the percentage of people who  
18 have bail set at 5,000 dollars or less, how many... how  
19 many of them pay bail at arraignment, how many of  
20 them are able to pay bail and get out before they're  
21 ever transported to a jail facility and we've seen  
22 that proportion increase since 2014 to what it is  
23 this year, 16 percent. So, if you get bail set at  
24 5,000 dollars or less citywide 16 percent of those  
25 defendants are able to pay bail at arraignment and

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2 never set foot in a jail facility. So, that speaks..  
3 [cross-talk]

4 CHAIRPERSON LANCMAN: That was for what,  
5 2017... [cross-talk]

6 AUBREY FOX: That's, that's for this  
7 year, I'm giving you... [cross-talk]

8 CHAIRPERSON LANCMAN: '18...

9 AUBREY FOX: ...year to date figures,  
10 that's up from 11 percent in 2014 and 13 percent in  
11 2016. So, I think how you view that statistic depends  
12 very much on your perspective. I think it speaks to  
13 the fact that as Insha pointed out people have real  
14 difficulties paying bail so to have 16... only 16  
15 percent of the people able to pay bail of 5,000 or  
16 less at arraignments I think shows how difficult it  
17 is for people to pay bail immediately but we are  
18 seeing increases from as recently as 2014 and keep in  
19 mind that if about 15,000 people a year are getting  
20 bail set at 5,000 or less, a one percentage point  
21 increase means 150 more people paying bail at  
22 arraignment and being allowed to go home without ever  
23 having to set foot in a jail for that case. So, it  
24 depends on your perspective, but I think it, it's a  
25 kind of dose or realism about how difficult it is to

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2 have people pay bail even small amounts of bail at  
3 arraignment but also how we have been able to make  
4 improvements through things like investments in BEX  
5 and Insha's excellent program. So, another point just  
6 to kind of echo something that Insha said is if you  
7 kind of dig into the dynamics of what drives  
8 someone's ability to pay bail at arraignments a lot  
9 of it really does have to do with whether or not  
10 they have someone, a contact they can provide, a  
11 surety who can pay bail on their behalf and as with  
12 Insha's program what we do is if they provide us with  
13 a name of a contact we work very hard to get in touch  
14 with that person and help them come in and pay the  
15 bail and if you look at some of the detailed  
16 information about how our program operates and boil  
17 it down to what appears to be driving most of bail  
18 payments essentially about half of the people who are  
19 able to give us the name of a surety, another words  
20 someone who can come in and pay their bail, pay their  
21 bail either at arraignment or within two days and  
22 only about a quarter of people are able to do so if  
23 they don't give us the name of a surety, a contact  
24 person that they can call. So, I think that  
25 underlines the importance of not just people being

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2 able to identify a surety but some sort of resource  
3 whether its Vera or the Criminal Justice Agency  
4 trying to reach out to that person and walk them  
5 through this often complicated process of paying bail  
6 and we have a lot of examples of kind of the  
7 individualized attention that we, we pay to sureties  
8 that that makes the difference between their ability  
9 to pay bail on behalf of a family member or a friend  
10 versus not pay bail. I also wanted to speak about  
11 this unique power that CJA has which is the power to  
12 issue a hold on a defendant and so CJA is the agency  
13 that has the authority to place a hold with the  
14 Department of Corrections that would prevent the  
15 defendant from being transported to a local jail and  
16 firstly I wanted to say that Local Law 124 that was  
17 passed last year has been enormously helpful to us  
18 and its helpful to us because we've seen real changes  
19 on the ground in boroughs as a result of that  
20 legislation being passed. The first and most obvious  
21 change is that we have more time to work with  
22 defendant's surety to allow for payment of bail and  
23 what that means is that even when we don't ask for an  
24 extended hold in each borough that we operate in the  
25 hold time at a minimum is four hours where in the

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2 past it might have been two or three hours, in  
3 Manhattan it's six hours and so that allows us to  
4 have more options to work with defendants because  
5 often we might call a surety and they would say I  
6 need more time to get my... to get money or to be able  
7 to come to the courthouse and so that has been  
8 tremendously helpful. And we've seen in our own  
9 statistics we, we carefully track the number of times  
10 we issue a hold with Department of Corrections and  
11 whether or not when we issue a hold the defendant is  
12 able... our defendant surety is able to pay, and the  
13 defendant is able to go home before being transported  
14 to a jail. Roughly speaking we, we have... we issue  
15 about 2,000 holds a year that that number, that raw  
16 number has stayed the same even as the number of bail  
17 cases has gone down significantly and about 70  
18 percent of the time when we issue a hold the  
19 defendant is able to pay their bail, our defendant  
20 surety is able to pay their bail at arraignment. We,  
21 we do not know, we cannot track what happens for  
22 those 30 percent of instances where a hold did not  
23 result in bail being paid at arraignment, it could  
24 either be and most often is because despite the  
25 surety's pledge to come they're not able to make it

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2 in the amount of time that is given to them, there  
3 are a handful of cases where it may have been the  
4 results... the, the lack of successful bail payment at  
5 arraignment may have been the result of a  
6 miscommunication with the Department of Corrections  
7 but my sense is that that really is a small number  
8 and so getting back to the importance of Local Law  
9 124, what we have seen since its passage that this  
10 year we're on track to issue more holds and to have a  
11 slightly higher hold success rate than we did last  
12 year and because as I had started by saying there are  
13 so many fewer cases in which bail is being set, the  
14 fact that we're issuing the same number of holds I  
15 think is really a, a testament to the fact that we  
16 have much more power to issue holds than we did in  
17 the past. So, just a few points of where we plan to  
18 go in the future with the program, we, we now collect  
19 data in a much more real time basis and so there's a  
20 perhaps somewhat bewildering at first flowchart in  
21 the back that describes some of the really detailed  
22 data that we capture about every stage of the bail  
23 payment process and how effectively we are, are able  
24 to operate and it helps us because it allows us to  
25 identify potential bottlenecks and things that we're

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2 not doing accurately. So, for example, we, we collect  
3 sureties from defendants through either the pre-trial  
4 interview or post arraignment second interview and we  
5 want to make sure that every time we collect a  
6 surety, we have a member of staff call that surety  
7 and we do so about 90 percent of the time and we know  
8 we can do better than that. We are also working with  
9 the city on an expansion of the BEX program which  
10 would allow us to serve all defendants aged 16 and 17  
11 regardless of bail amount so we think that would be  
12 an important expansion of our program and, and  
13 opportunity for the city. So, I think I'll stop there  
14 but just I wanted again to thank you for the  
15 opportunity to testify and I'm happy to answer,  
16 answer any questions that you might have.

17 CHAIRPERSON LANCMAN: Alright, let me  
18 just go back to Vera for a minute and then I want to  
19 talk about BEX. I don't know if I saw it... if I'm  
20 missing it but do you have any data on the, the, the  
21 return rate for the people who have benefited from  
22 the, the pilot?

23 INSHA RAHMAN: We don't yet because it  
24 hasn't been in operation very long, I mean we can  
25 start to get data on folks who we assessed in April,

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2 May, June, they've probably had at least one if not  
3 more court dates but we're going to get that data  
4 from the Office of Court Administration in one big  
5 administrative data dump in the next couple of months  
6 but we can certainly do that a little sooner given  
7 that of course that's a question that we all... we all  
8 want to know.

9 CHAIRPERSON LANCMAN: Right and is the  
10 program scalable, we're about to go into... [cross-  
11 talk]

12 INSHA RAHMAN: Uh-huh... [cross-talk]

13 CHAIRPERSON LANCMAN: ...budget season...  
14 [cross-talk]

15 INSHA RAHMAN: Great question... [cross-  
16 talk]

17 CHAIRPERSON LANCMAN: ...and you know the  
18 council fought for this money and... [cross-talk]

19 INSHA RAHMAN: Yeah... [cross-talk]

20 CHAIRPERSON LANCMAN: ...and it seems like  
21 it's going well, could you bring it to... [cross-talk]

22 INSHA RAHMAN: Could we bring it to  
23 scale... [cross-talk]

24 CHAIRPERSON LANCMAN: ...all... [cross-talk]

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2 INSHA RAHMAN: ...yeah, that's a... [cross-  
3 talk]

4 CHAIRPERSON LANCMAN: ...you know five...  
5 [cross-talk]

6 INSHA RAHMAN: ...great question... [cross-  
7 talk]

8 CHAIRPERSON LANCMAN: ...boroughs... [cross-  
9 talk]

10 INSHA RAHMAN: Yep... [cross-talk]

11 CHAIRPERSON LANCMAN: ...every arraignment  
12 like how do we do that?

13 INSHA RAHMAN: It's a great question and  
14 one that we are talking actively about because we  
15 want this to be part of the infrastructure that  
16 already exists, we don't need to have Vera be  
17 everywhere, that isn't a good use of us or of  
18 resources and money. So, one idea is to have the  
19 existing supervised release providers given that they  
20 are in every single shift in each borough be the  
21 folks who sort of also do this. We've actually found  
22 certainly in the Bronx and in Queens that there are  
23 cases where the supervised release provider might  
24 actually say hey this case we can't take it, the  
25 person is too high risk or isn't charge eligible will

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2 you guys do your assessment so we're actually finding  
3 there's a natural kind of sync there and maybe  
4 there's a way to actually make it formal and have  
5 another existing provider who's in the courtroom be  
6 the person who does this assessment. We would like to  
7 finish out the course of our pilot which is another  
8 year, certainly been speaking with your staff about  
9 that but we need to think about how to scale this for  
10 as long as we have money bail I do think that this is  
11 something that should be in every courtroom for every  
12 arraignment shift and I think the most obvious way to  
13 do that is through the existing providers who are in  
14 each shift already.

15 CHAIRPERSON LANCMAN: Right, because Vera  
16 is not in the business of providing this service,  
17 you're piloting it and providing the analysis.

18 INSHA RAHMAN: That's exactly right.

19 CHAIRPERSON LANCMAN: And you know  
20 originally this kind of got started with a bill that  
21 we had which would have given CJA the responsibility  
22 for collecting this information etcetera and then  
23 through conversations and negotiations it was agreed  
24 that well let's, let's do this pilot through Vera  
25 and, and see how that, that works.

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2 INSHA RAHMAN: Yeah and a couple of  
3 thoughts about that, one is the way the bill was  
4 originally drafted was that CJA would do it as part  
5 of their interview that they do for every single  
6 person arrested and we think that the defense  
7 attorney as gatekeeper is really important if 70  
8 percent of cases are just getting ROR'd anyway..  
9 [cross-talk]

10 CHAIRPERSON LANCMAN: Uh-huh... [cross-  
11 talk]

12 INSHA RAHMAN: ...we don't want judges to  
13 have information that might actually tip the scale  
14 towards more bail being set so that's a, a... sort of a  
15 natural caution to actually doing it that way. The  
16 other thing is we have 30 questions, it takes six to  
17 seven minutes max but that is I think about four  
18 minutes more than Aubrey would say his folks  
19 downstairs for every single interview could, could  
20 manage so we would have to think carefully about if  
21 this were to roll out to scale how do we do so in a  
22 way that doesn't compromise the individualized nature  
23 of the assessment because we actually think that  
24 matters, if it starts to look kind of rote or without  
25 that individualized consideration I bet the impact

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2 that it will actually have on judges will begin to  
3 diminish.

4 CHAIRPERSON LANCMAN: Got it...

5 INSHA RAHMAN: And Council Member I  
6 wanted to... [cross-talk]

7 CHAIRPERSON LANCMAN: Yes... [cross-talk]

8 INSHA RAHMAN: ...answer your questions, my  
9 wonderful staff who are here who are the sort of  
10 brains behind this operation and hold all of the  
11 data, that case that you asked about where we had  
12 assessed the person as being able to afford a 50  
13 dollar partially secured bond it was a case where the  
14 district attorney's office requested 3,000 dollars  
15 bail, we had put our assessment on the record and the  
16 judge ROR'd that particular individual. So, that's  
17 what happened... [cross-talk]

18 CHAIRPERSON LANCMAN: Sure... [cross-talk]

19 INSHA RAHMAN: ...there and one thing that  
20 my staff reminded me is of those 30 percent of cases  
21 where we've done an assessment and people are ROR'd  
22 or released under supervision what we found is that  
23 judges we think hear the amount of bail somebody can  
24 afford and it is so low that they're like well I  
25 don't really want this to keep them in, at least

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2 that's what I'm assuming is the, the thought process  
3 behind it which is why I think we're seeing a fair  
4 number of cases where we've done an assessment and  
5 provided this information actually lead to an ROR  
6 decision and I think I shared this with you before  
7 and I'm happy to share it on the record but in our  
8 first week of operation we were in the Bronx, I  
9 actually was the person who did the assessment and  
10 went on the record and it was a judge in front of  
11 whom I had practiced and who I have a very nice  
12 relationship and we put on the record what this  
13 particular individual could afford in terms of the  
14 bail amount which was 80 dollars partially secured  
15 bond and the judge calls me up and off the record is  
16 basically like it's a little absurd that we're  
17 talking about 80 dollars partially secured bond,  
18 that's an absurd amount and I said well with all due  
19 respect it's a little absurd that we're talking about  
20 cash bail for a woman who has none and that little  
21 interaction ultimately she was released, I think that  
22 little interaction meant something, right, because  
23 that judge had to actually confront the decision that  
24 even if I set a low bail, 250 dollars, 500 dollars  
25 which is usually the going rate for the lowest bail

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2 possible at least in the Bronx that that would have  
3 kept this individual in and I think judges are forced  
4 to confront that question head on, is this a case  
5 where I want this individual to remain in jail pre-  
6 trail or is this a case where I'm comfortable with  
7 this individual being at liberty and I think that is  
8 the value of what this information presents is, is  
9 having to confront that question.

10 CHAIRPERSON LANCMAN: A 100 percent  
11 having the, the, the court confront what it is... what  
12 it is doing and giving consideration to what a person  
13 really has and can afford and, and what does it  
14 really mean to just throw out 500 dollars or a  
15 thousand dollars like it's nothing.. [cross-talk]

16 INSHA RAHMAN: Yep... [cross-talk]

17 CHAIRPERSON LANCMAN: ...and the, the big  
18 impetus for this was to get the system to, to, to  
19 confront and to... and to reconcile with what its doing  
20 to people for these seemingly low amounts of... low  
21 amounts of, of, of bail. So, for BEX you're  
22 constrained by the 5,000-dollar bail amount, are  
23 there substantive constraints based on charges?

24

25

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2 AUBREY FOX: No, any, any person who gets  
3 bail 5,000 or less regardless of the charge would be  
4 eligible for our program.

5 CHAIRPERSON LANCMAN: So, what if  
6 anything... how, how if any... any way would you... would  
7 you want to be able to expand the BEX program, right  
8 because unlike the Vera pilot project, it's not two  
9 days a week, its not you know just in a couple of  
10 courthouses, this is citywide, 24/7, right?

11 AUBREY FOX: Yep.

12 CHAIRPERSON LANCMAN: You have the 5,000-  
13 dollar jurisdictional limit, if that were lifted what  
14 would be the, the impact, would the... would the  
15 difference be, be marginal, would it... would it create  
16 a different dynamic that wouldn't be helpful... [cross-  
17 talk]

18 AUBREY FOX: Yeah... [cross-talk]

19 CHAIRPERSON LANCMAN: ...why, why a 5,000-  
20 dollar cap, is that... is that useful at this point?

21 AUBREY FOX: Well I think there's some  
22 tradeoffs if you go to the higher amounts. One is its  
23 probably a, a little less likely that they would be  
24 able to pay bail so there's a... kind of resource issue  
25 and benefit issue. The other one is that we, we have

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2 chosen not to work with the bail bonds industry so  
3 the higher the bail amount the more likely that you  
4 would bring a bail bonds person into pay the bail and  
5 we don't see ourselves as facilitating that process  
6 but it is something that, you know we can certainly  
7 consider because I do think there's a real value to  
8 all the work that we do and it really comes down to  
9 kind of the minutia of the process and the personal  
10 relationships we have in the courthouse to try to  
11 move things along so... I mean I, I think there's cost  
12 of benefits on either side but it's something that  
13 we'd be willing to take a look at.

14 CHAIRPERSON LANCMAN: Got it and I know  
15 in your... in your written testimony you gave the  
16 figures for people returning for their... for their  
17 court appearances who have been ROR'd, it was 88  
18 percent in 2018?

19 AUBREY FOX: Yeah and that, that's a...  
20 that's a high standard, it means that 88 percent of  
21 defendants given a ROR showed up for every single  
22 court date.

23 CHAIRPERSON LANCMAN: Okay. And that  
24 wouldn't include... among the other 12 percent it might  
25 include someone who missed a court date but then

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2 showed up subsequently, it's not... it doesn't mean  
3 that 12 percent of them had to be tracked down...  
4 [cross-talk]

5 AUBREY FOX: Correct and keep in mind  
6 that the best... the best we know from the national...  
7 the national average is about 23 percent of  
8 defendants fail to appear for a court date so we're,  
9 we're twice as good essentially as... [cross-talk]

10 CHAIRPERSON LANCMAN: Do you have any... do  
11 you have any metrics on the people who were... what's  
12 the term, fully served by, by the BEX program like  
13 they, they weren't ROR'd some bail was paid, someone  
14 came and helped them pay it like what's their return  
15 rate?

16 AUBREY FOX: So, we'd have to take...  
17 [cross-talk]

18 CHAIRPERSON LANCMAN: So, so what... like  
19 when I've participated... [cross-talk]

20 AUBREY FOX: Yeah... [cross-talk]

21 CHAIRPERSON LANCMAN: ...in the... in the  
22 mass bailout with the RFK foundation, right, one of  
23 the knocks against it was well if someone else is  
24 paying bail for the person they don't have the same  
25 interest in returning and now that's somewhat

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2 different than the, the other person paying bail is  
3 their family member as opposed to just random  
4 stranger but still curious, one of the things we have  
5 heard is this encourages people being released on  
6 bail that is supported by someone other than the  
7 defendant themselves so do you have any information  
8 on the return rate?

9 AUBREY FOX: Well generally speaking we,  
10 we do know that low amounts of bail do not seem to,  
11 to do better than an... a release on recognizance at  
12 promoting court appearance so its hard to set the..  
13 that dollar amount with specificity but you, you  
14 could say that for a person who has bail of 5,000  
15 dollars or less its, it's a relatively small amount  
16 of money and so we do not see that a similarly  
17 situated person, defendant with the same  
18 characteristics who just happened to have gotten ROR  
19 versus 5,000 dollars bail, we would not expect them  
20 to perform differently in terms of their court  
21 appearance rate, what we don't know is if you go to  
22 the much higher levels of bail what would happen if  
23 you were to ROR that person versus set that bail  
24 amount.

25 CHAIRPERSON LANCMAN: Right..

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2 AUBREY FOX: So, essentially it does not  
3 appear that low amounts of bail does anything to  
4 improve court appearance rates relative to a release  
5 on recognizance.

6 CHAIRPERSON LANCMAN: Yeah, what, what  
7 kind of metrics or, or data reporting is MOCJ  
8 requiring of, of each of you pursuant to, to the  
9 funding for these programs?

10 AUBREY FOX: I mean we, we share a lot of  
11 the information that you're seeing in front of you,  
12 we do monthly reporting and MOCJ reviews the figures  
13 on a monthly basis and you know we're working on kind  
14 of an annual report of what you're seeing 11 months  
15 of data.

16 INSHA RAHMAN: And we're still  
17 negotiating the, the terms of our contract but our  
18 understanding of what we would be reporting is number  
19 of cases assessed, you know bail setting, bail  
20 payment, return to court as well as case disposition  
21 and pre-trial re-arrest those are all metrics that  
22 we'll be tracking over the course of this pilot.

23 AUBREY FOX: And, and just to add one  
24 more point to you, the, the standard we're using for  
25 the... what we report to the city is fairly high, we

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2 want to make it clear that there are some people who  
3 even if our program didn't exist they would pay bail  
4 anyway, right, so we're trying to understand the, the  
5 kind of unique impacts of our program so we, we  
6 intentionally exclude for example those defendants  
7 who, who pay bail kind of immediately or at  
8 arraignment. So, for example, they might have a  
9 family member sitting right there in court who raise  
10 their hand and say I'm ready to pay bail right now  
11 and there are in fact, you know a substantial number  
12 of people who do that so we're only looking at those  
13 people for whom they're not able to immediately pay  
14 bail and we meet with them immediately after  
15 arraignment and we try to provide them with some  
16 assistance.

17 CHAIRPERSON LANCMAN: Yeah, so you don't  
18 operate... BEX doesn't operate in Staten Island?

19 AUBREY FOX: Not at the moment.

20 CHAIRPERSON LANCMAN: Why is that...

21 [cross-talk]

22 AUBREY FOX: I mean... well we, we've been  
23 running BEX for several decades now, we expanded to..  
24 use to only operate in Bronx and Queens so  
25 interesting comparison to Vera until 2010 when we

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2 expanded to Manhattan and Brooklyn but we're, we're  
3 certainly happy and we're... we've been... we're starting  
4 to look at what it would take to build the program in  
5 Staten Island.

6 CHAIRPERSON LANCMAN: Has there been any  
7 objection from the Staten Island DA or OCA in Staten  
8 Island like who... [cross-talk]

9 AUBREY FOX: No objection, I think the... I  
10 mean the issue for us is the... there's kind of a sunk  
11 cost to operating BEX, you know the... we depend on the  
12 fact that we have a substantial number of staff  
13 deployed in the courthouses where we operate and on  
14 top of that we build the BEX program so it's just a  
15 question of whether we're able to vest the, the  
16 resources that we would need to be there kind of all  
17 of the time basically.

18 CHAIRPERSON LANCMAN: So, at a recent  
19 hearing we heard complaints that people were not  
20 being held and were being put on the bus and sent to  
21 Rikers Island not only in violation of, of the city  
22 law but in, in, in making it impossible for, for BEX  
23 to, to work its magic so what's your experience with  
24 the holds that you are, are requesting for people  
25 being honored?

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2 AUBREY FOX: Oh okay, so... citywide where,  
3 where we're operating, as, as I said, you know we, we  
4 do track the proportion of times that, that... when we  
5 place a hold the defendant is able to pay bail at  
6 arraignment and that has stayed at a fairly high  
7 proportion, around 70 percent and ticked up a little  
8 bit recently. We do work to resolve individual  
9 instances where there's some kind of miscommunication  
10 with the Department of Corrections and we've issued a  
11 hold that the person is put on the bus and I... and I  
12 will say that no system is perfect but what I've  
13 found is that in general I, I would say Department of  
14 Corrections is much more responsive and much more  
15 aware of their obligations and responsibilities and  
16 so we have much clearer kind of lines of  
17 communications with them so when there is an issue  
18 we're able to bring it to their attention and they do  
19 take these instances seriously and, and its important  
20 to us and I'll say this even to folks in this room  
21 that, you know we get information from social media,  
22 we hear about individual instances where people have  
23 concerns about holds not being respected and we  
24 follow up on all of them so its really helpful for us

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2 to get information wherever we can where people have  
3 concerns about individual holds.

4 CHAIRPERSON LANCMAN: Alright, well thank  
5 you very much for your testimony and thank you for  
6 the good work that you... that you do.

7 INSHA RAHMAN: Thank you.

8 AUBREY FOX: Thank you.

9 CHAIRPERSON LANCMAN: Okay, so now we'll  
10 hear from some public defenders; Dawit, sorry... I  
11 can't read the last name, I'm sorry, the Bronx  
12 Defenders; Joshua Norkin from Legal Aid and Dave Long  
13 from the Liberty Fund, not all defenders.

14 [off mic dialogue]

15 CHAIRPERSON LANCMAN: Good afternoon. If  
16 you raise your right hand so we can swear you in, do  
17 you swear or affirm the testimony you're about to  
18 give is the truth, the whole truth and nothing but  
19 the truth

20 [off mic dialogue]

21 CHAIRPERSON LANCMAN: Thank you. We can  
22 just go from my left to right and that'd be great.

23 DAWIT GETACHEW: Good afternoon Chairman  
24 Lancman and members of the Committee. My name is  
25 Dawit Getachew and I am a Criminal Defense Attorney

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2 and an Associate Special Counsel to the Criminal  
3 Defense Practice at the Bronx Defenders and I want to  
4 thank you for the opportunity to testify today. the  
5 Bronx Defenders is a community based and nationally  
6 recognized holistic public defender office dedicated  
7 to serving the people of the Bronx and we represent  
8 over 28 individuals... 28,000 individuals every year  
9 providing criminal defense, family defense,  
10 immigration representation, civil legal services,  
11 social work support, and other advocacy to indigent  
12 people in the Bronx and the Bronx... and beyond. The  
13 Bronx Defenders promotes criminal justice reform to  
14 dismantle the culture of mass incarceration. As the  
15 end of 2018 approaches, the need to fix New York  
16 City's broken bail system is no longer up for debate.  
17 The consensus among New Yorkers is that people should  
18 not stay in jail simply because they cannot afford to  
19 pay for their freedom. And to this end, I understand  
20 that various stakeholders, including the City Council  
21 have taken steps over the past year to address some  
22 of the obstacles that the current bail system erects  
23 against our clients and their families. The Bronx  
24 Defenders welcomes these efforts and we appreciate  
25 the opportunity to provide some of the feedback on

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2 the measures that have been implemented this year. In  
3 particular, we hope to relay our experiences, as  
4 public defenders, with the use of the alternative  
5 forms of bail; the bail assessment project  
6 implemented by the Vera Institute, Institute of  
7 Justice and the BEX program. Now I, I do want to  
8 start with really reiterating the significance of  
9 these alternative forms of bail. Such programs.. and  
10 providing the alternative forms of bail payments  
11 specifically dramatically increases the likelihood  
12 that people will avoid pre-trial detention while  
13 fulfilling the only purpose for bail, ensuring their  
14 return to court in the future. Now specifically  
15 alternatives like partially secured bond ease the  
16 bail payment process, increases the chance that  
17 clients will be released from court and avoid jail  
18 time altogether. In contrast, the process of securing  
19 the service of a bail bonds company generally  
20 requires time and virtually guarantees that clients  
21 will be held in for additional hours if not days for  
22 bail to be posted and this delay obviously disrupts  
23 the lives of our clients while also cost New York  
24 City taxpayers by needlessly keeping people in jail.  
25 I, I do want to give the example of one of my clients

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2 this year, John who was arrested on felony charges.  
3 By any measure John was eligible to be released on  
4 his own recognizance, he had no criminal record or  
5 prior failures to appear in court, he was born and  
6 raised in the Bronx and he was employed, and he lived  
7 in the Bronx with his wife and two children and  
8 family who were also present in the courthouse for  
9 support. Now during the interview prior to the  
10 arraignment, it was clear that John was very worried  
11 that he would lose his job if he didn't show up to  
12 work the following morning. He was more concerned  
13 about the prospect of not being able to financially  
14 support his family more than spending the night in  
15 jail and in that case, you know the court did end up  
16 setting bail but also provided the option for a  
17 partially secured bond in the amount of 10,000  
18 dollars with a ten percent deposit. As a result of  
19 that, John's brother was able to step in as surety  
20 following the arraignment and posted the required  
21 amount immediately and John was released shortly  
22 thereafter. And the important thing to note is  
23 although John's family came to court with some amount  
24 of money it was not enough for the cash bail that was  
25 also set in the case and furthermore the... John's

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2 arraignment occurred.. it was late at night during  
3 night arraignments approximately around.. after 11  
4 p.m. so the option of going to a bail bonds company  
5 was not really feasible without risking that John  
6 would be transported to Rikers and potentially  
7 staying for an extended period of time. So, the  
8 court's decision to set a partially secured bond  
9 ensured that John was able to reunite with his family  
10 that night and averted a potential job loss. Since  
11 then John has appeared on all of his court dates  
12 while maintaining his employment and the ability,  
13 ability to support his family. The outcome in John's  
14 case however remains unusual for many of our clients  
15 because cash bail and insurance company bond are  
16 still the primary and often the only options that are  
17 made available to them. We recognize that there have  
18 been... there's been an uptick in the use of  
19 alternative forms of bail, we're seeing that judges  
20 are setting partially secured bond and credit card  
21 bail in an increasing number of cases and defense  
22 attorneys also regularly request the court to  
23 consider partially secured bonds as an option if the  
24 court decides to set bail. Likewise, Vera's bail  
25 assessment project has increased awareness about

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2 partially secured bond among judges, attorneys,  
3 clients and their families. Although these trends are  
4 encouraging there continues to be significant inertia  
5 against normalizing the use of alternative forms of  
6 bail. The use of unsecured bond is virtually unheard  
7 of, furthermore it's rare that judges will set  
8 partially secured bond without a specific request  
9 from defense attorneys. Even worse, many judges  
10 hesitate or outright refuse to provide it as an  
11 option when asked by counsel. And in many of these  
12 cases the, the decision to do so that is not provide  
13 an alternative is effectively remanding our clients  
14 as they wait for the case to proceed. Now the  
15 reluctance to fully embrace partially secured bond  
16 has become more apparent in light of the efforts by  
17 the bail assessment project. Since the pilot began  
18 earlier this year the Bronx Defenders attorneys have  
19 referred a number of cases to the project which has  
20 conducted an independent assessment of our client's  
21 ability to pay bail and make recommendations to the..  
22 to the court as to the appropriate time.. type and  
23 amount of bail based on their findings. Now as Insha  
24 stated earlier, the majority of our clients that we  
25 refer to the project were found to have no ability to

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2 pay bail and, you know in the cases where the project  
3 found that clients had some resources the bail  
4 assessment project always recommended partially  
5 secured if bail was to be set. However, we, we saw  
6 that despite these recommendations often times bail  
7 was set only as cash bail and insurance company bond  
8 and sometimes its credit card bail and I... and I  
9 think what they stated earlier the numbers reflect  
10 that and while some judges did occasionally set  
11 partially secured bond we found that the amount was  
12 often higher than when... what our clients were  
13 assessed to afford by the project which pretty much  
14 defeats the purpose of providing an alternative form  
15 of... [cross-talk]

16 CHAIRPERSON LANCMAN: So, what you're  
17 saying is the court was ignoring Vera's  
18 recommendation?

19 DAWIT GETACHEW: At times we certainly  
20 felt that the, the actual amount that was recommended  
21 by Vera was not accepted by the... by a... by the judges  
22 that would often... more... pretty much... and... with the  
23 exception of a very few cases they usually set it at  
24 a much higher amount than what Vera recommended.

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2 CHAIRPERSON LANCMAN: The... did they ever...  
3 does the court ever explain itself? Oh no, I'm not  
4 doing that because X, Y and Z or is there any reason  
5 that you can discern or any, any, any principled  
6 reason or, or, or recurring theme?

7 DAWIT GETACHEW: Unfortunately those  
8 conversations we haven't been able to have with, with  
9 the... with the judges however I, I do think that it  
10 has to do with the general culture of the criminal  
11 courts which has been sluggish in terms of changing  
12 the usual... changing the practice of setting the usual  
13 amounts and types of, of bail, you know we are faced  
14 with this culture that's resistant to change when it  
15 comes to bail setting practices and, and, and the  
16 case of trying to determine why a judge would set a  
17 higher amount is often very difficult at arraignment  
18 when attorneys are waiting for the next case to come  
19 up and it ends up being pushed aside and we... and  
20 judges continue to the next case so that opportunity  
21 is not there. However, what's useful about having  
22 these recommendations is the advocacy efforts  
23 continue once bail has been set after and following  
24 court dates such as during, during bail reviews or  
25 writs which we have had certain experiences of it

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2 referring to the recommendation that was proposed by..  
3 that was made by Vera as part of our advocacy to  
4 reduce the amount of bail that was set in... during  
5 bail reviews. So, we do think that is helpful and I  
6 do want to reiterate that the point that Vera made..  
7 or about having the assessment and the tools to be  
8 used at the discretion of defense attorneys, I think  
9 its important that the... these... this tool is used in  
10 conjunction with having conversations with the  
11 criminal defense attorneys who have the initial  
12 interaction with our clients and based on their... the  
13 information that they have can speak to the  
14 necessity of having this assessment and with respect  
15 to the question that you raised earlier which, which  
16 was does it induce judges to perhaps set bail because  
17 the tools were presented in court on the record and  
18 its hard to say unfortunately there's certainly no  
19 measurement on the motivations of the judges however  
20 I think based on the conversations I've had with the  
21 attorneys I think one... the way one person explained  
22 it is I'm not sure if it helped but I certainly do  
23 think that it didn't hurt. So, I, I think the general  
24 sentiment among defense attorneys is like this could  
25 be useful and we have seen that in some cases it, it

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2 is... it has been useful to really have the record be  
3 presented to the judges about their ability... our  
4 client's ability to, to pay... to pay bail. Now I do  
5 want to add another thing which was there's also a  
6 sentiment that whenever partially secured bonds are  
7 set usually a surety, a family member has to step in  
8 and a judge has to take a, a brief moment to swear  
9 them in and review the associated paper, paperwork  
10 that's provided and this brief procedure usually  
11 takes a few minutes and it's something we've actually  
12 seen courts conduct with bail insurance... commercial  
13 bail bonds companies and that's generally treated as  
14 an annoyance that's... that interrupts the regular  
15 court proceedings instead of something that's an  
16 important part of the court system so there is this  
17 reluctance to adopt it fully into the day to day  
18 operations. In addition, we've seen that our clients  
19 continue to face other obstacles while attempting to  
20 navigate the process, the paperwork associated with  
21 partially secured bond can be daunting for our  
22 clients and attorneys and other advocates have had to  
23 step in to assist them with the process, we're also  
24 concerned that the inquiries by some judges when  
25 people seek to post, post bond can be arbitrary,

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2 there have been instances when judges have required  
3 excessive and unnecessary documentation as proof of  
4 income and assets erecting another set of obstacles  
5 for our clients and possibly extending the time that  
6 our clients remain in jail. I do want to turn to...  
7 briefly about the BEX program, it... we want to note  
8 that, you know we, we feel that the Criminal Justice  
9 Agency provides an important role in ensuring that  
10 our clients will not be turned over to the Department  
11 of Corrections and facilitating bail payment by  
12 contacting friends and family members and we also  
13 want to note that the CJA has been interfacing with  
14 the bail funds and we've been informed that they now  
15 place holds on, on all bail fund eligible clients  
16 without CJA checking for sureties. I think that's a  
17 critical step, we do have... the bail funds have been  
18 playing an important role in our courts and we do  
19 think that this type of cooperation is essential in,  
20 in ensuring that people are actually bailed out even  
21 when they don't have family members who cannot pay  
22 bail because these bail funds do in fact step in. And  
23 we've also seen an increased willingness on the part  
24 of DOC to honor courthouse holds for our clients,  
25 nevertheless we have, have noticed that occasionally

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2 clients slip through the cracks and are shipped off  
3 to Rikers due to some oversight. For example, in one  
4 case where an attorney placed a hold on a client who  
5 had partially secured bond set at his arraignment  
6 because a family member was coming to court to place  
7 bail was still transported to Rikers and  
8 unfortunately no explanation was given as to why this  
9 occurred but based... when I spoke to the attorney  
10 about this she speculated that her client shared the  
11 same first name and last name as another person who  
12 was also arraigned around the same time and that... we  
13 don't have additional information and I, I... we do  
14 believe that its necessary to figure out why certain  
15 things happen because while an administrative error  
16 can and do occur the stakes are certainly far too  
17 high to simply brush it aside and say that this was  
18 just some administrative error. So, I do want to end  
19 that... with brief recommendations, specifically we do  
20 think that raising awareness of additional forms of  
21 bail as Vera has been doing is an important piece of  
22 changing the culture, furthermore encouraging judges  
23 to set alternative forms of bail that are less  
24 onerous than insurance company bonds and really to  
25 impose the least financially burdensome conditions

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2 necessary to ensure the people of... that people return  
3 to court is important. We also recommend that there  
4 are steps to be taken regarding simplifying the  
5 paperwork and procedures required for alternative  
6 forms of bail. We do support expanding the use of  
7 independent assessments like the bail calculator  
8 implemented by the bail assessment project to  
9 determine a person's ability to pay bail and really  
10 working with the defense to ensure that the client's  
11 ability is actually presented to, to the judge prior  
12 to making a decision about bail. And lastly, we do  
13 support that the... providing additional resources for  
14 bail facilitators so you... as you heard earlier Vera's  
15 work based on communicating with, with family members  
16 and clients... and friends is an essential piece of  
17 ensuring that people come to court and bail is paid  
18 as soon as possible so that clients do not... are not  
19 transported to Rikers and we do believe that these  
20 are not radical recommendations, they are sensible  
21 and, and real steps towards improving the current  
22 bail setting practices. However, we do recognize that  
23 the problems that are facing the current bail system  
24 are longstanding and deeply structural, so we are in  
25 need of comprehensive solutions if we are to address

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2 the tremendous hardship that is in inflicted upon New  
3 Yorkers by the criminal just... legal system. So, I  
4 thank you for the time, if you have any questions,  
5 I'll be happy to answer them.

6 CHAIRPERSON LANCMAN: Thank you.

7 JOSHUA NORKIN: I'd like to start by  
8 introducing myself, my name is Joshua Norkin, I am a  
9 Staff Attorney with the Legal Aid Society Special  
10 Litigation Unit. I focus on bail reform and I want to  
11 thank not just Council Member Lancman but the City  
12 Council as well as all of my colleagues in the room.  
13 As the testimony from both Vera and the Criminal  
14 Justice Agency indicate, in the absence of  
15 legislative reform in Albany this city has taken  
16 tremendous strides to... and changing the bail system  
17 relatively dramatically I think in the past several  
18 years and so I think this conversation is an  
19 important one because I think it is about what can we  
20 continue to do to ensure that downward trend  
21 continues especially if we don't get legislative  
22 reform in Albany this year. And I'd like to just  
23 start by saying that this conversation can't be had  
24 without acknowledging the people that are impacted by  
25 the system and earlier this year as part of our work

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2 we wrote to incarcerated clients in upstate facility..  
3 prison facilities asking them how bail impacted their  
4 lives and we heard back, you know tremendous stories  
5 from them that were totally heartbreaking and show  
6 how even though the system has made progress there  
7 continue to be individual instances in which  
8 unaffordable bail is set on people that places.. that  
9 places those people's rights at... in jeopardy and one  
10 client wrote to us that bail was set at 25,000  
11 dollars and as the father of four and someone who  
12 only collects SSI disability there is no way I could  
13 afford to take that money out of my kid's mouth and  
14 still consider myself a decent man. Another, a 19-  
15 year-old teenager wanted to know where he was  
16 supposed to find 50,000 dollars to buy his freedom.  
17 Another wrote to us and told us that bail was ransom.  
18 So, today the use of money bail in New York City's  
19 criminal courts while potentially better and it's not  
20 as devastating as it once was, still renders the  
21 presumption of innocence barely recognizable. And in  
22 October of this past year, just over a year ago in  
23 2017, we released a study with the Human Rights data  
24 analysis group that shows that those individual  
25 clients that continue to have bail set on them at

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2 arraignments are 34 percent more likely to be  
3 convicted simply because bail was set and it's for  
4 these reasons that the Legal Aid Society has long  
5 supported the greater use unsecured and partially  
6 secured bonds in New York City's courts. While the  
7 legislature passed an expansive statutory scheme in  
8 the 1970's aimed at reducing the jail population its  
9 never been fully utilized to its full potential.  
10 These forms of bail are clearly geared towards our  
11 clients, our clients with no disposable income and  
12 they are the types of bail that we will need to rely  
13 on as an in between when judges are not willing to  
14 release people individually. And so one of the things  
15 that's come up at this hearing is sort of this  
16 intersection of the alternative forms of bail as well  
17 as assessments about our client's ability to pay any  
18 bail set whether that's cash, partially secured bonds  
19 or insurance company bail and I think the underlying  
20 theme here is some type of judicial oversight or  
21 some... I think inquiry into whether or not judges and  
22 the bench and the judiciary recognize, recognize what  
23 their roles and responsibility are. The Legal Aid  
24 Society has long supported efforts of the City  
25 Council as well as Vera and of course the Criminal

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2 Justice Agency to take it to... four strategies to take  
3 into consideration; our client's ability to pay  
4 monetary bail when its set and over the past two  
5 years the Legal Aid Society itself has been engaged  
6 in systemic litigation trying to force the  
7 judiciary's hand in terms of considering arguments,  
8 constitutional arguments that impose a requirement on  
9 judges that they consider our ability... our client's  
10 ability to pay and seek out less restrictive  
11 alternatives before setting that amount of bail. Our  
12 opinion... in our opinion a New York City judge who  
13 sets monetary bail and incarcerates presumptively  
14 innocent individuals without making an inquiry into  
15 their ability to pay and without seeking out those  
16 less restrictive alternatives violates the equal  
17 protection clause of the United States constitution.  
18 Such illegal practices are still endemic to bail  
19 setting in New York City's courts. Supreme Court  
20 juror's prudence establishes clearly that an equal  
21 protection... in an, an equal protection principle that  
22 are all too frequently ignored that the state may not  
23 incarcerate somebody because of their poverty unless  
24 it first inquiries into the reasons that that person  
25 may not be able to pay and without seeking an

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2 alternative to incarceration. For over two years  
3 we've raised these arguments in the city's courts,  
4 we've raised them in every borough of New York City,  
5 we've presented them to both the appellate divisions,  
6 we've taken them to the court of appeals and we've  
7 taken them to federal court. Our staff in the trial  
8 offices has consistently challenged the setting of  
9 secured money bail beyond what our individual clients  
10 can pay. Our arguments have largely been ignored by  
11 the judiciary and discarded by judges on the bench.  
12 While there is little the City Council can do to  
13 impact judicial practices directly, the Vera ability  
14 to pay pilot represents a promising start. What we  
15 would encourage the City Council to do is... and... is to  
16 continue to hold these hearings and to continue to  
17 think about how to place judge... place pressure on  
18 judges and actors in the system to set partially  
19 secured and unsecured bonds in amounts that our  
20 clients can pay and to recognize that when these  
21 courts rely on these types of more flexible forms of  
22 bail not only will they continue to ensure that the  
23 appearance rates that Mr. Fox touted here earlier  
24 will stay that high but it means that more people  
25 will be released in accordance with, with

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2 constitutional principles. By presenting judges with  
3 more information about our client's ability to pay  
4 and for the City Council to call for a fuller use of  
5 the existing bail options the city will take a large  
6 step towards fulfilling the promises of the equal  
7 protection clause in guaranteeing that all of the  
8 citizens coming through the criminal, criminal  
9 justice system will be treated equally and fairly by  
10 the law. I will say one final thing and this didn't  
11 made it into our testimony but I do want to tell the  
12 Council Member this, which is that at the moment I, I  
13 raise that we have been filing litigation in all of  
14 the boroughs challenging the setting of money bail as  
15 being unconstitutional, often our opposing council in  
16 those... in those writs of habeas corpus tends to be  
17 the local district attorney's office. I'd like to  
18 take out the opportunity to point out that the  
19 respondent in each and every single one of those  
20 cases is actually Cynthia Brann, the Commissioner of  
21 the Department of Corrections. Why corporate council  
22 or the city's council does not intervene or state a  
23 position in these cases I'm not entirely sure other  
24 than to say that it seems that this is just a pattern  
25 in practice of how these cases have been handled over

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2 the course of the past however many centuries but I  
3 think it is fair to point out that we have repeatedly  
4 sued effectively the city of New York over these  
5 practices and we have repeatedly met opposition, we  
6 have not filed a writ or challenged a monetary bail  
7 decision that a district attorney has not opposed in  
8 this city.

9 CHAIRPERSON LANCMAN: Say that again?

10 JOSHUA NORKIN: What's that?

11 CHAIRPERSON LANCMAN: Say that last part  
12 again.

13 JOSHUA NORKIN: We have not filed a writ...  
14 there may be one floating out there, but I don't  
15 think we have filed a writ or a legal challenge in  
16 this city in which the district attorney has not  
17 opposed in some way, shape or form.

18 CHAIRPERSON LANCMAN: But, but who's  
19 representing.. when, when you say the, the district  
20 attorney has not opposed... is the corporation council  
21 that's responding, I don't... I want... [cross-talk]

22 JOSHUA NORKIN: What I'm saying is that  
23 when we file a writ habeas corpus... [cross-talk]

24 CHAIRPERSON LANCMAN: Right... [cross-talk]

25

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2 JOSHUA NORKIN: ...and what... as I explained  
3 which we've been doing systematically the respondent  
4 that is listed on that proceeding, which is a civil  
5 proceeding under Article 70 of the civil procedure  
6 laws the respondent in those proceedings is the  
7 Department of Corrections, its Cynthia Brann and the  
8 responding attorney, the person who has showed up to  
9 represent the city's position or Cynthia Brann's  
10 position in those writs of habeas corpus has been the  
11 local district attorney's offices... [cross-talk]

12 CHAIRPERSON LANCMAN: Right... [cross-talk]

13 JOSHUA NORKIN: So, I would imagine given  
14 the position of the City Council as well as the Mayor  
15 of New York City that the City Council's position on  
16 the setting of money... I'm sorry, that the city of New  
17 York's position on the imposition of money bail is  
18 dramatically different than those of the local  
19 district attorney's offices.

20 CHAIRPERSON LANCMAN: Got it, thank you.

21 Sir.

22 DAVE LONG: Chair Lancman and members and  
23 staff of the City Council thank you for the  
24 opportunity to present my views to this Committee. My  
25 name is Dave Long and I'm the Executive Director of

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2 the Liberty Fund, the first citywide city council  
3 funded charitable bail organization in New York City.  
4 Our mission is to reduce the number of New Yorkers  
5 subjected to pretrial detention. The Liberty Fund is  
6 distinct from other charitable bail funds in this  
7 city because of our work... because our work happens  
8 directly in arraignment courts every night of the  
9 year, from six p.m. until court closes, usually  
10 around one a.m. We began operation in August 2017 and  
11 to date have posted bail for 614 men and women. I  
12 have included with my testimony today a summary  
13 report of our outcomes from our first year. Today, I  
14 will offer three points that I hope will inform the  
15 conversation about the future of bail. First, as long  
16 as cash bail is required for misdemeanors, it is  
17 crucial that we continue to fund and support the work  
18 of charitable bail funds. The Liberty Fund and the  
19 other charitable bail funds in New York City, Bronx  
20 Freedom Fund and Brooklyn Community Bail Funds, are  
21 keeping people who have not been found guilty of  
22 misdemeanor charges out of our correctional system.  
23 Instead of the trauma and disruption of going to  
24 jail, our clients leave court, return home to their  
25 jobs, their families and their lives. Second, through

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2 our experience providing on the ground intervention,  
3 the Liberty Fund has gained insights into the social  
4 service needs of the bail and the ROR population. We  
5 intervene at a crucial moment, immediately after bail  
6 is set and before a person boards the bus to Rikers.  
7 After we post bail, we voluntarily offer service  
8 referrals. In our first year, over a third of our  
9 clients requested assistance with housing,  
10 employment, substance abuse, mental health,  
11 immigration, entitlements and other services.

12 Clearly, this demonstrates a gap in our criminal  
13 justice system. And that leads me to the third and  
14 most important point, in any post bail reform world  
15 the Liberty Fund can be an important partner in  
16 providing social service interventions. As the bail  
17 reform movement progresses, the Liberty Fund should  
18 be leveraged into an intervention to fill social  
19 service referral gaps in our criminal justice system.

20 Going forward, we can help people meet their basic  
21 needs, make their court dates and ultimately help  
22 prevent future involvement with our criminal justice  
23 system. In conclusion, the work of the city's  
24 charitable bail funds has demonstrated that removing  
25 pre-trial detention for misdemeanor offenses is more

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2 efficient and less disruptive in people's lives. As  
3 we move forward, we will continue to promote, promote  
4 a more fair, humane and effective criminal justice  
5 system from all... for all. Thank you for your time  
6 today.

7 CHAIRPERSON LANCMAN: Thank you. Could  
8 each of you just describe what interactions your  
9 respective organizations have with the bail  
10 facilitators or from, from the bail assessment  
11 project or the... or the BEX folks and, and whether  
12 those are good and meaningful and, and productive and  
13 whether or not there might be some improvements you  
14 can identify?

15 DAWIT GETACHEW: So, I'll start with the  
16 bail assessment project and you, you know the way  
17 that has been implemented has been really good, they  
18 have... Vera reached out to us and has been working  
19 with the Bronx Defenders and, and informing us what  
20 their roles are and has been very open to hearing  
21 what the concerns are and... at arraignments being  
22 present and available is, is always an important  
23 piece and ensuring that clients are able... are  
24 comfortable with having another person present asking  
25 them questions in the back and upon doing that, upon

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2 making... presenting their findings to the attorney  
3 leaving it to the defense to make a decision about  
4 whether or not to present it to... present it on the  
5 record has been a crucial part of like the working  
6 relationship that we've had with Vera. So, I do think  
7 that that's, that's been helpful. In terms of with  
8 the bail facilitators we have less of a direct  
9 interaction, we usually communicate with them in  
10 terms of asking, asking them to place holds for our  
11 clients because we believe that someone is coming to  
12 pay bail. We do occasionally go downstairs to where  
13 our clients are being held but we do not have any  
14 interactions with our clients at that point. The...  
15 they... you know DOC will not let us speak to them if  
16 their bail has been set so the only place that... the  
17 only individuals that we can speak to have been the  
18 bail facilitators and generally they have been  
19 helpful although the outcome is... until recently as we  
20 have found in many occasions that our clients are  
21 still transported to, to Rikers and we don't have  
22 information about like why that has... that that has  
23 happened or understand, you know what, what can be  
24 done better. So, I, I do think that there's always  
25 room for improvement, we do think that bail

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2 facilitators, the presence of bail facilitators  
3 within the courthouse having additional interaction  
4 with the defense attorneys is a significant piece  
5 because the contacting families takes time, clients  
6 may be more likely to tell their attorneys about... you  
7 know what, what sort of contacts they have and we can  
8 ask additional questions that could be helpful to the  
9 facilitator so we do think that having the resource...  
10 providing resources for additional bail facilitators  
11 whether that's with CJA or directly with defense  
12 organizations is something that can be useful.

13 JOSHUA NORKIN: I, I just want to say I  
14 think I mentioned this at the beginning of the... my  
15 testimony but the work that both Vera and CJA have  
16 been doing I think is incredibly important and we're  
17 entirely supportive of. I don't know if there's a lot  
18 to recommend in terms of improvement, I think as miss  
19 Rahman mentioned the pilot program is still... they're  
20 still learning about it and its still in its infancy  
21 and we're still waiting to get statistics back on it.  
22 I think to their credit so far, it's worked well, and  
23 I think the way that its set up has worked well, you  
24 know with BEX and with the Criminal Justice Agency I  
25 will say... you know I'll say that we speak pretty

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2 regularly with the Criminal Justice Agency. We spoke  
3 with folks there just yesterday about an issue. In  
4 terms of BEX, you know one thing that I have  
5 mentioned in the past and I think its worth still  
6 considering is trying to make more information about  
7 it publicly available and that might be true with the  
8 Vera pilot as well. I think one thing that tends to  
9 happen in the fast paced world of arraignments and  
10 just, you know the defense bar generally is that  
11 there are so many competing issues that our attorneys  
12 have to deal with, that clerks have to deal with,  
13 getting the information down on paper, doing  
14 trainings and doing sort of repetitive trainings  
15 becomes important to let that information sink in. I  
16 think in the past, you know I have heard instances  
17 where people are... attorneys in the courtroom were  
18 either confused by the parameters of what the BEX  
19 system was or who the bail facilitators, facilitators  
20 are and so, you know I certain... we've certainly said  
21 we'd open the door for everybody to come in and do a  
22 training or help develop materials that might be  
23 helpful, you know to, to sort of facilitate or  
24 promote the program and I think that's all to say  
25 that these are relatively minor things, I mean that's

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2 not a big ask and I think the real... the real issue  
3 here in which, you know I tried... I hoped I conveyed  
4 in my testimony is that I don't really think this is...  
5 this is not... the issues in here is not CJA, its not  
6 Vera but it's, it's, it's always at the end of the  
7 day convincing that judge sitting in front of you and  
8 making sure that that judge is informed about what  
9 these programs are, what the setting of bail means,  
10 you know and trying to convince those judges that  
11 making that inquiry into somebody's ability to pay  
12 and then using something like an unsecured bond that  
13 to me right now is the... is the target, target  
14 audience and I recognize the City Council has got  
15 limited control over that but I think what I would  
16 say is that, you know if its Vera or CJA that's the  
17 messenger and they need, you know either additional  
18 resources to do that or more funding to support those  
19 programs I think that's an entry point that the City  
20 Council considering... can consider to help.

21 CHAIRPERSON LANCMAN: Does the Liberty  
22 Fund interact with either the Vera or, or BEX folks?

23 DAVE LONG: Yes, very much so, I mean  
24 since we're in all the boroughs we wouldn't be able  
25 to really do what we do without the help and

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2 assistance of CJA, they have been tremendously  
3 helpful right from the start in providing guidance  
4 and resources and, and assistance... and assistance  
5 whenever we need to so, you know we, we interact with  
6 them nightly and their staff. I've met with Vera and,  
7 and CJA on, on various different components of bail  
8 reform and, and all of the defense counsels also...  
9 defense counsel organizations, Legal Aid, and Bronx  
10 Defenders and all, all of them included have been  
11 extremely helpful in helping us get to the point that  
12 we are at. I would say based upon the hearing from  
13 last week one suggestion I would put forth is that I  
14 believe you... that you suggested a, a work group, a  
15 bail reform work group to the Department of  
16 Corrections to expand that group to involve as many  
17 players that are testifying today and entities would  
18 I think be helpful so they can hear more information  
19 about what's going on, on a daily basis in court.

20 CHAIRPERSON LANCMAN: Got it and, and  
21 just to... I think that you both talked about it but I  
22 just want to be clear, both at a public defender  
23 organizations, you're, you're satisfied that the way  
24 this... the Vera bail pilot has been set up that we're  
25

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2 not inadvertently exposing people to bail who would  
3 otherwise not have bail set, we, we... [cross-talk]

4 JOSHUA NORKIN: I mean this is a... this  
5 is... this is like the age old concern with trying to  
6 move the system from, you know basically cash and  
7 insurance company bail to partially secured and  
8 unsecured bonds, right, the ROR population as both  
9 the pre... you know as both CJA and Vera mentioned in  
10 New York City is so high that any risk seriously in  
11 any bail reform whether that's state legislative  
12 reform, City Council reform or even these, you know  
13 smaller pilot program reforms inadvertently cutting  
14 into that ROR population by doing something like  
15 this. I think it's fair to say that we probably don't  
16 have enough information as Miss Rahman said about  
17 exactly what the program is doing or how judges are  
18 utilizing it just yet, the sample size is pretty  
19 small comparatively to the number of cases that come  
20 through New York City criminal courts every year and  
21 so I think, you know the best way... you know the best  
22 thing to say about it is that its, it's a real  
23 concern, it would be a concern whether or not Vera  
24 was in that courtroom or not as the city transitions  
25 away from the, the current system and I think it's

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2 something that you, you've got to keep an eye on and  
3 I think that's one of those things where these  
4 hearings are important, the constant reporting of  
5 data, full transparency as... is important because it's  
6 something that... you know we, we're really sort of on  
7 the brink especially if you look at misdemeanor cases  
8 in New York City where release rates are close to 90  
9 percent, you don't want to dip into that ROR rate by  
10 starting to set bail on people or having more people  
11 inadvertently detained because we try to do something  
12 that was righteous and it had the adverse effect.

13 CHAIRPERSON LANCMAN: Alright, thank you  
14 all for your testimony.

15 JOSHUA NORKIN: Thank you.

16 CHAIRPERSON LANCMAN: So, now we'll just  
17 have some questions for MOCJ if they want to come up  
18 and the Mayor's Office of Criminal Justice.

19 [off mic dialogue]

20 CHAIRPERSON LANCMAN: Alright, good  
21 afternoon... [cross-talk]

22 SARAH CASSEL: Hi, good afternoon...  
23 [cross-talk]

24 CHAIRPERSON LANCMAN: ...just swear you in.  
25 Do you swear or affirm the testimony you're about to

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

4 SARAH CASSEL: Yes.

5 CHAIRPERSON LANCMAN: Thank you. Just  
6 state your name for the record?

7 SARAH CASSEL: My name is Sarah Cassel,  
8 I'm a Program Manager at the Mayor's Office of  
9 Criminal Justice.

10 CHAIRPERSON LANCMAN: Okay and my  
11 understanding is that MOCJ doesn't have testimony for  
12 us but you're available here to answer questions that  
13 we have?

14 SARAH CASSEL: Correct.

15 CHAIRPERSON LANCMAN: Terrific. So, could  
16 you describe for us what coordinating MOCJ either  
17 arranged or participated in amongst the public  
18 defenders, Vera, the district attorneys in the Bronx  
19 and Queens and the, the judiciary in, in the Bronx  
20 and Queens to, to get people ready for the pilot?

21 SARAH CASSEL: I can't speak to that  
22 program in particular, I'm prepared more to talk  
23 about the BEX program. I know that our office is in  
24 touch with all of those parties about a number of  
25

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2 bail initiatives and I imagine that that one is  
3 included.

4 CHAIRPERSON LANCMAN: Oh, so, so... is  
5 there no one from MOCJ who can talk about the bail  
6 assessment project? No?

7 SARAH CASSEL: No.

8 CHAIRPERSON LANCMAN: Okay. Do you have  
9 any thoughts or opinions on the recommendations or  
10 the suggestions for expanding BEX that were raised by  
11 CJA today, in particular the issue of eliminating I  
12 guess the threshold requirements for 16 and 17-year  
13 olds?

14 SARAH CASSEL: Yeah, it's definitely  
15 smoothing that we're actively talking about and, and  
16 are starting to implement.

17 CHAIRPERSON LANCMAN: Okay. Alright, well  
18 the focus of our interest with MOCJ is really with  
19 the Vera project so we would like to get information  
20 from MOCJ in particular about what kind of dialoguing  
21 and training that has been done if you know for  
22 judges when it comes to interacting with, with the  
23 Vera bail project and with using the alternative  
24 forms of, of bail and what metrics you are examining  
25 and what conclusions if any you have reached or

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2 observations you have made, I, I don't want to say  
3 conclusions because the project is not even close to  
4 being finished? Who, who at MOCJ is responsible for  
5 the, the, the Vera project?

6 SARAH CASSEL: So, Vera is telling me  
7 that Mariam Popper is on that... on the programmatic  
8 side and Irmali I think is probably on the contract  
9 side, yeah.

10 CHAIRPERSON LANCMAN: Got it. okay. So,  
11 you heard the exchange with, I guess it was Legal Aid  
12 who said that when the writs are filed, and  
13 Commissioner Brann is the, the defendant it's not the  
14 corporation counsel that is appearing on the other  
15 side, its, it's the respective district attorney's  
16 office, do you know why that is so?

17 SARAH CASSEL: I'd have to defer to  
18 someone else in the administration to... regarding  
19 those legal issues.

20 CHAIRPERSON LANCMAN: Yeah, so why is it  
21 that CJA is the only entity that is allowed to place  
22 a hold while someone... they track down someone who can  
23 help pay a bail, why, why can't a public defender do  
24 that or, or a, a bail fund?

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2 SARAH CASSEL: I'm not sure, I think  
3 that's the, the court practice, I'm not sure if  
4 that's statutory.. [cross-talk]

5 CHAIRPERSON LANCMAN: I, I just can't  
6 hear you, I'm sorry.

7 SARAH CASSEL: I'm sorry, I'm not sure if  
8 that's statutory or a court practice but we can look  
9 into that.

10 CHAIRPERSON LANCMAN: Okay and.. alright,  
11 thank you. That concludes our hearing. We are very,  
12 very happy to, to hear that the Vera bail project  
13 and, and that the expansion of BEX are contributing  
14 to mitigating the evils of, of cash bail and we hope  
15 that you think hard about how you'd like to  
16 potentially scale the pilot if you think that its  
17 necessary to get to a place where we can say this  
18 thing works and, and here's how we should bring it  
19 citywide. Thank you all very much.

20 [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

December 27, 2018