NYPD

Thursday, February 7, 2019

**STATEMENT OF OLEG CHERNYAVSKY**
**EXECUTIVE DIRECTOR OF LEGISLATIVE AFFAIRS**
**NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL**
**COMMITTEES ON PUBLIC SAFETY AND THE JUSTICE SYSTEM**
**COUNCIL CHAMBERS, CITY HALL**
**FEBRUARY 7, 2019**

Good morning Speaker Johnson, Chair Richards, Chair Lancman, and Members of the Council. As Commissioner Tucker has laid out, now that the independent discipline review panel commissioned by the Police Commissioner has completed its work, the Department has commenced implementation of the panel's recommendations. As you probably have noticed, some of the bills or portions of bills being heard today address the same or similar topics. The Police Commissioner has accepted all of the panel's recommendations and we look forward to keeping the Council updated as we work toward the most effective and meaningful way to implement these reforms.

I would now like to comment on the legislation being heard today.

**Intro. 1105** would require the Department to report monthly on the number of complaints of police misconduct received by the Department, specifically misuse of force, harassment, and use of offensive language and the action taken by the Department in response to each complaint. While the Department does not have an objection to providing transparency about such data, it should be noted that complaints about force and offensive language are handled by the CCRB, which currently posts such data publicly. Any complaints received by the Department related to these areas are immediately referred to the CCRB. Additionally, CCRB has begun investigating and recommending discipline regarding sexual harassment complaints. The Department supports CCRB's continued practice of allowing public access to this data; however, because this is not the Department's data we do not believe we are the proper entity to report about it. We note that the second sentence of the proposed new section, referring to actions taken in response to "each such complaint," would have to be interpreted consistent with the limitations of Civil Rights Law section 50-a.

**Intro. 1309** would require the Department to study and implement a disciplinary matrix. The Department supports the intent of this bill. As the Council is aware, the independent discipline review panel has also recommended the implementation of a discipline matrix. While the implementation of any type of discipline guidelines must remain within the purview of the Police Commissioner, as the legally mandated final arbiter of discipline, the adoption of such a matrix will be something the implementation group will be working towards and we intend on keeping the Council informed throughout the process.

**Preconsidered Intro 3705** would require the Department to publish its disciplinary guidelines, which are effectively a description of the types of violations and range of penalties officers committing misconduct face, as well as the number of disciplinary cases disaggregated by precinct, among other disaggregation points. With the exception of ongoing investigations or pending cases, the Department's goal of amending Civil Rights Law section 50-a would permit the disclosure of

such data with greater specificity than even this bill requires. However, given ongoing litigation over the interpretation of the types of information covered by the current CRL 50-a, and current injunctions which are in place arising from such litigation, we are concerned that disaggregation of all of the data points at the level of granularity sought in the bill may lead to additional litigation. We look forward to working with the Council on a draft bill -- at the conclusion of the litigation -- that comports with court rulings and the law so that we may disclose as much aggregate discipline data as possible. We also commit to continue actively seeking an amendment to Civil Rights Law section 50-a that would, at a minimum, permit the Department to post the type of data the current version of this bill envisions at the conclusion of a disciplinary proceeding.

**Preconsidered Intro 3706**, would require the Department to turn over all disciplinary records requested by a District Attorney's office within 24 hours of a request. The Department opposes this legislation. The NYPD has a strong and productive working relationship with each of the District Attorney's offices, as well as the Special Narcotics Prosecutor. These relationships have developed over decades and have resulted in countless successful prosecutions of many criminals. We count the City's prosecutors among our vital partners who have worked with us to reduce crime to low levels not seen since the 1950s, while at the same time the number of arrests has been reduced by tens of thousands each year since the start of this Administration. We call it precision policing: the targeting of the few individuals who are responsible for driving crime in this city. The prosecution of these bad actors requires ongoing collaboration and sharing of information to ensure they are taken off the streets before they find their next victim.

Through the years, we have developed processes that ensure that our prosecutorial partners get material evidence in a timely fashion, including the ability for prosecutors to make expedited requests when necessary. These processes have evolved and have been strengthened over time, based on court decisions, statutory amendments and a mutual desire to improve. To that end, the Department led a working group with prosecutors that has revised the manner in which requests for discipline records are processed. We have centralized and streamlined this process so that the Department's Document Production Unit (DPU) is the single responsive unit to such requests from prosecutors. Also, based on a request from prosecutors, we simplified and revised the form used by DAs offices to submit their requests, to better reflect their needs, all in an effort to ensure a timely response. We have all fostered an effective relationship over the years that accounts for the prosecutors' need for time to prepare their case, meet court imposed and statutorily mandated deadlines, while utilizing finite Department resources.

We object to this bill because setting by local law an arbitrary and stringent timetable for the transfer of information between law enforcement agencies effectively micromanages the day-to-day and hour-to-hour operations of the Department. It fails to account for the resources required for compliance and protocols for ensuring requests are limited to relevant information and are not overly broad. The Department commits to a continued productive working relationship with the City's prosecutors, to ensure fair and successful prosecutions.

**Preconsidered Intros 3707 and 3708** set out reporting requirements for charges of Resisting Arrest, Assault in the 2nd Degree, and Obstruction of Governmental Administration. We do not oppose the reporting of broad categories relating to these crimes but we would be unable to provide certain detailed data points required by this bill. For example, the Department can report on the

number of arrests for these charges, disaggregated by borough, precinct, age, race, and gender of the arrestee. However, we cannot capture data on the specific underlying charge that an arrestee resisted, the relationship of an arrestee charged with resisting arrest to another individual whose arrest they resisted, the nature of injuries in a felony assault case, whether the district attorney declined to prosecute a case, the entity which operates the building where the arrest transpired, the ethnic origin or specific gender identity of the arrestee, or the specific government function obstructed. The Department looks forward to working with the bill sponsors on amendments to these pieces of legislation to achieve a greater level of transparency within our data collection capabilities.

Thank you and we look forward to answering any questions you may have.

NYPD

Thursday, February 7, 2019

**STATEMENT OF BENJAMIN B. TUCKER**
**FIRST DEPUTY COMMISSIONER**
**NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL**
**COMMITTEES ON PUBLIC SAFETY AND THE JUSTICE SYSTEM**
**COUNCIL CHAMBERS, CITY HALL**
**FEBRUARY 7, 2019**

Good morning Speaker Johnson, Chair Richards, Chair Lancman, and Members of the Council. I am Benjamin Tucker, the Department's First Deputy Commissioner, and I am joined by Assistant Chief Matthew Pontillo, Commanding Officer of the Office of the First Deputy Commissioner, Assistant Deputy Commissioner Ann Prunty, who is acting Deputy Commissioner of Legal Matters, and Oleg Chernyavsky, the Department's Executive Director of Legislative Affairs. On behalf of Police Commissioner James P. O'Neill, we are pleased to testify about the bills being heard today.

At the core of the Department's mission is our obligation to protect the health, safety and welfare of those that live in, work in, and visit our city. A well-trained, focused, and disciplined team of more than 36,000 officers is vital to this mission. We are the largest police force in the nation and also the most scrutinized. No police department operates under as much public scrutiny or as many layers of oversight as the NYPD—oversight and scrutiny that we welcome.

In the past five years—that is during the de Blasio administration—the NYPD has accomplished a series of sweeping reforms designed to build trust and encourage collaboration with New York City communities. In the context of all those reforms, the credibility of our internal system for disciplining misconduct by police officers is an important component in winning the public trust. If people see the department's discipline system as minimizing and discounting police misconduct, they will be far more likely to doubt the legitimacy of *any* police action. We recognize that lasting trust cannot be achieved without a fair and transparent police discipline process. That process should provide the people we serve with an understanding of—and insight into—how the Department addresses their complaints of officer misconduct and how we ensure that our personnel perform with integrity.

In the NYPD, we believe that—overall—we have a very robust discipline process that holds officers accountable for misconduct and punishes guilty officers appropriately. But it is crucially important that the public believes it too. That's one of the reasons why Police Commissioner O'Neill commissioned an external panel of criminal justice experts to examine our internal discipline process and make recommendations on how we can improve it. The panel reported their findings last Friday, and the Commissioner immediately accepted all of their recommendations. He has charged me with heading an implementation group to ensure that panel's recommendations are adopted expeditiously.

The panel's raised important issues, which their recommendations address, but they did not identify any significant systemic problems with the fundamental fairness or overall effectiveness of our discipline system. We are ready and willing to remedy any problems that they did identify.

The members of the police department implementation group have almost two centuries of combined experience in law enforcement. They will assist me in ensuring that the panel's recommendations are executed faithfully. We are also committed to engaging an outside organization, as the panel recommended, to audit our disciplinary process once the new procedures are in place. I would like to thank the panel, once again, for lending us their time and expertise. They, and their staff, took time out of their busy lives to provide this vital public service. Their recommendations will ensure fairness, accountability and transparency. And, as is always the case, once implementation is complete, we will continue to look for additional avenues of improvement.

Before I discuss the panel recommendations and the discipline system further, I'd like to talk a little about the department's wider reform agenda in order to present the context in which our disciplinary reforms are taking place.

Since 2014, the department has remade its patrol model, its investigative model, its training for both recruits and in-service officers, its use-of-force policy, its performance evaluation system for officers, and its approach to assisting and supporting victims of crime. Compared with just five years ago, we are far better connected to communities at the local level, far more service oriented, and far better trained in defusing situations and alternatives to force. Our investigative work is more sharply focused on the real drivers of violence in the city, and we no longer use arrests and summonses as primary measures of police officer performance. With the advent of the Crime Victims Assistance Program, we are much more responsive and helpful to victims of crime. All this has been accomplished while crime itself has fallen to its lowest levels in more than sixty years.

The reforms that we call Neighborhood Policing are localizing police service and connecting in neighborhoods all across the city. Average population in New York City precincts exceeds 100,000, so we are anchoring our patrol officers in smaller sectors within precincts to foster connection between the cops and the people they serve. We are empowering our officers to work with residents and take initiative in solving problems and fighting crime at the very local level. It's a sea change in how policing is done, as we invite neighbors to share responsibility with us and play a role in how their neighborhoods are policed.

Trust is built by ensuring that officers spend time interacting with the communities they serve. Trust is built by including our advocate partners in making us more sensitive to the unique needs of diverse communities and victims of crime. Trust is built by collaborating with our elected, community and faith leaders to make life better, safer, and fairer in all communities

On the investigative side, we have also moved to a more geographic model, with most detective work, including proactive drug and gang investigations, overseen by each of eight localized detective commands. This new structure has propelled a series of precision gang violence investigations that have brought several thousand violent gang members to justice. As the effect of these investigations took hold in 2017, murders fell to 292, the lowest level since 1951, and

shootings fell to 789, the lowest level on record. Last year, murders ticked up by three incidents, but shootings fell further to 754, an astonishing number when compared to 5,200 shootings back in 1993.

Our revised policing methods are helping us decrease the gross number of enforcement actions, as we pursue a less punitive approach to public safety. In 2018, arrests were down 13.8 percent for the year and 37.3 percent in the past five years. Criminal summonses were down 45 percent in 2018, and nearly 79 percent since 2013. Transit Bureau arrests were cut nearly in half last year alone, and misdemeanor arrests for marijuana have declined by 71 percent in five years. Following big drops in 2012 and 2013, street stops have fallen a further 90 percent since then.

The NYPD also has transformed its police training—from Police Academy courses for recruits to the advancing the skills of experienced officers in de-escalating street confrontations with both criminals and emotionally disturbed people.

In probably the most significant change, we have abolished impact zones. These were higher crime locales where new officers were sent, fresh out the academy, largely to conduct stop-and-frisk operations and other heavy enforcement. Today, in contrast, new officers receive six months of field training with experienced mentors. They gain exposure to the full range of police functions and interactions and develop as well-rounded providers of police service.

The use-of-force reforms are equally transformational. As it has long done for firearms, the NYPD is now tracking all uses of force and requiring internal investigations in each case to ensure that each use of force was justified. The data is reported quarterly and broken out by the categories of firearms, conducted electrical weapons, impact weapons, canine, O.C. spray, restraining mesh blankets, and other physical force. Our use-of-force policy also goes far beyond the requirements of law. It obliges officers to attempt to deescalate encounters before using physical force, mandates that they intervene if another officer uses excessive force, and establishes the duty to report all such incidents. Closed force allegations at the Civilian Complaint Review Board in 2017 had declined by 50 percent since 2013.

The NYPD's victim service initiatives have gone largely unheralded. By late last year, we had placed two victim services advocates in every precinct and in all the police service areas that serve the city's public housing. One advocate specializes in domestic violence and the other works with other victims. We've never had anything like this level of victim service. The advocates are helping victims to secure services and compensation and otherwise to rebuild their lives, providing an unprecedented degree of support for innocent people traumatized by crime.

The department has continued its policies of openness and transparency. We voluntarily publish crime complaint and enforcement data. We have collaborated with the City Council on dozens of transparency laws, including opening our Patrol Guide to public review with limited exceptions. We have equipped approximately 20,000 officers on patrol with body worn cameras—with more to come. We have held regular meetings with community members, stakeholders, and leaders.

All of these initiatives are designed to build trust with the people we serve. Reforms to our discipline system have the same goal.

But, as we discuss building trust with the public concerning police discipline, you should also be aware that we have faced a second challenge in winning trust, which is winning trust inside the department. Traditionally, our cops have perceived our discipline system as unfair, arbitrary, unduly punitive, and, most of all, as taking far too long. Officers felt that their careers were put on hold—including promotions and transfers—while they awaited judgment, sometimes for many months, on pending discipline cases.

In the past five years, we have done much to improve the system, cutting process and trial times almost in half and scaling back on draconian penalties for minor offenses. I think it is important for people outside the department to understand that we use the discipline process not just to punish offenders, but to train and manage our workforce. While we are always ready to terminate the serious offenders, we don't necessarily want to fire people who have made honest mistakes or even had an ethical lapse of some kind. Many of these people are redeemable and may go on to successful careers with us. The discipline system is part of the redemption and training process.

Transparency of the discipline process is key to building public trust. The department will continue, and increase, our advocacy for amendments to Civil Rights Law section 50-a that will permit us to release information of significant public interest, including officer names, trial transcripts, trial decisions, and final disciplinary outcomes. We will also be judicious in our application of the current law, as we *have* been when seeking to release body-worn camera footage and disciplinary case summaries. Although we were enjoined from releasing this information, we are optimistic that the final decision by the courts will support our position that those materials are *not* personnel records.

The Department, however, does not support the full repeal of 50-a because the law provides vital protections for police officers from harassment in court and possible threats to their personal safety, both on and off duty. The threats in police work are very real. There were 151 direct threats to individual police officers recorded in 2017, and 154 direct threats in 2018. The right path toward greater transparency would amend the portions of the law that raise roadblocks to transparency, but preserve those sections of the law that protect the brave men and women who protect us all. That is the responsible and balanced approach.

I would like to close with an explanation of how our discipline system is structured to establish a framework for further discussion today.

Complaints about members of the service can be made to the Civilian Complaint Review Board, the Internal Affairs Bureau, or by calling 3-1-1. 3-1-1 routes complaints to CCRB and IAB based on the type of allegation. IAB has a 24-hour hotline that members of the public and police officers may call to report misconduct, and any reporter may remain anonymous.

CCRB handles complaints of force, abuse of authority, discourtesy, and offensive language. CCRB investigates these complaints, finds complaints to be substantiated, unsubstantiated or unfounded, and issues recommendations for discipline in substantiated cases. In 2018, there were 4,747 complaints made against officers to CCRB, as compared to 4,486 complaints in 2017, an increase of 5.8%. Of those 2018 complaints, 1,208 were fully investigated, with 19% substantiated, and

74% exonerated, unsubstantiated and unfounded. That represents a 2% increase, as compared to 2017, when 72% of such cases resulted in a determination that the complaint made against the officer was unsubstantiated or unfounded, or that the officer was exonerated.

Authorized by a 2012 memorandum of understanding between CCRB and the NYPD, CCRB's Administrative Prosecution Unit prosecutes CCRB cases when an officer chooses to challenge CCRB findings and recommended discipline. The trials, which are open to the public, are held before the NYPD Deputy Commissioner, Trials, which is the adjudicating body in police discipline cases. Trial results are reviewed by my office and the Police Commissioner.

The final resolution of discipline rests with the Commissioner, as mandated by law. He has the power to accept or modify recommended discipline. As the independent panel noted, the Commissioner does not take this responsibility lightly. He draws on his 37 years of police experience and works toward a fair and meaningful disciplinary outcome in each case.

IAB investigates all other serious allegations of misconduct and corruption. IAB investigations are not only commenced as a result of allegations, but are also self-initiated, including the performance of integrity tests. In some cases, IAB investigations may be referred for criminal prosecution.

If an IAB investigation substantiates an allegation, it refers the case to the Department Advocate's Office (DAO), which prosecutes disciplinary cases. If a case goes to trial, the adjudicating body, as in CCRB prosecutions, is the Deputy Commissioner, Trials. As in CCRB cases, whether a case ends in a pre-trial settlement or a post-trial verdict, the recommended discipline is reviewed by my office, and then by the Police Commissioner.

Depending on the infraction, penalties can include command discipline, retraining, loss of vacation days, unpaid suspension, and termination. During the time period from 2014 to 2018, discipline proceedings ended with termination on 156 occasions.

Lower level infractions, generally involving administrative violations, are referred to the officer's commanding officer for discipline. It should be noted that most discipline in the department results not from complaints or IAB investigations, but from investigations conducted and penalties assessed at the command level by an officer's direct supervisors.

The NYPD values our relationships with the CCRB and our collaboration is always evolving to better serve the needs of the public. The 2012 MOU that enabled CCRB to prosecute certain cases also led to development of the Reconsideration Program, which was further revised last year, and will be improved again based on the independent panel's recommendations. This program established a formal process for negotiating cases in which the department differs with the CCRB's findings or their suggested penalties.

The differences may result from new facts emerging, or from NYPD's judgment that the CCRB finding was based on misinterpretation of law or resulted in an unjust outcome. The department may formally request the CCRB to reconsider their findings or recommendations. The program has led to increased agreement between the Department's and the CCRB's findings.

I hope that we can all agree that the vast majority of police officers perform their often- dangerous work with integrity and courtesy. But the noble work of the vast majority cannot excuse or justify, in any way, misconduct by the relative few. Police misconduct not only hurts its victims and the community writ large, but also harms other cops. All cops feel the erosion of the public's trust. All cops feel the suspicion and shame when one of their own behaves in a way that is inconsistent with our shared values.

Just as important, unless the public can see that there are consequences for these improper actions in the way the Department disciplines its own, New Yorkers might be led to the false belief that acts of corruption or misconduct are shrugged off or somehow tolerated. As a Department, we can never permit that outcome. It breeds a perception of lawlessness and damages our individual and collective reputations. Most of all, the first casualty of such negative perceptions would be our ability to build relationships and fight crime.

I will now turn it over to Executive Director Oleg Chernyavsky who will discuss the legislation being considered today.

**Office of the**
**Special Narcotics Prosecutor**
**for the City of New York**
Bridget G. Brennan, Special Narcotics Prosecutor

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February 4, 2019

BY FIRST CLASS MAIL
The Honorable Rory I. Lancman
Council Member
Chair of the Committee on the Justice System
250 Broadway, Suite 1773
New York, New York 10007

The Honorable Donovan J. Richards
Council Member
Chair of the Committee on Public Safety
250 Broadway, Suite 1731
New York, New York 10007

Dear Council Members Lancman and Richards:

Thank you for the opportunity to submit testimony about Proposed Int. 14-777, concerning prosecutors' access to the New York City Police Department's disciplinary records. I am submitting this letter on behalf of the Office of the Special Narcotics Prosecutor for the City of New York.

I commend the members of the Committee on Public Safety and the Committee on the Justice System for joining with local prosecutors and the NYPD in recognizing the importance of transparency and fairness in the criminal justice system. It is indisputable that our criminal justice system will not work unless prosecutors have ready access to the tools they need to handle criminal cases fairly and efficiently. Accelerated production of disciplinary records held by the NYPD enables timely prosecutorial review and disclosure of certain categories of information that could impeach the credibility of potential witnesses.

It is for this reason that my Office participates in a long-standing working group with fellow prosecutors and the NYPD. We have learned through this ongoing process that the NYPD's disciplinary system is complex and multi-tiered, and that the necessary records frequently are not stored electronically or in a central location that is readily accessible, causing frustrating delays in getting the material on the part of all involved. While our collaborative efforts have resulted in some small improvements towards our common goals of transparency, efficiency, and fairness in the prosecution of criminal cases, clearly more can be done to streamline the NYPD's disciplinary process and enable prosecutors' ready access to relevant records.

To that end, Police Commissioner James O'Neill last summer appointed a distinguished panel chaired by Mary Jo White, who was joined by Robert Capers and Barbara Jones, to examine the NYPD's disciplinary system and issue findings and recommendations concerning the Department's disciplinary process, practices, and policies. On Friday, February 1, 2019, this experienced panel of former federal and state prosecutors released its final report and the Police Commissioner formally accepted the panel's recommendations to improve the NYPD disciplinary system. Furthermore, the Police Commissioner announced that an NYPD implementation panel will administer the operational, legal, and budgetary plan to enact all recommendations. Some recommendations are expected to be implemented within 30-60 days. These steps will undoubtedly lead to needed changes and improvements to the Department's currently unwieldy disciplinary system.

I suggest that any proposals by the City Council be postponed to allow for adequate opportunity to examine and study the report's findings and recommendations. I believe that doing so will allow the Committee on Public Safety and the Committee on the Justice System to build upon and compliment the work of the advisory panel and help attain the goals of the Council, local prosecutors, and the NYPD as efficiently and seamlessly as possible.

Sincerely,

Bridget G. Brennan
New York City Special Narcotics Prosecutor

**New York County District Attorney's Office**

**Written Testimony by Chief Assistant District Attorney Karen Friedman-Agnifilo for City Council Committees on Public Safety and the Justice System**

**Oversight Hearing on Police Discipline and District Attorney Reports**

**February 7, 2019**

Chairman Richards, Chairman Lancman, and members of the Committees on Public Safety and the Justice System, thank you for the opportunity to submit testimony for the City Council's oversight hearing on police discipline and District Attorney reports.

Through these bills, the Committees are taking up the important issue of increased transparency for law enforcement. We support that goal broadly and have taken many steps over the years to achieve it, from inviting the Vera Institute of Justice to conduct and publish a multi-year study into racial and ethnic disparities in case outcomes, to posting data on the manhattanda.org website, with an eye towards expanding the information available.

For many months, we have been in discussions with the NYPD and other offices about obtaining more direct, expanded, and expedited access to police disciplinary records, given the inadequacy of the existing disclosure process. Last May, our Office formally requested that the NYPD provide us with this information so that we can make early assessments of witness credibility, explore weaknesses in potential cases, and exonerate individuals who may have been mistakenly accused (this request has been well-documented). We appreciate the Council's leadership and support, and we remain willing to work closely with all stakeholders to ensure that this issue is resolved soon.

As to enhanced reporting of data by District Attorneys, our Office has also been working hard in recent months to collect and report publicly the types of data contemplated by the proposed Council bill, and we expect to be in a position to publish such data before the timetable contemplated by the Council.


# TESTIMONY

The Council of the City of New York
Committee on Public Safety

Hearing on the NYPD Disciplinary System

The Legal Aid Society
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February 7, 2019

Good afternoon. I am Cynthia Conti-Cook, a staff attorney at The Legal Aid Society testifying on behalf of the Special Litigation Unit in the Criminal Practice, a specialized unit dedicated to addressing systemic problems created by the criminal justice system. We thank this Committee for the opportunity to provide testimony on the New York Police Department's disciplinary system. I also echo the testimony prepared by my colleagues at Bronx Defenders and the Center for Constitutional Rights.

To start, before moving into relatively specific feedback on these bills, I want to acknowledge how important these bills are for finally beginning to demystify the NYPD's police disciplinary system. As Justice Jenny Rivera said in her dissent in the NYCLU case decided this past December, **"government is the public's business"** and it is important for the public not only to have an opportunity to be heard on matters involving the public servants they interact with more often than any other, often on a daily basis, but to do so in an informed way.[1] By hiding this information about the police disciplinary system, the public has been kept in the dark about what the problems are, what reforms are necessary, and had no access to the data to support those reforms. These bills are crucial first steps to allowing the public into the process but will definitely not be the last police accountability measures we ask the Council to take on.

## ORGANIZATIONAL INFORMATION

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles about 300,000 cases for low income families and individuals. By contract with the City, the Society serves as the primary defender of indigent people prosecuted in the State court system. In this capacity, and through our role as counsel in several civil rights cases as well, the Society is in a unique position to testify about the

[1] NYCLU v. NYPD, No. 133, 2018 WL 6492733, at *9 (N.Y. Dec. 11, 2018). (Rivera, J. dissent)

importance of a robust, transparent and function police disciplinary system in New York City. Since 2015, the Cop Accountability Project of The Legal Aid Society has systematically collected data from multiple sources on police misconduct in New York City in order to support our defenders' ability to subpoena personnel records, otherwise inaccessible under Civil Rights Law 50-a. This database is a model other defenders nationwide have begun replicating. It supports not just our defenders in criminal court rooms, it supports our law reform and policy work, our impact litigation, investigative reporting as well as local grassroots groups. We have closely analyzed this data, as well as the data released from the BuzzFeed report last year, for patterns of misconduct, outcomes, types of penalties and sentences.

In addition, we have brought Freedom of Information litigation against the CCRB and the NYPD since 2014 requesting information on the civilian complaint histories and disciplinary summaries of police officers, including Daniel Pantaleo. We currently have one case pending leave to appeal in the Court of Appeals, which is against the NYPD for 5 years of summaries of the Personnel Orders like those released by BuzzFeed. We have another pending decision in the Second Department based on a request to the CCRB for the civilian complaint history for Louis Scarcella, who has been retired for 20 years. We lost the case in the First Department for Daniel Pantaleo's CCRB records and we lost a similar case in the Second Department. We have also intervened in the case brought by the PBA against the NYPD preventing NYPD from releasing anonymous summaries along the lines of what BuzzFeed released. That case is still pending decision.

In New York City specifically, the Special Litigation Unit is extremely experienced in police disciplinary matters through the discovery in civil rights cases of police misconduct information, recordings of IAB interviews, CCRB interviews, investigations from both agencies,

the disciplinary process and fundamental lack of follow up on accountability matters. For example, some officers deposed in a civil rights case last year were found guilty of misconduct, sent written reprimands only to never learn from their commanding officers about it. Through these cases we are also aware that much misconduct is not the fault of individual officers as often as it is the fault of supervisors failing to correct misconduct, especially false statements and omissions and of the department failing to hold officers accountable for serious misconduct.

I have also written several articles on the harms of police misconduct secrecy, the history of Police Officer Bill of Rights (like Civil Rights Law 50-a),[2] on similar technology-supported police accountability projects across the country[3] and on why police misconduct information is important to public defenders.[4]

**WE FULLY SUPPORT A RESOLUTION TO REPEAL OF 50-A**
(Williams) (Preconsidered Res. No.)

Civil Rights Law § 50-a prevents the public from receiving critical information about the police officers who serve in their communities, officers entrusted with an immense amount of power. As the Panel Report noted after a seven month investigation: "Denying those directly affected by police misconduct access to information on police discipline serves no one's interest. More broadly, lack of transparency impedes the Department's efforts to show the public that it holds officers accountable for their conduct."[5]

As an illustration of how important it is to have this information about officers, consider news from Chicago this past week. It was discovered that officers leading the Chicago Police

[2] Cynthia Conti-Cook, A NEW BALANCE: WEIGHING HARMS OF HIDING POLICE MISCONDUCT INFORMATION FROM THE PUBLIC, Vol. 22 CUNY Law Review Issue 1 (Feb. 2019) *pending publication.*
[3] Cynthia H. Conti-Cook, *Open Data Policing*, 106 GEO. L.J. ONLINE 1, 16-21 (2017) (detailing how "open data" about police conduct is being utilized by police reform advocates to "improve oversight and understanding of the police").
[4] Cynthia H. Conti-Cook, *Defending the Public: Police Accountability in the Courtroom*, 46 SETON HALL L. REV. 1063 (2016).
[5] Mary Jo White et al., *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department*, (Jan. 25, 2019), at 20 [*hereinafter* "Panel Report"].

Department's Implicit Bias training themselves were involved in brutal incidents against young black men.[6] James Baldwin famously said that "Not everything that is faced can be changed, but nothing can be changed without being faced."[7] We can't keep relying on reforms like new policies and trainings when we don't know if there are much deeper ongoing problems that will sabotage those new initiatives.

Existing FOIL exemptions already prevent officers' residential, social security, and medical information from being released.[8] Repealing 50a would only place the police on equal footing with other working professionals, such as doctors and lawyers, who are subject to discipline that is reported online.[9] Repeal would facilitate accountability systems similar to these other professions and allow for public trust in the ability of state police agencies to oversee their officers.

For the proposed resolution, we only have small edits to language.[10] We also recommend removing all references to 50-a from the reporting bills, as its completely unnecessary in the context of aggregated reporting.[11]

**POLICE MISCONDUCT REPORT**
Int. No 1105 (Richards et al) and (Johnson)(Pre-considered)
DEFINING TERMS AND DISCIPLINARY ACTION
WITHIN A COMPLEX SYSTEM

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[6] Debbie Southorn & Sarah Lazare, *Officers Accused of Abuses are Leading Chicago Police's "Implicit Bias" Training Program*, INTERCEPT, (Feb. 3, 2019), https://theintercept.com/2019/02/03/chicago-police-procedural-justice-training-complaints-lawsuits-racism/.

[7] "As much truth as one can bear" in The New York Times Book Review (14 Jan 1962) republished in The Cross of Redemption: Uncollected Writings (2011), edited by Randall Kenan.

[8] *See, e.g.*, Matter of Obiajulu v. City of Rochester, 213 A.D.2d 1055, 1056 (4th Dep't 1995) ("personal and intimate details of an employee's personal life are exempt") (internal quotation omitted); Lyon v. Dunne, 180 A.D.2d 922, 924-25 (3d Dep't 1992) (ordering redaction of addresses, phone numbers, and dates of birth from otherwise disclosable investigation records).

[9] *E.g.* James Kelly, *New York Courts Put Attorney Discipline Records Online*, N.Y. L. INSTITUTE, (Feb. 24, 2015), http://www.nyli.org/new-york-courts-put-attorney-discipline-records-online.

[10] NYCLU v. NYPD, No. 133, 2018 WL 6492733 (N.Y. Dec. 11, 2018).

[11] For example, Int. No. 1105 references 50-a.

The NYPD's disciplinary system is complex and multi-tiered.[12] Complaints of police misconduct come from many different directions before they ultimately end up resulting in discipline[13] and a case can be disposed of through many different avenues.[14] Therefore, what each agency is responsible for reporting must be clear, as well as the origins of the complaint and the method in which a disposition was reached.

We ask the Council to consider making the categories of misconduct more accessible than the complex set of rules, regulations, city, state and federal laws the bill currently asks the NYPD to report according to. Instead, the Council could require reporting across several categories of misconduct such as those the Panel Report created to describe types of misconduct, for example, Stopping/Frisking/Searching Without Sufficient Legal Authority; Failing to Perform Duties; Making False Entries in Department Records; Excessive Force or Force Without Necessity, etc.[15]

COMPLAINTS AND INVESTIGATIONS FROM CCRB, IAB and OIG

The bills need more clarity around what complaints, investigations and disciplinary proceedings the Council will require reporting on. For example, in the Police Misconduct Report bill, the Council asks the NYPD to report on the number of complaints of misconduct it receives. This creates confusion about whether the NYPD needs to also report how many complaints of

[12] Panel Report, at 7-14 (overviewing NYPD's disciplinary process).
[13] Investigations may be initiated by civilians or service member complaints, or by the Department itself. *Id.* at 7-8. Minor infractions are routinely addressed at the precinct level through Command Discipline, and serious offenses generally involve a more formal disciplinary process. *Id,* at 8. Allegations of misconduct may then be investigated by one or more of the IAB, CCRB, or Force Investigation Division, *id.* at 9-10,
[14] Complaints substantiated internally are prosecuted by the DAO, and those substantiated by CCRB are prosecuted by their Administrative Prosecution Unit (APU), *id.* at 11-12.
[15] Panel Report, at 29-30 (listing the 12 categories of misconduct identified by the Panel). For example, criminal conduct, administrative misconduct, force against civilians, force against MOS, unlawful stop, frisk or searches, false statements, reporting or testimony, failure to investigate, failure to report misconduct, false reporting of overtime, false reporting of sick leave, failure to identify name and badge, etc.

misconduct it receives through the CCRB, which would be a subset of the complaints CCRB receives in general.

We recommend disaggregating the reporting by which complaints the NYPD receives from CCRB, versus the IAB and the OIG, as well as by which of those agencies investigated complaints. We have concerns that IAB officers, who often go directly to people's homes, interrogate them aggressively and leverage power to arrest them, often discourage people from moving forward with complaints. It would be useful to have data on whether complaints traveling through IAB vs CCRB vs OIG have different paths depending on how each agency does intake. We also have concerns that parallel IAB investigations are conducted to undermine CCRB outcomes. In my capacity as a civil rights attorney, I have listened to IAB investigations with officers that last a shorter period of time than the 3-minute preamble the investigator gives before the interview starts. In other words, it's barely an investigation at all.

We recommend removing the language from this bill that overlaps with the jurisdictional areas covered by the CCRB. We believe this will cause confusion, especially without specific aggregation based on to whom a complaint was made and by which agency it was investigated.

UNDERSTANDING THE UNIVERSE OF DISCIPLINARY OUTCOMES

We learned from the Panel Report that even if the NYPD did create a centralized case management system, it still would not capture the universe of misconduct penalized by NYPD commanding officers.[16] A world of misconduct is not reported centrally but at the command level only. While much of this misconduct is fairly considered "minor" it also may include misconduct really important to the public, for example unlawful stops, frisks, failure to fill out

[16] Panel Report, at 8.

stop paperwork, failure to turn on body cameras, and many other aspects of public encounters the public would want more information about.[17]

The definitions used in these bills need to be broad enough to get what the Council wants: a full picture of what misconduct officers are committing and how the NYPD is responding to hold them accountable. If we learn that there are categories of misconduct the public categorically does not have an interest in, we can modify future reporting requirements accordingly. It's important for the public to be involved in defining what misconduct is in the public's interest and that they may do so fully informed about the scope of misconduct occurring in the NYPD.

Likewise, it's important that the Council be aware of when action isn't taken as much as when it is taken. We suggest that the Council disaggregate by what the disciplinary outcomes are (as opposed to the investigation outcomes) by the various types of outcomes available in the NYPD disciplinary system (guilty, not guilty, guilty in part, dismissed, filed, acquitted, resignation and "no lo contendre").

We suggest that the penalties are separately reported according to what type of penalty was given (forfeiture; return of time; return of benefits; return of pay; restitution; case citation; reprimand; instructions; Command Discipline – A; Command Discipline – B; formal training; informal training; dismissal probation; voluntary separation; suspension; and termination").

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[17] Peter L. Zimroth, *Seventh Report of the Independent Monitor*, at 38-40 (Dec. 13, 2017) (finding that the failure to documented stops continues to be a problem, and showing various nonpublic disciplinary outcomes, including Command Discipline, supervisors have imposed). See NYPD, PATROL GUIDE PROCEDURE NO. 206-03: VIOLATIONS SUBJECT TO COMMAND DISCIPLINE (2017) (providing that discipline may be imposed based on charges brought under Schedule A, "[a]ny other minor violation that, in the opinion of the commanding/executive officer is appropriate for Schedule A command discipline procedure;" under Schedule B, "[a]ny other violation, which, in the opinion of the commanding/executive officer and after notification to the patrol borough adjutant and consultation with the Department Advocate, is appropriate for Schedule 'B' command discipline procedure;" under Schedule C, "[a]ny violation reviewed and determined by the Department Advocate to be suitable for Schedule 'C' command discipline.").

We further suggest the following "sentence" is reported in detail: if forfeiture or "return of": report the number of days sentenced to forfeit or return. (For example: days of annual leave, days of vacation, days of pre-trial suspension, days of time, days of pay, days of benefits, and years of dismissal probation).

We make these recommendations because comparing BuzzFeed data on sentences is confusing. Many sentences read in a convoluted way that is hard to compare.[18] For example, many officers received a combination of "judgement suspended and one year of dismissal probation" and would get some combination of days forfeited, vacation days forfeited, on suspension without pay or pre-trial suspension days. These sentences need clarity and transparency as well as the outcomes and types of penalties before they can be comparable.

## TRANSFERS AND VOLUNTARY SEPARATION

We also learned from the Panel Report that Commissioner O'Neill has increasingly relied on voluntary separation as a method of removing officers from the department without interrupting their pensions, their ability to get future employment as a police officer and also to possibly avoid required reporting to the New York State Department of Criminal Justice Services for when officers are terminated.[19]

It is very important, therefore that voluntary separation is a type of discipline recognized and counted in any data reporting on the disciplinary system, as are other hidden forms of discipline, such as transfers to other boroughs or demotions from rank.

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[18] Kendall Taggart, Mike Hayes and Scott Pham, *Here are the Records on Thousands of New York Police Misconduct Cases,* BUZZFEED, (Apr. 16, 2018), https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database.

[19] Panel Report, at 26 ("The overall effect of voluntary separation is that the officer is entitled to collect a pension, if it has vested, and can inform future employers that he or she voluntarily left the Department."). *See* 9 NYCRR 6056.4(c) (requiring each police department to report to NYSDCJS when officers have ceased employment and the reasons why, including "for cause"); 9 NYCRR 6056.2(g) (defining "for cause"). Voluntary separation is arguably meant to skirt this definition, allowing for a report that an officer was not terminated due to misconduct, but simply resigned.

COMMAND VS. PRECINCT

The distinction between command and precinct isn't semantics. It's technical. And if the bill only requires reporting across precincts, important and powerful commands that interact with the public invasively, for example, narcotics detectives, anti-crime detectives, Strategic Response Group officers, VICE detectives and other officers assigned to similar public encounters will be carved out, as would the housing and transit patrol service areas.

FORMATTING

We really look forward to having the reporting from these bills available in Excel or similar formats, allowing for processing and modern analysis.

**DEMAND A STUDY ON STRATEGY FOR IMPLEMENTATION OF A DISCIPINARY MATRIX, NOT FEASIBILITY**

Int. No. 1309 (Richards)

As my colleagues' testimony emphasizes, there are sufficient studies at this point to say definitively that NYPD's disciplinary system requires publicly available guidelines or matrices created with opportunity for informed public comment. This is no longer an "if" but a "how" report. There are, however, important strategic decisions the department needs to make on how it will construct a matrix and how it will involve informed community input. This is so important because it is the department's and the community's sense of justice that need to be aligned in order for there to be trust in the accountability system again. The public (and officers) need to know the types of misconduct officers can be charged with, the process of investigation, prosecution and the penalties available and they need to have access to see it in action for themselves. These are not revolutionary ideas, these are the fundamental basics of our

governmental system that center the right of access and the principle that "justice must be seen to be done".[20]

It would be wrong, for example, if a matrix or guidelines were built with data from past decisions which do not deliver the penalties for misconduct that the community agrees officers deserve. For example, we do not want to introduce any type of scoring system that will fundamentally weigh mitigating factors in a way that means the status quo is maintained.

A disciplinary matrix is also not a static thing. We not only want the NYPD to design a system to implement a disciplinary matrix but one to update it regularly as well, again with ongoing opportunity for public input.

**COMBINE OBSTRUCTION OF GOVERNMENTAL ADMINISTRATION, RESISTING ARREST, AND/OR ASSAULT AND/OR DISORDERLY CONDUCT**
(Lancman)(Preconsidered) and (Richards)(Preconsidered)

If the Council is trying to probe the path of cases civil rights and criminal defense lawyers have dubbed "the trifecta" or "contempt of cop" we recommend combining the reporting bills related to reporting on resisting arrest, assault and obstruction of governmental administration. We recommend requiring the reporting not from the police but from the District Attorneys. We also recommend adding disorderly conduct to the group of charges. We recommend not including other offenses, which may obscure the types of incidents you're searching for evidence of.

**DISTRICT ATTORNEY OFFICES' ACCESS TO POLICE PERSONNEL RECORDS**
(Lancman)(Preconsidered)

[20] *See* GEOFFREY ROBERTSON, THE TYRANNICIDE BRIEF: THE STORY OF THE MAN WHO SENT CHARLES I TO THE SCAFFOLD 145-147 (2005) ("Cromwell wanted to play to the larger gallery . . . so that the justice of the proceedings could be more widely appreciated . . . . [because of terrible acoustics in the Hall] . . . . [T]he judges were particularly concerned that justice must be seen to be done, because it would not be heard to be done. It would be read, at least: twelve short-hand reporters were permitted to form the first press gallery.").

Civil Rights Law § 50-a expressly permits district attorneys to obtain officers' disciplinary records "in connection with official duties," the most obvious example being criminal prosecutions.[21] Recently, a public disagreement between the District Attorney of New York and the NYPD over the ability of the DA to view disciplinary files has made clear the recalcitrance of the NYPD to comply with their obligations, as well as the necessity for further, outside action.[22] For decades, the NYPD has "turned over disciplinary records of officers only when a prosecutor asks for a background check on an officer who is going to testify at a hearing or trial."[23] This bill, requiring NYPD to comply with all district attorney requests within 24-hours, represents a step in the right direction.

It is critical for prosecutors to ask for disciplinary records of arresting officers and to obtain these records quickly. Early decisions to decline prosecutions could prevent harmful, abusive prosecutions from going forward that are sometimes only initiated to deter police complaints from being filed. Disciplinary records are necessary to make full investigations into the merits of allegations and to probe the credibility of potential police witnesses, who will often be central to obtaining a conviction.

The sooner that prosecutors obtain officers' disciplinary records, and share them with defense, the easier defense can make an informed decision about the strength of the State's case. Wrongful prosecutions, for example based upon false arrests that are part of a pattern of documented misconduct, will be weeded out, and in strong cases, defense may sooner be persuaded to negotiate a plea.

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[21] N.Y. CIV. RIGHTS. L. § 50-a(4).
[22] James McKinley Jr., *Manhattan District Attorney Demands Access to Police Records*, N.Y. TIMES, (July 8, 2018), https://www.nytimes.com/2018/07/08/nyregion/manhattan-district-attorney-police-records.html.
[23] *Id.*

This will not only preserve judicial resources, but also directly effects the liberty interest of our clients. Each year, several of our clients' cases are dismissed by prosecutors based on red-flags found in officer disciplinary files. Requiring NYPD to share this information within 24 hours of request will lead to earlier dismissals in such cases. For individuals who have been ROR'ed or made bail, this means less money expended, and days of work, childcare, etc. lost due to going back and forth to court. For clients incarcerated during the pendency of proceedings, each day it takes to produce disciplinary records means another day confined in jail. And especially for incarcerated clients, who in many cases feel immense pressure to quickly plea in order to regain their freedom, and currently often do so before defense has access to any disciplinary information regarding their arresting officers, early access to this information can be the difference between a conviction and all of its collateral consequences and the decision to fight a case.

While this bill is a step in the right direction, its requirements could be made stronger in the following ways. First, as written, there is no way to ensure that NYPD is complying with the twenty four-hour records production requirement. At a minimum, District Attorneys should be required to report to the Council instances in which they are not receiving requested disciplinary histories from the NYPD in timely fashion.

We strongly believe that failure by district attorneys to request officers' disciplinary records: runs counter to prosecutors' duties to fully investigate the cases they bring; enables officers to continue patterns of unconstitutional, incredible, or otherwise unlawful arrests and/or practices; and, most alarmingly, increases the risks of prolonged incarceration of innocent clients, false convictions and false pleas. The public deserves to know which prosecutors are making these requests, or conversely shielding themselves from awareness of the misconduct

histories of officers they willingly call to the witness stand. Absent the council's ability to mandate that prosecutors' request these records, each District Attorney should be required to report when these requests are made.

**DISTRICT ATTORNEY REPORTING REQUIREMENTS**
(Johnson) (Preconsidered)

Collectively representing the nation's largest provider of indigent defense, Legal Aid Society attorneys understand that prosecutors are trusted with wide discretion and wield tremendous power in our criminal courts. Through decisions such as what crimes to charge, whether to request bail and for how much, and what pleas to offer, prosecutors are the *de facto* sentencers in a great deal of our cases.

Such power necessitates increased transparency. In order for district attorneys to truly represent the will of the communities that elect them, it is imperative that the public be given the information to assess how they are using their considerable discretion. Members of the public will not be able to hold prosecutors accountable without such information.

For example, some District Attorneys have recently responded to the long-ignored voices of communities marginalized by mass incarceration, by running on campaign promises not to prosecute certain crimes.[24] These policies embody a criminal justice system influenced by democratic choices. Yet without public information on showing whether these promises have been kept, the public will not be able to make an informed choice on who they trust with the considerable power to prosecute, and will thereby continue to be shut out of informing decisions at the root of basic liberty.

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[24] *See, e.g.*, Noah Maskar, *Court Watch NYC Aims to Make DAs Keep Their Promises*, PATCH, (Feb. 27, 2018), https://patch.com/new-york/new-york-city/court-watch-nyc-aims-make-das-keep-their-promises (Vance and Gonzalez . . . have each pledged leniency on certain charges such as turnstile-jumping and marijuana possession, which are disproportionately enforced against people of color."); Azi Paybarah, *Brooklyn D.A. Candidates Take Aim at Broken Windows*, POLITICO, (Apr. 19, 2017), https://www.politico.com/states/new-york/city-hall/story/2017/04/brooklyn-da-candidates-tae-aim-at-broken-windows-policing-111317;

The Legal Aid Society therefore supports this bill as a much-needed measure to shine a light on those representing "the People" in our criminal courts. We are especially encouraged by inclusion of reporting requirements for demographic data on those charged with crimes, which will allow for accountability surrounding racially disproportionate charging decisions, and decline to prosecute, which will allow the public to scrutinize the extent to which different District Attorneys ensure the fairness and integrity of criminal proceedings.

As written, the bill can most benefit from more complete reporting on bail applications made by prosecutors. Most obviously and immediately, the decision to request bail effects the liberty of individuals charged with crimes. Those who cannot make bail are subjected to heinous conditions in New York City's jails, many of which have been well-documented.[25] But Legal Aid attorneys know all too well the further consequences of being warehoused in jail during the pendency of a case—loss of education and/or employment opportunities; loss of familial relations and even custody of children[26]; and a greater chance of receiving a carceral sentence at the culmination of one's case.[27] Faced with the specter of years in jail awaiting trial, even clients privately pleading their innocence make understandable decisions to plead guilty.

As written, the data captured in District Attorney's bail reports will fail to capture the full range of damage our bail system has wrought, and the extent to which prosecutorial discretion is to blame for it. First, the bill should be amended to include demographic information of all individuals for whom bail is requested. Publicly available data demonstrate distressing racial

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[25] *See* Michael Jacobson et al., *Beyond the Island: Changing the Culture of New York City Jails*, 45 FORDHAM URB. L.J. 373, 379-391 (overviewing a history of brutal conditions including "pervasive violence and…decaying and outmoded conditions" at New York City jails, as well as reform efforts, and citing contemporaneous media coverage of these abuses).

[26] Nick Pinto, *The Bail Trap*, N.Y. TIMES, (AUG. 13, 2015), https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html.

[27] Meghan Sacks & Alissa R. Ackerman, *Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?*, 20 CRIM. JUST. POL'Y REV. 1 (finding that pretrial detention "significantly and negatively" affects sentence length).

disparities in judicial grants of release versus bail during arraignments.[28] The first step to fixing this problem is understanding it. Without information on prosecutors' bail requests sorted out by demographic data, it will be impossible to determine the extent to which prosecutorial bias has contributed to these disparities.

Next, the District Attorneys should report on whether they have attempted to assess an individual's ability to pay before making a bail request. This reporting is critical to understanding whether, and which, District Attorney's offices view bail as a means to keep individuals in jail throughout the pendency of a case, instead of simply ensuring their returns to court—the only statutory determination on which bail decisions are to be based under New York State law.[29]

Lastly, while we it will certainly be useful to understand when in the course of proceedings cases are resolved and after how much time in order to study the criminal justice system and make real speedy trial guarantees, further information could illuminate the challenges that our clients who cannot make bail face. Additional reporting should include the stage of the proceeding at which a case is disposed of disaggregated by incarceration, as well as convictions resolved by plea agreement disaggregated by incarceration.

## CONCLUSION

We thank you for hearing our testimony today. We look forward to continuing to partner with the City Council in order to create meaningful accountability structures, informed by the needs and values of community members, that are a minimum to community trust in the NYPD.

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[28] Cynthia E. Jones, *"Give us Free": Addressing Racial Disparities in Bail Determinations*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 919, 938-945 (2013) (outlining fifty years of studies consistently finding that "African American defendants receive significantly harsher bail outcomes than those imposed on white defendants.").
[29] N.Y. CPL § 510.30(2)(a).

BROOKLYN DEFENDER SERVICES

**TESTIMONY OF:**
**Jacqueline Caruana – Senior Trial Attorney, Criminal Defense Practice**

**Presented before:**
**The New York City Council Committee on Public Safety and the Committee on Justice System**

**Oversight Hearing on NYPD Discipline Procedures**

**and**

**Ints. 1105-2018, 1309-2018, T2019-3704, T2019-3705, T2019-3706, T2019-3707, T2019-3708, T2019-3709**

February 7, 2019

My name is Jacqueline Caruana and I am a Senior Staff Attorney in the Criminal Defense Practice at Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 30,000 clients in Brooklyn every year. I thank Chairpersons Donovan Richards, Rory Lancman, and members of the Committee on Public Safety and Committee on Justice System for your leadership on improving police oversight and accountability.

The crisis of police misconduct and systemic lack of consequences and accountability has gained increased national attention in recent years, largely due to the #BlackLivesMatter movement. In spite of this, through Civil Rights Law (CRL) 50-a, New York State has maintained the nation's most regressive and least transparent law that local municipalities across the state have used to shield this misconduct from public scrutiny. This secrecy enables continued police misconduct and, in too many cases, wrongful convictions. Public accountability for how public officials perform public duties with public dollars in our communities is necessary to public safety for all New Yorkers and to enable defense attorneys to fully defend our clients' rights. This accountability is also necessary if community trust is to be earned by police.

## BACKGROUND

The national media focus on police killings of unarmed people has fueled outrage across the country, yet the same attention has not been paid to the non-fatal punitive law enforcement interactions many, particularly Black and Latinx people, experience in New York City each day. The lack of consequences surrounding these interactions emboldens police tactics that target Black, Latinx, and immigrant communities of color.

New York City's continued use of broken windows policing has a major impact in the courtroom. Many, if not most, cases rely on the testimony of a single police officer alone, rather than a civilian-generated complaint. Excessive prosecutorial power and discretion, coupled with the threat of long prison sentences, have made trials very rare. Over 90 percent of convictions are the result of plea bargains, generally without an opportunity to cross-examine a police officer. With little to no evidence shared with the public defender, the outcome of a case—and in many cases someone's freedom—is dependent on the credibility and integrity of a police report filed by a single police officer.[1] Police officers have become a consistent presence in our everyday lives, particularly for low-income communities of color. Yet, our communities, public defenders, and journalists often have no access to information about police officer misconduct or effective mechanisms to hold police accountable.

## CLIENT STORIES

### Mr. C – No Evidence or Mechanism to Prove Client's Claims

A police officer stopped my client, Mr. C, in the street because he purportedly thought he saw an "unknown heavy object" in Mr. C's pocket. A search found that Mr. C had nothing in his pocket, so the officer charged Mr. C with disorderly conduct and claimed that Mr. C head-butted him. Mr. C ended up with a felony assault charge as a result. The officer had not suffered any injuries. Clearly, the officer's credibility was central to the case, but unfortunately as Mr. C's attorney I had no access to the officer's disciplinary records.

Because of CRL 50-a, the only method by which to obtain police disciplinary records is to file a motion with the court and request that the court order the police records to be turned over to the judge to review. In this motion, the defense is required to make "a clear showing of facts sufficient to warrant the judge to request police records for review." We generally cannot make that claim without access to the information in police records – a catch 22. Therefore, these motions are usually unsuccessful. In Mr. C's case, he was initially charged with a felony and ended up with an ACD, which resulted in his case being dismissed and sealed. Shortly after I filed the motion to get access to the officer's disciplinary records, the prosecution offered Mr. C an ACD, because they did not want me to gain access to this officer's file.

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[1] Gaby Del Valle, *Most Criminal Cases End in Plea Bargains, Not Trials,* August, 7, 2017, The Atlantic, available at: https://theoutline.com/post/2066/most-criminal-cases-end-in-plea-bargains-not-trials?zd=1&zi=tzbk66dp.

**Mr. H –Evidence of Wrongdoing, but No Accountability:**

Mr. H was arrested and accused of assaulting a jail officer and of possessing a weapon while he was detained at Brooklyn House of Detention. He denied all of the charges. The police reports, Department of Corrections' reports, and initial discovery disclosure indicated very clearly that the officer conducted an unlawful strip search of Mr. H and unlawfully used excessive force on Mr. H while he was detained. The officer alleged that Mr. H had a sharpened piece of plastic in his pants pocket and that when the officer attempted to retrieve this object, Mr. H allegedly bit his finger.

Mr. H adamantly contends that he was not preventing the officer from performing any lawful duty; in fact Mr. H contends that the officer along with other officers violently attacked him and that any injury that the officer may have sustained was the result of his own actions. Moreover, all of the officers fabricated their versions of what happened inside the detention facility on that day to cover up the unlawful force they used to wrongfully accuse Mr. H of having a weapon in order to justify the officer's assault on Mr. H.

The officer's credibility, as well as his motive to fabricate, was central to this case at trial. Such issues, including the officer's propensity for violence and use of force, specifically excessive force, as well as his bias against Mr. H and his motive to fabricate his story were both material and relevant to this case.

A motion was filed with the court to obtain the officer's disciplinary record but it was denied because the judge determined that the defense did not make a clear showing of facts sufficient to warrant the judge to request officer records for review. In other words, we did not have enough facts in order to justify a request for the facts.

Mr. H's case went to trial where it was revealed during the trial that the officer and his colleagues forged paperwork and planted evidence. Mr. H was acquitted by a jury; however, the officer still works at the same detention facility and his disciplinary record remains secret.

**RECOMMENDATIONS**

We thank the Council for introducing several bills to help address the lack of transparency within NYPD, and the inconsistent, arguably non-existent, accountability for police misconduct. We support the bills that require reporting on police misconduct and disciplinary guidelines. This, of course, is only the beginning of the work that needs to be done to mitigate police misconduct and finally hold law enforcement agents accountable. Until the New York State Legislature reforms the discovery laws, information pertinent to our client's defense will remain unavailable to us. We hope that the City Council will consider expanding these bills to provide access to disciplinary records to defenders.

We respectfully offer the additional comments and recommendations on some of the bills being considering today.

**Reso. T2019-3709 – Repeal Section 50-a of Civil Rights Law (A.02513 O'Donnell)**

BDS supports repealing CRL 50-a and appreciates the Council's support to push for New York State to prioritize transparency and accountability for police misconduct. Civil Rights Law 50-a unjustly prevents defense attorneys from presenting key evidence that would prompt judicial review of police misconduct, any criminal activity by police officers, or challenge the credibility of an officer. Though the law allows disclosure when "mandated by lawful court order," many judges continue to hold subpoenas of potential police officer misconduct to a heightened standard of scrutiny and precariously rely on prosecutorial discretion to investigate and disclose misconduct, making the provision in the statute ineffectual.[2]

The Report of the Independent Panel on the Disciplinary System of the New York City Police Department, released on January 25, strongly recommends that NYPD support legislative efforts to amend Civil Rights Law Section 50-a.[3] This bolsters what advocates have been saying for decades. However, we believe the only change that should be made to 50-a is to completely repeal it. Changing the definition of "personnel records" would not address the mechanisms that continue to allow police departments to seek broad interpretations of what qualifies as personnel records.[4]

**Int. T2019-3704 – District Attorney Reporting on Criminal Prosecutions**

BDS supports this bill and the release of data on prosecutions as a tool for evaluating our criminal legal system. This information should be used to inform further changes towards ending the hyper-criminalization of low-income Black and Latinx communities.[5]

One important issue that should be monitored under this bill is overcharging. It is no secret that prosecutors have immense power to determine the fate of a defendant. For example, a prosecutor can choose whether to charge a defendant arrested for fighting in a low-income, "high crime" neighborhood with a gang assault where a white defendant in an affluent area may be charged with disorderly conduct or never arrested in the first place. As we saw in the case of my client Mr.C, a charge of assaulting a police officer with no evidence can funnel a person through the criminal legal system, but end with a favorable adjudication such as an ACD. By overcharging, prosecutors use their unchecked authority and the advantage of closed discovery to force our clients into plea deals.[6] This data will be an

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[2] Under *Brady*, prosecutors have a constitutional duty to disclose to the defense any favorable, material evidence known to the prosecution team. Jonathan Abel, *Prosecutors' duty to disclose impeachment evidence in police personnel files: the other side of police misconduct*, available at: https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/07/11/prosecutors-duty-to-disclose-impachment-evidence-in-police-personnel-files-the-other-side-of-police-misconduct/?noredirect=on&utm_term=.7d38aafc1fa9

[3] The Report of the Independent Panel on the Disciplinary System of the New York City Police Department, January 25, 2019 available at: https://www.independentpanelreportnypd.net/

[4] New York City Bar, *Report on Legislation,* available at: http://documents.nycbar.org/files/2017285-50aPoliceRecordsTransparency_Advocacy.pdf.

[5] Hyper-criminalization is defined as "the process by which individuals' everyday behavior and styles become treated as deviant, risky, threatening or criminal, across social contexts. Leslie Berenstein Rojas, *Youth and Punishment: The Hypercriminalization of Black and Brown Boys,"* September 20, 2011, available at: https://www.scpr.org/blogs/multiamerican/2011/09/20/7369/youth-and-punishment-on-the-hypercriminalization-o/.

[6] Toni Messina, *The Insidiousness of Overindicting,* December 24, 2018, Above the Law, available at: https://abovethelaw.com/2018/12/the-insidiousness-of-overindicting/.

important step in holding prosecutors accountable for their roles in facilitating mass incarceration and their power to help reverse it.

**Int. 1309- 2018 – Internal Disciplinary Matrix**

BDS supports the intent of this legislation; however, NYPD (or any agency, institution, organization, etc.) cannot be trusted to evaluate its own office discipline and create recommendations on how they can improve their own disciplinary processes. Similarly to structure of the Panel commissioned by the NYPD, an internal disciplinary matrix should be developed by an external group of stakeholders who are given full access to NYPD internal documents, interviews with personnel, access to the administrative trials, and any pertinent information that will allow them to create a comprehensive matrix for sanction options for police department personnel. We call on the Council to draw on the expertise of the Civilian Complaint Review Board, which has produced their own matrix of disciplinary actions, as well as defense attorneys and community groups of impacted New Yorkers.

**Int. 2019-3706 – District Attorneys Given Access to Law Enforcement Records**

We support prosecutors' access to police disciplinary records, but note that this change will not meaningfully hold police accountable or protect the liberty interests of the people they may wrongfully arrest. Ultimately, people facing criminal accusations and their defense attorneys must have access to this information. That said, this legislation should make it easier for Brooklyn public defenders to get access to police records from the District Attorney's Office because DA Eric Gonzalez is the currently the only DA in the City that voluntarily participates in a system that resembles open-file discovery.

**Int. T2019-3705 – Reporting on NYPDs Disciplinary Guidelines & Disciplinary Actions**

Like personnel records, law enforcement disciplinary guidelines and actions, even in aggregate, are hidden from the public. We support this legislation to make such guidelines public; however, BDS believes that disciplinary actions should also be made public or given to public defenders. Disciplinary actions are necessary to prove the credibility of the officer, to file a motion to warrant the judge to review personnel records, or to effectively document patterns of misconduct.

Additionally, we support the Independent Panel's recommendation to remove the unilateral authority of the Police Commissioner, a position not directly elected by the people, to overturn findings of guilt or modify penalties, and that there needs to be more transparency not only in the guidelines but the actual administrative trial process of accountability.

We thank the Council for the opportunity to speak on this issue and hope you will view BDS as a resource as we continue to work together address this issue.

If you have any question, please feel free to reach out to Saye Joseph at scjoseph@bds.org.

**Testimony of Eric Vassell, Father of Saheed Vassell, killed by NYPD officers on April 4, 2018**

**Submitted to the New York City Council**

**For February 7, 2019 Public Safety Committee Hearing at New York City Hall**

Good afternoon Chairman Richards and members of the Public Safety Committee. Thank you to Speaker Johnson for the invitation to speak at today's hearing and to Chairman Richards for including me in this hearing. My name is Eric Vassell and I'm the father of Saheed Vassell. Saheed was 34 years old on April 4, 2018, when he was murdered by NYPD officers near our family's home in Crown Heights, Brooklyn.

To say that Saheed's death has been difficult for our family and community is an understatement. He was a bright light for my wife, children and our extended family abroad. In death, I got to know my son even better through our neighbors, many of whom poured into our home to share their stories of his giving nature. I'm sad to say I didn't know about all the people he helped do laundry, carry grocery bags or accompanied to the train station in the wee morning hours until after he died.

I share this with you because I'm not sure what you know about my son beyond the destructive and false narrative the NYPD put out about Saheed only hours after they killed him. Saheed was killed at about 4:40pm after SRG and anti-crime officers pulled up on a busy intersection and recklessly shot at him 10 times in less than 30 seconds. One bullet entered a nearby store. Many children were in the area, traveling home from school. The police killed my son and endangered dozens more, but their

first impulse was to release selectively edited surveillance video of Saheed carrying a pipe, to justify the killing of another unarmed Black man. The NYPD used public resources to create propaganda, vilify my son and try to protect their officers — even before they would publicly name the officers and before any thorough investigation.

What I've come to know in the 10 months since Saheed's death is that the NYPD is far less concerned with the safety of my community and holding itself accountable than it is with making its actions appear justified to the general public. Councilmembers: you represent the voice of the people on public safety and I am asking you to hold the NYPD accountable for disciplining those who make communities less safe for the public.

In the weeks after he died, police officers harassed our neighbors, who were understandably distressed. Since the NYPD didn't publicly release the names of the officers who killed Saheed, many people feared they were being harassed by the same officers. It took more than 16 weeks of organizing and public pressure to force the de Blasio administration and NYPD to finally name the four officers who shot at my son, but we still don't have the names of all officers and supervisors who were on the scene. This is wrong and dangerous.

My family demanded that the NYPD release the names of the four officers who killed Saheed. While the NYPD often cites potential retaliation as a reason for not releasing the names of officers involved in civilian shootings, our concern was that our son's killers were hiding in plain sight, free to cause more harm to more families and communities.

The NYPD never officially released a statement with the names of those who killed Saheed. To this day, over 10 months after my son was murdered in broad daylight, as these officers are being investigated by the State Attorney General, none of them have even been put on modified duty. This decision the NYPD made to keep the officers fully armed on the same streets where they erroneously killed my son is deeply discouraging to my family and alarming to the Crown Heights community. And the fact that the Attorney General's office has not yet moved to indict the officers — after 10 months — makes me and my family concerned that elected officials are all trying to sweep Saheed's murder under the rug.

While putting an officer on modified duty is not a formal disciplinary action, taking it shows concern for public safety while an investigation is underway. It sends a message to a community that their lives are valuable and that there is a chance of a fair investigation. It also shows the most basic level of respect for a life taken by the people whose job it was to protect it.

The NYPD's choice not to put Leon Dinham, Anthony Bottiglieri and Bekim Molic of the 71st Precinct, and Omar Rafiq of the SRG on modified duty sends the message that they have no regard for my son's life. If they cannot take a pre-disciplinary action that protects New Yorkers, we have no hope they will discipline these officers or any of the others involved unless they are forced to.

I came here today to tell my family's story. I mentioned it is an understatement to say that Saheed's death has been difficult for our family and community. I hope you understand what I mean. Of course the death of a loved one, a young man and my son

at that, is already difficult. My son was killed by New York City employees and our family has been discouraged by the lack of accountability for those employees' actions. Dealing with Saheed's death is made more difficult every time it is brushed off as a mistake by the Commissioner or the Mayor. When my family thinks of the people who killed Saheed holstering their guns every day when they go into work, it makes our grief that much heavier to bear. To know that these officers could harm us or one of our neighbors is a fear we carry every time we leave our homes.

I am asking this committee for the answers we have not been able to get from the NYPD. Why are officers not immediately put on modified duty after a civilian shooting? Why are the names of officers involved in such shootings not immediately released, as was the case under Mayors Giuliani and Bloomberg? And what hope can families like ours have that officers will be disciplined for killing their loved ones? I am also asking for your assistance in demanding that the NYPD put the officers who murdered my son on immediate modified leave, make their investigation public and transparent, and bring disciplinary charges against the officers who unjustly killed my son.

Thank you.

**Testimony by Victoria Davis, sister of Delrawn Small**
**Delrawn was killed by NYPD Officer Wayne Isaacs on July 4, 2016**

**For the New York City Council Public Safety Committee**
**Hearing on NYPD Discipline, February 7th, 2019 at City Hall**

Dear Speaker Johnson, Public Safety Committee Chair Councilmember Richards, and members of the Public Safety Committee:

My name is Victoria Davis, and I am the sister of Delrawn Small. I want to take a moment to thank Speaker Johnson for personally inviting me to testify today, Councilmembers Richards for also welcoming me to testify and the rest of the councilmembers present today for taking the time to listen to my testimony and the testimonies of other families whose loved ones have been murdered by the NYPD. **We have first hand knowledge of the failures of the NYPD discipline system.**

My brother, Delrawn Small was murdered in East New York by NYPD Officer Wayne Isaacs on July 4th 2016 as he drove his step-daughter and 4-month-old child home from a family gathering. My brother's killing is just one example of the shocking lack of discipline within the police department for officers who unjustly murder Black and other New Yorkers of color. There are many other examples from families who weren't able to attend today, like the families of John Collado, Kimani Gray, and many others.

While Delrawn was my brother, he was like a father to me and our younger brother Victor, who is also here today. When I was nine years old, my mother died of complications with HIV/AIDS and we were sent to live in foster homes. Despite being a child himself, Delrawn spent so much time and effort in trying to remove Victor and I from the foster system and felt guilty when he wasn't able to do so. He was our protector and our father figure, even though he was a child himself. Delrawn and I were very close – we often spoke on the phone, sharing laughs and hanging out. When I moved out of New York City for a period, he would come visit me upstate and Facetime with my son Carmelo – who adored him. There is nothing that can bring Delrawn back or fill the void in our hearts and lives left from his senseless murder over two years ago.

On the evening of July 3rd, Delrawn had been driving home on Atlantic Avenue when he and others were cut off by Isaacs. Both continued to drive down Atlantic Avenue with Isaacs continuing to drive recklessly – endangering the lives of Delrawn's family who was in the car. At a stop light, Delrawn left his car to tell Isaacs to stop driving recklessly and that he was endangering people. Isaacs was off-duty and in his personal vehicle and there was no way Delrawn would have known he was an officer. Instead of identifying himself as a police officer, or driving off, or simply talking to Delrawn – Isaacs unholstered his service weapon. As Delrawn approached him, Isaacs rolled down his car window and shot Delrawn three times. Delrawn then stumbled and fell to the ground, bleeding out from being shot.

**Instead of attempting to provide life saving measures, Isaacs called 911 for himself – falsely claiming to have been attacked – and he never told 911 responders that he had shot someone and that they were bleeding out on the ground.** Isaacs did nothing to try and preserve Delrawn's life. For a week after the shooting, Isaacs and the NYPD continued to lie about what happened in an attempt to cover it up. Thankfully, surveillance video surfaced contradicting Isaacs' lies that he had been attacked by Delrawn. Unfortunately, by that point, a harmful public narrative had already been set by the NYPD.

**My brother's killing was the first case to be prosecuted by the Attorney General's Special Prosecutor.** They thought that Isaacs' misconduct was serious enough to bring criminal charges against him for murder. Like in so many cases of police killings, the Special Prosecutor was unable to secure a conviction in part because Isaacs' defense in trial was predicated on lies and his defense relied on the fact that he was a police officer to sway jurors to view him more leniently than they would anyone else. **In fact, he used the fact that he was a police officer as part of his defense – claiming that the reason he shot Delrawn 3 times instead of once or twice or at all was that he was trained to shoot in spurts of 3.** During the trial, the defense attempted to criminalize Delrawn by focusing on his tattoos and his previous interactions with the criminal legal system – even though there was no way for Isaacs to have known about any of these things when he shot Delrawn. **In a lot of ways, Delrawn was put on trial for his own unjust murder. Simply because Isaacs was not convicted by a jury, doesn't mean he is not guilty of murdering my brother.**

Since the conclusion of the criminal trial in October 2017, our family has been calling on Mayor de Blasio and Police Commissioner O'Neill to fire Wayne Isaacs. Since killing Delrawn, Iaacs has remained on the NYPD, is receiving a higher salary today than when he killed our brother, and the de Blasio administration has taken no action to hold him accountable. **Isaacs has not even been charged by the NYPD for possible misconduct.** Officer Isaacs acted with a deliberate disregard for my brother's life that day. Someone who is so trigger happy that he begins to shoot at people who approach his car is unfit to be a police officer. Simply because he was acquitted by a state court doesn't mean that the NYPD can't fire him for violating protocols, leading to the killing of those he's supposed to serve and protect, and lying about it. **He should be fired – and it is shameful that the NYPD hasn't even brought discipline charges. Any civilian who had done what Wayne Isaacs did would have been arrested on the scene, but Isaacs has been given preferential treatment every step of the way, and has continued to receive a taxpayer-funded salary, even though he's a public safety threat.**

It is dangerous and irresponsible for Mayor de Blasio and Commissioner O'Neill to allow him to police the streets of this city with a gun. If they fail to do anything and Isaacs is involved in a future incident, they will be entirely responsible for failing to fire him after he unjustly killed a civilian and for other New Yorkers to be harmed. There is a precedent for NYPD firing and/or proceeding with discipline of other officers after a criminal court acquittal – including officers in the cases of Ramarley Graham, Amadou Diallo and Sean Bell.

Like in the cases of Saheed Vassell, Eric Garner and countless others, my family has been asking for years that the Police Commissioner and Mayor act – and hold officers accountable for their wrongdoing. **The lack of action in my brother's case is confirmation about what many communities already know: that the NYPD is unwilling to adequately discipline abusive officers.**

**Since Delrawn's killing, I had a child – named Justice in honor of him – who will never be able to meet his uncle Delrawn.** Justice is four months old. Delrawn's children, including his then four-month-old son and step-daughter who were in the car when he was killed, will continue to grow up without their father. Our family will always feel his absence because my brother was deeply loved by those who knew him – his family, coworkers and community.

The City Council has an opportunity here to help ensure that there is accountability for the murder of Delrawn, Eric Garner, Saheed Vassell and others. We need you to help us because Mayor de Blasio & the NYPD have refused to communicate with us and have refused to take action. I hand-delivered a letter to them last year, my organizing for Delrawn has been covered by the press and we have still not received a response from Mayor de Blasio or Commissioner **O'Neill.**

**For Delrawn, for my 4 month old baby Justice and for the rest of my family, I'm pleading with you to:**

- **Demand that the NYPD immediately bring discipline charges against Wayne Isaacs for the multiple violations of NYPD protocol he engaged in, including escalating the situation with a civilian, murdering my brother, lying about it in official reports, and more.**

- **Pass City Council bills that will require the NYPD to publicly report on what discipline steps they have and have not taken related to all cases of police killings, deaths in custody, police sexual violence, police brutatlity and lying in official capacity.**

- **Pass Councilmember Wiliiams' resolution to call on Albany to repeal 50-a as soon as possible**

- **Work with me, other families, and the groups that we work with like Justice Committee and Communities United for Police Reform to make sure that we can prevent other families going through what we have gone through.**

No more families should have to go through what we have experienced – both losing our brother, and then watching as the administration and the department take no action in response to these senseless killings by NYPD officers.

Thank you for your time.

**Testimony of the Children's Defense Fund-New York**
**For the New York City Council Committees on Public Safety and the Justice System**
**Oversight – Police Discipline**
**February 7, 2019**

Good afternoon. My name is Charlotte Pope and I am the Youth Justice Policy Associate with the Children's Defense Fund-New York (CDF-NY). The Children's Defense Fund's (CDF) Leave No Child Behind® mission is to ensure every child a healthy start, a head start, a fair start, a safe start and a moral start in life, and successful passage to adulthood with the help of caring families and communities.

Thank you to Chair Richards, Chair Lancman, and to the members and staff of the City Council Committees on Public Safety and the Justice System for the opportunity to testify before this oversight hearing on police discipline. As the Council considers the issue of complaints of police misconduct, it is critical to ensure the scope of the issue includes attention to police presence in New York City's public schools and – as has been made evident through the more than 10,000 reported police interventions in schools during 2018 – the everyday culture of policing students as they attend school.

As an active member of the Dignity in Schools Campaign of New York, a coalition in large part organized by youth, CDF-NY understands that using police to respond to student behaviors in school does not address the underlying conditions that lead to unwelcome behaviors, nor supports student wellbeing, nor resolves conflict.[1] CDF-NY seeks to foster safe and supportive schools through measures that prevent and address conflict in ways that preserve the dignity and wellbeing of all students, school staff, and their communities.

According to data made available through the Council's Student Safety Act, young people experienced 936 school-based arrests, 701 criminal court summonses, 1,103 juvenile reports, and 3,624 "child in crisis" incidents during 2018. Every year, upwards of $300 million passes through the Department of Education's budget to the NYPD to sustain the School Safety Division of the NYPD and its 5,511 budgeted positions. At the same time that the City is placing NYPD School Safety Officers in schools, NYPD patrol officers and detectives who function outside of the School Safety Division are also policing these settings and were responsible for 74.3% of all school-based arrests and 57.2% of all criminal court summonses during 2018. While the Student Safety Act allows some broad conclusions to be drawn, students' in-school experiences of policing are far-reaching and the consequences of or potential for relief from daily conflict or harassment fails to be transparent to students, families and educators. Based on recommendations made by the Independent Panel on the Disciplinary System of the NYPD (the Panel), NYPD and DOE must make policing accountable to young people in school.

As an example, the *BuzzFeed News* database of NYPD disciplinary documents from 2011-2015, posted in 2018, shows 206 cases involving a School Safety Agent (SSA) or representative of the School Safety Division.[2] Substantiated charges included 52 instances of physical contact with students, with a few such scenarios outlined below:

| *Specifications* | *Penalty* |
|---|---|
| Unnecessary and excessive force against a student | Forfeiture of 5 vacation days |
| Engaged in a physical altercation with a student | Forfeiture of 30 days' time on suspension |
| Wrongfully searched student | Forfeiture of 30 vacation days / retraining |
| Acted inappropriately with a student | 1 year dismissal probation and forfeiture of 30 vacation days |
| Dragged a student by the arm | Forfeiture of 20 vacation days |

Of those 206 cases, an average of 391 days passed between the date of the charges and the date of the disposition. We understand that there are limitations to this database, and we insist that the City bring greater transparency to complaints originating from school-based incidents to ensure student safety and wellbeing.

Students citywide have long complained of oppressive conduct by SSAs and police officers in school,[3] and advocates have repeatedly called for NYPD to establish review procedures for addressing complaints related to misconduct of SSAs – particularly through expanding the jurisdiction of the CCRB to investigate. This is essential to provide a more meaningful resource to students and families who feel disenfranchised when experiencing police misconduct. Under current law, people can file complaints with the CCRB against "members of the police department," but the NYPD has countered that SSAs are *not* members of the police department, meaning that SSAs are immune from CCRB oversight.

CDF-NY has also been advocating for a revised Memorandum of Understanding between the NYPD and Department of Education that would clearly delineate and limit the role of SSAs and the NYPD in schools. Students who work with us repeatedly attest to instances where SSAs and police entering schools escalate incidents that could have otherwise been resolved or mitigated by an educator or counselor. CDF-NY supports Intro 1105-2018, requiring the police department to submit reports on complaints of police misconduct, and we again insist on the need to bring greater transparency to complaints originating from school-based incidents.

The Panel notes that Section 50-a poses no impediment to the release of anonymized statistical data about disciplinary outcomes, describing how CCRB reports include such statistics. The CCRB's monthly reports disaggregate complaints closed by command, including many categories beyond the Patrol Services Bureau, like Special Operations (including the harbor unit, aviation unit, canine unit, mounted unit), Traffic Control Division, Transit bureau, Housing Bureau, and Organized Crime Control Bureau. We ask that Intro 1105 also require NYPD to disaggregate complaints by command so that school-based incidents can be identified.

Finally, we urge the city to move away from police in our schools and realign resources to invest in school-based restorative justice, which seeks to respond to violence, harm, and abuse without deferring to criminalization while actively cultivating what has been found to prevent violence: accountability, healing, connection, and transparency. Policing students in school is not a substitute for counselors, social workers, and mental health providers and the City must divert funds away from criminalization and toward these alternatives.

It is our hope that the Council continues dialogue with the City on the value of sustainable investment in restorative justice in schools and ending the persistent disparities facing New York's students.

Thank you again for this opportunity to testify.

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[1] Kupchik, A. (2009). Things are Tough All Over: Race, Ethnicity, Class and School Discipline. *Punishment and Society, 11*: 291-302.
[2] Available at https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database.
[3] See Elora Mukherjee, Criminalizing the Classroom, The Over-Policing of New York City Schools, (New York Civil Liberties Union, American Civil Liberties Union, March 2007).

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**Testimony of Michael Sisitzky on Behalf of the New York Civil Liberties Union Before City Council Committee on Public Safety and Committee on Justice System Regarding New York City Police Discipline**

**February 7, 2019**

The New York Civil Liberties Union ("NYCLU") respectfully submits the following testimony today regarding the New York Police Department ("NYPD") disciplinary system. The NYCLU, the New York affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 200,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution.

Defending New Yorkers' right to be free from discriminatory and abusive policing is a core component of the NYCLU's mission. Protecting this right requires robust systems for investigating abusive officers and holding them accountable. We also work to ensure that all individuals accused of a crime receive due process and equal protection under the law. Fundamental to this effort is holding district attorneys and their offices accountable to the public. Our testimony will speak to the need to increase transparency in both the NYPD and prosecutorial systems, including commentary on the specific bills now before the committees.

In brief, the NYCLU expresses our full support for the resolution calling for repeal of New York Civil Rights Law Section 50-a and our qualified support for the remaining seven introductions. Each introduction has the potential to fill key voids in the public's understanding of NYPD disciplinary practices and prosecutorial decision-making. We include specific suggestions below to further strengthen these proposals and enhance the public's access to this critical information.

## The NYPD's Disciplinary System Urgently Needs Reform and Oversight

In June 2018, NYPD Commissioner James O'Neill convened a panel of two former U.S. attorneys and a former federal judge to review and make recommendations for improving the Department's internal disciplinary processes, practices, and policies. The report issued by that

panel last week[1] confirms issues within the NYPD that the NYCLU has raised for years, including the lack of transparency in the disciplinary process, the Commissioner's complete authority to decide outcomes in all disciplinary cases, the vulnerability of key decision makers to inappropriate internal and external influences, and long delays in case processing that deny victims of police misconduct a sense of resolution or closure.

The Panel noted that it "was struck from the outset, and throughout its work by the lack of transparency and plain-English explanations of the NYPD's disciplinary system and process."[2] This observation sets the tone for why the measures before the committees today are so essential – and in many cases, need to go further. The public's trust in police is diminished every time an officer is not brought to justice for misconduct. It is further diminished when departments actively resist sharing even the most basic information about what rules and procedures they have in place to respond to complaints of misconduct and data on what happens once those complaints start winding their way through these opaque systems.

Despite the existence of an independent Civilian Complaint Review Board ("CCRB") with the power to investigate and prosecute a defined subset of misconduct complaints, New Yorkers are ultimately asked to trust the NYPD to police itself. Decisions about how—and indeed, whether—to discipline officers who violate the public trust are left entirely to the discretion of the NYPD Commissioner. The CCRB and even the NYPD's own Deputy Commissioner for Trials only have the power to make recommendations to the Commissioner about discipline. State and local laws combine to vest the Commissioner with absolute discretion over the final outcome and to allow the NYPD full control over where disciplinary proceedings take place and who has access to information on how these proceedings are resolved.

To its credit, the CCRB produces detailed reports on the outcomes of cases it investigates and prosecutes. The story told by this data, however, is serious cause for alarm. In 2017, the most recent year for which we have full data, the Police Commissioner imposed penalties weaker than those recommended by the CCRB in the majority of cases.[3] In the most serious cases that went to full administrative trials, the Commissioner imposed discipline consistent with CCRB recommendations in just 27 percent of cases.[4]

The NYPD's handling of officer disciplinary proceedings demands close scrutiny and comprehensive reform. The bills before the committee today are not enough to eliminate flaws in the NYPD disciplinary system, but they represent a critical first step by adding in long overdue and badly needed mechanisms for oversight. As the de Blasio Administration and the NYPD have manipulated secrecy provisions like New York Civil Rights Law Section 50-a to shield abusive

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[1] *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department*, (Jan. 2019), https://www.independentpanelreportnypd.net/assets/report.pdf (hereinafter Panel Report).
[2] *Id.* at 7.
[3] Civilian Complaint Review Board, *2017 Annual Report*, 34, https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf.
[4] *Id.* at 35.

officers from all accountability, the City Council has a public duty to respond by mandating greater transparency. By requiring the NYPD to report on the rules it follows—or purports to follow—regarding discipline, and to release data on what happens with misconduct complaints and investigations, the City Council can help New Yorkers begin to break through the thin blue line protecting those officers who abuse the very people they are supposed to protect and serve.

- Preconsidered Resolution 2019-3709: **Support**

The NYCLU strongly supports passage of Preconsidered Resolution 2019-3709, calling on the State Legislature to fully repeal New York Civil Rights Law Section 50-a. Section 50-a cloaks police disciplinary records in secrecy and has been used to shield evidence of law enforcement abuse from the public. Originally passed in 1976 as an attempt to limit defense attorneys' ability to impeach the credibility of police officers by bringing up unproven allegations of misconduct, Section 50-a is now infamous for the harm it inflicts on victims of police abuse.

Section 50-a permits total state secrecy. It permits police departments to cover up their inaction on past allegations of officer misconduct when confronted with demands for accountability – including from police abuse victims and grieving family members who have lost loved ones to police killings. It has been twisted to justify the withholding of everything from body camera footage[5] to completely anonymized use of force data.[6]

And it has gotten worse. More than any administration in recent memory, the de Blasio administration has made use of 50-a to push vitally important public records down the memory hole. In 2016, the de Blasio administration and the NYPD reversed a 40 year-old practice of releasing "personnel orders," basic summaries of disciplinary charges and outcomes, claiming for the first time that this practice violated Section 50-a.[7] This robbed the public and the media of one of the only sources of information on whether officers who engage in serious misconduct face any degree of accountability. Astoundingly, in a 2018 letter to the Inspector General for the NYPD, the Deputy Commissioner for Legal Matters argued that Section 50-a even bars the release of aggregate, anonymized data on how many use of force incidents were reported in a given precinct.[8] The de Blasio administration also fought the NYCLU's request for redacted decisions from the NYPD trial room, in which we sought to better understand how disciplinary decisions were made

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[5] Ashley Southall, "New York Police Union Sues to Stop Release of Body Camera Videos," N.Y. Times, Jan. 9, 2018, https://www.nytimes.com/2018/01/09/nyregion/new-york-police-union-body-camera-lawsuit.html.

[6] Graham Rayman, "NYPD Refuses to Reveal Precinct Use-of-Force Data, Citing State Law," N.Y. Daily News, May 10, 2018, https://www.nydailynews.com/new-york/nypd-refuses-reveal-use-of-force-data-citing-state-law-article-1.3981630.

[7] Rocco Parascandola and Graham Rayman, "Exclusive: NYPD Suddenly Stops Sharing Records on Cop Discipline in Move Watchdogs Slam as Anti-Transparency," N.Y. Daily News, Aug. 24, 2016, https://www.nydailynews.com/new-york/exclusive-nypd-stops-releasing-cops-disciplinary-records-article-1.2764145.

[8] *NYPD Response to the Report of the Office of the Inspector General for the NYPP entitled "An Investigation of NYPD's New Force Reporting System* (May 4, 2018), https://www1.nyc.gov/assets/doi/oignypd/response/NYPD_Reponse_DOIForceReportingSystemReport_50418.pdf .

within the NYPD but without seeking any information that would have identified an individual officer. That opposition resulted in a December 2018 decision from the New York Court of Appeals that dealt a severe blow to transparency and good governance. In its decision, the Court of Appeals expanded Section 50-a's reach so dramatically that now, unlike the other exemptions in the state Freedom of Information Law (under which disclosure of covered records is still permissive and redactions are favored to withholding) Section 50-a stands as a categorical ban on the disclosure of police personnel records.[9]

New York has long been an outlier in elevating police personnel records to the level of state secrets. We are one of just two states to maintain a law specifically making these records secret. California, long part of an ignoble trio alongside New York and Delaware, recently took steps to open the books of certain records of police misconduct,[10] joining a group of 28 states that make police disciplinary records available to the public in at least some cases and leaving New York and Delaware to compete for last place in terms of transparency. Of the 28 states where at least some records are accessible, 13 states—a geographically and politically diverse group including, among others, Alabama, Arizona, Connecticut, Florida, Ohio, and Washington—start from the position that disciplinary records specifically are and should be open to the public.[11] It's time for New York to catch up.

The power to repeal Section 50-a obviously rests with the State Legislature but New York City-based actors bear no small part of the responsibility for the provision's shameful expansion and the attendant weakening in the public's ability to serve as a check on official misconduct. It is imperative that city lawmakers join in the statewide movement to push back on this anti-democratic provision and that their counterparts in Albany do their part to end police secrecy by heeding the call to repeal 50-a.

- Introduction 1309: **Qualified Support**

As important as the underlying records and decisions concerning police discipline are, it is equally important that the public be able to understand and have confidence in the process through which disciplinary decisions are made. To that end, the NYCLU expresses qualified support for Intro. 1309, which will require the NYPD to study the feasibility of instituting and develop a plan for implementing a disciplinary matrix. A disciplinary matrix is a tool setting out presumptive penalties or a range of penalties to ascribe to defined categories of misconduct. While a matrix

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[9] *Matter of New York Civil Liberties Union v. New York City Police Department*, No. 133, 2018 WL 6492733, *5 (N.Y. Dec. 11, 2018)

[10] Liam Dillon and Maya Lau, "Gov. Jerry Brown Signs Landmark Laws that Unwind Decades of Secrecy Surrounding Police Misconduct, Use of Force," L.A. Times, Sep. 30, 2018, https://www.latimes.com/politics/la-pol-ca-police-misconduct-rules-changed-20180930-story.html.

[11] Robert Lewis, Noah Veltman, and Xander Landen, "Is Police Misconduct a Secret in Your State?" WNYC, Oct. 15, 2015, https://www.wnyc.org/story/police-misconduct-records/.

would not be binding on the NYPD Commissioner, the goal would be to promote more consistent application of the Department's rules and enhance the public's understanding of the process.

The NYCLU agrees with the bill sponsor and the Panel Report that the development and implementation of such a matrix are crucial steps for the department to take. It is unnecessary, however, for the department to be asked to first undertake an examination of the "feasibility" of such a model. As the Panel Report notes, disciplinary matrices have been developed and implemented in a number of large police departments across the country, including Los Angeles and Denver.[12]

New Yorkers, the Panel, the NYPD, and members of this Council all know that a disciplinary matrix is doable. Rather than undertake a study of whether the Department *can* do this, the bill should require the Department to involve the public in planning for *how* to do so. Instead of starting with a feasibility study, the bill should instead require the NYPD to consult with the Council and directly with communities most impacted by police practices in order to incorporate their input into the design and implementation of a disciplinary matrix. While no disciplinary matrix can, by itself, alter the exclusive authority of the NYPD Commissioner to decide these matters, the public deserves a voice in developing the standards that he should be looking to in reaching those decisions.

- Preconsidered Introduction 2019-3705: **Qualified Support**

As the Panel Report made clear, the NYPD must do a better job of tracking and reporting on disciplinary outcomes if the public is to have any confidence that the department is taking officer misconduct seriously. Preconsidered Intro. 2019-3705 is an important first step toward that goal. This bill will shed light on NYPD disciplinary practices and policies in two key ways. First, it will mandate that the NYPD publish its guidelines for determining the types of discipline to be imposed on officers for violations of department rules and regulations or local, state, and federal laws. Second, it will require annual reporting on the number of officers subject to disciplinary action, disaggregated by the type of discipline received and including information on the number and percentage of cases in which the Commissioner deviates from the recommendations of the Deputy Commissioner of Trials or the Civilian Complaint Review Board. It also requires the NYPD to prepare a report that compiles this information on disciplinary actions and outcomes for cases commenced within the preceding three years.

There appears to be some overlap between this bill and Intros. 1309 and 1105, in particular relating to how disciplinary guidelines and violations are defined. The Panel Report stressed how difficult these processes already are even for experts to comprehend and noted a lack of consistent guidelines and definitions within the NYPD itself. To avoid adding to this confusion, the Council should use shared and consistent definitions of disciplinary guidelines, matrices, investigatory and

[12] Panel Report at 51.

disciplinary findings, and categories of misconduct to better enable the public to make use of information that will be generated.

That said, this bill represents an important step toward providing the public with greater access to information about how the department hands down disciplinary penalties, and it will serve as a useful complement to similar reports from the CCRB regarding cases within that agency's jurisdiction. The NYCLU looks forward to the role this information will play in better informing the public debate about discipline within the NYPD.

- Introduction 1105: **Qualified Support**

The NYCLU supports the concept behind Intro. 1105, but we have concerns about the usefulness of the reporting that it will generate if passed without amendment. This bill will require the NYPD to issue monthly reports on the number of complaints it receives, disaggregated by precinct, and to report on actions taken by the department in response to each complaint. The bill states that these complaints shall include, but not be limited to "misuse of force, harassment, and use of offensive language," an apparent nod to the types of misconduct over which the CCRB exercises jurisdiction.

This framework serves little real purpose without more rigorous disaggregation requirements. As written, the bill only requires simple numerical reporting: the aggregate number of complaints received by a precinct each month. Despite the explicit inclusion of the above categories of misconduct, there is no requirement to yield data on how many complaints allege misconduct related to use of force, harassment, offensive language, or any other type of misconduct for that matter. To better capture and allow for analysis of patterns in types of misconduct complaints, the bill should require the NYPD to disaggregate the number of complaints by precinct and to further disaggregate that information by the type of misconduct alleged to have occurred. The current language states a non-exclusive list of misconduct categories to be included; the NYCLU suggests striking these examples. These categories are so closely linked to the types of misconduct within the CCRB's jurisdiction that it may inadvertently suggest that the department is to only report on these specific categories, as opposed to reporting on any and all complaints of misconduct, whether within the CCRB's or IAB's jurisdiction.

It is also not clear that requiring monthly reporting on outcomes will have the desired effect unless the bill incorporates a specific requirement for the NYPD to continually monitor and update the status of individual complaints. As written, the bill could be read as only requiring the NYPD to report once on the status of complaints filed within the preceding month, during which time, those complaints will almost uniformly be pending. An ongoing duty to monitor and to update these complaint reports is essential if these reports are to enhance the public's and the Council's ability to engage in real oversight of the NYPD.

Lastly, it is not clear the extent to which this bill will require reporting on complaints originally filed with and received by the Civilian Complaint Review Board or another agency like

the Inspector General that are subsequently transferred to the NYPD. The bill should be amended to ensure such complaints are included in the Department's reporting requirements and to also include disaggregation by the origin of the complaint.

- Preconsidered Introductions 2019-3707 and 2019-3708: **Qualified Support**

These bills would require the NYPD to report on the numbers of individuals arrested for resisting arrest, assault in the second degree on an officer, or obstructing governmental administration, including demographic information on the arrestee. If intended to cover reporting on whether police are using these provisions inappropriately to target particular groups or communities for offenses sometimes dubbed "contempt of cop," it should also include reporting on disorderly conduct.

More data on these offenses, including when more than one of these offenses are charged together, can shed light on whether and how officers are misusing these charges. However, data that comes solely from the NYPD will necessarily be devoid of essential context—namely, how prosecutors and courts respond to these charges. The bill requires reporting on whether a district attorney declines to prosecute, but this requirement is more properly directed toward the district attorney offices themselves, as it may not be information readily available to the NYPD. Nevertheless, data on charging decisions and outcomes are essential for telling a more complete story about what happens with these arrests, and the bill should therefore impose reporting obligations on district attorney offices related to post-arrest charging and outcomes so that the public can better understand these arrest numbers in context.

Lastly, while well-intentioned, the bills' requirement that the NYPD report on whether the person arrested "is known to identify as transgender" or "is known to identify as non-binary or gender non-conforming" may result in invasive and potentially harassing questioning of transgender and gender nonconforming ("TGNC") New Yorkers. A 2017 report from the Office of the Inspector General for the NYPD found substantial gaps in the Department's implementation of 2012 Patrol Guide revisions intended to improve interactions between NYPD officers and TGNC New Yorkers, including the fact that not all officers had been trained on LGBTQ and TGNC issues and that the Department had not fully updated all forms and databases to properly account for interactions with TGNC individuals.[13] The long and continuing[14] history of harassment of TGNC communities by police warrants caution before adding such reporting requirements as routine components of police interactions. At minimum, if these provisions are retained, officers should only be recording and reporting this information if self-reported by the arrestee and that officers should not be proactively seeking this information.

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[13] Office of the Inspector General for the NYPD, *Review of NYPD's Implementation of Patrol Guide Procedures Concerning Transgender and Gender Nonconforming People*, 5 (Nov. 2017), https://www1.nyc.gov/assets/doi/press-releases/2017/nov/31_LGBTQ_ReportRelease_112117.pdf.

[14] New York Civil Liberties Union, "Trans Advocate Sues NYPD for Charging Her with 'False Personation,'" Jan. 22, 2019, https://www.nyclu.org/en/press-releases/trans-advocate-sues-nypd-charging-her-false-personation.

- Preconsidered Introduction 2019-3706: **Qualified Support**

Preconsidered Intro. 2019-3706 will require the NYPD to provide district attorneys with information on certain types of disciplinary penalties imposed on officers within 24 hours of a district attorney's request. Records of an officer's past misconduct can have a profound impact on the course of a district attorney's prosecution. Documented instances of bad arrests by an officer or lying in official statements may inform a decision not to prosecute, and the earlier that prosecutors obtain relevant evidence, the earlier such records can be shared with defense attorneys.

The bill could be further strengthened to ensure that records of ostensibly lower-level officer misconduct are not falling through the cracks. The bill appears to only cover discipline resulting from charges and specifications, the most severe—and most infrequent—instances of police misconduct. The Council should amend the bill to include a requirement to provide prosecutors with records of any discipline imposed on an officer, whether that discipline resulted from charges and specifications in a formal trial room proceeding or whether that discipline was imposed at the precinct level through command discipline, instructions, or training.

- Preconsidered Introduction 2019-3704: **Qualified Support**

District attorneys wield immense power and influence over the trajectory of a defendant's case. Yet the public generally has no idea about what goes into their decision-making or what standards they use to evaluate their own performance and assess the fairness of outcomes. This information gap is shocking given the outsized importance of these decisions – and the massive number of New Yorkers affected by them. In 2010, 99.6 % of New York City misdemeanor convictions resulted not from trials or evidentiary hearings, but from plea bargains that were crafted by prosecutors.[15] Across the state, less than 4% of felony guilty convictions went to trial in 2016.[16]

We have no way of knowing how individual plea bargains are determined; but the astonishing percentage of plea deals in New York suggest powerful structural incentives to do so. One of the key reasons a person might accept a plea deal is the bail amount that is first recommended by the prosecutor,[17] public data for which is also nonexistent. If a person receives bail at an amount that they cannot afford and is consequently subject to pretrial detention, the person is more likely to accept a plea deal. Without information on how bail recommendations are reached and plea bargains decided, the public lacks a basis for evaluating the integrity of a system in which a majority of criminal defendants waive their rights to trial.

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[15]Human Rights Watch, *The Price for Freedom* (Dec. 2010), https://www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york

[16] New York State Violent Felony Offense Processing 2016 Annual Report, https://www.nycourts.gov/IP/sentencing/Determinate%20Sentencing%20Report%20Final%20Delivered.pdf.

[17] U.S. Dep't of Justice Bureau of Justice Assistance, *Research Summary: Plea and Charge Bargaining* 3 (Jan. 24, 2011), https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf. ("Those who are taken into custody are more likely to accept a plea.")

The public also lacks any basis for evaluating whether district attorneys are using their discretion in a fair, unbiased way. In part due to our ongoing work tracking NYPD stops,[18] the NYCLU strongly suspects that the actual commission of crimes is not the most significant factor leading to stark racial disparities in the Rikers population, where nearly 90% of detainees are Black and Latino New Yorkers.[19] The Vera Institute of Justice published a study in 2014 illustrating how race plays a key factor across all prosecutorial decision points in the Manhattan District Attorney Office, shaping case outcomes.[20] The study looked at discretion points—from case acceptance for prosecution, to dismissals, pretrial detention, plea bargaining, and sentencing recommendations—for analyses of case outcomes disaggregated by race. Overall, race was a statistically significant independent factor in most of the discretion points. Blacks and Latinos charged with drug offenses were, for example, more likely to receive more punitive plea offers and custodial sentences than similarly situated whites.[21] Without data from district attorneys to show otherwise, the Council cannot ignore the correlation between the prosecutorial discretion and the disparities in case outcomes.

The nonexistence of prosecutorial data is particularly concerning in light of the city's recent efforts to drive down the population of Rikers as part of its overall commitment to close the jail. The City Council approved $375.6 million in funding for the five district attorney offices for the 2019 fiscal year, representing a $107,511 increase from than the previous year.[22] Meanwhile district attorneys pursued practices that either assisted or impeded efforts to address the incarceration problems without having to report any data on those practices to the city. Such data would serve a vital purpose in helping the public and policymakers better identify where resources are needed to further the goal of decarceration.

Given the current black box in which district attorneys operate, the NYCLU offers our support for Preconsidered Intro. 2019-3704, which will require our city's district attorneys to disclose information on criminal case dispositions. The bill will require reporting disaggregated by race, gender, and charge, on the number of cases prosecuted; cases resulting in a conviction; cases referred but declined for prosecution; number of bail, remand, and supervised release requests; cases dismissed for various reasons; cases dismissed at each phase; the average time for a case to be disposed; and the sentences imposed. Such information would no doubt inform the

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[18] *See generally* New York Civil Liberties Union, *Stop-and-Frisk Data*, undated, http://www.nyclu.org/content/stop-and-frisk-data. (Last checked Feb. 4, 2019).
[19] *A More Just New York City* 34 (Apr. 2017), https://www.ncsc.org/~/media/C056A0513F0C4D34B779E875CBD2472B.ashx.;
[20] Vera Institute of Justice, *Race and Prosecution in Manhattan*, (July 2014), http://www.atlanticphilanthropies.org/wp-content/uploads/2015/10/dany_final_7_7_2014_policy_brief.pdf
[21] *Id.*
[22] New York City Council Report of the Finance Division on the Fiscal 2019 Preliminary Budget for the District Attorneys and Office of Special Narcotics Prosecutor (Mar. 12, 2018), https://council.nyc.gov/budget/wp-content/uploads/sites/54/2018/03/FY19-District-Attorneys-and-Office-of-Special-Narcotics-Prosecutor.pdf.

public about how district attorneys use their discretion to affect the liberty interests of thousands of New Yorkers.

Missing from this list, however, is information on plea bargains. We urge the Council to amend the bill to require district attorneys to also report on their plea bargains. Given the sizable percentage of convictions that result from plea bargains, information disclosed on the number and percentage of convictions that result in plea deals that are custodial and noncustodial, disaggregated by race, gender, and charge is necessary. Plea bargaining accounts for an overwhelming number of prosecutorial decision points in cases and must be taken into public account. The addition of plea bargains will further support the meaning and purpose behind this transparency bill and will bolster efforts to hold district attorneys more accountable for how they choose to exercise prosecutorial discretion.

## Conclusion

We thank the committees for the opportunity to provide testimony today and for taking the first steps in a long overdue process to bring increased transparency and accountability to the NYPD disciplinary system. The NYCLU looks forward to working with the Council on these and other measures to enhance the public's understanding of some of the most secretive government actors.

GIRLS FOR GENDER EQUITY

**Girls for Gender Equity Testimony**
**The New York City Council's**
**Jointly Committees on Public Safety and Justice System**
**Delivered by: Kylynn Grier**
**February 7, 2019**

Good morning, Committee Chairs Richards and Lancman, and members of the Committee on Public Safety and Justice System. My name is Kylynn Grier and I am the Policy Manager at Girls for Gender Equity (GGE), an organization challenging structural forces that work to obstruct the freedom, full expression, and rights of girls, transgender, and gender non-conforming (TGNC) youth of color. We are also proud members and leaders of a number of coalitions and joint campaigns that advance our work - pertinent to today's hearing, the Dignity in Schools Campaign, the Sexuality Education Alliance of New York, and Communities United for Police Reform. Thank you for the opportunity to speak today.

We work daily with young women and TGNC youth of color who are policed at every juncture of their lives, on the way to school by NYPD officers, in school by NYPD School Safety Agents, and while accessing City services as seen with Jazmin Headley at the Department of Social Services. Young women and TGNC young people are criminalized for normal adolescent behavior, often times hyper-sexualized due to historically located racialized and gender-based stereotypes, and their bodies are regularly policed because of their race, ethnicity, sexual orientation, gender identity and/or gender expression.

**<u>Resolution 3709 - Calling for Civil Rights Law 50-a Repeal:</u>**

Girls for Gender Equity applauds the introduction of Resolution 3709 - a resolution calling on the New York State Legislature to pass a full repeal of New York State Civil Rights law 50-a. This would make certain information from police personnel records available to the public, such

as reports of misconduct. As an organization that has worked to address gender-based violence for over 16 years, we understand that acts of gender-based violence are often patterned and

repetitive. Frequently, sexual harassment and sexual assault are not a one time or isolated incident. As with other forms of police misconduct against community members, officers often have disciplinary records that reflect former complaints of misconduct against alleged officers. Survivors who report sexual misconduct by police officers are met by a disciplinary system that benefits from hiding repeated misconduct from the public eye.

The Freedom of Information Law (FOIL) already carves out protections around personal records of any city employee, so the overly broad and expansive interpretation of CRL 50-a by this administration offers special protections that go far beyond FOIL and beyond protections offered to other New York City employees. This secrecy unessisailty cause undue onus of survivors of *all* police misconduct, including families who have lost loved ones to police violence.

**Expand the Power of the Civilian Complaint Review Board:**

Girls for Gender Equity stands with Anna Chambers[1], an 18-year-old girl who was raped and sexually assaulted by two NYPD officers in Brooklyn and who is one of many survivors of NYPD gender-based violence, including police sexual violence. These experiences and narratives are often unheard in mainstream media or conversations about policing. This silence exists alongside a multitude of systemic barriers to reporting, survivor supports, and often victim-blaming and criminalization of survivors. This is absolutely and unequivocally rooted in racialized and gender-based discrimination.

In February 2018, the Civilian Complaint Review Board (CCRB) agreed to begin phasing in taking reports of police sexual misconduct against members of the public. Since the adoption of

[1] Two New York Detectives Are Charged With Rape and Kidnapping
https://www.nytimes.com/2017/10/30/nyregion/nypd-detectives-rape-kidnapping-charges.html

GIRLS FOR GENDER EQUITY

this policy, the CCRB has reported 130 reports of sexual misconduct with 50 reports with complaints of sexual assault sent to District Attorneys' offices[2]. Located in a landscape where very few people report experiences of gender-based violence and with limited public awareness of CCRB's recent adoption, this number is significant.

Still, survivors must still participate in a dual process run out of the NYPD Internal Affairs Bureau (IAB), where survivors are treated in deeply dehumanizing ways and the NYPD has ultimate decision authority over disciplinary outcomes for NYPD Officers who engage in harmful behavior. As a city, we must enable CCRB to make final discipline determinations in cases that they already prosecute through the Administrative Prosecution Unit and in cases where the NYPD Commissioner deviates from a CCRB recommendation the Commissioner should document and make publicly available the reason for a dissenting opinion.

Girls for Gender Equity also calls for the expansion of CCRB's authority to explicitly include NYPD School Safety Agents, and other "peace officers" who operate under the direction of the NYPD, though they are not themselves NYPD officers, through the 2019 New York City Charter Revision process. This expanded power must also include complaints of gender-based violence and sexual harassment. Currently, pathways for reporting harmful experiences with school safety agents and other peace officers must go through IAB. Young people who have experienced reportable harm by school safety agents must have their reports handled by the NYPD. CCRB can and should be the primary agency for these reports and should have the authority to make final disciplinary decisions in cases in which they already have oversight power.

Thank you for the opportunity to speak today, our shared work to continue to ensure that survivors of all forms of violence are treated with the dignity and respect that they deserve.

[2] [1/22/2019] The New York City Council Committee on Public Safety https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=670673&GUID=E305F60F-E662-4185-B23B-08060FD6BFCA&Options=info&Search=

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# HEARING ON THE NEW YORK CITY POLICE DEPARTMENT'S DISCIPLINARY PRACTICES

BEFORE THE

## PUBLIC SAFETY COMMITTEE OF THE NEW YORK CITY COUNCIL

TESTIMONY OF NAHAL ZAMANI,
ADVOCACY PROGRAM MANAGER OF THE CENTER FOR CONSTITUTIONAL RIGHTS

February 7, 2019

## I. INTRODUCTION

The Center for Constitutional Rights would like to thank the Public Safety Committee of the New York City Council for holding this important hearing on the disciplinary practices of the New York City Police Department (NYPD or Department).

The Center for Constitutional Rights works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications.[1] For nearly twenty years, we have been challenging abusive and discriminatory practices of the NYPD, the largest and most influential municipal police department in the United States, through litigation and advocacy.

We are a founding member of the Communities United for Police Reform campaign, and supported the passage of bills which end unconstitutional searches and increase transparency during police interactions, created an Inspector General of the NYPD, and ban on NYPD

[1] Since 1966, we have taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach. Learn more at ccrjustice.org.

profiling. In our case, *Floyd v. the City of New York*, a federal judge issued a historic decision against the NYPD, finding that police had engaged in a widespread practice of unconstitutional and racially discriminatory "stops–and-frisks."[2] We are currently in the remedial phase of the case, working with a court-appointed monitor to make a number of critical changes to NYPD policies and practices, including how disciplinary matters are handled.

While the NYPD's disciplinary system is complex and complicated,[3] there are a number of necessary changes the Department must implement in order to truly be an accountable, transparent department, as well as meet the requirements set forth in the *Floyd* remedial order to address its unconstitutional practices, including racial profiling.

In this written submission, we address several aspects of the practices of the NYPD disciplinary system, which, at this juncture are most critical for the Committee's attention.

## II. RECENT DEVELOPMENTS: INDEPENDENT NYPD PANEL REPORT AND CITY COUNCIL BILLS

We would like to commend the Independent Panel on the Disciplinary System of the New York City Police Department for its crucial report, which was released in early February 2019, and for their key recommendations, including their finding that the Department Advocate's Office (DAO) limit their use of reconsideration requests to the Civilian Complaint Review Board (CCRB).[4] Further, we acknowledge NYPD Commissioner James O'Neill's commitment to implementing the panel's recommendations, which will improve the Department's disciplinary system.[5]

We also appreciate the suite of bills introduced several weeks ago by Members of City Council looking at a number of issues related to the NYPD's disciplinary system, and share some preliminary thoughts on those bills in our testimony.

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[2] See *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) ("Liability Opinion"). Currently the NYPD is under the oversight of a court-appointed independent monitor to implement a series of concrete reforms to the NYPD's policies, training, supervision, disciplinary systems, among other things, to ensure that individuals are stopped only based on the constitutionally required standard of "reasonable suspicion" and that the police no longer no longer systemically use race as a criteria for law enforcement actions. The court also ordered the City to engage in a "Joint Remedial Process," currently underway, bringing together affected communities, elected officials, the NYPD, and other stakeholders to collaboratively develop reforms to the Department's stop and frisk practices – and to provide a forum for a broader conversation about unfair policing practices. One of the final recommendations emanating from the JRP was the development of a discipline matrix. Learn more about *Floyd v. the City of New York* at www.ccrjustice.org/floyd.

[3] Kendall Taggart & Michael Hayes, *The NYPD's Secret Files*, BuzzFeed (Apr. 16, 2018), https://www.buzzfeed.com/kendalltaggart/nypd-police-misconduct-database-explainer.

[4] Report of the Independent Panel on the Disciplinary System of the New York City Department, January 25, 2019, released to the public on February 1, 2019, available: https://www.independentpanelreportnypd.net/, (hereinafter Independent Panel Report")

[5] New York City Police Department, Press Release: Commissioner O'Neill Announces Changes to NYPD Disciplinary System, February 1, 2019, available: https://www1.nyc.gov/site/nypd/news/pr0201/commissioner-o-neill-changes-nypd-disciplinary-system.

*a. Court-Ordered Reforms to NYPD Disciplinary Systems Will Complement These Developments*

While the NYPD must work proactively to enact the Panel Recommendations, there are still a number of necessary requirements compelled by our case, *Floyd v. the City of New York*, to ensure the Department has fully remedied the constitutional violations found by the federal court and is in substantial compliance with the law, including the ushering in of a suite of necessary reforms. Rather, the Panel Recommendations and the bills introduced by the Council may complement future *Floyd* reforms.

First, there is a matter of prematurity, given the state of discipline reform development in *Floyd*. The substance of the court-ordered reforms necessary to bring the NYPD's discipline system into compliance with constitutional standards have yet been developed, approved by the court, or fully implemented. NYPD actions to enact the Panel Recommendations or even the passage of the legislative package by the Council do not obviate necessary court reforms.

Second, many of the bills proposed by City Council are aimed towards increasing public understanding of disciplinary processes through public reporting. Public reporting is naturally separate and distinct from any court-ordered changes to NYPD disciplinary procedures to ensure the Department actually holds officers accountable when they have been found to have committed unlawful and racially discriminatory stops-and-frisks.

Third, though there may be *complementary themes* in overall changes to the NYPD disciplinary system among the bills, the Panel Recommendations and what is eventually ordered in our case, there is a level of specificity which will likely appear in the court-ordered reforms in *Floyd* to ensure legal compliance in our case, which understandably do not appear in the bills nor in the Panel Recommendations.

For example, the Panel recommends that the DAO limit their use of reconsiderations for civilian complaints, stating specifically that the "DAO should not request reconsideration where it merely disagrees with CCRB's conclusions, when those conclusions were based on a complete evidentiary record and an accurate understanding of the law."[6] We wholeheartedly welcome that recommendation, however, in our litigation, it may be that the court orders an even more strict interpretation and orders that the DAO *cannot* request such reconsiderations based on certain, unpermitted circumstances.

Notably, in its Remedial Order, the court found the "[DAO] must improve its procedures for imposing discipline in response to the [CCRB] findings of substantiated misconduct during stops."[7] This includes "revisions to the deference given to CCRB determinations, evidentiary standards, and corroborating physical evidence." As such, we are particularly concerned about the prevalence of NYPD reconsideration requests based on whether the NYPD disagreed with the CCRB's credibility determinations as to one or more witnesses; the NYPD disagreed with the weight CCRB gave to respective witnesses' testimony (i.e. that CCRB gave more weight to

[6] Independent Panel Report at 53.
[7] *Floyd v. City of New York*, No. 08-cv-1034, Dkt. #372 ("Remedial Order"), at 24.

civilian witness than to officer witness testimony; and/or CCRB substantiated the allegation based solely on witness testimony that was not corroborated by physical or other extrinsic evidence).

We believe that in order to come into compliance with the law, the DAO must improve procedures for imposing discipline by increasing deference to CCRB credibility determinations, applying an evidentiary standard that is neutral between claims of complainants and officers and not requiring corroborating physical evidence in every case in order to ensure that officers are in fact held accountable for misconduct that was substantiated by the CCRB.

## III. DISCIPLINE MATRIX

The NYPD must develop, in consultation with impacted communities, a discipline matrix or set of progressive disciplinary guidelines for misconduct and associated proportional penalties. The Independent Panel also notes that the NYPD should consider adopting a matrix to guide the Commissioner in exercising his broad discretion. Furthermore, a NYPD disciplinary matrix is featured as one of the recommendations in the Joint Remedial Process Final Report ("JRP Final Report").[8] Moreover, social science scholarship also support this recommendation; the benefits of discipline matrices include, among other things, "operationalized" progressive discipline which can contribute to more efficient, consistent, proportional, and fair discipline of police officers.[9] This can improve both officer and public attitudes toward the department, as well as "enhance police accountability," particularly if the matrix is made public.[10]

It is imperative that *all* entities which oversee or have a role in discipline of members of the NYPD follow a single, standard matrix to ensure uniform decision-making, fairness, and efficacy overall. Without standards, the NYPD's historic lack of uniformity and accountability, and practice of issuing low or disproportionate punishment in disciplinary matters will continue. Concrete penalties enumerated through a binding discipline matrix, and employed by all entities implicated in disciplinary matters, would address this issue.

As the Independent Panel on Discipline discusses in their report, the matter in which the NYPD Commissioner addresses issues of misconduct actively contributes to a perception that disciplinary decisions are arbitrary. In cases where the Commissioner would depart from the matrix, the Commissioner should provide specific explanations to the complainant, the subject

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[8] HON. ARIEL E. BELEN, NEW YORK CITY JOINT REMEDIAL PROCESS FINAL REPORT & RECOMMENDATIONS, (2018) (hereinafter "JRP Final Report"), at 224. ("We therefore recommend that the NYPD be ordered to develop and publish progressive disciplinary standards to be used in cases arising from unconstitutional stops and trespass enforcement regarding excessive force, abuse of authority, discourtesy or offensive language, and racial profiling allegations.")

[9] *See* Christopher J. Harris et al., *The Prevalence and Content of Police Discipline Matrices*, 38(4) POLICING: INT'L J. POLICE STRATEGIES & MGMT. 788, 789–91 (2015).

[10] *Id.*, *see also* Jon M. Shane, *Police Employee Discipline Matrix: An Emerging Concept*, 15(1) POLICE QUARTERLY 62, 62–67 (2012); Samuel Walker, *Best Practices in Policing: the Discipline Matrix: An Effective Police Accountability Tool?* (2003).

officer as appropriate, and agencies such as the CCRB as further enumerated later in this Testimony.

## IV. NEED FOR PUBLIC REPORTING ON DISCIPLINARY OUTCOMES, SUCH REPORTING WITHSTANDS 50-A CONCERNS

We highlight the critical need for public reporting on NYPD disciplinary outcomes. The JRP Final Report also recommended a monthly discipline report, publication of progressive disciplinary standards, timely disciplinary action, and increased attention to public understanding of disciplinary standards.[11]

Moreover, we believe that public reporting on disciplinary outcomes is both feasible and also permissible under Civil Rights Law 50-a. This is supported by the findings of the Independent Panel, which notes, "Section 50–a poses no impediment to the release of anonymized statistical data about disciplinary outcomes. At present, CCRB issues monthly, semi-annual, and annual reports that include these statistics."[12] The Panel provides examples of other city agencies which release valuable analyses "rich in statistical data," including those of the OIG NYPD, the CCPC, and the CCRB, adding,

> These reports do not identify any officer, but are invaluable resources and possible catalysts for reform. None of this reporting was forbidden by § 50–a. Data compilations are not personnel records, even under the most restrictive interpretation of existing law. The fact that CCRB, the CCPC, OIG-NYPD, and the federal monitor issue regular reports on Department discipline, while the Department does not, helps create the impression that the Department has something to hide. The Panel recommends that the Department join these agencies in publishing an annual report on police discipline to provide meaningful transparency about its disciplinary process and outcomes.[13]

We are delighted that the reporting of disciplinary outcomes is contemplated in the suite of bills introduced. In order to identify valuable information and trends, including discriminatory impact, we recommend including: Investigatory Body; [14] Description of Misconduct; Assignment Precinct or Unit of Member(s) of Service; Rank of Member(s) of Service; Recommended Penalty; [15] and Final Penalty including Term//Days docked (if applicable); and whether no disciplinary action was taken. This reporting should also be aggregated by precinct, so that future NYPD interventions are targeted and effective.

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[11] JRP Final Report at 222-25.
[12] Independent Panel Report at 46.
[13] Independent Panel Report at 47.
[14] The disciplinary outcome reporting should include the investigatory body (i.e. the CCRB, IAB, Office of the Chief of Department [OCD], etc.) in order to determine potential trends of differential treatment or resolution of particular cases.
[15] It is compelling to include the Recommended Penalty particularly in cases in which the ultimate resolution may differ, or where the NYPD may not pursue discipline.

## V. NYPD HINDERS ACCOUNTABILITY FOR CIVILIAN COMPLAINTS

As we alluded to during our previous testimony before this Committee, [16] the NYPD's "nonconcurrence" with the CCRB is probably one of the starkest symbols for how they treat civilian complaints. By frequently disagreeing with the CCRB, lowering recommended penalties and even declining to pursue any disciplinary action, the Department demonstrates that it will refuse to hold officers accountable when they violate peoples' rights.

Moreover, the NYPD's frequent use of Reconsideration Requests to the CCRB of both recommended disciplinary penalties as well as the cases the Board has substantiated is a serious matter of concern. As I shared before this Committee, the reconsideration process writ large allows for the historical ignoring of and downgrading of the CCRB's recommended penalties to continue today. We are also concerned by cases in which the Commissioner departs downwards from recommended penalties, particularly for CCRB cases. [17] Despite our concerns and the Board's inclination to pursue lower penalties in recent years, the NYPD's use of reconsiderations is on the rise, indeed this was an issue reported on publically in 2017, and again in 2018.

Relatedly, we are concerned about the prevalence of NYPD Reconsideration Requests issued on the basis of the Department's disagreement with the CCRB's credibility determinations as to one or more witnesses; with the weight CCRB gave to respective witnesses' testimony (i.e. that CCRB gave more weight to civilian witness than to officer witness testimony); and/or for cases in which CCRB substantiated the allegation based solely on witness testimony that was not corroborated by physical or other extrinsic evidence. We believe that necessary court-ordered reforms must address and put a stop to this practice, through sweeping and permanent changes to DAO procedures for handling substantiated CCRB complaints, but welcome the Independent Panel's recommendation to limit the DAO's requests overall.

## VI. NYPD PREFERENCE FOR LOWER PENALTIES

Based on our understanding of the resolution of CCRB complaints, we can infer that the DAO, and other internal entities with investigatory and disciplinary authority, are leaning towards lower penalties overall. This was confirmed in the Ninth Status Report of the independent federal monitor in our case, which discusses how "final discipline and penalties imposed have declined" from 2014-2017. [18] The NYPD's gravitation toward administering lower penalties from CCRB initiated cases is troubling, to say the least. With the publishing of disciplinary outcomes, and the public development of a matrix, we will be able to firmly establish whether this is a widespread, Department phenomenon of administering lower-level penalties.

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[16] Center for Constitutional Rights, *Testimony on the Civilian Complaint Review Board before the Public Safety Committee of the New York City Council: Testimony of Nahal Zamani*, January 22, 2019, available at: https://ccrjustice.org/ccr-testimony-civilian-complaint-review-board-nyc-council.

[17] Independent Panel Report at 26.

[18] Ninth Report of the Independent Monitor, *Floyd v. City of New York*, No. 1:08-cv-01034-AT, at 49–62, Jan. 11, 2019 at 57 (hereinafter "Ninth Status Report").

## VII. NYPD PURSUES *NO DISCIPLINARY ACTION*

NYPD also fails to take *any* disciplinary action for a number of matters which come before it. Regarding civilian complaints, in 2017, the NYPD pursued no disciplinary action in 28 percent of the cases brought before it.[19] Because we do not have enough public reporting on this issue, we do not have a sense of the prevalence of this phenomenon Department-wide. This lack of action on disciplinary matters should be studied further, and publicly reported. Importantly, the current suite of bills introduced by the City Council, as written, should provide that any public reporting must include tracking of "no disciplinary action is taken". Thus, we support the inclusion of any language, which would help track this phenomenon across the NYPD, within the current package of bills being contemplated by the City Council.

## VIII. SUPERVISORS AND DISCIPLINARY MATTERS, ISSUING OF COMMAND DISCIPLINES, ETC.

Given the NYPD's purported de-centralizing of disciplinary matters,[20] supervisors play a critical role in ensuring that officers' actions are lawful and that misconduct is being adequately addressed through effective interventions. Supervisors have great responsibilities with regards to "everyday" disciplinary interventions, including the issuing of Command Disciplines and ensuring that subject officers are held accountable for incidents of misconduct. The federal monitor in *Floyd* also has underscored the role of supervisors, and supervisory failures to intervene for a vast number of unlawful and racially discriminatory stops and frisks and the number of improvements.[21] Examining the practices of supervisors, and suggesting targeted interventions to ensure they are holding Members of Service (MOS) responsible is key.

### *a. Patrol Guide Removal of Command Disciplines*

Another area of concern is regarding Patrol Guide rules concerning the permanence of penalized misconduct on personnel records.[22] The NYPD Patrol Guide compels Commanding Officers (CO) to fully expunge Schedule "A" command disciplines after one year—whether they are

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[19] *NYC Civilian Complaint Review Bd. 2017 Annual Report*, NYC.Gov 30 (2017) (hereinafter "CCRB 2017 Annual Report"), available at: https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2017_annual.pdf at 34, (Noting, "Cases in which the Board recommended some type of discipline, but no discipline was imposed by the Police Commissioner, increased from 9% in 2016 to 28% in 2017.")

[20] Baker, Al, "Bratton Tries a Community Policing Approach, on the New York Police," *The New York Times*, (September 20, 2015), available at: https://www.nytimes.com/2015/09/21/nyregion/bratton-tries-a-community-policing-approach-on-the-new-york-police.html

[21] As underlined in the federal Monitor's Ninth Status Report, a number of deficiencies related to supervision remain, including failures to engage in non-perfunctory reviews of stop forms; repeated approval of deficient stop reports; lack of clarity of corrective action for subject officers; and prevalence of lack of reasonable suspicion for stops and frisks, as well as unjustified searches. *See* Ninth Status Report at 16-18.

[22] *See* New York Police Department Patrol Guide Procedure No. 206-02, Schedule "A" and Schedule "B" Command Disciplines, (Effective 4/20/17) available at: https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf. *See also* New York Police Department Patrol Guide, Procedure No. 206-14, Sealing Disciplinary Records (Effective 4/20/17) available at: https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf.

substantiated or unsubstantiated and conditional upon no intervening "A" disciplines for the relevant officer. The CO must "remove and destroy records and dispositions of convictions."[23] Additionally, Schedule "B" disciplines may be sealed at the officer's request after three years.

However, if such penalties are sealed, how can they be adequately or meaningfully considered in assessing an MOS' performance or fitness for duty, particularly those MOS with repeat incidents over the course of their NYPD tenure? Relevant entities should have full access to the officer's entire personnel history for consideration when substantiating cases or determining disciplinary penalties. The NYPD should end this practice by removing it from the Patrol Guide.

## IX. INTERNAL AFFAIRS FAILS TO SUBSTANTIATE RACIAL PROFILING CLAIMS

We also raise our serious concerns regarding how the NYPD Internal Affairs Bureau (IAB) is investigating and substantiating racial profiling cases. Since trial in *Floyd,* the IAB developed several mechanisms to investigate and substantiate racial profiling claims. Disconcertingly, the IAB has never substantiated *any* allegations of racial profiling.[24] Failing to substantiate any racial profiling allegations incorrectly implies that the Department is no longer targeting people for interventions on the basis of their actual or perceived race. More broadly, this demonstrates that the NYPD is not adequately intervening for any such cases to deter future misconduct – and further stains the efficacy of the disciplinary system of the Department.

## X. CLEAR "VARIANCE" COMMUNICATIONS FOR DEPARTURES

The Panel also recognizes the need for improved and standard communications by the NYPD Commissioner in his execution of his disciplinary authority and discretion, particularly as it is employed in overturning findings of guilt or modifying or departing downwards from recommended penalties by the CCRB and other entities.

Currently, written explanations are only mandated for CCRB cases.[25] At the outset, the NYPD must ensure that the CCRB is furnished adequate and sufficient written explanations unique to the case at hand, and that the Commissioner does not fail to provide such recommendations.[26]

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[23] New York Police Department Patrol Guide Procedure No. 206-02.

[24] Ninth Status report, also see Monitor's Seventh Status Report (December 13, 2017, Dkt # 576 at 45-46)

[25] As per the 2012 MOU and Rules of the CCRB, the NYPD Commissioner must provide written explanations in cases in which the CCRB recommends the penalty of 'Charges and Specifications' for the Member of Service (MOS) and where the NYPD departs from this penalty. 2012 MOU at ¶ 2 noting "in those limited instances where the Police Commissioner determines that CCRB's prosecution of Charges and Specifications in a substantiated case would be detrimental to the Police Department's disciplinary process, the Police Commissioner hall so notify CCRB." *See also* Rules of the City of New York, Title 38A, Chapter 1, § 1- 46(f).

[26] We do know of at least some instances in which the NYPD has failed to provide this explanation. For instance, in 2013, the NYPD OIG identified a 100 percent failure rate for providing this written obligation in 6 of the cases where it departed downwards from 'Charges recommendations' by the Board and was mandated to do so. *See* NYPD OIG, *POLICE USE OF FORCE IN NEW YORK CITY: FINDINGS AND RECOMMENDATIONS ON*

The NYPD should publish the Commissioner's explanations to CCRB for each deviation from disciplinary outcome, particularly those in which the Commissioner is declining or reducing discipline. Particularly we believe it is crucial for the NYPD to enumerate why they believe CCRB recommendations must be reconsidered, before the public.[27]

Second, Commissioner must provide a written explanation to *any* entities involved in the Department's internal disciplinary processes from which the Commissioner departs from recommended penalties or overturns trial decisions. Notably, the Panel recommends a consistent "variance memorandum" for all bodies implicated, with certain information included therein, which would address perceptions of arbitrary or exhibit favoritism.[28]

## XI. CONCLUSION

The NYPD's systemic lack of discipline and accountability for misconduct must end, and we urge the Department to take concrete steps towards holding its officers accountable when they violate peoples' rights and for improving systems as necessary. We thank you for hearing our testimony today.

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*NYPD'S POLICIES AND PRACTICES, OCTOBER 2015,* available at: https://www1.nyc.gov/assets/oignypd/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf at 55-6.

[27] While we appreciate the APU's report from June 2018 discussing for example, the use of Section 2s by the NYPD and hope will be a permanent feature of the Board going forward, the Board's reporting does not prevent the NYPD from also publishing the Commissioner's explanations. NYC Civilian Complaint Review Board, Report on the Administrative Prosecution Unit ("APU") Third Quarter 2016 – Fourth Quarter 2017, June 29, 2018, (hereinafter APU Report), available at: https://www1.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/apu_2016q3-2017q4.pdf

[28] Independent Panel Report at 27-28 and 48-49.

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**New York City Council**
**Committee on Public Safety and Committee on Justice System**
**Joint Hearing re:**
**Oversight - Police Discipline**
**February 7, 2019**
**Written Testimony of The Bronx Defenders**
**By Jenn Rolnick Borchetta & Oded Oren**

Chairman Richards, Chairman Lancman, and members of the Committees, my name is Jenn Rolnick Borchetta and I am Deputy Director of Impact Litigation at The Bronx Defenders. I am here with my colleague Oded Oren who is a staff attorney in our Criminal Defense Practice.

The Bronx Defenders is a community-based and nationally recognized holistic public defender office dedicated to serving the people of the Bronx. The Bronx Defenders provides innovative holistic client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to low-income people in the Bronx. Our staff of over 300 represents approximately 28,000 individuals each year. In the Bronx and beyond, The Bronx Defenders works to transform how low-income people are represented, and to reform the system they face.

Police misconduct is a lived reality for many of our clients at The Bronx Defenders. Our clients are pushed and shoved, their faces scraped on walls and on the floors, their arms broken and their heads intentionally banged against cars and walls — even after they are handcuffed. Often, police misconduct is more psychologically scarring than it is physically. Such was the case for a client of ours, who, strolling down the street towards his bus stop, was stopped by two undercover officers — guns brandished — who proceeded to throw him to the ground and later strip search him at the precinct. By the time our client's case ended — with a dismissal — he had already been enrolled in therapy for months to address the trauma he had suffered from that encounter.

We are grateful for the opportunity to testify today about the impact of police misconduct on our clients, their families, and their communities, and to offer our insights on how the City Council can help ensure meaningful accountability. We will speak specifically to the bills calling for a disciplinary matrix report, the repeal of 50-A of the New York Civil Rights Law, the

publication of data by the prosecution offices, and police reporting about specific charges related to officer misconduct; we support these bills with modifications, as we discuss in more detail next.

## LESSONS FROM THE BRONX DEFENDERS IMPACT LITIGATION PRACTICE

The Impact Litigation Practice at The Bronx Defenders brings affirmative lawsuits to advance civil rights for low-income people in the Bronx. The Impact Ligation Practice works closely with staff throughout The Bronx Defenders to identify widespread injustices affecting our clients. Through civil litigation in federal and state courts, we then secure long-lasting reforms. In recent years, our Impact Litigation Practice has challenged court delay and helped reduce the backlog of old misdemeanor cases in the Bronx from approximately 2,400 to under 400; forced prosecutors to implement a quick and seamless process for the public to retrieve property seized during arrests; and brought the number of unlawful trespass arrests in private buildings patrolled by the New York City Police Department ("NYPD") from hundreds to almost none.

As part of this work, we represent the plaintiffs in the ongoing stop-and-frisk remedial process that is being overseen by a federal court monitor. We have represented the plaintiffs in two lawsuits within the stop-and-frisk remedial process: *Floyd v. City of New York* and *Ligon v. City of New York*. While our work with the court monitor in designing and implementing reforms pursuant to the court's orders and the parties' settlements in those cases is fairly well known, the stop-and-frisk remedial process also included a massive community input component that has received less attention. Relevant to the bills under consideration today is that thousands of community members who gave input in this process spoke with almost total unanimity in calling for more meaningful discipline of officer misconduct. We urge the Committees to consider this testimony in contemplating the package of discipline and transparency bills that have been introduced.

The stop-and-frisk community input process was conducted over a three year period, from 2014 to 2016. It relied on the collaboration of over twenty organizations. It included sixty-four focus groups comprised of the people most affected by stop-and-frisk and trespass enforcement practices[1] and twenty-eight community forums at which attendees were guided through facilitated conversations about reforms.[2] Over five hundred people participated in the

[1] Final Report and Recommendations of the Hon. Ariel Belen, *et al. v. City of New York*, 08 Civ. 01034, Dkt # 597 ("Belen Report") at 34-35. The Belen Report is also available at https://ccrjustice.org/sites/default/files/attach/2018/05/Dkt%20593%20-%20JRP%20Final%20Report%205-15-18%20ECF.pdf.

[2] Belen Report at 37.

focus groups; almost two thousand people participated in the forums.[3] The focus groups were comprised predominantly of black and Latino people from the neighborhoods in New York that bore the brunt of the NYPD's unlawful stops and trespass arrests.[4] Their voices should be heard here, as they are the ones whose daily lives are affected by the NYPD's persistent failure to hold officers accountable. While we do not have time this afternoon to share every relevant testimonial from the thousands of pages of focus group transcripts that were compiled, the following quotes make plain the urgent need for the NYPD to implement more meaningful and consistent discipline when officers engage in misconduct:

> "There's no accountability. The police can just do anything."[5]
>
> "I'll lose my job if I have weed in my pocket. They can't lose their job if they shot somebody wrongfully?"[6]
>
> "They kill people and get away with it."[7]
>
> "They have to be penalized for things they're doing . . . They need discipline . . . They're not equal. They're considered higher than us."[8]
>
> "I see all my life cops break the law and nothing happens to them. . . . there should be consequences."[9]
>
> "They act like they can get away with anything, which basically they can."[10]
>
> "You gotta do some type of discipline. Because if [officers] see that their actions is not being disciplined they're gonna keep doing what they're doing now."[11]
>
> "[Officers] should do their time for doing real criminal stuff, like beating on people for no reason."[12]

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[3] Belen Report at 37.
[4] Belen Report at 135-149.
[5] 1/5/2016 *Floyd* Focus Group Tr., 8:16-17. The *Floyd* focus group transcripts are publicly available as an appendix to the Belen Report, *see Floyd et al. v. City of New York*, 08 Civ. 01034, Dkt # 598-8, Appendix H. They can also be accessed via the following link: https://www.dropbox.com/sh/pc526qv7ni0foy9/AADG_t-ozI3pSYTnTobKsicca?dl=0. The focus group participants' names are confidential; the participants are ascribed pseudonyms in the transcripts.
[6] 10/20/2015 *Floyd* Focus Group Tr., 23:13-14.
[7] 10/28/2015 *Floyd* Focus Group Tr., 15:19.
[8] 12/9/2015 *Floyd* Focus Group Tr., 10:39-11:3.
[9] 1/26/2016 *Floyd* Focus Group Tr., 14:22-33
[10] 10/28/2015 *Floyd* Focus Group Tr., 5:47.
[11] 10/27/2015 *Floyd* Focus Group Tr., 18:9-11.

"I can sit here, as a police officer, I could punch her in the fucking head, and I'm getting desk duty with pay."[13]

"[T]hey do as they please, and . . . all they get is suspension or desk duty."[14]

Officers who have engaged in misconduct "get leave and they're still getting paid. You didn't feel no consequences. . . . There's no real affect in their life . . . ."[15]

"[I]t may be an officer with 50 complaints on him already. He's still okay. He still has his job. He's still out in the field, doing the same thing repetitively."[16]

"When an officer gets in trouble, you know what they do? Desk work. They be at the desk. That's all they do. That's not a punishment."[17]

"If you don't pay a consequence, you're not going to learn anything."[18]

"[E]ven though they have evidence [of misconduct], the cop always wins the case . . . ."[19]

"[W]hen you start making noise . . . that's the only time that I know for a fact they even get a talking to. They're not really reprimanded or nothing like that."[20]

"We've made significant changes, but the new rules will only be as good as enforcement and accountability."[21]

"There's this culture in place where there's no accountability from within. . . . no one is holding [officers] accountable within their own team."[22]

"We have to start holding [the police] accountable because it's basically like you said, what are you going to take from this? Nothing."[23]

"No matter how many people you get to justify and say that person was in the wrong, as long as he has a badge, he's untouchable."[24]

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[12] 10/28/15 *Floyd* Focus Group Tr., 15:14-19.
[13] 11/3/15 *Floyd* Focus Group Tr., 28.
[14] 11/17/15 *Floyd* Focus Group Tr., 29:1283-1284.
[15] 11/18/15 *Floyd* Focus Group Tr., 17:563-564.
[16] 12/8/15 *Floyd* Focus Group Tr., 9:5-6.
[17] 12/14/15 *Floyd* Focus Group Tr., 10:30-31.
[18] 12/16/15 *Floyd* Focus Group Tr., 12:23-34.
[19] 12/21/15 *Floyd* Focus Group Tr., 17:19-20.
[20] 12/21/15 *Floyd* Focus Group Tr., 20:34-38.
[21] 1/5/16 *Floyd* Focus Group Tr., 15:25-27.
[22] 1/6/16 *Floyd* Focus Group Tr., 7:4-8.
[23] 1/12/16 *Floyd* Focus Group Tr., 15:46-16:2.
[24] 1/21/2016 *Floyd* Focus Group Tr., 23:12-14.

"There's no cops getting no type of type of repercussions for what they're doing."[25]

"[W]hat really needs to happen . . . is accountability; not just from the Commissioner of the NYPD down to the lowest patrol car or patrol officer, but also with the City Council and Mayor's office; because ultimately that Commissioner, NYPD, answers to them, the City Council . . . So we need accountability . . . and guidelines set in place for officer that violate [the rules]."[26]

The stop-and-frisk community input process was overseen by retired judge Ariel Belen, who was appointed by the federal court to facilitate the proceedings and to develop additional reforms that reflected community input and that would be necessary to bring the NYPD's practices into compliance with the Constitution. After amassing extensive community input, and following months of discussions among community stakeholders and the parties' representatives, Judge Belen issued a report to the court in which he recommended additional reforms that the court should order the NYPD to implement.[27] In issuing his recommendations, the Facilitator found that "an overarching theme throughout the focus groups centered around accountability"[28] and a recurring theme at the community forums was "a perceived lack of accountability for misconduct at the NYPD."[29] Judge Belen recommended, among other things, that the court order the NYPD to develop a disciplinary matrix and to periodically report on disciplinary action.[30] The plaintiffs supported these recommendations and asked the court to order the NYPD to implement them; the court has not yet ruled. Though beyond the purview of the court's jurisdiction, Judge Belen further suggested that--as a policy matter--the legislature should repeal 50-A and that the NYPD should support such repeal.[31]

The disciplinary matrix bill introduced by Chairman Richards (Int. No. 1309), is commendable as a step toward holding officers accountable in New York City, but we believe it should go further: The NYPD should be required to report on how--not whether--to implement a

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[25] 2/3/2016 *Floyd* Focus Group Tr., 11:25-26.
[26] 11/5/2016 *Floyd* Focus Group Tr., 5:27-33.
[27] Belen Report, *supra* n.1.
[28] Belen Report at 153.
[29] Belen Report at 173.
[30] Judge Belen's recommendation was as follows: "We therefore recommend that the NYPD be ordered to develop and publish progressive disciplinary standards to be used in cases arising from unconstitutional stops and trespass enforcement regarding excessive force, abuse of authority, discourtesy or offensive language, and racial profiling allegations." Belen Report at 224. Notably, The NYPD's Patrol Guide already lists violations that will ordinarily result in certain consequences. *See* NYPD Patrol Guide §§ 206-03, 206-04, 206-05, 206-07. The NYPD Patrol Guide is available for viewing and download at https://www1.nyc.gov/site/nypd/about/about-nypd/patrol-guide.page.
[31] Belen Report at 272.

disciplinary matrix, and the Council should require an ancillary report that documents the need for a disciplinary matrix from the perspective of those who face the most policing in our city. This community input can be culled in part from the *Floyd* focus groups. Finally, the disciplinary matrix should be transparent to the public and informed by those most impacted by police abuses.

## LESSONS FROM THE BRONX DEFENDERS CRIMINAL DEFENSE PRACTICE

Transparency in police accountability and discipline, and the proper documentation and disclosure of police misconduct, are critical to both the effective representation of our clients in criminal court and to our clients' ability to receive some form of closure and justice in their cases. We recently represented a client who was stopped without justification, frisked, and charged with possession of controlled substance, in what was a blatantly racist application of the racist stop-and-frisk practices that continue to harm our clients and their communities. The arresting officer's misconduct records indicated a clear pattern of similar behavior. These records helped obtain a dismissal in that case, which was the first step in our client's path to find justice and closure.

As the above example demonstrates, the disclosure of police misconduct records provides some measure of accountability for unlawful behavior through the court system — even when other accountability systems, such as the IAB or the CCRB, fail to do more than give an anemic slap to the wrist of the offending officer.

### *The Role of Police Disciplinary Records in Litigation and the Need to Repeal 50-A*

While records of police misconduct are vital to holding officers accountable and reaching a measure of justice, they are not freely available to defense attorneys: the state civil rights law, known as Section 50-a, forbids the public issuance or mention in court of an officer's personnel record without judicial approval. As these Committees are well aware, the *de facto* effect of this section is that police disciplinary records are turned over to defense only on the eve of trial — and, lamentably, at times after the start of the trial. Thus Section 50-a, and the policy that upholds it, serve to minimize police accountability, hurt the most vulnerable communities in our city, and block the administration of justice from those who have been unlawfully injured by the State. Proposed resolution T2019-3709, by Committee Member Williams, calls on the State Legislature and the Governor to repel section 50-A of the New York Civil Rights Law, the section that protects these records from the public eye. If this were to pass, and misconduct records were more easily accessible to lawyers and the public, more accountability and more protection against the abuse of power by law enforcement would immediately result.

For the time being, we have relied heavily on the misconduct records database created by Legal Aid. This database allows us to identify officers with misconduct records early in the process of each case, and to investigate better and deeper into the misconduct that may have occurred in the case. It allows us to find patterns of unlawful behavior and to demonstrate these to the judges and juries. This database has revolutionized our ability to hold law enforcement accountable for misconduct and to demonstrate their misconduct in open court. However, this database is still limited since it includes only a patchwork of records, relying almost entirely on the initiative and memory of independent attorneys in collecting and uploading these records to the system.

Faced with inaccessible misconduct records (and a failure discipline officers in the first place), defenders have turned to information mining in order to obtain more insight into patterns of misconduct and to find better signals and corroboration when such patterns exist. Yet these methods are limited due to the incomplete information that we have access to.

Just like public defenders, policy makers can use information in order to gain profound insight and understanding into the failure of the criminal justice system - and potential remedies for these failures. This approach depends on transparency; in this case, in the form of access to information.

***The Role of Transparency in Effective Police Discipline***

Transparency, in the form of accessible information, is a first and important step towards accountability. The issue of police discipline has come to the forefront of the public discourse in recent years, after police violence, use of force and misconduct were exposed to the public's eye. Police discipline is a factor in minimizing these incidents in the future, and restoring some of the public's lost faith in law enforcement. Transparency is therefore an instrumental part of transforming the system and addressing the public outcry.

Transparency works on two separate tracks. First, transparency allows policy makers, such as this Council, and other stakeholders to understand the factors and context that give rise to these incidents; it thus allows all stakeholders to debate and decide on better, more effective policy initiatives. Second, transparency sends a clear signal to law enforcement personnel that they are being monitored and that they could be held accountable if they were to act in an unlawful or unethical way. This signal incentivizes law enforcement to act according to the laws and rules laid out for them.

To be effective, transparency in this context must make accessible as much information as possible. Access to information allows stakeholders to comb through information for recurring patterns, signals and irregularities. Finding these will lead to a better understanding of the scope of police misconduct, where it arises, and how it is camouflaged, hidden and explained away.

For example, police encounters that result in use of force often occur around subway entrances and places of congregation, such as neighborhood parties and festivals in the summer. As public defenders, we learn to identify these, even before speaking to our clients, by the trifecta of charges: resisting arrest; obstructing governmental administration; and disorderly conduct (in the context of outdoor encounters) or trespass/theft of services (in the context of subway encounters). Information about police charges at arrest, cross-referenced with locations, would such yield more information about the prevalence of such occurrences; information about how these cases are resolved would help pinpoint those that involved misconduct and other case-handling patterns that are associated with misconduct. Ultimately, sifting through this information would lead to better, more effective and more targeted police discipline.

Another example that demonstrates the need for expanded transparency comes from a pattern comparing arrest charges by the police and the District Attorney's handling of these arrests. As a start, charges that do not involve a complaint which the District Attorney declines to prosecute serve as an initial indicator for a category of cases that should be examined. Focusing on the arrest charges in this group--perhaps cross-referenced to the specific charges of resisting arrest, obstructing governmental administration, and disorderly conduct--would yield a group of encounters that are suspect. Further narrowing such a group by cross-referencing specific officers involved could lead to even more insight into misconduct that is happening during police encounters.

Transparency, through access to information from both the police and the prosecution office, would send a message to officers that they are accountable for their actions, while promoting a deeper understanding of the issues and challenges we face in achieving accountability. Such information would be instrumental in formulating rules and policies that protect vulnerable communities and make the police accountable for its actions.

***These Committees Must Expand Access to Non-Aggregate Information Regarding Police Action, From Initial Encounter To Final Disposition***

If transparency is the key to achieving accountability, then the Committees' efforts, at least initially, must focus on making as much information accessible to stakeholders - including the public as a whole.

T2019-3707 and T2019-3708 make for a good first draft. They recognize the need to make accessible information about the identity of the person arrested, and focuses on some of the charges that are indeed indicative of foul play. Yet as noted above, these parameters alone are not enough. In order to understand what these numbers signify, they must be contextualized in tandem with more information, such as the arrest history of involved officer and the history of

dispositions for cases that the officer was previously involved in. For example, a much more informative form of this bill for policy considerations would include a designation as to whether the officers involved in each of the incidents had been previously disciplined or sued for similarly unlawful conduct.

Similarly, T2019-3704, while making more information accessible, could go several steps further still. The bill would require prosecution offices to produce annual reports containing aggregate information about criminal charges and their severity, and the demographic information of the people prosecuted, among other parameters. Yet this bill stops short, too, of providing the information that would be truly informative for policy makers: it mandates reporting of aggregate information rather than reporting of individual encounters (as discussed below); and it leaves out much other information that would be instrumental in providing context and insight. For example, the bill focuses on information from prosecution offices, without requiring that similar information and parameters be reported by the NYPD - comparative information that would allow policy makers to draw much better inferences and conclusions about how to bring about more and better accountability.

In general, the above mentioned bills, along with the bills relating to police discipline and complaints (1105-2018 and T2019-3705), would further aid the goals of these Committees if they made accessible information about each individual officers, rather than aggregating whole encounters into statistical sums. Aggregation, while protecting the identity of both officer and citizen, also hides information relating to specific officers who may be acting unlawfully, and specific patterns of behavior. Reviewing information that is less aggregated will allow policy makers to make much more informed decisions - while putting officers and prosecutors on notice that they are accountable. For example, for each officer, the police and district attorney office could make accessible information relating to the specific encounters: charges, the resolution of the case, the officer (precinct, past misconduct history, etc.), the protected class details of the citizen involved, and so on. By hiding some identifying details, the confidentiality and privacy of the individuals arrested can be maintained. Access to this level of information would allow policy makers not only to address current issues, but to locate and flag issues that have not yet been identified by the people engaged with this work "on the ground."

Police accountability is one of the most pressing issues facing our City. The first step in addressing this issue is transparency - not only of NYPD practices, discipline matrices, and disciplinary records, but also of information from both the NYPD and the prosecution offices. Making such information accessible to policy makers and the public as a whole will send a message to officers that they are being watched and that they can be held accountable, while at the same time allowing the public and policy makers to formulate better policy initiatives to bring about more, and better, accountability.

nycds
Fighting for your rights, one person at a time

**Stanislao A. Germán,** Executive Director
**Carolyn P. Wilson,** Director

# 2/7/2019 CITY COUNCIL HEARING

## T2019-3709

**Resolution calling upon the New York State Legislature to pass, and the Governor to sign, A02513 which would repeal section 50-A of the New York Civil Rights Law in relation to the personnel records of police officers, firefighters, and correction officers.**

*TESTIMONY OF NEW YORK COUNTY DEFENDER SERVICES*

New York County Defender Services writes in support of A02513. The bill would repeal section 50-a of the civil rights law. This rescission is long overdue.

Whatever its original intent and justification, Civil Rights Law 50-a currently results in the widespread deprivation of the constitutional rights of New Yorkers facing criminal prosecution. 50-a permits law enforcement entities like the NYPD to shroud their disciplinary records in secrecy. As a result, criminal trials in New York are conducted without highly relevant prior wrongdoing by police witnesses ever coming to light. So the law, at its core, seeks to conceal the truth and does so at the expense of a criminal defendant's fundamental right to confront the witnesses against them.

In creating this indefensible secrecy, New York is a clear outlier. Elsewhere throughout the country, the misconduct records of police officers are rightly considered a public record and as such they are available to defendants faced with a governmental loss of their liberty. But here those who wish to give the jury an accurate picture of their accuser on a matter highly relevant to that accuser's credibility face the unnatural barrier of this unjust law.

From a fundamental fairness perspective, police officers should not be treated any differently than any other witness at trial. But illogically New York's police witnesses are able to cloak their past misconduct in secrecy. Under 50-a, the accused has the unfair burden of demonstrating that records they have no access to or specific knowledge of are relevant and material to their case. Unsurprisingly, judges very often reject these argument as speculative thereby strengthening the existing illegitimate secrecy.

The repeal of 50-a would bring New York out of an antiquated realm where police disciplinary records are valued more highly than fair trials and the fundamental constitutional rights of our citizens. Those concerned with the potential for abuse must appreciate that judges presiding over a trial have broad discretion to limit certain cross-examination questions and that attorneys always need a good faith basis for certain lines of questioning. The current blanket prohibition removes nuance and analysis and instead breeds the kind of secrecy where misconduct and abuse thrive. NYCDS therefore fully supports the repeal of this misguided law.

Christopher Boyle
Director of Data Research and Policy
New York County Defender Services

- My name is Constance Malcolm and I am the mother of Ramarley Graham. My son Ramarley was murdered in my home in front of his 6 year old brother and grandmother in 2012. The NYPD discipline system failed my family at every turn.

- I am also speaking on behalf of Gwen Carr, the mother of Eric Garner, who was unable to attend the hearing today. We thank the City Council, including Councilmember Richards, Speaker Johnson, and other CMs here today for listening to our testimony.

- **It would take more than a day to tell you the full stories of the murders of my son Ramarley and the murder of Eric Garner by NYPD officers, the related cover-up and other misconduct and the many ways the NYPD investigation and discipline process has failed our families.**

- **Since I have just a few minutes, there are a few things I want to highlight now. The rest will be in my written testimony.**

- **In both of our cases, the NYPD obstructed accountability and has failed to be transparent.**

- **They have used this lack of transparency to make it harder for us as families to fight for justice and accountability for our loved ones.**

- **In the case of my son Ramarley, there were at least 12 officers who should have been fired.**

- **Only 3 officers of more than a dozen ever faced NYPD discipline charges.**
- And to this day, Mayor de Blasio and the NYPD have still refused to give me the names of all the officers who engaged in misconduct.
- There were at least a dozen officers who should have been fired, including
  - Officers who assaulted my mother in our home right after Ramarley was murdered
  - Officers who interrogated my mother for 7 hours at the precinct right after she witnessed Ramarley murdered and denied her acccess to our attorney
  - Officer who assaulted me in the precinct
  - Officers who illegally leaked sealed information about Ramarley
  - Officers who tried to cover-up the incident

- **This is unacceptable – Keeping these kinds of officers on the job is a danger to all New Yorkers.**

- **Of the 3 officers who had NYPD charges, 2 of them are off the force but none of them were fired.**

- **It took almost 5 years of non-stop organizing by me and groups who supported me before Richard Haste even saw an NYPD discipline trial.**
  - He was able to resign instead of being fired – after getting an annual salary with overtime and increases every year since murdering my son.

- **It took almost 6 years to have anything move with Sgt Scott Morris and Officer John McLoughlin** – and they never even saw a discipline trial. Morris is off the force, but McLoughlin is still there.

- **Let me be clear – Haste and Morris were forced to resign not because of the NYPD, but in spite of it.**

- **If it hadn't been for non-stop public pressure that I organized with groups supporting me, nothing would have happened and both Haste & Morris would still be on the force.**

- **Every step of the way, 50a was an obstacle and that's why me and other families are fighting for repeal of 50a.**

- **Richardson also was very disrespectful to me and my family.**
    - In my case, when Haste was on trial by the NYPD, the NYPD wouldn't even tell me what the charges were. Kevin Richardson, the head of DAO made me sit through every day of the trial to try to "catch the charges". He refused to tell me the charges against Haste until the end.
    - He refused to let my mother, Ramarley's grandmother, testify in the trial even though she was a witness.
    - He failed to have his team come to my home at a time that I could let them in even though he committed that he would. That meant the prosecution was weakened because they didn't understand my home's layout.
    - There's many other examples I could give you.

There's more on Ramarley but I also want to tell you about Eric Garner since his mother couldn't be here.

- As you know, Eric Garner was murdered in July of 2014 by the NYPD.

- It's almost 5 years later, and Daniel Pantaleo - the officer who choked Eric, other officers who threw him to the ground to unlawfully arrest him, officers who lied in official reports, officers who failed to supervise, and other officers who engaged in misconduct are all still on the force.

- Ms Carr is very worried that the NYPD is trying to sweep how big this was under the rug.

- I'm not sure if you know this, but Mayor de Blasio and Commissioner O'Neill have continued to refuse to tell her the names of all the officers who played a role in the murder of her son Eric, and attempted to try to cover it up afterwards. She has the names of about 5 others besides Pantaleo, only because she and groups supporting ahve been piecing together media reports of officers who lied in their reports and the like.

- **All of us families stand with Ms. Carr and are really concerned that de Blasio and O'Neill have no intention of holding anyone accountable for murdering Eric.**

- Given the widespread cover-up and the many officers responsible for misconduct, it shouldn't just be Pantaleo who faces possible discipline.

    - Pantaleo should be fired and as you know he's facing a discipline trial -- only because the CCRB substantiated charges against him. The NYPD did not, and in fact they blocked the CCRB from bringing charges for almost a year.

        - It wasn't until Ms. Carr pointed out the NYPD's lies for delaying charges again and again last year -- along with groups in this room -- that the NYPD stopped blocking the CCRB and brought charges against Pantaleo.

        - Pantaleo's case is the only one that has even moved forward - and that's because of the CCRB, not the NYPD.

        - The NYPD has had Sgt Adonis charged since the first year, and they still haven't moved forward on a discipline trial.

        - The NYPD has not even brought any other officers up on discipline charges - not the ones who lied in official reports, or the ones who jumped on my son to falsely arrest him when he wasn't doing anything wrong - remember, in spite of NYPD propaganda, witnesses all say that Eric had just broken up a fight. He wasn't selling loosies when they arrested him -- and even if he was, that should never be a death sentence.

    - We're in the middle of a massive cover-up and Ms. Carr and all of us feel like nobody in the City cares except our families, communities and the groups that have been supporting us.

- We are really worried that Pantaleo may not even get fired. The fact that the NYPD has been dragging their heels on charging him meant that he has been able to vest 10 years of service. He could put in for his 30 day resignation at any point and still get vested retirement.

- We really need your help to make sure that not only Pantaleo, but that all the officers who helped murder Eric Garner and tried to cover-it up are held accountable and I know that Ms. Davis and Mr. Vassell also need your help in their fights for justice for Delrawn and Saheed.

- We can't keep having our Black children murdered by NYPD officers and no one is ever held accountable.

**Testimony on DA Reporting Bill - submitted by Davon Woodley, #CLOSErikers Campaign Leader at JustLeadershipUSA**

Most people assume that District Attorneys are keeping us safe. This is far from the truth. The sad reality is that people who are standing/awaiting trial are contributing taxpayers essentially paying racist prosecutors to lock them up based off of the crime they allegedly committed without a fair understanding of the person standing trial. That gives them the room to operate in the dark; we trust them because we have to and because the people elected them. If we THE PEOPLE elect them into office and are paying them to do their jobs, then we HAVE THE RIGHT TO TRANSPARENCY. We have the right to know what they know.

It is our duty and our right to hold them accountable for their false accusations, their racist tactics, their insensitivity to black and brown communities, and most importantly protecting our due process and a fair and speedy trial. Nobody should wield the power to take someone's freedom and neglect their humanity without being accountable to our communities.

Accountability is the foundation for reforms. Remember that District Attorneys could, on their own, enact significant pretrial reforms without waiting for Albany to act. Here in Manhattan, DA Cyrus Vance's office practices open file discovery whenever they feel like it. They would drastically reduce court delays if they practiced early and open discovery in every single case that they prosecuted.

Five Years ago, I was fighting an assault charge. I had never been arrested, I had never been pulled over, and never had any warrants for my arrest. I was in college, I was working 2 jobs to support myself and my daughter and was privileged to post an outrageous $10,000 bail through the love and support of my family and friends.

But instead of explaining the man I was, the District Attorney office made me out to be an irredeemable monster with a suspected history of violence or violent tendencies. With no prior engagement with me, other than the police report and probation assessment they gathered. Instead of getting to know me as the man I was and who my family and loved ones knew me to be -- an upstanding, taxpaying, contributing member of society-- the prosecution decided to call me a quote "MONSTER, A MENACE", and convince the judge that I had no regard for public safety.

The DA's office made me feel less than my worth and lied to the courts, depicting me as a boy who had been born into a life of crime and knew nothing but wreaking havoc and causing pain. The insensitivity, the Injustice, and the racial profiling must stop now. DA accountability and transparency are what we need now in order for reform to work we must reform the system.

# DIGNITY IN SCHOOLS

DIGNITY IN SCHOOLS CAMPAIGN | INFO@DIGNITYINSCHOOLS.ORG | WWW.DIGNITYINSCHOOLS.ORG

**Public Safety Committee Hearing**

*Thursday, February 7, 2019*

My name is Kate McDonough and I am the Director of Dignity in Schools Campaign-NY (DSC-NY), a multi stakeholder coalition of over 20 NYC based organizations that work for education justice and an end to the school to prison pipeline.

I am here today because systematic racism is leading to the gross over policing of our coalition members in school. Research has shown that while Black and Latinx students do not misbehave more frequently than their White peers, they are more likely to be punished harshly for their actions. For example, Black and Latinx youth make up 92 percent of all students arrested and 91.7 percent of students given summonses, yet are only 67.1% of the student population. Thus, while White students who get into a fight have an opportunity to get at the root of the issue and receive support and guidance, Black and Latinx students are placed in handcuffs and traumatized.

This is a symptom of a larger issue, which is state sanctioned violence against Black and Brown young people. Right now there are more NYPD School Safety Officers in our schools than there are guidance counselors and social workers combined. Currently, the city gives over $300 million of the DOE's budget to the NYPD's School Safety Division. As we saw the NYPD's budget grow, the City Council stopped funding Restorative Justice in FY19, which is proven to build positive school climate and reduce the criminalization of Black and Brown young people. You get what you pay for.

Now is the time for the City to divest from this violence and invest in the success of our young people. DSC-NY is calling for funds to be reallocated from the NYPD to the DOE to enable guidance counselors and social workers to be in every school at a 1:150 ratio for most schools and 1:50 for high needs schools. We also want funds to enable restorative justice to be expanded citywide. The City has a choice: continue to invest in violence against young people of color or invest in their success and wellbeing. To be clear, our members still thrive and do amazing things, but it's in spite of the system, not because of it. We hope you will join us in the effort to create the schools that young people of color want, need and deserve.

# Testimony by the Urban Youth Collaborative

**Submitted to the New York City Council Committees on Public Safety and Justice System**
**February 7, 2019**

Good afternoon, Chairperson Richards and Chairperson Lancman. Thank you for providing us with an opportunity to testify today. My name is Roberto Cabanas and I am the coordinator of the Urban Youth Collaborative (UYC). UYC is a coalition of youth led organizations all across New York City. Our young people are youth of color from Make the Road New York, Rockaway Youth Taskforce, Sistas and Brothas United, and Future of Tomorrow.

Every day, members in our organizations deal with the harsh and dehumanizing presence of police in our schools. While their mere presence creates detrimental impacts on young people, the frequent displays of abuse compound these harms. Across the city, approximately 95 percent of all police interactions in schools are with students of color, despite being only 67 percent of the student population. The discriminatory use of policing in our schools means that it is also very likely that Black and Brown students are the students most regularly abused by the NYPD in schools.

Our members have shared stories of physical and verbal abuse by School Safety Agents and other NYPD personnel in schools. If they were not in school right now, they would be here testifying and sharing their stories, not me!

When this type of abuse occurs by police and School Safety Agents (SSAs), young people do not know where to turn. The complaint system is incredibly difficult to navigate. Most schools do not even know how students can file complaints against the NYPD personnel who police our schools.

Some students have still been able to file complaints despite the excessive hurdles they face to do so. In the last two years, there have been nearly **300 Force, Abuse of Authority, Discourtesy, or Offensive Language complaints lodged against School Safety Agents.** We know, based on the barriers young people face in filing these complaints that this number vastly undercounts the true scope of abuse occurring in our schools. And yet, that is **almost a complaint in every school day, everyday.** The rate of abuse appears to be on the rise. Just yesterday, data came out about the complaints from Quarter 4 of 2018. The number of complaints was approximately 57 percent higher than the same quarter of data in 2017.

But, once a complaint is filed, there is no transparency as to what, if any, disciplinary action is taken against the NYPD personnel.. On average, complaints remain open for more than 50 days and some are open more than 100 days. During that time, SSAs usually remain in the schools interacting with students.

Young people must feel safe and supported in their schools. When we permit SSAs to stay in schools who have abused their authority, used force against young people, or are disrespectful, we tell young people that they don't matter. We tell them that if they are abused, we will not support them.

We are asking you to change that. The city must provide a transparent disciplinary process so that all New Yorkers know if they file a complaint against NYPD personnel their complaint will be taken seriously and appropriate disciplinary action will be taken. SSAs with complaints against them should not be able to work in our schools.

We also strongly support the repeal of 50-a. Students, parents, and community members at large need to have an opportunity to understand the disciplinary histories of people who are around our city's young people every day. Both in and out of schools, the NYPD must be held accountable for their disciplinary decisions. The only way to do that is for the public to have access to those records. New York State must repeal 50-a.

Thank you.

February 7, 2019

Greetings family, on 11.18.2018 I was assaulted by police on the corner of my block in The Bronx (which by the way is the poorest congressional District in the country) only feet away from where my 8 year old daughter stood. While having a conversation with someone, I was manhandled, dragged, hair yanked, arm cut and thrown in the back of a 52nd Precinct squad car. As I screamed for my life at that point because I was NOT under arrest, there were three different points during this interaction where I quite literally thought I would not make it back to my daughter Miracle, I thought I was going to die. Officer Capellen and his cronies made sure to divest from protection in those moments, particularly after over 8 officers took my body and did what they wanted.

I was never placed under arrest, I was never told that I broke any laws. The only law that came to mind was walking while Black in America. As these officers who refused to give information to my goddaughter nastily drove off, I kept asking if I was under arrest to which they continued to respond that I was NOT. Being kidnapped that day caused emotional trauma and physical scars. What is the point of this story?

My name is Shanequa Charles, ED of Miss Abbies Kids, a youth development non profit organization servicing the North East Bronx and beyond and Co Founder of Never Be Caged, a newly formed org to end mass incarceration through investment in our youth and the point is that tirelessly working on criminal justice issues daily to correct the ills that impact communities of color and communities experiencing poverty does NOT even keep humans safe when police want to engage in negative behavior.

Intro 1105-2018 would not only force police officers to have to think more deeply before terrorizing the communities they are supposed to serve and protect but would also begin a record of responsibility that officers would have to adhere to. If we want to speak truth to power, than holding officers accountable to THEIR actions of misconduct is a large piece of the puzzle, right? Not only this but ALSO holding the department responsible for what actions are being taken to respond when people are nastily violated, like myself and the countless others that unfortunately do sometimes wind up in death.

Secondly, T2019 is a must particularly in our city where Black and Brown people are over sentenced and much ado to the unrelenting power that prosecutors wield during the arraignment process and sentencing. We have staunch evidence of poor choice and targeted prosecutorial practices when we have a stain on NYC like Rikers Island, where 89% of the population are Black and Brown bodies when we KNOW that we only make up about 25% of our city. Where Craig and Johnny can commit the same exact crime, have the exact same background and Johnny goes home (perhaps never even arrested) and Craig surrenders the rest of his life to being caged like an animal for the next 25 years.

SOMETHING must change and these Bill's are a strong start in addressing two THE MOST powerful players in the heartwrenching, rights violating game of how many folks can we eliminate through Mass Incarceration. Our ancestors did NOT jump of ships to be free for us to STILL be enslaved. We need healing, we need reconciliation, we need empathy, we need change and we need change right now. We need to continuously honor the work of boots on the ground, grass roots, directly impacted humans that have the lives experience of what's WRONG with our current system...which we all know is not broken and creating community around these issues based on love and humanity

Peace and blessings, thank you for your time.

Peace and good afternoon council members, my name is Darian and I am the Youth Organizer for Justice and Community Safety at Make the Road NY.

For far too long, young people in this city have faced harm and abuse by the hands of police, with the burden of scrutiny always being placed on them instead of the NYPD. Young people are exceptionally vulnerable to this violence in our communities. On our streets unconstitutional stops continue to happen everyday. Just because the NYPD has not been documenting stops doesn't mean they have changed their practices.

This violence is also real in our in schools where we are supposed to feel the safest. As recent Buzzfeed articles report, hundreds of officers have abused their powers from lying on official documents to sexual harassment and they continue to work in our communities. Over two dozen of those officers work in our schools, where students and families have no idea who is patrolling their hallways.

Safety for youth of color has been precariously held in the hands of those who routinely criminalize their neighborhoods and in some cases, like those previously aforementioned today, kill people who look like them. Not only can we no longer allow this to be the context through which young people in our city live, but we can no longer allow the harm and misconduct committed by the NYPD to be hidden behind blue walls of silence.

Despite the rhetoric that the NYPD has been completely re-trained and transformed, that is far from reality and just a form of political gaslighting. Police misconduct, abuse, and sexual harassment continues to happen with little or no consequences for officers. What videos and high profile incidents do is bring to light what's in the shadows throughout Black and Brown communities.

The calls provide transparency and accountability from communities most impacted by police violence has never been louder, and it is this council's duty to answer those calls. The Council must urge and fight for a discipline matrix with swift and severe consequences if we are going to mitigate abuse of power in an agency that continues to police itself. Supporting a full repeal of Civil Rights Law 50-A must also be a priority for this council and the fact that the NYPD continuously attempts to broaden the scope of this legislation should be alarming to everyone. 50-A was one of the sole reasons Ms.Carr was unable to identify whether officers involved in killing her son held a history of misconduct; though we later did find this out about Daniel Pantaleo through leaks, confirming what our communities already knew through our day to day experiences.

We urge this council to stand with our young people, to stand with our communities and prioritize these issues. Thank you.

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**February 7, 2019**

# BRONX DISTRICT ATTORNEY DARCEL D. CLARK STATEMENT TO CITY COUNCIL COMMITTEES ON PUBLIC SAFETY AND THE JUSTICE SYSTEM OVERSIGHT HEARING

Council Speaker Cory Johnson's DA Reporting Bill provides an opportunity for the Office of the District Attorney, Bronx County, to show how we hold ourselves accountable to the community. The annual report in this legislation promotes data transparency detailing how justice is administered. By providing an annual report, members of the defense bar can use the information to assure their clients of fair outcomes; members of the public can examine whether there are disparate impacts on individuals within our community; the Office itself can utilize the data to determine if there are patterns and practices where we can improve; and the raw data has the potential to show results of the thoughtful and deliberate reforms we have made.

While we are in support of greater transparency efforts to show just how we pursue justice with integrity, the Office does not currently possess the technological resources to produce the comprehensive report required by this legislation. We would simply ask that this legislation is paired with funding to ensure that the Office's technological resources are thorough, verifiable, and comply with the requirements of the legislation. This additional resource is but one step towards meaningful reform on the path of building community trust.


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February 7, 2019

**NYC Council Committee on Justice Systems**

**Via email**:

**To:** Councilman Rory Lancman: NYC Committee Chair Committee on the Justice System

**To**: Councilman Andrew Cohen, Councilman Alan N. Maisel, Councilwoman Deborah L. Rose and Councilman Eric A. Ulrich

**cc:** Councilwoman Carlina Rivera; Councilman; Councilman Daniel Dromm; Councilwoman Helen Rosenthal; Commissioner James O'Neill; the person currently with the title of Manhattan DA, Jeffrey Schlanger, , Public Advocate Corey Johnson, Sebastian Macguire, Eric Boettcher, Rachel Graham Keegan

**Ref Oversight - Police Discipline : Int 1105-2018; Int 1309-2018; T2019-3704; T2019-3705; T2019-3706; T2019-3707 T2019-3708; T2019-3709**

Dear Chair Lancman, Committee Members and Committee Counsel(s):

I thank you for holding this hearing and also the other members of the council and staff for allowing me to appear today and speak. I am Kelly Grace Price, co-founder of Close Rosie's (http://www.CloseRosies.org). I appear today to submit comment on the various bills pending. I have been advocating for accountability and oversight of the NYPD, CCRB and City DAs for the better part of a decade since my false arrests, unlawful detention and malicious prosecutions in 2011 that ended in full dismissals. This slate of bills is a good start—each need improvement—but sadly still the best

oversight of these agencies comes not from within City government but from 40 Foley and 500 Pearl street. Luckily I am closer today to my own litigation goals in that venue: Cravath Swaine & Moore has picked-up my pro se litigation against the tyrant masking as a progressive who currently also has the title of Manhattan District Attorney, the NYPD, the City of New York and other individuals employed by NYC. I am one of the few people that actively engages with the data the City produces on our arrested, detained, and incarcerated population in my capacity as advocate and I hope my comments are helpful in the modulation of these bills.

***First: general comments about the specifics of the bills under consideration today.***

***Then: comments ref: specific reporting needs of survivors of sexual violence who are re-victimized by the NYPD, CCRB City District Attorneys, and the criminal non-justice system:***

I. **T2019-3704: a Local Law to amend the administrative code of the city of New York, in relation to requiring district attorneys to report on criminal prosecutions.**

A. Why is reporting annual? I suggest these reports be quarterly or at minimum bi-annual.

B. Why is the law not implemented until 2021? Why can't we demand reports NOW or to commence in July of 2019 or January of 2020.

C. § 9-402 Reporting.

1 Section 1.c: additional reporting requirements by CLASS of Felony, Misdemeanor,

2 Section 1.c: additional reporting requirement of zip code of alleged offendee and declared sexual orientation should be added.

3 Section 2.a: additional reporting requirements by class of felony, misdemeanor convictions

4 Section 2.c: additional reporting requirement of zip code of convicted and declared sexual orientation should be added.

5 Add number of grand juries conveened and the outcome(s)

6 Section 7.c: "program" needs further definition

7 Section 8: "time served" should be "time assessed" as it is impossible in most cases to know the outcome at the beginning of a person's incarceration of their time

served. An additional reporting requireement could be added to track people released.

8 **A further category could be added to this report requiring reporting on the NUMBER OF APPEALS taken from criminal convictions by each borough DA and their disposition aggregated by charge, charge category, deponant's race, sex, gender, arresting precinct, sexual orientation and home zip code.**

9 ***We need more reporting on sexual vioence and how our City DAs treat us when we turn to them in our darkest moments. If the #MeToo movement has taught us anything it is that New York City DAs do not serve survivors well. Additional requirements could be added mandating:***

a. the number of cases of IPV, rape, sexual abuse, sexual harassment sent to the DAs for prosecution aggregated by precinct and abuse category
b. the number of cases of Intimate partner violence, rape, sexual abuse and sexual harassment prosecuted.
c. the number of cases of Intimate partner violence, rape, sexual abuse and sexual harassment convicted aggregated by charge, charge severity and sentence
d. the number of cases of Intimate partner violence, rape, sexual abuse and sexual harassment reported to the borough DAs that are associated with a Cross Complaint against the survivor aggregated by the disposition of those cross complaints
e. the DURATION between the day the borough DAs receive cases of IPV, rape, sexual abuse, sexual harassment from the NYPD and the final disposition of the case.
f. The number of cases referred to specialty court parts aggregated by type of part sent to: trafficking, youth, drug etc and case outcome(s).
g. We have an ENORMOUS confidential informant issue in our Judicial system: we need to know the number of prosecutions DROPPED/DP'd against informants/cooperating witnesses aggregated by charge type, date of arrest, date of dismissal and class of felony/misdemeanor.
h. the number of prosecutions/ sentences REDUCED against

informants/cooperating witnesses aggregated by charge type, date of arrest, date of dismissal and class of felony/misdemeanor.

**II. Ref: Chari Lancman's T2019-3706: A local law amend the administrative code of the city of New York, in relation to granting district attorneys access to law enforcement records:**

A. These same disciplinary records need to be culled from the borough DA's offices as well: I suggest adding language such as:

"On a quarterly basis the borough District Attorneys shall post records on their website(s) pertaining to complaints and disciplinary offenses for any district attorney employee. The aggregate reporting includes the following: a) Improper withholding of Brady material; b) sexual misconduct; c) domestic violence or other domestic incidents; d) drug possession, use or sale without police necessity; e) driving while intoxicated or alcohol-related misconduct; f) false statements, including written, and verbal statements or statements made under oath; g) false prosecutions; h) unlawful or criminal conduct; i) firearm-related offenses; j) misconduct involving interactions with the public; h) other department rule violations.

B. We don't need to look far to find that oversight of DA office employees is non-existent and this is particularly disturbing considering DAs are protected by the doctrines of absolute and qualified immunity and shielded from discipline by the Federal Courts:

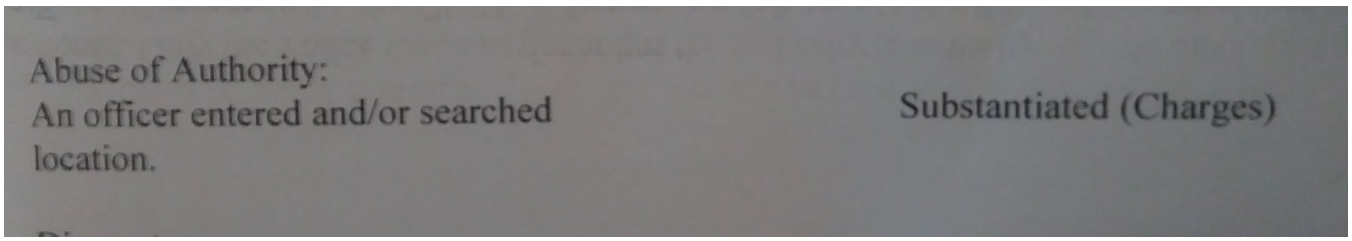
1. High-Level Employee in Manhattan DA Office Accused of Sex Assault by Intern
2. Prosecutor guilty of choking woman in drunken bar brawl
3. This nanny is taking on cops, prosecutors after finding boss' spycam in ...
4. Ex-assistant DA who wiretapped NYPD love interest gets year in jail
5. Rebecca Woodard claims Manhattan District Attorney's office 'pimped ...

6. Spitzer call girl: ADA was my pimp - New York Post
7. DA employee accuses prosecutors of wild behavior
8. Bronx DA's office overrun with sex, booze and fights, employee says ...
9. District attorney who didn't prosecute Weinstein will be investigated ...

III. **Regarding Councilman Richard's bill Int 1105-2018 Misconduct Report: A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to submit reports on complaints of police misconduct:**

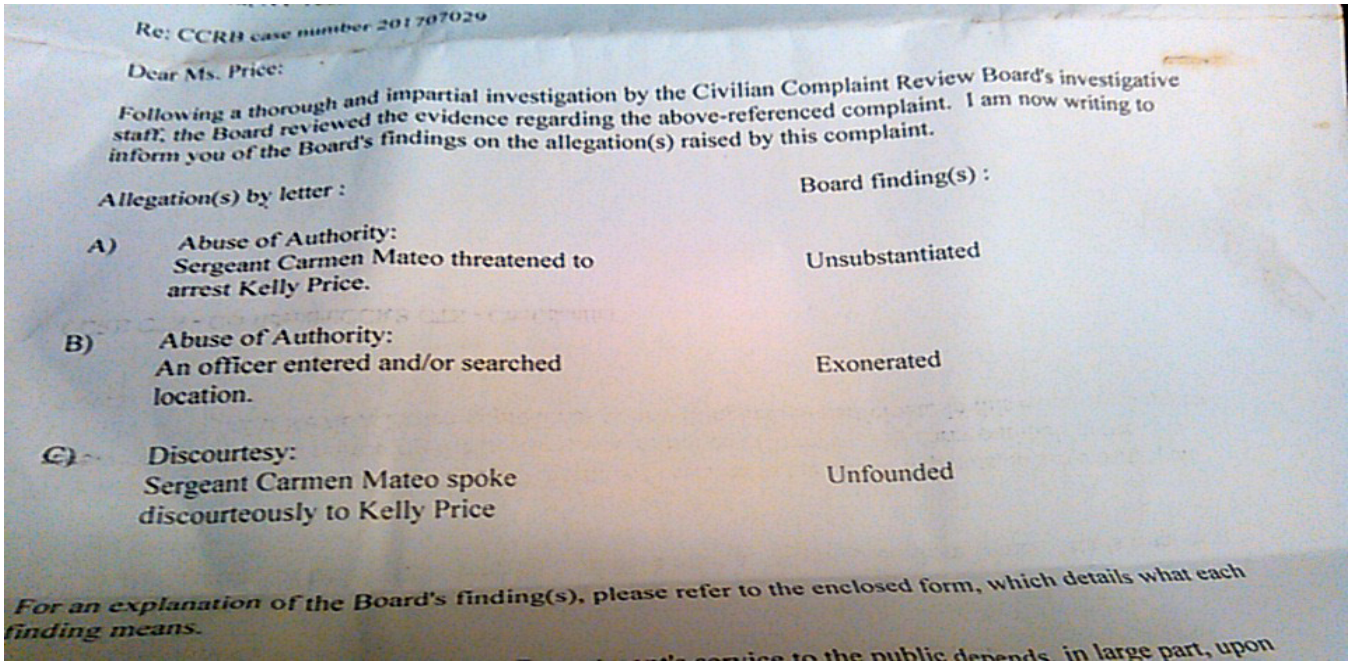
A. The CCRB is now investigating complaints of sexual harassment and plans on investigating complaints of sexual abuse in the coming months. These categories should be added to the language of the § 14-177 Police misconduct report.

B. It takes MONTHS sometime YEARS for a disposition on a case and determinations are made and adjusted at each stage of the disciplinary process. For instance as a result of various trespasses against my constitutional rights and discourtesies levied against me by NYPD SGT Mateo of the 34th precinct when we called the NYPD because my landlord had illegally changed the locks on our buildings Mateo's actions were determined to be FOUNDED by the CCRB: below an excerpt from a determination letter I received in January of 2018 about the incident:


Abuse of Authority:
An officer entered and/or searched location.

Substantiated (Charges)

Now just days ago I received a SECOND determination letter ref the SAME incident but it is completely different and reveals a change in determination of the same charge:



Re: CCRB case number 201707029

Dear Ms. Price:

Following a thorough and impartial investigation by the Civilian Complaint Review Board's investigative staff, the Board reviewed the evidence regarding the above-referenced complaint. I am now writing to inform you of the Board's findings on the allegation(s) raised by this complaint.

| Allegation(s) by letter : | Board finding(s) : |
|---|---|
| A) Abuse of Authority: Sergeant Carmen Mateo threatened to arrest Kelly Price. | Unsubstantiated |
| B) Abuse of Authority: An officer entered and/or searched location. | Exonerated |
| C) Discourtesy: Sergeant Carmen Mateo spoke discourteously to Kelly Price | Unfounded |

For an explanation of the Board's finding(s), please refer to the enclosed form, which details what each finding means.

...to the public depends, in large part, upon

How is this discrepancy to be accounted for in the reporting? I have NO idea if Mateo was exonerated at trial or by the PC. This bill should have at least three levels of reporting: 1) Determination by CCRB 2) Administrative Trial Determination and; 3) Determination by Police Commissioner.

C. I have previously submitted testimony ref CCRB reporting to the Public Safety Committee on January 22 of this year regarding Intro 1106. Here are my suggestions regarding CCRB reporting:

**Potential Reporting Provisions to Intro 1106:**

i. The council could consider adding a provision that **requires the CCRB to document the number of complaints converted/on-passed to the NYPD for investigation** that are initially investigated by the CCRB and deemed to fall outside of the agency's charter. Currently I have made several complaints that fall outside of the charter of the CCRB and have NEVER been informed that my complaint has been on-passed to IAB for investigation. Also, I have never been given a determination as to the outcome of many of my requests. Please see a recent correspondence from November of 2018 (between myself and the CCRB) regarding this issue (See Exhibit 1).

ii. The council could consider adding a provision to Intro 1106 that requires the CCRB to **report on the duration between individual complaints and the when the complainant is informed of that investigatory outcome;**

iii. The Council could consider adding a provision to Intro 1106 that requires the CCRB to **report on the number of complaints pending by duration;**

iv. The Council could consider adding a provision that requires the NYPD/CCRB to report on **the number of investigative outcome notification letters returned to CCRB that never reach complainants.** Currently there is no data available about how long a complainant has to wait before being updated about the status of their complaint. This is particularly harmful to survivors of sexual assault and harassment who often have to flee their homes and relocate into temporary living situations without forwarding addresses. I encourage the Council to mandate better reporting processes and guarantees before the CCRB is allowed to proceed with stage II of its sex harassment and assault investigations into complaints made by civilians of uniformed and ununiformed members of the NYPD. This is an HUGE issue that I have tried to flag to the Downstate Coalition vs. Sexual Violence and the Women's Issue Committee but it has not taken hold.

v. The Council could consider adding a provision to Intro 1106 that **requires the CCRB to provide a full and complete accounting of an individual's previous/pending CCRB complaints** upon request to that individual that includes: date of initial report; date of conclusion; date complainant was informed of income; method of reporting to complainant and outcome of the complaint(s).

vi. The Council could consider adding a provision to Intro 1106 that **requires the CCRB to provide a full and complete accounting of the time between receiving the initial complaint and responding to the complain tent.**

vii. There are many people who have been banned from the "Mediation" option with the NYPD instead of choosing a full CCRB investigation. I am one of these people and this practice is selective and exclusionary and denies me many constitutional rights. The NYC Council could consider adding a provision to Intro 1106 that requires the CCRB to provide a full and complete accounting of all people who have been denied the ability to enter into mediation with the NYPD as an option instead of a full CCRB investigation.

**IV.** **<u>ref Council Member Richards Int. No. 1309:</u> a Local Law in relation to requiring the police department to study the impacts of implementing an internal disciplinary matrix:**

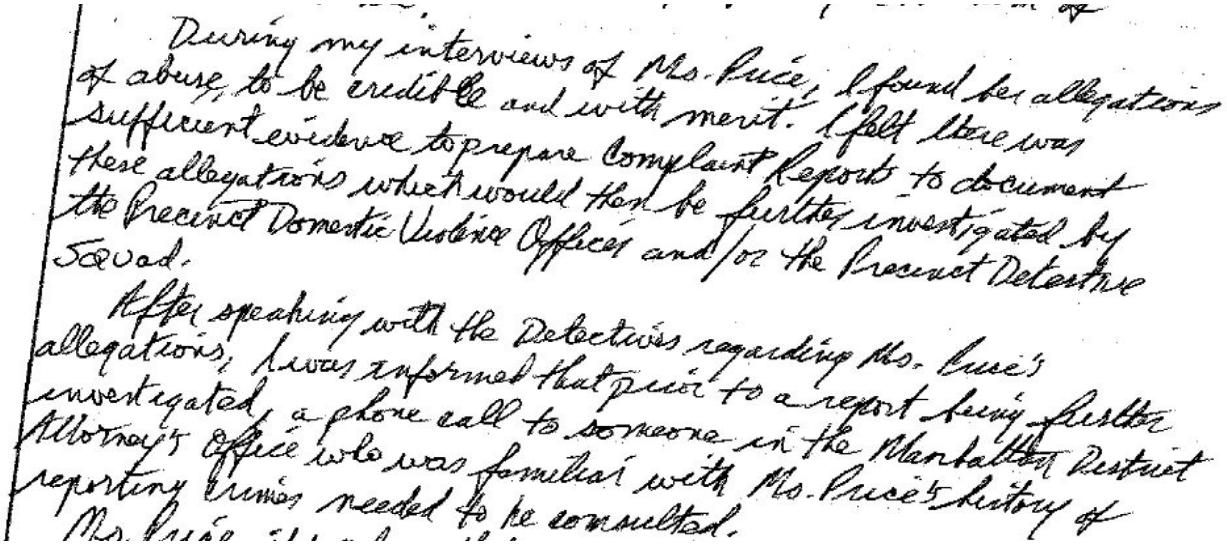
A. I suggest that this report be prepared, scripted and filed by a consortium of NYPD and external stakeholders to be appointed by the Public Advocate/City Council Speaker.

V. **<u>ref T2019-3705 Speaker Johnson's bill</u> requiring the police dept. to publish the dept.'s disciplinary guidelines and the number of officers disciplined each year, and to provide a disciplinary action report directly to the Council:**

A. a sixth category could be added to this report requiring: 1) the number of LAWSUITS filed against staff or contractors of the NYPD aggregated by; 2) the disposition of each lawsuit; 3) duration of litigation; 4) the number of repeat litigations filed against officers and; 4) monetary award awarded complainant resulting from litigation (if relevant.)

VI. **In all of these bills it needs to be noted that the reports, whether quarterly, bi-annual or annual need to remain posted on department websites for a term of no less than ten years.** I have seen the Department of Correction actual remove data required by Local Law 33 from previous years placing the burden on advocates and outside agencies to organize the aggregate data and know that there will be issues with this if it is not in the bill(s) language.

VII. **Survivors of Sexual Violence: I have major concerns about the back-end reporting procedures and responsibilities that the NYPD and CCRB have to complainants alleging sex assault and or harassment at the hands of the NYPD or citizenry.** Because my abuser was an asset to the NYPD and the MDAO and I was demarcated on the NYPD "do not serve list" under the instruction of the MDAO, I have complained numerous times to the IAB, DOI and CCRB about the NYPD refusing to take my complaints b/c I have been demarcated falsely as a "fabricator" in the NYPD's Palentir/Cobalt databases (please see a letter from retired NYPD Lt Marc C Larocca who reports that the NYPD was instructed NOT to extend me services or investigate my claims of abuse at the hands of my abuser:



During my interviews of Ms. Price, I found her allegations of abuse, to be credible and with merit. I felt there was sufficient evidence to prepare Complaint Reports to document these allegations which would then be further investigated by the Precinct Domestic Violence Officer and/or the Precinct Detective Squad.

After speaking with the Detectives regarding Ms. Price's allegations, I was informed that prior to a report being further investigated, a phone call to someone in the Manhattan District Attorney's Office who was familiar with Ms. Price's history of reporting crimes needed to be consulted.

Many on the City Council know my story already; as an innocent survivor of intimate partner violence and trafficking I was refused assistance in extracting myself from a relationship with a man who was involved in aiding the NYPD and MDAO in making large RICO busts of "gangs" in my neighborhood of gentrifying Southwest Harlem in the jurisdiction of the 28th precinct. In short: my abuser was useful to the authorities in providing proffer and assisting as a complainant in various fashions that forced testimony prescient to law enforcement's gang enforcement program in Harlem. Many times I have been denied services, maligned by the NYPD and complained to the CCRB, DOI or IAB. A few examples of this harassment:

a. In 2011 when I was arrested by the NYPD's 28th pct. squad and held in the tank in their squad room I beseeched Detective Linda Simmons as to why she had never questioned my neighbors (two blocks from the precinct) about the abuse unhanded to me; never pulled my emergency room records proving my abuse or: asked to review photos of the many life-threatening injuries my abuser inflicted on me. Detective Linda Simmons responded to me: "***Kelly, when you lay [sic] on your back and spread your legs I don't stand over you and tell you how to do your job and I sure don't expect you to tell me how to do mine."*** At the time I was being viciously pimped and trafficked by my abuser and had gone to the NYPD asking for help in extracting myself from that situation…
b. Later that day when Dt. Flowers of the 28th pct. escorted me through the tombs for intake into the arraignments part at 100 Centre street he said to me: ***"Miss Price you got between your legs something the dudes uptown and the dudes downtown want—I never seen anything like it."***
c. Officers from the 28th pct. used to lean out of their second floor squad room window and "MOO" like a cow whenever I walked by the precinct when I still lived in the neighborhood.
d. At an earlier date in 2010 a man who portrayed himself as an undercover police officer

pretended to arrest me when I was being pimped and told me after he stripped me naked and handcuffed me that he would "let me go" if I "did him a favor." Later in 2013 I finally had the resolve to make a complaint about the incident to the DOI (the CCRB ignored me). The DOI on-passed my allegations to the NYPD SVU who in turn punted the investigation to the NYPD's IAB "squad 30." *The squad actually sent a NYPD IAB SGT who had been a client of mine when I was trafficked to investigate my allegation!* I never heard anything back about these allegations or the outcome after much back and forth with members of IAB squad 30 who were much more interested in investigating my relationship with disgraced NYPD Lt. Adam Lamboy and other members of the NYPD who had potentially been my client(s) when I was being trafficked (Lamboy had NOT been). But one of the people they sent to question me had actually been himself a client!!!

e. I have reported all of these events and others to the NYPD's IAB and CCRB or DOI but have not ONCE heard back about the disposition of these complaints.

**The NYPD, City DA's and CCRB must take on broader responsibility in regard to reporting on sex assault and harassment allegations made against citizens and/or uniformed and ununiformed NYPD staff but these agencies must change their own workflow before taking on these new investigative and reporting roles. I am hopeful that this facae of new reporting bills takes hold.**

**Thank you for allowing me to speak today and thank you for considering my edits and suggestions to refine the current legislation pending before you today.**

**Best,**

**Miss Price**

# Contents:

**Subject** **Page**





E-mail: Towaki_Komatsu@yahoo.com

E-mail: Towaki_Komatsu@yahoo.com

Cote, D.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTOPHER FARAONE,

Plaintiff,

-against-

SERGEANT BOGDAN FRYC, INSPECTOR HOWARD REDMOND, INSPECTOR TED BERNTSEN,

Defendants.

**STIPULATION AND ORDER OF DISMISSAL**

13 CV 9074 (DLC) (JCF)

**WHEREAS,** the parties have reached a settlement agreement and now desire to resolve the remaining issues raised in this litigation, without further proceedings and without admitting any fault or liability;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED,** by and between the undersigned, that the above-referenced action is hereby dismissed with prejudice.

Dated: New York, New York
June 14, 2016

So ordered.

6/14/16



E-mail: Towaki_Komatsu@yahoo.com

## GENERAL RELEASE

**KNOW THAT I, CHRISTOPHER FARAONE,** date of birth [redacted], Social Security No. [redacted], plaintiff in the action entitled Faraone v. Fryc, et al., 13 CV 9074 (DLC) (JCF), as "RELEASOR," in consideration of the payment of Twenty Thousand ($20,000.00) DOLLARS to me by the City of New York, do hereby release and discharge defendants Sergeant Fryc, Inspector Berntsen and Inspector Redmond; their successors or assigns; the City of New York; and all past and present officials, employees, representatives, and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, collectively the "RELEASEES," from any and all liability, claims, or rights of action alleging a violation of my civil rights and any and all related state law claims, from the beginning of the world to the date of this General Release, including claims for costs, expenses, and attorneys' fees.

**IN FURTHER CONSIDERATION** of the payment set forth above, RELEASOR hereby waives, releases and forever discharges RELEASEES from any and all claims, known or unknown, past and/or future conditional payments, arising out of the RELEASOR'S Medicare eligibility and receipt of Medicare benefits related to the claimed injury in this matter and/or arising out of the provision of primary payment (or appropriate reimbursement) including causes of action pursuant to 42 U.S.C. §1395y(b)(3)A of the Medicare, Medicaid and SCHIP Extension Act of 2007.

**THIS RELEASE MAY NOT BE CHANGED ORALLY. THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.**

**IN WITNESS WHEREOF,** I have executed this Release this 27th day of June, 2016.

Christopher Faraone

STATE OF MA, COUNTY OF Norfolk SS.: [redacted]

On June 27th, 2016 before me personally came Christopher Faraone to me known, and known to me to be the individual described in, and who executed the foregoing RELEASE, and duly acknowledged to me that she/he executed the same.

NOTARY PUBLIC

CATARINA AUGMON
Notary Public, Commonwealth of Massachusetts
My Commission Expires May 15, 2020



E-mail: Towaki_Komatsu@yahoo.com

**KALAN SHERRARD, Plaintiff,**

**v.**

**CITY OF NEW YORK, et al., Defendant.**

No. 15-CV-7318 (CM).

**United States District Court, S.D. New York.**

April 15, 2016.

MEMORANDUM DECISION AND ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS AND GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS

COLLEEN McMAHON, District Judge.

In this action, Kalan **Sherrard** ("Plaintiff') brings suit against the City of New York (the "City"), certain individually named members of the New York City Police Department (Lieutenant Colin Austin, Officer Anthony Denatale, Detective Eugene Lang, Retired Sergeant Michael Liberatore, and Deputy Inspector Howard Redmond), and many "John Doe" police officers, alleging claims for false arrest and violation of freedom of expression and assembly in violation of 42 U.S.C. § 1983. The City has moved for judgment on the pleadings pursuant to Rule 12(c) and the named individual defendants ("Officer Defendants") have moved to dismiss pursuant to Rule 12(b)(6), joining in the City's arguments.

For the reasons that follow, the motion to dismiss is granted as against Defendants Lang, Austin, Denatale, and Liberatore, because they were not named and sued until long after the statute of limitations had expired. However, because Defendant Redmond was named (by last name, shield number and photograph) prior to the expiration of the statute of limitations, **Sherrard's** lawsuit cannot be dismissed as to him — even though he was not served until after the limitations period expired.

The City's motion for judgment on the pleadings is granted.

# BACKGROUND

## I. Factual History

The underlying facts alleged in Plaintiff's complaint are relatively simple and taken to be true for purposes of this motion.

Plaintiff is a street performance artist who dresses provocatively for his work. Am. Compl. ¶ 19.

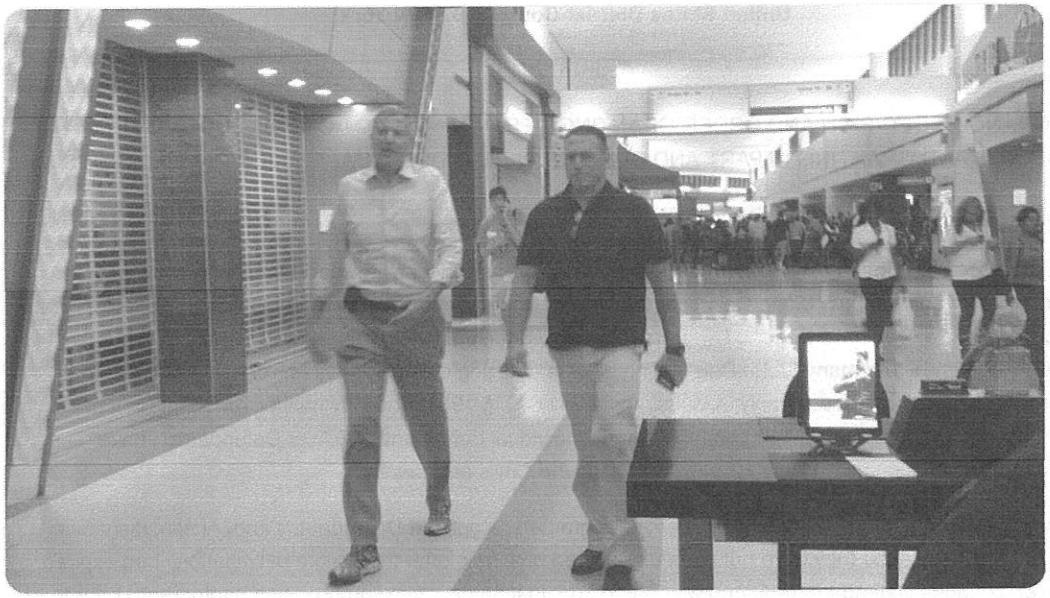
On September 17, 2012, at about 6:00 a.m., Plaintiff, wearing bright pink panties and absolutely nothing else, was arrested while he was riding his bicycle along with a few other people. The group was on Lafayette Street near White Street and was proceeding downtown. Am. Compl. ¶¶ 19-20.

Plaintiff alleges that his arrest was part of a coordinated plan by the New York City Police Department ("NYPD") to thwart a mass protest that they supposedly knew was going to occur — the protest being the disruption of Wall Street to commemorate the one year anniversary of the Occupy Wall Street movement. *Id.* ¶¶ 17-18. Plaintiff alleges that the NYPD's plan was to prevent people from congregating around the

**Nathan**
@nathantempey

Follow

# BDB w/ the Port Authority PD detail who previously tried to dissuade me from taking photos (they then walked by me)



9:49 PM - 17 Jul 2016

**1** Retweet **2** Likes

5 1 2

**Nathan** @nathantempey 17 Jul 2016
Replying to @nathantempey
The story checks out, anyhow. The mayor is at the gate for a United flight to Rome that's delayed by 4 1/2 hours (original departure: 5:30)

1 1

**Nathan** @nathantempey 17 Jul 2016
The board lists the new departure time as 10, but folks still haven't boarded. Bloomberg did not deal with these sorts of issues

2 2

**Nathan** @nathantempey 17 Jul 2016
Can confirm the mayor does not board priority

1 2

**Matthew Chayes** @chayesmatthew 20 May 2017
Replying to @nathantempey


**NYC Mayor's Office** @NYCMayorsOffice
He was born in the Bronx and has dedicated his life to protecting New York City.

1

**Nathan** @nathantempey 20 May 2017
Thanks. I went through the CCRB process and after several months had my account confirmed. The conclusion was that he's allowed to lie

1

**Matthew Chayes** @chayesmatthew 20 May 2017
What happened?

1

**Nathan** @nathantempey 20 May 2017
No action taken

1

**Matthew Chayes** @chayesmatthew 20 May 2017
What was your complaint?

1

**Nathan** @nathantempey 20 May 2017
Oh just that he misidentified himself and implied he was arresting me. I wanted to see the inside the process, and it was unnecessary

1

**Matthew Chayes** @chayesmatthew 20 May 2017
Did you write it up?

1

**Nathan** @nathantempey 20 May 2017
Nah

2

1 more reply

**Josh Dawsey** @jdawsey1 17 Jul 2016
Replying to @nathantempey
that's the head of his NYPD detail

1

**Nathan** @nathantempey 17 Jul 2016
he said he was Port Authority PD and, "You're coming with me." After I asked for some more information it turned out I wasn't

2 1

**Jillian Jorgensen** @Jill_Jorgensen 18 Jul 2016
wow (also, def NYPD, as Josh said)

2

**Nathan** @nathantempey 19 Jul 2016
Do either of you happen to know his name/rank?

# Active federal lawsuit #1 against leading Asshole & NYPD Inspector Howard Redmond who misleads liar Bill de Blasio's NYPD gang that the City Council sucks up to:

## Fitchett v. City of New York et al

| | | | |
|---|---|---|---|
| **New York Southern District Court** | | **Case Filed:** | Sep 06, 2018 |
| **Judge:** | Paul A Engelmayer | | |
| **Case #:** | 1:18-cv-08144 | | |
| **Nature of Suit** | 442 Civil Rights - Employment | | |
| **Cause** | 42:2000e-2ra Job Discrimination (Race) | | |

Docket | Parties (6)

**Docket last updated: 02/01/2019 11:59 PM EST**

### Tuesday, January 29, 2019

40 order | Memo Endorsement - Util - Set Deadlines/Hearings | Tue 4:06 PM

MEMO ENDORSEMENT: on re:39 Letter filed by Chief of Intelligence Bureau Thomas Galati, Karl Pfeffer, NYPD Commanding Officer Howard Redmond, Paul Briscoe, City of New York. ENDORSEMENT: On consent of defendants, the Court grants Fitchett leave to file a Second Amended Complaint. The Court reiterates that no further opportunities to amend will ordinarily be granted. See Dkt. 27 (amend/oppose order on original complaint). SO ORDERED. (Signed by Judge Paul A. Engelmayer on 1/29/2019) (ama)

### Monday, January 28, 2019

39 misc | Letter | Mon 4:06 PM

LETTER addressed to Judge Paul A. Engelmayer from Dominique F. Saint-Fort dated January 28, 2019 re: Plaintiff's Cross-Motion to Amend Complaint. Document filed by Paul Briscoe, City of New York, Chief of Intelligence Bureau Thomas Galati, Karl Pfeffer, NYPD Commanding Officer Howard Redmond.(Saint-Fort, Dominique)

### Tuesday, January 22, 2019

38 27 pgs | respm | Memorandum of Law in Opposition to Motion | Tue 8:11 PM

MEMORANDUM OF LAW in Opposition re:29 MOTION to Dismiss the Amended Complaint . . Document filed by Erin Fitchett. (Bellovin, Marshall)

37 respm | Declaration in Opposition to Motion | Tue 8:10 PM

DECLARATION of Marshall B. Bellovin, Esq. in Opposition re:29 MOTION to Dismiss the Amended Complaint .. Document filed by Erin Fitchett.(Bellovin, Marshall)

Att: 1 Exhibit A - 1st Amended Complaint,

Att: 2 Exhibit B - Proposed 2nd Amended Complaint,

E-mail: Towaki_Komatsu@yahoo.com

# Active federal lawsuit #2 against leading Asshole & NYPD Inspector Howard Redmond who misleads liar Bill de Blasio's NYPD gang that the City Council sucks up to:

E-mail: Towaki_Komatsu@yahoo.com



## Rugg v. The City Of New York , et al

| | | | |
|---|---|---|---|
| **New York Southern District Court** | | **Case Filed:** | Oct 23, 2018 |
| **Judge:** | Loretta A Preska | | |
| **Case #:** | 1:18-cv-09762 | | |
| **Nature of Suit** | 442 Civil Rights - Employment | | |
| **Cause** | 29:621 Job Discrimination (Age) | | |

Docket | Parties (5)

Docket last updated: 02/01/2019 11:59 PM EST

### Monday, December 31, 2018

18 notice | Notice of Appearance | Mon 12:17 PM
NOTICE OF APPEARANCE by Danielle Kimberly Conn Rosenberg on behalf of Karl Rugg. (Conn Rosenberg, Danielle)

17 service | Affidavit of Service Complaints | Mon 10:49 AM
AFFIDAVIT OF SERVICE of Summons and Complaint. The City Of New York, served on 12/7/2018, answer due 2/11/2019. Service was accepted by Ariton Marke. Legal Clerk. Document filed by Karl Rugg. (Bellovin, Marshall)

16 service | Affidavit of Service Complaints | Mon 10:47 AM
AFFIDAVIT OF SERVICE of Summons and Complaint. Karl Pfeffer served on 12/3/2018, answer due 12/24/2018. Service was accepted by Mirabello. Service was made by MAIL. Document filed by Karl Rugg. (Bellovin, Marshall)

15 service | Affidavit of Service Complaints | Mon 10:46 AM
AFFIDAVIT OF SERVICE of Summons and Complaint. Howard Redmond served on 12/3/2018, answer due 12/24/2018. Service was accepted by Mirabello. Service was made by MAIL. Document filed by Karl Rugg. (Bellovin, Marshall)

14 service | Affidavit of Service Complaints | Mon 10:46 AM
AFFIDAVIT OF SERVICE of Summons and Complaint. Thomas Galati served on 12/3/2018, answer due 12/24/2018. Service was accepted by Mirabello. Service was made by MAIL. Document filed by Karl Rugg. (Bellovin, Marshall)

# Active federal lawsuit #3 against leading Asshole & NYPD Inspector Howard Redmond who misleads liar Bill de Blasio's NYPD gang that the City Council sucks up to:

## Azab v. The City Of New York , et al

| | | | |
|---|---|---|---|
| **New York Southern District Court** | | **Case Filed:** | Aug 03, 2018 |
| **Judge:** | John G Koeltl | | |
| **Case #:** | 1:18-cv-07004 | | |
| **Nature of Suit** | 442 Civil Rights - Employment | | |
| **Cause** | 42:2000e-2rl Job Discrimination (religion) | | |

Docket | Parties (7)

**Docket last updated: 02/01/2019 11:59 PM EST**

### Monday, January 28, 2019

45 1 pgs | order | Order on Motion to Dismiss Order on Motion to Amend/Correct Order on Motion for Extension of Time Order on Motion for Conference | Mon 11:45 AM

ORDER denying without prejudice31 Motion to Dismiss; granting40 Motion to Amend/Correct30 Amended Complaint, ; granting44 Letter Motion for Extension of Time (Amended Pleadings due by 2/8/2019., Motions due by 2/28/2019.); granting27 Letter Motion for Conference. 1. Plaintiff may file an Amended Complaint by 2/8/19. 2. Defendant's motion to dismiss is denied without prejudice as moot. The Clerk is directed to close Docket No. 31. 3. Time for Defendants to move or answer against the new Amended Complaint is 2/28. Time to respond is 3/21. Time to reply is 4/1. 4. The Clerk is directed to close all open motions. So Ordered. (Signed by Judge John G. Koeltl on 1/25/19) (yv)

utility | Set/Reset Deadlines | Mon 11:46 AM

Set/Reset Deadlines: Responses due by 3/21/2019. Replies due by 4/1/2019. (yv)

### Friday, January 25, 2019

44 motion | Extension of Time | Fri 2:24 PM

LETTER MOTION for Extension of Time addressed to Judge John G. Koeltl from Marshall B. Bellovin, Esq. dated January 25, 2019. Document filed by Abdelim Azab.(Bellovin, Marshall)

### Wednesday, January 16, 2019

43 notice | Certificate of Counsel | Wed 7:27 PM

CERTIFICATE of Counsel by Marshall Benjamin Bellovin on behalf of Abdelim Azab. Re:42 Memorandum of Law in Support of Motion. (Bellovin, Marshall)

42 9 pgs | respm | Memorandum of Law in Support of Motion | Wed 7:26 PM

MEMORANDUM OF LAW in Support re:40 MOTION to Amend/Correct First Amended Complaint . . Document filed by Abdelim Azab. (Bellovin, Marshall)

E-mail: Towaki_Komatsu@yahoo.com

# Active federal lawsuit #4 against leading Asshole & NYPD Inspector Howard Redmond who misleads liar Bill de Blasio's NYPD gang that the City Council sucks up to:

E-mail: Towaki_Komatsu@yahoo.com



## Dietrich v. The City of New York et al

| | | | |
|---|---|---|---|
| **New York Southern District Court** | | **Case Filed:** | Aug 19, 2018 |
| **Judge:** | Colleen Mcmahon | | |
| **Case #:** | 1:18-cv-07544 | | |
| **Nature of Suit** | 442 Civil Rights - Employment | | |
| **Cause** | 42:2000e-2ag Job Discrimination (Age) | | |

Docket | Parties (6)

**Docket last updated: 02/01/2019 11:59 PM EST**

**Monday, January 28, 2019**

49 1 pgs | order | Order on Motion for Extension of Time | Mon 1:04 PM

ORDER granting48 Letter Motion for Extension of Time. Ok - fine. I am delighted to have counsel work this out between them. Deadline extended nunc pro tunc to 2/5/2019. Amended Pleadings due by 2/5/2019. (Signed by Judge Colleen McMahon on 1/28/2019) (mml)

**Friday, January 25, 2019**

48 motion | Extension of Time | Fri 2:07 PM

LETTER MOTION for Extension of Time addressed to Judge Colleen McMahon from Marshall B. Bellovin, Esq. dated January 25, 2019. Document filed by Keith Dietrich.(Bellovin, Marshall)

**Wednesday, January 23, 2019**

47 2 pgs | order | Order on Motion to Stay | Wed 5:51 PM

ORDER with respect to46 Letter Motion to Stay. It seems that Plaintiff needs to move for leave to file an amended complaint. The City's citation appear correct to me. (Signed by Judge Colleen McMahon on 1/23/2019) (mml)

**Tuesday, January 22, 2019**

46 motion | Stay | Tue 3:21 PM

LETTER MOTION to Stay re:42 Amended Complaint, Defendants' response thereto addressed to Judge Colleen McMahon from Danielle M. Dandrige dated January 22, 2019. Document filed by Paul Briscoe, Thomas Galati, Karl Pfeffer, Howard Redmond, The City of New York.(Dandrige, Danielle)

Active New York State Supreme Court lawsuit against leading Asshole & NYPD Inspector Howard Redmond who misleads liar Bill de Blasio's NYPD gang that the City Council sucks up to:

Index No. 154246/2018

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALEX PELEPELIN,

Plaintiff,

- against -

THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, HOWARD REDMOND, KARL PFEFFER, and PAUL BRISCOE,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

ZACHARY W. CARTER
Corporation Counsel of the City of New York

*Attorney for Defendants*
*100 Church Street*
*New York, N.Y. 10007*

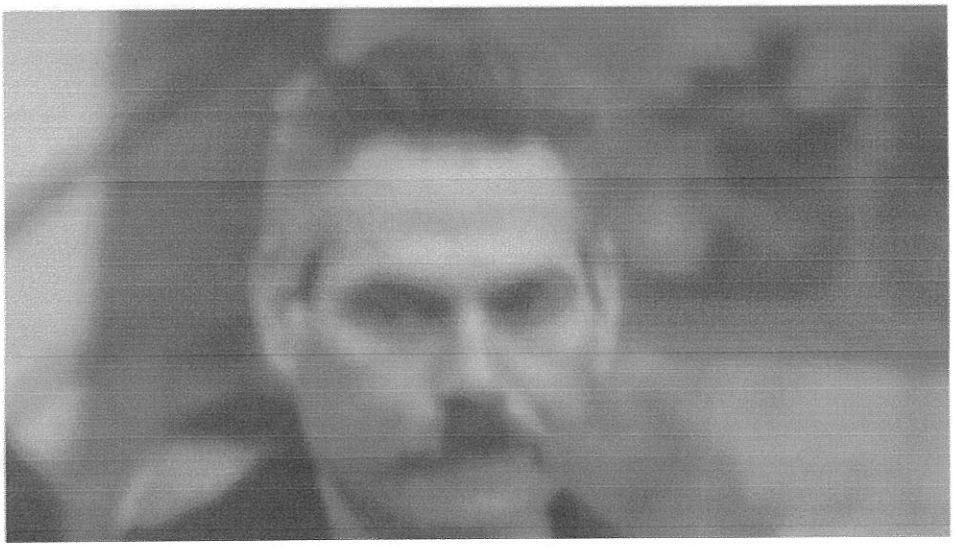
*Of Counsel: Danielle M. Dandrige*
*Tel: (212) 356-0889*
*Matter #: 2018-032661*



E-mail: Towaki_Komatsu@yahoo.com

**Subject: Re: IAB Case #'s**
**Date:** May 30, 2017 at 9:12:43 AM EDT
**To:** "DiCarlo, Anthony" <adicarlo@nynjhidta.org>

I forgot to mention that before I was shoved on 4/27 by Officer Beato and while I was being illegally discriminated against at that 4/27 Town Hall, I pointed out to 2 police officers that were standing by me and 2 others also being segregated that I was being illegally discriminated against by being ordered to stand away from the main line of people entering that school and had no intent to act disorderly by trying to re-enter that line to get into the Town Hall. In addition, while I stood in view of the security camera outside of Exit 13 to that school, this NYPD member tried to trick me into touching him as I told him that Redmond put his hands on me. I believe this idiot wanted me to touch him to give him possible grounds to arrest me.




E-mail: Towaki_Komatsu@yahoo.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| TOWAKI KOMATSU, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| -against- | : | 18-cv-3698 (LGS) (GWG) |
| | : | |
| THE CITY OF NEW YORK, et al., | : | |
| | : | |
| Defendants. | : | |

**MEMORANDUM OF LAW IN SUPPORT OF STATE DEFENDANTS ANTHONY MANZI, MATTHEW BRUNNER, AND RAMON DOMINGUEZ'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

LETITIA JAMES
Attorney General
State Of New York

*Attorney for State Defendants*

28 Liberty Street
New York, New York 10005
Tel.: (212) 416-8227

MONICA HANNA
Assistant Attorney General
of Counsel



E-mail: Towaki_Komatsu@yahoo.com

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E-mail: Towaki_Komatsu@yahoo.com

alleged prior protected speech, let alone engaged in any actions motivated or substantially caused by Plaintiff's exercise of that right. Indeed, Plaintiff's specific allegations concerning the State Defendants are limited and conclusory. *See* SAC at ¶ 6. This is insufficient to state a claim as a matter of law. *See Murray*, 2017 WL 4286658 at *10; *see e.g.*, *Burgin v. Brown*, No. 15 Civ. 201S, 2018 WL 1932598, at *9 (W.D.N.Y. Apr. 24, 2018). Much like the case at bar, in *Burgin*, the *pro se* plaintiff asserted a similar First Amendment claim based on the alleged denial of an opportunity to be heard at a Board of Education meeting. The court dismissed the claim, because the plaintiff alleged only that he was attempting "to 'speak out' against the board members and superintendent to expose their" conduct relating to a particular program, which was not protected speech. *Burgin*, 2018 WL 1932598 at *9. Here, Plaintiff likewise fails to adequately allege that the State Defendants prevented him from speaking on a particular topic because of the content of his remarks. Plaintiff does not allege any facts stating what his specific viewpoint was on any particular matter, nor the State Defendants' opposition to it. Therefore, like that in *Burgin*, Plaintiff's claim must be dismissed. *Id.*

Third, Plaintiff also fails to allege the chilling of his First Amendment rights. *See generally* SAC. Indeed, on January 3, 2019, Plaintiff informed the court that he continues to attend public events featuring the Mayor. *See* ECF No. 71. This is additional grounds for dismissal. *See, e.g*, *Murray*, 2017 WL 4286658 at *10.

**C. Plaintiff Had No Constitutionally Protected Right to Attend the Public Resource Fair In the Courthouse**

"To state a due process violation—procedural or substantive—Plaintiff must first show a deprivation of a constitutionally protected property or liberty interest." *Perez v. Metro. Transp. Auth.*, No. 11 Civ. 8655, 2012 WL 1943943, at *8 (S.D.N.Y. May 29, 2012) (internal quotations omitted). "A property interest does not exist solely because of the importance of the benefit to the


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recipient." *Kelly Kare, Ltd. v. O'Rourke*, 930 F.2d 170, 175 (2d Cir. 1991). Instead, a plaintiff must show "a legitimate claim of entitlement," pursuant to "existing rules or understandings that stem from an independent source such as state law." *City Line Auto Mall, Inc. v. Mintz*, No. 05 Civ. 5524, 2006 WL 8439742, at *2 (E.D.N.Y. Oct. 25, 2006) (quoting *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985)); *accord Thomas-Ateba*, 2014 WL 1414577 at *6. Here, Plaintiff cannot make the requisite showing because he had no legitimate claim of entitlement to attend the public resource fair.

Plaintiff's only alleged protected interest in this case is access to the Veterans Memorial Hall chamber within the Courthouse during the public resource fair.[7] *See* SAC at ¶ 6(b). Plaintiff does not cite to any state law or authority granting him unfettered admission, other than the "New York State's Open Meetings Law." *Id.* at ¶¶ 1, 6(b), 6(d). Plaintiff ostensibly claims that the Open Meetings Law is the independent state law basis for his alleged right to "lawfully attend that meeting [in the Courthouse], engage in protected whistleblowing activity in it, and attempt to use that meeting to try to get assistance with obtaining employment and legal assistance from New York City government agencies." *Id.* at ¶ 6 (b); *see also id.* at ¶¶ 1, 4(a)(iii), (v), 6(d). However, the Open Meetings Law cannot provide the basis for Plaintiff's claim.

As a threshold matter, Plaintiff cannot assert a claim for money damages against the State Defendants under the Open Meetings Law, *see id.* at ¶ 19, because only injunctive relief is available pursuant to such a claim. *See* N.Y. Pub. Off. Law § 107 ("Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of ... an action for declaratory judgment and injunctive relief."); *see also Jones v. Bay Shore Union*

[7] Notably, Plaintiff makes no claim that he was denied access to the Courthouse in general. In fact, as demonstrated in the Video, Plaintiff otherwise walked around the Courthouse freely, spoke to various people, and left the Courthouse of his own initiative. *See* Video at 9:58:25 – 10:34:05.


E-mail: Towaki_Komatsu@yahoo.com

## CONCLUSION

For the foregoing reasons, State Defendants Court Officer Captain Manzi and Sergeants Matthew Brunner and Ramon Dominguez respectfully request that this Court dismiss Plaintiff's Second Amended Complaint with prejudice, together with such other and further relief as it deems just and proper.

Dated: New York, New York
January 11, 2019

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

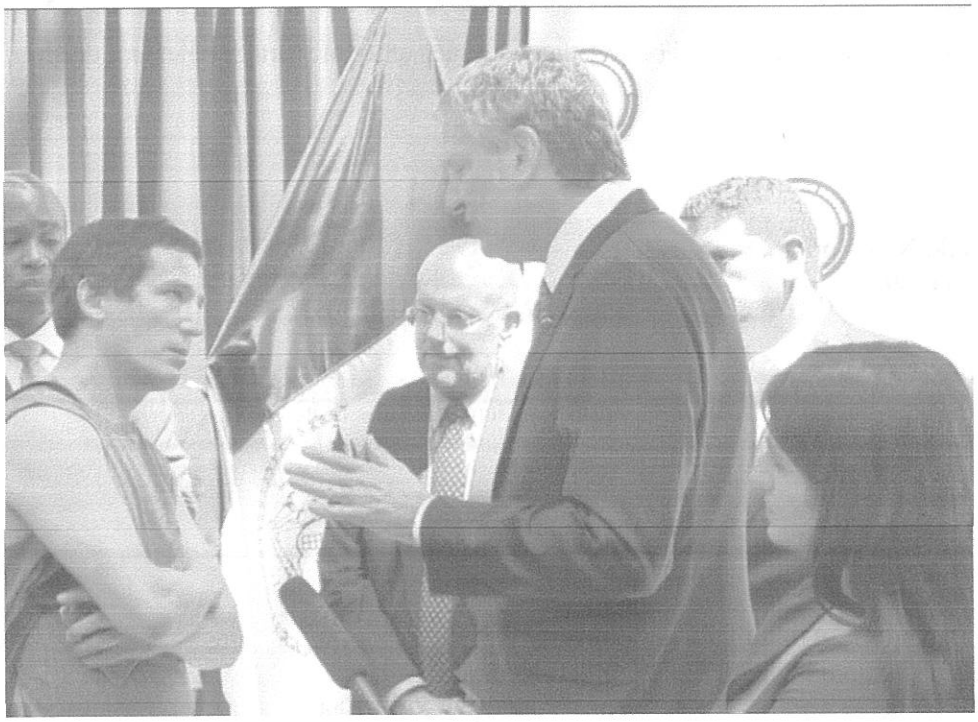
By:

/s/ Monica Hanna

MONICA HANNA
Assistant Attorney General
28 Liberty Street
New York, New York 10005

Tel: (212) 416-8227
monica.hanna@ag.ny.gov

*Attorneys for State Defendants*





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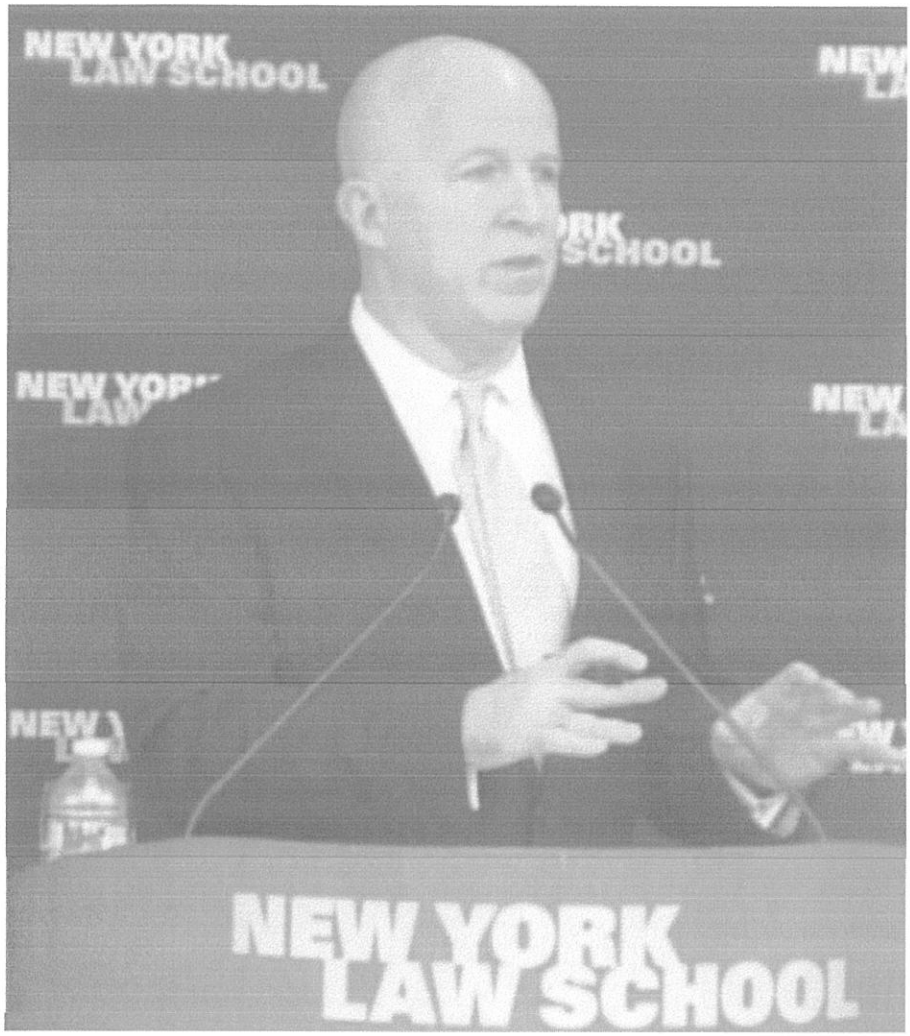



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# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

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☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

**Name:** Victor Kempsey

**Address:** _____

**I represent:** _____

**Address:** _____

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. All Bills Res. No. _____

☑ in favor ☐ in opposition

*Date:* 2/7/19

**(PLEASE PRINT)**

**Name:** Michael Sisitzky

**Address:** 1 Whitehall

**I represent:** New York Civil Liberties Union

**Address:** _____

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. 1105 & Res. No. (SOA)

☑ in favor ☐ in opposition

*Date:* FEB 7 2019

**(PLEASE PRINT)**

**Name:** Cynthia Conti-Cook

**Address:** 199 Water St 6th Fl NYNY 10038

**I represent:** The Legal Aid Society (CPR

**Address:** same

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# THE CITY OF NEW YORK

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☒ in favor ☐ in opposition

*Date:* 2/7/2019

**(PLEASE PRINT)**

**Name:** Jenn Borchetta

**Address:** 360 E 161st St Bronx NY

**I represent:** The Bronx Defenders

**Address:** _____

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# THE CITY OF NEW YORK

*Appearance Card*

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☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

**Name:** NAHAL ZAMANI

**Address:** 666 BROADWAY

**I represent:** CENTER FOR CONSTITUTIONAL RIGHTS

**Address:** _____

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* 2-7-19

**(PLEASE PRINT)**

**Name:** Assistant chief Matthew Pontillo

**Address:** _____

**I represent:** NYPD

**Address:** 1 Police Plaza NY, NY

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# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. 1209-3209 Res. No. _____

☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

**Name:** Christopher Boyle

**Address:** _____

**I represent:** New York County Defender Services.

**Address:** _____

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* 2/7/2019

**(PLEASE PRINT)**

**Name:** Shanequa Charles

**Address:** _____

**I represent:** _____

**Address:** _____

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* 2/7/2019

**(PLEASE PRINT)**

**Name:** Stephanie Bontramire

**Address:** _____

**I represent:** _____

**Address:** _____

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# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

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☐ in favor ☐ in opposition

*Date:* 2/7/2019

**(PLEASE PRINT)**

**Name:** Davon Woodley

**Address:** _____

**I represent:** _____

**Address:** _____

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* 2/7/19

**(PLEASE PRINT)**

**Name:** Joo-Hyun Kang or Carolyn Martinez-Cosio

**Address:** _____

**I represent:** Communities United for Police Reform

**Address:** 520 8th Ave, NY NY 10018

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# THE CITY OF NEW YORK

*Appearance Card*

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☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

**Name:** Kelly Grace Price

**Address:** 534 W 187th #7 NY NY 10033

**I represent:** Close Rosie's

**Address:** _____

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# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

**Name:** ODED OREN

**Address:** 360 E 161st, Bronx

**I represent:** The Bronx Defenders

**Address:** _____

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* 2-7-19

**(PLEASE PRINT)**

**Name:** Executive Director Oleg Chernyavsky

**Address:** _____

**I represent:** NYPP

**Address:** 1 Police Plaza, NY, NY

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

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☐ in favor ☐ in opposition

*Date:* 2-7-19

**(PLEASE PRINT)**

**Name:** First Deputy Commissioner Benjamin Tucker

**Address:** _____

**I represent:** NYPD

**Address:** 1 Police Plaza, NY, NY

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*Appearance Card*

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☐ in favor ☐ in opposition

*Date:* 2-7-19

**(PLEASE PRINT)**

**Name:** Assistant Deputy Commissioner Ann Prouty

**Address:** _____

**I represent:** NYPD

**Address:** 1 Police Plaza, NY, NY

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Other

*Date:* 2/7/19

**(PLEASE PRINT)**

**Name:** Towaki Komatsu

**Address:** _____

**I represent:** Self

**Address:** _____

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

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*Date:* _____

**(PLEASE PRINT)**

**Name:** Roberto Cabanas

**Address:** 726 Broadway

**I represent:** Urban Youth Collaborative

**Address:** _____

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*Appearance Card*

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*Date:* _____

**(PLEASE PRINT)**

**Name:** Jackie Caruana

**Address:** _____

**I represent:** Brooklyn Defender Services

**Address:** 177 Livingston Street, 7th Floor

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

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☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

**Name:** Kate McDonough

**Address:** 90 John St. Suite 501

**I represent:** Dignity in Schools Campaign

**Address:** Police in Schools

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*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

**Name:** Charlotte Pope

**Address:** _____

**I represent:** Childrens Defense Fund

**Address:** Police in Schools

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# THE COUNCIL
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*Appearance Card*

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☐ in favor ☐ in opposition

*Date:* 2/7/2019

**(PLEASE PRINT)**

**Name:** Kylynn Grier

**Address:** 25 Chapel St. Bk

**I represent:** Girls for Gender Equity/CPR

**Address:** _____

# THE COUNCIL
# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

**Name:** DARIAN X

**Address:** 854 HANCOCK ST

**I represent:** Make the Road NY / CPR

**Address:** 301 GROVE ST

# THE COUNCIL
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*Appearance Card*

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☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

**Name:** Constance Malcolm

**Address:** _____

**I represent:** _____

**Address:** _____

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# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

Name: Victoria Davis

Address: _____

I represent: _____

Address: _____

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# THE CITY OF NEW YORK

*Appearance Card*

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

*Date:* _____

**(PLEASE PRINT)**

Name: Eric Vassell

Address: _____

I represent: _____

Address: _____

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