

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON JUSTICE SYSTEM

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February 11, 2019
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HELD AT: Committee Room - City Hall

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

COUNCIL MEMBERS: Andrew Cohen
Alan N. Maisel
Deborah L. Rose
Eric A. Ulrich

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

Robert Messner, Assistant Deputy Commissioner and
Commanding Officer of the Department's Civil
Enforcement Unit, New York City Police Department

Olympia Kazi, New York City Artist Coalition Member

Deana Morra, Friends and Lovers, Crown Heights

Rachel Nelson, Brooklyn Bar Owner

Robert Bookman, Counsel to New York City Hospitality
Alliance

Marva Babel Tucker, Owner of Ode to Babel, Brooklyn

Patrick Weaver, Appearing for Brian Abelson

Tara McMannis, Artist and Nightclub worker

Jamie Burkhart, NYC Artist Coalition Member

Liz Pelly, Journalist

John Barclay, Brooklyn Bar owner/Operator and
Co-founder of Dance Liberation Network

Alan Sugarman, Attorney, Law Offices of Alan D.
Sugarman

2 [sound check] [pause] [gavel]

3 CHAIRPERSON LANCMAN: Good morning. I am
4 Council Member Rory Lancman, Chair of the Committee
5 on the Justice System, and today we are here to
6 discuss the Multi-Agency Response to Community
7 Hotspots or M.A.R.C.H. operations led by the NYPD and
8 Council Member Levin's reporting bill Intro 1156.
9 M.A.R.C.H. operations were originally established by
10 former Mayor Rudy Giuliani. They are multi-agency
11 raids where agencies such as the FDNY, Department of
12 Health and Mental Hygiene, State Liquor Authority,
13 Department of Environmental Protection, and
14 Department of Buildings [coughs] enter a Nightlife
15 establishment, ask patrons to leave and proceed to
16 inspect venues. During the inspection, each agency
17 can issue citations, fines and summonses. M.A.R.C.H.
18 raids were originally designed during the Giuliani
19 Administration as a way to enforce the Cabaret Laws
20 during the height of Broken Windows policing. Since
21 the Council repealed the Cabaret Laws, and
22 established the Office of Nightlife in 2017 to more
23 effectively and fairly regulate these business,
24 M.A.R.C.H. raids deserve more scrutiny. There are
25 serious and reasonable safety concerns for the

2 patrons of Nightlife venues particularly those that
3 occupy a previously industrial space or exist only
4 for night. These operations place a tremendous
5 burden on small businesses already struggling to
6 survive. Raids regularly shutter a business during
7 peak weekend hours without notice often without
8 leading to any citations at all. In theory, these
9 raids are driven by 311 complaints about quality of
10 life issues such as noise, incidents that occurred in
11 the venue or the surrounding area, and cooperation
12 with authorities. The data shows that M.A.R.C.H.
13 raid occur more regularly in minority communities or
14 venues frequented by minority patrons without regard
15 to complaints or crime, and even when business owners
16 have gone out of their way to cooperate. Certainly,
17 the number of M.A.R.C.H. raids in a community is not
18 related to the number of establishments or the number
19 of liquor licenses. Otherwise, the Upper East Side
20 would have more raids than Washington Heights rather
21 than a third as many. The city has a responsibility
22 to determine whether a business is violating
23 building, fire or health codes or violating the law,
24 but from 2012 to 2017, 48% of raids resulted in no
25 enforcement action by any agency. Council Member

2 Levin's bill will help us evaluate the efficacy of
3 these raids by giving us more detailed information
4 about the triggers for M.A.R.C.H. raids, how they are
5 conducted, and how often they result in citations or
6 fines. I look forward to hearing today from the
7 Administration, advocates and business owners about
8 March operations. With that, our first panel of
9 witnesses are from the Administration. If you all
10 would raise your right hand to be sworn in. Do you
11 wear or affirm the testimony you're about to give is
12 the truth, the whole truth and nothing but the truth?

13 PANEL MEMBERS: [interposing] Yes.

14 CHAIRPERSON LANCMAN: Good. Have you
15 decided amongst yourselves who would like to go
16 first? [pause]

17 DEPUTY COMMISSIONER MESSNER: Good
18 morning Chair Lancman and members of the Council.
19 I'm Assistant Deputy Commissioner Robert Messner, the
20 Commanding Officer of the Department's Civil
21 Enforcement Unit. On behalf of Police Commissioner
22 James P. O'Neill, I am pleased to testify about the
23 bill being heard today, and the department's role in
24 the multi-agency response to community hotspots or
25 M.A.R.C.H. program. New York City is the largest

2 most diverse, most vibrant and most exciting city in
3 the nation. New York has always been the trend setter
4 in hospitality, entertainment, music, dance and
5 fashion, and this energy draws individuals of all
6 ages from around the country and the world to enjoy
7 and take part in our unparalleled Nightlife. Such a
8 vibrant and neglected Nightlife does, however,
9 present unique challenges in a densely populated city
10 where Nightlife venues often exist side by side with
11 residential properties. This often requires new and
12 innovative approaches to meet these challenges by
13 ensuring that a night out remains fun and safe while
14 respecting the right of others to enjoy the peace and
15 tranquility of their homes. The M.A.R.C.H. program
16 was introduced to address Nightlife locations where
17 chronic safety and crime conditions had been allowed
18 to fester and other efforts had failed to address
19 these conditions. The program is a collaborative
20 effort with the NYPD providing security for agencies
21 such as Health, Buildings, Fire, the Department of
22 Environmental Protection, and the State Liquor
23 Authority while they perform inspections and take
24 enforcement if needed. Let me take a moment to take
25 you through how a typical M.A.R.C.H. operation is

2 coordinated and executed. The Special Operation
3 Lieutenant of each precinct is tasked with
4 maintaining a list of SLA licensed establishments in
5 the confines of their precinct and keeps track of 311
6 complaints so long as they are related to the
7 department, 911 calls, criminal complaints and
8 arrests stemming from the locations. In addition,
9 Neighborhood Coordination Officers or NCOs, may
10 become aware of a previously unreported issue while
11 talking to community members and during conferrals
12 with both the community boards and the precinct
13 community counsels. After the department confirms
14 that we have received complaints from multiple
15 complainants that conditions are tied to a specific
16 establishment, we make the establishment aware of
17 these conditions. This is done with the hope that
18 the establishment will take necessary steps to
19 address the issues, and there will, therefore, be no
20 need to include it in a M.A.R.C.H. operation. If,
21 however, the location refuses to address conditions
22 stemming from their establishment, the location is
23 rightfully considered for inclusion in such an
24 operation. Prior to recommending a location for a
25 M.A.R.C.H. operation, both the precinct NCO and crime

2 prevention officer consider methods of mediating the
3 situation without the need for enforcement. In fact,
4 crime prevention officers are mandated to visit all
5 licensed premises in the precinct to ensure that they
6 are provided with relevant crime prevention
7 information and materials. This reflects the Mayor's
8 and Police Commissioner's commitment to Neighborhood
9 Policing and an emphasis on collaboration and problem
10 solving rather than simply increased enforcement.
11 Indeed, the number of M.A.R.C.H. operations has
12 steadily declined from 117 in 2013 to 57 last year.
13 If mediation and collaborative problem solving is
14 successful, then a M.A.R.C.H. operation will not be
15 conducted. However, there are instances where the
16 establishment will not work with the precinct to
17 remediate the condition or take steps on their own.
18 In these situations, personnel in the precinct
19 including the NCO, the Field Intelligence Officer or
20 the Crime Prevention Officer may determine that an
21 establishment is a candidate for a M.A.R.C.H.
22 operation. This recommendation is forwarded to the
23 precinct's Commanding Officer. If the Commanding
24 Officer agrees that the location warrants inclusion
25 in a M.A.R.C.H. operation, the Commanding Officer

2 includes the location on a list of such locations in
3 a written request for approval to the Chief of
4 Patrol. These recommendations are made based upon
5 many factors including, but not limited to 311 and
6 911 calls complaining about the conduct of the
7 establishment, conferrals with both the Community
8 Boards and the precinct community councils, meetings
9 held with operators of the location and crimes which
10 have occurred in or around the location. It is
11 significant to note that Commanding Officers are
12 directed to consider only verified 311, 911 and
13 community complaints relating to noise, underage
14 drinking, quality of life violations, and drug sales
15 or other violations when making this decision.
16 Additionally, Commanding Officer s are directed not
17 to consider complaints of grand or petit larceny or
18 identity theft within the establishment if the
19 establishment cooperated with the department in
20 preventing future crime and plays no active role in
21 the criminal activity. Once a list of recommended
22 establishments was forwarded to the Chief of Patrol's
23 Office, they make the final determination of which
24 locations will be included in the M.A.R.C.H.
25 operation after ensuring sufficient steps were

2 previously taken to address problematic conditions
3 without success. Once each location is approved for
4 inclusion in a M.A.R.C.H. operation, my unit, the
5 Civil Enforcement Unit will then will then schedule
6 the operation. We ensure the availability of the
7 other agencies, and that they have the information
8 that they need to effectively participate in the
9 operation. Operations are usually scheduled for
10 either Friday or Saturday evening as some locations
11 only operate on these nights, and these are the times
12 when the agency's inspectors can get a realist view
13 of how a location operates during the times that give
14 rise to most complaints and dangerous conditions.
15 One benefit of the program is that it enables some of
16 these agencies to conduct needed inspections when
17 they would not otherwise be able to because the
18 location may only operate at night or the inspector's
19 safety could not otherwise be ensured. On the
20 evening of the M.A.R.C.H. operation, the agencies
21 taking part meet at the relevant precinct to
22 coordinate. The participating agencies and the
23 precinct personnel then travel together to each
24 location. Upon arrival, inspectors from each agency
25 enter the location and begin their work. Barring a

2 significant safety concern such as severe
3 overcrowding, noise levels that make communication
4 impossible or blocked fire exists, a location is
5 allowed to operate without interference while the
6 inspections are being conducted. It has been our
7 experience that most patrons struggle with the
8 operation while a few ask questions of the city
9 personnel involved. All then return to enjoying
10 their night out, continuing on with their
11 conversations and social activities. Patrons are not
12 asked to leave the location or stop any activities
13 during the inspections. As the Commissioner has
14 said, each day we strive to do better, and the same
15 is true for M.A.R.C.H. operations. We continually-
16 continually review this this program to ensure it is
17 conducted in a manner that meets the needs of the
18 city. For years the department has held quarterly
19 Nightlife meetings with Nightlife business owners and
20 operators. These meeting are designed to keep the
21 lines of communication open between these businesses
22 and the department. Nightlife business owners and
23 operators are encourage to attend these meetings and
24 voice their concerns to senior patrol borough police
25 commanders. The department has also worked closely

2 with the New York City Hospitality Alliance for over
3 10 years. This ongoing partnership has resulted in a
4 robust and productive working relationship and has
5 resulted in the cooperative publication of three
6 additions of a booklet entitled *Best Practices for*
7 *Nightlife Establishments* which was written
8 collaboratively by New York City Hospitality Alliance
9 Nightlife experts and Police Department law
10 enforcement experts. The goal of this booklet is to
11 help Nightlife business operators to provide a safe
12 and enjoyable experience for their customers and the
13 surrounding community. This Hospitality Alliance
14 NYPD partnership also produced an active shooter
15 video, which specifically dealt with Nightlife
16 venues. Recent tragedies such as that Pulse Night
17 Club shooting mandate that we address the fact
18 Nightlife establishments attract large numbers of
19 people and have historically been the targets of
20 individuals seeking to carry out sensational
21 terrorist attacks. Last year the Mayor appointed
22 city's first Nightlife Mayor to head up the newly
23 oper-newly created Office of Nightlife, which is
24 tasked with coordinating Nightlife venues, city
25 agencies, and the community to help the industry

2 prosper safely in a way that benefits all New
3 Yorkers. In fact, beginning last year the Office of
4 Nightlife conducted a citywide listening tour, which
5 involved the department and representatives from
6 other agencies to gather input and suggestions from
7 businesses and the community to further this goal.
8 The department looks forward to continuing our
9 collaborative efforts with the Office of Nightlife,
10 the New York City Hospitality Alliance, our sister
11 agencies, and the community at large so that we can
12 maintain a thriving and above all safe Nightlife
13 environment. I will now turn my attention to Intro
14 1155. The department has partnered with the Council
15 on dozens of pieces of legislation aimed at
16 increasing transparency in the past, and this is no
17 exception. Some of the criticism of these operations
18 is driven by a lack of information, and we will work
19 with the Council to ensure more data is made public.
20 Thank you for the opportunity to provide insight on
21 these important operations, and I look forward to
22 answering any questions you may have.

23 CHAIRPERSON LANCMAN: Thank you. Is
24 anyone else testifying or just being available to
25 respond to questions? Okay, good. So, let's talk

2 about how establishments are identified for a
3 M.A.R.C.H. operation. It—from your testimony and—and
4 from the operations order, it seems like there's a
5 detailed vetting although a very high reliance on 311
6 and 911 complaints. But as a Council Member
7 representing a district where I get complaints about
8 bars or other establishments that might be causing
9 problems in neighborhood whether it's noise or—or
10 patrons congregating outside, I'm not—I'm—I'm
11 sympathetic to the—the need to identify
12 establishments that are either unsafe for the patrons
13 or causing community issues. The New York City
14 Artist Coalition did a Freedom of Information Law
15 request, and compiled data I think from 2012 to 2017
16 that mapped out where these raids are—are taking
17 place, and their results. So, I want to ask you
18 about their first finding, which is that, and I think
19 it's in 48% of—of these raids no enforcement action
20 is taken. Do you dispute that data, and what can you
21 tell us about how often it is that these raids result
22 in—in enforcement action.

23 DEPUTY COMMISSIONER MESSNER: Well, I do
24 dispute that, and I believe that it's a much lower
25 percentage. I think that the—one of the problems in

2 trying to assess what's gone on before is that
3 M.A.R.C.H. Operations the term M.A.R.C.H. Operation,
4 is thrown around very loosely. It's like Scotch
5 tape. People refer to Scotch tape, but Scotch tape is
6 really on a product made by the Scotch Corporation,
7 but there are other cellophane tapes. It seems that
8 every time a couple of city inspectors get together
9 and visit a Nightlife business, people call that a
10 M.A.R.C.H. Operation and it's not. M.A.R.C.H.
11 Operations are a very discrete thing. It's a
12 collaboration--[background comments] I'm a--it's a
13 collaboration between multiple city agencies that is
14 approved, and I'm sure we'll end up talking about the
15 approval process and only 58 of them occurred last
16 year. Now, I--I'm familiar to some extent with the
17 study, and I know that they--apart of the study they
18 produced a hat map, and the Heat Mp purports to show
19 the M.A.R.C.H. where the M.A.R.C.H. operations
20 occurred. Well, on their Heat Map they--they say that
21 between 68 and 104 operations occurred in the
22 Rockaways, but I know that between 2013 to 2018 only
23 seven M.A.R.C.H. Operations occurred in the
24 Rockaways, and that of those--in those seven
25 M.A.R.C.H. operations, there were only 30

2 establishments that were approved for inclusion. And
3 I also know that we never reach all of the businesses
4 that are approved for inclusion because of time
5 constraints in the evening. So, less than 30 places
6 were visited. So, while I'm--

7 CHAIRPERSON LANCMAN: [interposing] Just
8 to-just-just to clarify. So, a M.A.R.C.H. Operation
9 is-is-is broader than just we're going to one place?
10 A M.A.R.C.H.--one of-one M.A.R.C.H. operation could be
11 10, 20, 30--

12 DEPUTY COMMISSIONER MESSNER:
13 [interposing] No. On a M.A.R.C.H.--well, it's
14 multiple. M.A.R.C.H. Operations--and I'm sure we'll
15 get into this--involve an approved list of places.
16 The lists are typically 4 to 6 Nightlife businesses
17 in a single precinct. However, because of the time
18 constraints of the agency inspectors, we rarely if
19 ever visit all 4 to 6 during the course of an
20 evening. So, typically, I would say the average
21 number is 3 to 4 are visited during the course of an
22 evening. They're typically in the same precinct
23 although sometimes will cross precinct boundaries.

2 CHAIRPERSON LANCMAN: So, with that
3 understanding, just go back to you were comparing for
4 example the Rockaways with--

5 DEPUTY COMMISSIONER MESSNER:
6 [interposing] Right, well the reason--

7 CHAIRPERSON LANCMAN: --the coalition put
8 together from the documents that they FOIL'd. I mean
9 they--this wasn't my understanding. They're going to
10 testify later. This wasn't them just going out and
11 anecdotally finding out what happened, but what do
12 you understand the difference between your data is
13 and their data just so we're on the same page.

14 DEPUTY COMMISSIONER MESSNER: Well, the
15 heat--[background comments]. Yea, I've never
16 reviewed that data. I've looked at the Heat Map.
17 The Heat Map shows there are two zones in the
18 Rockaways. One of the zones appears to show 44 to 58
19 M.A.R.C.H. Operations, and because they're banding
20 their data, and the other appears to show 24 to 44
21 operations. I know based on the records of the
22 department that there were only seven M.A.R.C.H.
23 Operations conducted in the Rockaways in '13 to '18
24 and that there were 30--of those seven operations

2 there were 30 locations approved, but I know that all
3 30 weren't reached.

4 CHAIRPERSON LANCMAN: Right. Well, they--
5 just--they used the term raids. So, I don't know, and
6 we'll have the opportunity to hear from them whether
7 they've--they describe a raid as being a raid of an
8 individual establishment or a M.A.R.C.H. Operation
9 what might be three or four, but let's just for the
10 sake of the data that--that you agree with and that
11 you are presenting to use. Of--of the establishments
12 that were the subject of these M.A.R.C.H. raids you
13 say about--about 30 or so?

14 DEPUTY COMMISSIONER MESSNER: Council
15 Member--

16 CHAIRPERSON LANCMAN: Yes.

17 DEPUTY COMMISSIONER MESSNER: --if I could
18 just--I--I find that I should say this at the outset
19 because we're--I noticed even in your testimony we're
20 calling them M.A.R.C.H. Operations and then we're
21 going and calling them raids.

22 CHAIRPERSON LANCMAN: Uh-hm.

23 DEPUTY COMMISSIONER MESSNER: We would
24 not categorize a M.A.R.C.H. Operations as a raid. I
25 mean I--I'd be curious to know what--what's envisioned,

2 you know, when we use the term raid or when you used
3 the term raid, what do you envision happening at one
4 of these operations?

5 CHAIRPERSON LANCMAN: I think that it's--
6 the Coalition will testify for themselves, but from
7 my own mind the operation and--and the word operation
8 or raid are interchangeable. What I mean is that the
9 law enforcement agencies are visiting an
10 establishment to determine their compliance with
11 various and sundry laws.

12 DEPUTY COMMISSIONER MESSNER: So, I--I
13 would--I would--interposing]

14 CHAIRPERSON LANCMAN: That's what we
15 talked about.

16 CHAIRPERSON EUGENE: I would agree with
17 that.

18 CHAIRPERSON LANCMAN: Okay.

19 [DEPUTY COMMISSIONER MESSNER: We would
20 come that an operation. I mean a raid what I
21 envision as a raid is guns drawn, bulletproof vests
22 and--and barreling down the door, which clearly I
23 think we both agree is not the case during the
24 M.A.R.C.H. Operations.

2 CHAIRPERSON LANCMAN: Alright, well, I'm-
3 I'm not suggesting that it is, but I'm not prepared
4 to say that isn't. So, let's just use the word
5 operation, and we'll all be happy.

6 DEPUTY COMMISSIONER MESSNER: Thank you.

7 CHAIRPERSON LANCMAN: So, in the-the
8 operations, how many-how many operations have there
9 been just your example the Rockaways in-in the time
10 period that you were talking about?

11 DEPUTY COMMISSIONER MESSNER: Since--

12 CHAIRPERSON LANCMAN: [interposing] Of-
13 sorry, of individual businesses?

14 DEPUTY COMMISSIONER MESSNER: Well, the
15 most there could-the most individual businesses that
16 could have been visited in that period 2013 to end of
17 2018 . The most that could have been visited are 30.

18 CHAIRPERSON LANCMAN: Okay, of those 30
19 or since you're estimating let's look at it this way.
20 How many M.A.R.C.H. Operations of individual
21 businesses you all did no enforcement action?

22 DEPUTY COMMISSIONER MESSNER: I don't
23 know.

24 CHAIRPERSON LANCMAN: Well, see that's-
25 that's big question.

2 DEPUTY COMMISSIONER MESSNER: I-I think
3 and to your-to the-to the point of the bill by
4 Council Member Levin, we're not objecting to the
5 bill. I mean that's certainly data that we can
6 capture moving forward with greater accuracy so we
7 could determine the answer to-to these question, but
8 what we can say is without giving you precise data
9 that of the location that we visited wherever they
10 are whether it's the Rockaways or somewhere else, it
11 is frequent that there are locations that there is no
12 enforcement, and then there are locations when there
13 is enforcement.

14 CHAIRPERSON LANCMAN: Okay.

15 DEPUTY COMMISSIONER MESSNER: But moving
16 forward I think that's data that we're going to be
17 tracking pursuant to this bill, and we have no
18 objection to providing it.

19 CHAIRPERSON LANCMAN: Would you agree
20 that-that operating produces no enforcement actions
21 suggests that maybe that operation should not have
22 been conducted especially in light of the fact, which
23 I think we're going to have testimony of-testimony
24 about later that these operations do put a tremendous
25 strain on those businesses.

2 DEPUTY COMMISSIONER MESSNER: I-I don't
3 feel that an operation that produces no results
4 should not have been conducted any more than I think
5 that if a Police Officer doesn't make an arrest
6 during the course of a day that that somehow was a
7 waste of his time. I think it--

8 CHAIRPERSON LANCMAN: [interposing] I
9 think a better-I think a better analogy would be if a
10 police officer is stopping and frisking someone and
11 nothing is produced from that, it begs the question
12 well why did that stop and frisk occur? And-but if-
13 and in particular if there's a lot of that, you
14 walked into it. It's not my fault. [laughter] If
15 there's-if-if-of there's a lot of that, then it
16 really questions their policy.

17 DEPUTY COMMISSIONER MESSNER:
18 [interposing] Well, I think-I think the-I think the
19 analogy is is that if an officer fails to issue a
20 summons that doesn't mean that there were no traffic
21 laws broken that day, and I think that that's-that's
22 the point we're making here that yes, given the
23 protocols for including the location in the
24 M.A.R.C.H. Operation, the balance-the multiple layers
25 of approval involved, what-the Chief of Department

2 has in front of him when he approves a location for
3 the M.A.R.C.H. Operations is that (1) there have been
4 complaints or conditions identified whether it be
5 311, 911 at Build A Block meetings, Community Council
6 meetings, wherever that residents of that
7 neighborhoods are bringing this location to our
8 attention. The Chief of Patrol also sees that we
9 have sent officers whether it's Neighborhood
10 Coordinating Officers, Community Affairs Officer or
11 any officers are visiting that location and trying to
12 collaborate and resolve the conditions being raised,
13 and when we're failing to do that, where the location
14 doesn't want to address the complaints, and we're
15 seeing these complaints materialize over and over
16 again. That's when the location gets-get-gets
17 included in the M.A.R.C.H. Operation. Now, the fact
18 that we may show up on the day of the M.A.R.C.H.
19 Operation, and the location that has a propensity to
20 serve underage individuals alcohol doesn't seem to
21 happen—doesn't seem to have an underage person there
22 that night, doesn't mean that they haven't served
23 underage alcohol. So, I—I think I wouldn't get to
24 the conclusion that you're getting to, but there is a
25 possibility that on the night of a M.A.R.C.H. when we

2 go there the conditions that residents have
3 complained about over and over again, conditions that
4 we've attempted to remediate with the establishment
5 owners may not be present that day. That doesn't
6 mean that those conditions are not present.

7 CHAIRPERSON LANCMAN: Well, I think our
8 friends from the Coalition and maybe the—the
9 businesses themselves will—will talk about what seems
10 to be a very high rate of operations that don't
11 product enforcement actions, and that does raise
12 questions about the selection process, and it does
13 raise questions about the—the worth of these
14 operations. Not ever but in the scale that the
15 department or that—that they're being conducted. And
16 then in the context of the other aspect that you
17 referred to as the Heat Map, [coughs] which seems to—
18 to—to indicate a much greater activity in communities
19 of color. Now, we're—we're—we're looking at other,
20 you know, analogies where law enforcement in the city
21 is spending a lot of time on enforcement activity in
22 communities of color that—that are hard to justify.
23 So, do you—do you disagree or dispute not just the
24 specific data points that—that—that the Coalition has
25 produced from the FOIL request, but—but the essence

2 of it, right that there is much more enforcement in
3 minority communities. Just--just enforcement
4 activity. There's much more operation activity
5 minority communities than there are in white
6 communities.

7 DEPUTY COMMISSIONER MESSNER: So, a couple
8 of points. Yes, I would dispute that to start off
9 with, but I-I think the numbers it's worth putting
10 them in context. There are approximately 12,000
11 licensed establishments for on premise alcohol
12 consumption in the city. I think it's 40 short of-of
13 12,000 or thereabouts. There have been 57 M.A.R.C.H.
14 Operations last year. I mean so the numbers aren't-I
15 mean they're nominal compared. So I think what-what
16 the numbers basically show is that the vast, vast,
17 vast majority of night of Nightlife establishments
18 are actually good actors abiding the law. They're
19 addressing their community's concerns. They're
20 address our concerns when we bring those community
21 concerns to their attention. So, I think it says a
22 lot that the number of operations are 57 and I think
23 I should also highlight that that number is about
24 half of what it was when the Mayor took office. So,
25 we were looking at approximately 109 or so operations

2 in 2014. It was reduced to 57 operations last year.
3 So, they've steadily decreased over time. In terms
4 of the concentration of operations, we're not seeing
5 what--what you--what you're highlighting in this report
6 and I'm not sure where the data came from. I would
7 like to see the data rather than the conclusions that
8 were printed. I would like to see the actual data
9 that was--that was gained by this group, but what I
10 can tell you is taking a look at 2018, the M.A.R.C.H.
11 Operations were pretty evenly spread out. So,
12 Manhattan South for example, Patrol Borough in
13 Manhattan South, which is 59th Street and below had
14 nine M.A.R.C.H. Operations. Manhattan North, which
15 is above 59th Street had seven M.A.R.C.H. Operations.
16 Patrol Borough Bronx, which is all of the Bronx had
17 seven operations. Patrol Borough Brooklyn South had
18 nine. Patrol Borough Brooklyn North had eight. So,
19 I mean we're looking at--the numbers are essentially
20 even as you go across the city. I'm--I'm really not
21 seeing the conclusions that that report has come to.

22 CHAIRPERSON LANCMAN: I want to turn it
23 over to my colleagues, in particular Council Member
24 Levin because it's his bill, but if we wanted to--to--
25 to arrange a meeting, you, the coalition, the Council

2 Members who are interested, our staff and—and you can
3 see their data and talk with them directly. Have you
4 done that already?

5 DEPUTY COMMISSIONER MESSNER: Yes. So, I
6 think, and the Commissioner can go into it, but we
7 have regular meetings with—with the Hospitality
8 Alliance. It's been going on for years. They're
9 regular quarterly meetings. We took part in a their
10 listening tour as part of the creation of--

11 CHAIRPERSON LANCMAN: [interposing] I
12 understand, I mean but the folks who—who—who got this
13 data and produced this report, have you met with
14 them?

15 DEPUTY COMMISSIONER MESSNER: I'm not
16 sure who the folks are. I mean I—so I can't really--

17 CHAIRPERSON LANCMAN: [interposing] But
18 you'd be willing to—to meet them. You said you said
19 you wanted to see them.

20 DEPUTY COMMISSIONER MESSNER: Sure. I
21 would like to see the data first, and make it more—a
22 more productive meeting, but I have no problem doing
23 that.

24 CHAIRPERSON LANCMAN: Alright. I have a
25 lot more questions, but the—the—the bill's sponsor is

2 here, and there are other members here. So, Council
3 Member Levin. Let me just also say we've also been
4 joined by Council Member Alan Maisel from Brooklyn
5 and Council Member Andy King from the Bronx.

6 COUNCIL MEMBER COHEN: [off mic] Cohen.
7 You know.

8 CHAIRPERSON LANCMAN: Andy Cohen. I do
9 it all the time. Sorry.

10 COUNCIL MEMBER LEVIN: Thank you very
11 much, Chair. Thank you all for your—for your
12 testimony and for being here today. I guess going
13 off of your testimony, I just want to make this—so
14 what exactly is the criteria? So, if—if there have
15 been 57—there were 57 M.A.R.C.H. Operations last
16 year. Certainly everybody—I don't know--how many SLA
17 licenses are there?

18 DEPUTY COMMISSIONER MESSNER: About
19 12,000.

20 COUNCIL MEMBER LEVIN: 12,000.

21 DEPUTY COMMISSIONER MESSNER: On premise.

22 COUNCIL MEMBER LEVIN: So, of those
23 12,000 I'm assuming that more than 57 had some 311
24 complaints about noise of about people standing
25 outside. I mean I could think of I represent

2 Community Board 1 in Brooklyn. You know, people are
3 smoking outside and get 311 complaints. Music is too
4 loud get 311 complaints. You know that's—that's
5 pretty much across the board I think. I think it
6 would actually be hard to find a Nightlife that does
7 have a 311 complaint. So then, what criteria of all
8 the universe of—of Nightlife establishments that have
9 a variety of 311 complaints do we—did we use to—to—to
10 choose these 57?

11 DEPUTY COMMISSIONER MESSNER: Well, it's
12 much more than 311 complaints. The—the process is a
13 process that tries to identify places that pose a
14 variety of problems to the—to the surrounding
15 community, but also and probably more importantly
16 making sure that these are problems that the business
17 is responsible for that the business has not
18 addressed and that the business has been informed and
19 of the problems, and asked to address and not.

20 COUNCIL MEMBER LEVIN: [interposing] And
21 what kind of problems?

22 DEPUTY COMMISSIONER MESSNER: These are
23 enforcement resistant or—or places that have not
24 taken appropriate steps to address. So, you have 311
25 complaints, 911 complaints. You have issues brought

2 to the Neighborhood Coordinating Officers, the NCOs
3 by local residents. You have community councils and
4 you have community boards, and a variety of other
5 places. Complaints can come in in many ways, and
6 they can be for many different things.

7 COUNCIL MEMBER LEVIN: Uh-hm.

8 DEPUTY COMMISSIONER MESSNER: The-the
9 Neighborhood Coordinating Officers are-are tasked
10 with meeting with the owners and operators of local
11 establishments, and the community-and the Crime
12 Prevention Officers in each precinct are required--

13 COUNCIL MEMBER LEVIN: [interposing] And
14 the NCO Program is a newer program.

15 DEPUTY COMMISSIONER MESSNER: Yes.

16 COUNCIL MEMBER LEVIN: It's only been
17 around for a couple of years. So, obviously the
18 M.A.R.C.H. Task Force is-predates the NCO program.

19 DEPUTY COMMISSIONER MESSNER: Well, but
20 the Crime Prevention Officers have for many, many
21 years been required to keep a list of every licensed
22 premise in the-that particular precinct and to meet
23 with the owners and operators of that premise to talk
24 to them about crime conditions, to provide them with
25 crime prevention information.

2 COUNCIL MEMBER LEVIN: Okay. I just want
3 to be clear. So is it related to crime or is it
4 related to-to quality of life?

5 DEPUTY COMMISSIONER MESSNER: Well, it's--
6 it's both. Many, many places that get visited, that--
7 that get included in M.A.R.C.H. Operation have
8 violence problems. That's one of the most common.

9 COUNCIL MEMBER LEVIN: But we've heard
10 from a lot of establishments that have had a
11 M.A.R.C.H. Operation that didn't include a--they
12 didn't have a history of violence. I mean I, you
13 know, I had an establishment in my district, I had a
14 M.A.R.C.H. Operations and it was, you know, it was
15 kind of an unrelated Department of Buildings issue.

16 DEPUTY COMMISSIONER MESSNER: Well, can--

17 COUNCIL MEMBER LEVIN: [interposing] You
18 know that--so--

19 DEPUTY COMMISSIONER MESSNER: Can I just
20 say that very often people will say that they've had
21 a M.A.R.C.H. Operation that they--a M.A.R.C.H.
22 Operation was conducted in the premises when it isn't
23 a M.A.R.C.H. Operation.

24 COUNCIL MEMBER LEVIN: [interposing]

25 Well, I can actually, in this instance this is how I

2 found out what M.A.R.C.H. was because the person told
3 me I got visited by the cops, FDNY, SLA, DOB, you
4 know, maybe another agency all at the same time, and
5 I said that's a--that's--that's strange. I didn't know
6 that that happened, and that how I found out about
7 what M.A.R.C.H. was. So, in fact, it was a
8 M.A.R.C.H. Operation. I was able to confirm that.
9 I'm just--I'm just trying to figure out the criteria
10 because that wasn't a violent. There was no violence
11 in that instance. It was--literally, it was a DOB.
12 They didn't correct their DOB problem. They had a
13 DOB problem, but I don't understand why that's a--why
14 that--that involves, you know, a multi-agency
15 response.

16 DEPUTY COMMISSIONER MESSNER: But I--I
17 mean I think it's very hard for us to comment on a
18 specific locations.

19 COUNCIL MEMBER LEVIN: [interposing] I'm
20 not--I'm not asking that--

21 DEPUTY COMMISSIONER MESSNER:
22 [interposing] I mean without a specific location, we
23 can certainly look it up. We're highlighting it as a
24 DOB issue. We need to see more. I think under the--
25 under the--the system that's in place, I think what we

2 can tell you broadly across all locations is that
3 whatever the complaint are, whatever the conditions
4 are, crime conditions or what have you--

5 COUNCIL MEMBER LEVIN: Uh-hm.

6 DEPUTY COMMISSIONER MESSNER: --we make
7 attempts for--for the exception of an unlicensed
8 premise, which I think you would--you would agree with
9 us that we shouldn't be making an attempt to have an
10 unlicensed premise correct their behavior and
11 continue operation unlicensed. But for a licensed
12 premise, we make attempts to try to resolve this.
13 So, I think part of your earlier question about
14 M.A.R.C.H. predating Neighborhood Policing, I think
15 you're right, M.A.R.C.H. does predate Neighborhood
16 Policing, but important to see is Neighborhood
17 Policing is about collaborative problem solving,
18 rather than enforcement, and what you're able to see
19 with--with Neighborhood Policing being implemented,
20 the number of M.A.R.C.H. Operations has been roughly
21 cut in half. So that means we're reaching out to
22 these business owners. We're trying to figure out a
23 solution to whatever that condition is, whatever that
24 complaint is without resorting to a M.A.R.C.H.
25 Operation.

2 COUNCIL MEMBER LEVIN: Okay. Let me ask
3 why—what is a M.A.R.C.H. Operation accomplishing that
4 a visit from an inspector from these individual
5 agencies wouldn't accomplish? There's—why, you know,
6 if there is an issue of people getting into fights at
7 a bar outside, is it—is it better for—for there to be
8 a, you know, a—a—you can call it a raid or you can
9 call it an operation, but it involves 15 or more
10 people, you know it's something. Why—why is this the
11 right way to do this as opposed to being much more
12 targeted in terms of addressing the issue. So, say
13 there's a, you know, one business has a—something
14 that kind of falls under the purview of FDNY, why
15 doesn't FDNY just go out? Why does it involve a
16 multi-agency response where sometimes people are
17 wearing, you know, some type of gear?

18 DEPUTY COMMISSIONER MESSNER: If the—a
19 couple answers. The—a—a location is not going to get
20 included in a M.A.R.C.H. Operation because they have
21 an FDNY problem. The complaints that come in are
22 indicative usually of a range of problems especially
23 things like violence or under age or noise and the
24 important thing to remember is no one—no
25 establishment gets included in a M.A.R.C.H. Operation

2 unless they haven't made—they've been informed of
3 this problem and haven't made the effort to address
4 it. So, once you have a location that has already
5 demonstrated that they're not willing to address
6 their problems, it—it's important for the city to try
7 to determine what else are they doing. Everyone of
8 these locations is subject to rules and regulations
9 of multiple agencies. Well, if they're not willing
10 to address their violence, are they also going to be
11 not keeping up their health code? Are they are all
12 going to have blocked fire exits?

13 COUNCIL MEMBER LEVIN: But why wouldn't—
14 but the Health Code is something that like the Health
15 Inspectors go out all the time to bars and
16 restaurants on their own, and that doesn't take a—
17 that doesn't take a—a multi-agency operation to
18 figure out whether there's a health violation.

19 DEPUTY COMMISSIONER MESSNER: I—I think—
20 I—I—would disagree because I think a lot—a lot of
21 complaints are intertwined between. Then they cut
22 across from multiple agencies. So if you have a
23 location that has a propensity to have violence or
24 fights break out, right, doesn't it make sense to see

2 if there are underage people there and are being
3 served alcohol contributing to the fight.

4 COUNCIL MEMBER LEVIN: [interposing] I
5 mean I was--

6 DEPUTY COMMISSIONER MESSNER:
7 [interposing] Doesn't it make sense, but I'd like to--
8 I'd just like to say--

9 COUNCIL MEMBER LEVIN: [interposing] Can
10 I say I think actually --

11 DEPUTY COMMISSIONER MESSNER:
12 [interposing] I would just like to say--I'd just like
13 to finish.

14 COUNCIL MEMBER LEVIN: Sure.

15 DEPUTY COMMISSIONER MESSNER: Doesn't it
16 make sense to see if a location that invites large
17 numbers of people, right that has fights breaking out
18 and a propensity for that, that they actually have
19 their building code and fire exits free. What if
20 there's a surge of people? Does it make sense to
21 make sure that they have a means of egress and
22 ingress or a means to escape a potentially violent
23 incident? I mean again, and we keep harping on this
24 because it's important to harp on this: A location
25 that has one fight is not going to get a M.A.R.C.H.

2 Operation. A location that that has multiple fights
3 and are refusing to take any action to stop that
4 activity from happening, is going to have a
5 M.A.R.C.H. Operation and all of the agencies that
6 come to the M.A.R.C.H. Operation are relevant to the
7 M.A.R.C.H. Operation.

8 COUNCIL MEMBER LEVIN: So, is every-
9 because you said—you mentioned three examples. You
10 said violence, under age drinking, and noise. Does
11 every M.A.R.C.H. Operation involve violence?

12 DEPUTY COMMISSIONER MESSNER: No.

13 COUNCIL MEMBER LEVIN: No, right. So-so,
14 you know, how many—I mean how many bars have—have
15 examples of underage drinking? I mean people—that's—
16 to say that--

17 DEPUTY COMMISSIONER MESSNER:

18 [interposing] But I—I--

19 COUNCIL MEMBER LEVIN: --to say that—to
20 say that under age drinking is a criteria or noise, I
21 mean noise is a very, again underage drinking and
22 noise are two things that I think are much more
23 prevalent than any of us would like in New York City,
24 but to say that there's a-a noise complaint—or
25 persistent noise complaints is a reason for a

2 M.A.R.C.H. or multiple instances of-of-of underage
3 drinking, but again, those things that-that NYPD does
4 without a full scale, you know, without a-without a
5 multi-agency operation to-to bust somebody for under
6 age drinking is I think part, you know that's
7 something that NYPD does--PD had done for a long time
8 in a way that is--doesn't involve like a multi-agency
9 raid--

10 DEPUTY COMMISSIONER MESSNER:

11 [interposing] but I think--

12 COUNCIL MEMBER LEVIN: -- or whatever.

13 DEPUTY COMMISSIONER MESSNER: Council
14 Member I think you're coming to--you're coming to a
15 conclusion that just because theses agencies are
16 present that all of them are taking enforcement, and
17 that's just not the case. So, it-it could very well
18 be the case. Everybody is going out on the
19 operation. A location that has a noise issue for
20 argument's sake--

21 COUNCIL MEMBER LEVIN: Uh-hm.

22 DEPUTY COMMISSIONER MESSNER: The Fire
23 Department may not issue a single summons. The
24 Building Department may not issue a single summons.
25 They Police, the SLA may not issue a single summons

2 but DEP may very well issue a summons at that
3 location. The idea is is that all of the
4 stakeholders are present, and we could address
5 whatever conditions we see, and often times a lot of
6 these establishments aren't open during the week.
7 They're open on the weekends at night. So, the-a lot
8 of the stakeholders here don't have the opportunity
9 to visit them and here is the opportunity that's
10 targeted precisely at locations are refusing to
11 collaborate or address the conditions that the
12 communities are highlighting in any way. And all of
13 the stakeholders are going to be present and to the
14 extent that they're needed, they're going to—they're
15 going to participate. To the extent that they're not
16 needed, they're not going to issue, they're not going
17 to take on the enforcement action.

18 COUNCIL MEMBER LEVIN: What is the—what
19 is the—you mentioned a little bit in your testimony,
20 but what is the exact procedure then for—for
21 conducting one of these? It is—who—who—the final
22 approval comes from your office, is that right?

23 DEPUTY COMMISSIONER MESSNER: No. Final
24 approval comes from the Chief of Patrol's Office.
25 The operation starts with the NCO or the Crime

2 Prevention Officer becoming aware of a problem or
3 some other officer in the precinct becoming aware of
4 a problem and they start to talk among each other,
5 and if they realize that there seems to be an ongoing
6 issues, they're tasked with telling the location.
7 The NCOs that's part of the their job description and
8 the Crime Prevention Officers as I said, they're
9 required to keep a list of all businesses, visit them
10 and make sure they have all relevant information. If
11 those officers feel that there's no opportunity
12 there's no-been no action on the part of the
13 establishment to try to remediate, then they can go
14 to the Special Operations Lieutenant, the Field
15 Intelligence Officer, and ask for more information
16 about this place. If all agree that or any of them
17 feel that this place should be included on a
18 M.A.R.C.H. Operation, they can go to their Commanding
19 Officer . They recommend to the Commanding Officer
20 inclusion of this location on a M.A.R.C.H. because
21 they've been informed of the issues and they haven't
22 addressed them. The Commanding Officer reviews
23 that. If he or she feels that the place does belong
24 in a march because they have a type or problem or
25 problems, that are appropriate for inclusion in the

2 Command, and that they've been informed and haven't
3 done anything, the Commanding Officer is going to
4 include them, that location on a list of 4 to 6
5 locations in the precinct and sent that to the Chief
6 of Patrol's Officer. The Chief of Patrol's Office is
7 then going to review those locations, and the Chief
8 of Patrol's Office is going to look first is this
9 the-are these the type of problems that should be
10 included in a M.A.R.C.H. Operation, and second has
11 the business been given the opportunity to address
12 these. Chief of Patrol approved some locations, and
13 denies other locations. There's—either it's not the
14 type—right type of problems or you haven't done
15 enough to remediate with the operators. The ones
16 that are approved the approve the operation, then it
17 comes to my unit the Civil Enforcement Unit. We
18 schedule with the other agencies. Many of the other
19 agencies need to know the businesses, the identities
20 of the place we're going to visit beforehand so that
21 they can do their internal research. They need to
22 know the building plans. They need to know what type
23 of—of liquor license they have. So, we tell them the
24 locations before hand so they can do their research.

2 The night of the operation we gather at the precinct
3 and then we go out together.

4 COUNCIL MEMBER LEVIN: MOCJ has a Task
5 Force the Task Force on Special Enforcement that
6 targets problematic or legal bars and gambling rooms
7 and such. Why is this—why is that not a sufficient
8 tool to address issues that you're—that—that the
9 M.A.R.C.H. Task Force is looking to address.

10 DEPUTY COMMISSIONER MESSNER: I—I
11 wouldn't try to answer for MOCJC. I'm really not
12 sure, but that's how it is.

13 COUNCIL MEMBER LEVIN: [interposing] Are
14 you familiar with that Task Force?

15 DEPUTY COMMISSIONER MESSNER: Excuse me?

16 COUNCIL MEMBER LEVIN: Are you familiar
17 with that Task Force?

18 DEPUTY COMMISSIONER MESSNER: Not really.
19 I—I know that, you know, MOCJ has enforcement effort
20 efforts, but I'm not familiar with what they're doing
21 specifically on this.

22 COUNCIL MEMBER LEVIN: I'm still a little
23 unclear as to why this is necessary. I—I—I-I don't
24 understand why individual agencies who have
25 inspectors that FDNY has inspectors. They can visit

2 any establishment at any time. DOHMH has inspectors.
3 They can go there and they do. You know, many more
4 than 57 times in a year. Why—I don't understand why
5 is that protocol, which businesses are aware of that
6 there's some level of normal course of-of action.
7 You know, it's-it's-it's within the kind of normal
8 realm of-of businesses' interaction with the city
9 agencies. Why is that not sufficient, and--and what
10 has been demonstrated in say the 57 cases last year
11 to show why that--why normal individual agency visits
12 by inspectors would be insufficient. I mean it's not
13 and just keep in mind DOHMH has inspectors that could
14 go out at 10 o'clock on a Saturday, too. It's not as
15 if that's impossible.

16 DEPUTY COMMISSIONER MESSNER: Well,
17 several things. DOH--individual agencies many of the
18 individual agencies often do not work at night
19 routinely whereas in most of these establishments
20 that get visited more of the operations--the problems
21 tend to be at night. So, if inspectors are going out
22 and inspecting Nightlife businesses when they're not
23 open for business, that doesn't give them a true
24 understanding of the conditions that actually exist
25 in the business.

2 COUNCIL MEMBER LEVIN: But my
3 understanding, sir is that—is that they do have—both
4 agencies or all the agencies they all have inspectors
5 that will go at night, and I can ask them. Does FDNY—
6 -

7 DEPUTY COMMISSIONER MESSNER:
8 [interposing] I'm not going to speak to--

9 COUNCIL MEMBER LEVIN: --have inspectors
10 that go out at night?

11 MALE SPEAKER: Yes, we do.

12 MALE SPEAKER: I can also confirm for the
13 Health Department that we haven't either so--

14 DEPUTY COMMISSIONER MESSNER: The
15 collaborative methodology of agencies collaborating
16 to address complex problems is one that's really been
17 used very successfully in this administration. You
18 can look at the Opioid Task Force, you can look at
19 the efforts that my office led against K2. I know
20 that you very involved in that, and what we needed
21 because of the the—the shortfalls of the State
22 Legislature—legislation, which didn't make K2 illegal
23 for many years when people in the city were becoming
24 victimized and sickened by it, what we needed then
25 was a multi-agency approach, and that's what we used.

2 The Multi-agency approach, the collaborative approach
3 is a sound one because it is an appropriate use of
4 city resources. For many years prior to this
5 Administration, city agencies we used-were very often
6 properly criticized for wasting resources by working
7 in silos. We're trying not to work in silos. We're
8 trying to find places that aren't responding to our
9 telling them that they have issues that they have to
10 address, and are refusing to address them. Those are
11 places that deserve to be inspected. If they're not
12 willing to address the problems that we're
13 specifically telling them exist, then what else
14 aren't they willing to address.

15 COUNCIL MEMBER LEVIN: Well, that's
16 something that we could-I mean it's one thing
17 comparing, you know a bar or restaurant some of whom
18 I'm-I'm familiar with, but I know that I've had
19 M.A.R.C.H. Operations to the K2 epidemic. I-I agree,
20 the K2 epidemic does deserve a multi-agency response.
21 I mean--

22 DEPUTY COMMISSIONER MESSNER:
23 [interposing] Well, the K2 epidemic that--

24

25

2 COUNCIL MEMBER LEVIN: [interposing] This
3 is--this is--I mean it's not even apples and oranges.
4 That's--this is, you know, this--

5 DEPUTY COMMISSIONER MESSNER:
6 [interposing] I disagree and I'll tell you why. The
7 K2 Epidemic was a law shortfall. Okay, that's
8 different than this. There weren't laws, but what's
9 similar to this is, you know, we all remember Happy
10 Land and we--Happy Land where multiple people died
11 because a club on had one method of entrance and
12 egress, and when a fire was started that blocked it,
13 all those people died.

14 COUNCIL MEMBER LEVIN: [interposing] But
15 again that's a--

16 DEPUTY COMMISSIONER MESSNER:
17 [interposing] We also know about the Pulse Nightclub
18 shooting where again if we--if they had had, if they
19 had been up to code, if they had had the Active
20 Shooter Plans that we encourage businesses to make,
21 then those people might not have died. [background
22 comments] I mean I don't--I--

23 COUNCIL MEMBER LEVIN: [interposing] I
24 just--I don't--[laughter]

2 DEPUTY COMMISSIONER MESSNER: --don't
3 find that funny.

4 COUNCIL MEMBER LEVIN: No, no, no, why I
5 think—I think—I think what you're seeing is an
6 reaction because it's—to say that—to say that we're
7 that the—the city is doing M.A.R.C.H. Operations to
8 protect—to protect, that all these are to protect
9 these establishments from potential shooting
10 incidents. I don't—I don't know if that's really
11 accurate.

12 DEPUTY COMMISSIONER MESSNER: I—I mean
13 Council member the department is collaborating with a
14 the Nightlife industry in general. We—we—with the
15 Hospitality Alliance specifically we develop active
16 shooter scenarios, but that's not the issue here.
17 What the issue here is—is what are the proper tools
18 to use to address community complains, crime
19 conditions, that we're seeing that we're unable to
20 address on a collaborative basis with the actual
21 establishment itself after trying to do so. And what
22 you're—what you see to have an issue with is is a
23 tool that the department uses to do that. I mean you
24 may not agree with that tool. I would argue that
25 there are constituents that actually do agree with

2 that tool because they expect us to do something, and
3 when collaborating, and when working with the
4 establishment fails to work, we escalate to the next
5 tool. We look at all of the available tools. This
6 is one of those available tools.

7 COUNCIL MEMBER LEVIN: Thank you. I'll
8 turn it back over to the Chair. Thank you, Chair.

9 CHAIRPERSON LANCMAN: Council Member
10 Cohen.

11 COUNCIL MEMBER COHEN: Thank you, Chair.
12 I just want to be clear that I-I understand what
13 we're talking about. How many raids or operations
14 did you say there were in 2017?

15 DEPUTY COMMISSIONER MESSNER: In-in '17
16 or '18?

17 COUNCIL MEMBER COHEN: In '17 or '18? I
18 don't-I don't know. I-I heard you testify I think to
19 one year. I wasn't sure which year.

20 DEPUTY COMMISSIONER MESSNER: Yeah, we
21 were saying 18 there were 57. If you-in '17 if you
22 want to look at that one, there were 68 operations.
23 So, we were down 11 operations from '17 to '18 and in
24 2016 there were 77 operations. So, if you take a
25 look at it they're decreasing. If you look at it

2 from the beginning of the Administration in 2014,
3 there were 109. So, if you look at 2018 where we
4 have 57, we're roughly—we roughly cut the number of
5 these operations in half, and I would—I would say in
6 large part due to the protocols that were instituted
7 that we're actually trying to engage with the
8 business to resolve what the basis of the complaint
9 is.

10 COUNCIL MEMBER COHEN: And 57 raids—I ran
11 for office because I thought there'd be no math, but
12 that's—you—the—you conduct these operations on half a
13 percent of all facilities that have a liquor license?

14 DEPUTY COMMISSIONER MESSNER: No, no, no.
15 Well, I do—well--

16 COUNCIL MEMBER COHEN: [laughs]

17 DEPUTY COMMISSIONER MESSNER: --well,
18 the—so, it's—it's not 57 establishments. It's 57
19 operations. So, as the Commissioner testified each
20 operation has somewhere between 4 to 6
21 establishments, and that's not saying that we're
22 actually going to go to each of those because
23 inevitably what happens at the end of—at the end of
24 the—inevitably what happens at the end of the night
25 or during the course of the night we--

2 COUNCIL MEMBER COHEN: [interposing] I'm
3 sorry, we'll conduct multiple operations in a single
4 night.

5 DEPUTY COMMISSIONER MESSNER: No, no, no.
6 It's one operation.

7 COUNCIL MEMBER COHEN: Okay.

8 DEPUTY COMMISSIONER MESSNER: Each
9 operation that's approved has somewhere as the
10 commissioner said in the neighborhoods of 4 to 6
11 establishments. That's the operation. Today, we're
12 going to visit 4 to 6 establishments and that counts
13 as one operation. Now, we generally don't get to the
14 4 to 6 as he testified because of time constraints
15 during the course of the night. There may be issues
16 in one. Another one may be closed.

17 COUNCIL MEMBER COHEN: Can you tell me
18 how many in 2018 how many locations were subject of
19 an operation, how many bars, restaurants or night
20 clubs.

21 DEPUTY COMMISSIONER MESSNER: Well, 20.

22 MALE SPEAKER: Well, that's the number
23 that was approved that I visited.

24 DEPUTY COMMISSIONER MESSNER: In 2018,
25 there were 203 locations that were approved. Now, I

2 want to, but I need to explain this because it's
3 important 203 locations that were approved by the
4 Chief of Patrol to be part of a M.A.R.C.H. Operation.
5 Now that does not mean that 203 locations were
6 actually visited, and then there's another qualifier
7 to this. As we said, during the course of the night
8 we run short on time and we may not visit a location
9 or two locations that are on the list. That location
10 may be re-included in some subsequent. So there's--
11 it's assigned by Council Member. (sic)

12 COUNCIL MEMBER COHEN: [interposing] I-I
13 understand. Can you tell me, though in 2018 how many
14 locations you actually did operate? You approved
15 203, you didn't get the whole 203.

16 DEPUTY COMMISSIONER MESSNER: No, no, I
17 mean, I-I can't--I can't with accuracy. I can't. I
18 can tell you that the maximum we could have done in
19 2018 was 203 out 12,000 licensed establishments.
20 We're talking about 203 that were approved. We know
21 that we didn't get to all 203, and we certainly know
22 some of that 203 are double counts because whatever
23 we couldn't get to they were included in the
24 subsequent list. So, the universe we're looking at
25 is 203 approved and the number we actually visited is

2 somewhere less than that, but I think again to to my
3 point earlier I think Council Member Levin's bill is
4 going to get us to to get to that data with some
5 level of specificity, which is why we're not opposing
6 providing that data moving forward.

7 COUNCIL MEMBER COHEN: No, I-I can't see
8 any reason to oppose the bill. I'm not seeing-I
9 haven't heard from any of the business owners who
10 have been subject to one of these operations, but I-I
11 can't see an object to reporting. I can think of a
12 facility in my district that may be could be-could
13 use one of these honestly. But it's ultimately I
14 guess the answer is even that, you know, 120 is one
15 percent. It's a very small percentage of-Thank you,
16 Chair.

17 CHAIRPERSON LANCMAN: Council Member
18 Levin, did you want to go back to anything or--? I
19 just-I just thought you might have yielded because
20 Council Member Cohen had to-had to go.

21 COUNCIL MEMBER LEVIN: Um--

22 CHAIRPERSON LANCMAN: not required.

23 COUNCIL MEMBER LEVIN: Well, just I-I-in
24 terms of-of the follow-up to a M.A.R.C.H. Operation,
25 so we've heard that you know, an example of one

2 establishment got 18 summonses during an operation.
3 They were all dismissed when the owner went to court
4 but, you know, there's—owners sometimes will feel,
5 you know that they—can you speak a little bit to
6 that—to—to the follow-up and what happens subsequent
7 to this operation. Is it—is there any kind of
8 ongoing communication with these agencies. I mean
9 we've also heard frankly that some businesses are
10 being told, you know, if—if you cooperate with us
11 we'll take it easy on you or, you know, there's—
12 there's—it's a little—little bit unclear. I think
13 sometimes owners get the perception or get the
14 feeling that—that the purpose of this is to kind of
15 intimidate businesses or, you know, try to put down a
16 marker, if you, you know, if you—if—if you're not—if
17 you don't work with us, there's going to be, you
18 know, ongoing problems.

19 DEPUTY COMMISSIONER MESSNER: So, the—I—I
20 would certainly not characterize it that way because
21 the reality of it is if a condition is—is resolved,
22 there is no need for a M.A.R.C.H. Operations and—and
23 I'll kind of take it a step further. So, let's—let's
24 assume we have complaints or conditions that are
25 brought to the department's attention. We're going

2 to send officers of the neighborhood coordinating
3 officer over to try to work collaboratively to
4 resolve the problem. Let's assume the establishment
5 says you know what? I don't want to work with you,
6 but then they go on and resolve the problem on their
7 own. That place will now be recommended for a
8 M.A.R.C.H. Operations. They don't need to cooperate
9 with us. What they actually need to do is address
10 the conditions that are being raised, address the
11 complaints that are being raised. It could be with
12 us. It can be without us, but the end result is it's
13 about the end not the means of getting there. So, I
14 think that's the best way to answer that.

15 COUNCIL MEMBER LEVIN: Do—does—does the
16 M.A.R.C.H. Task Force or NYPD factor in what kind of
17 music an establishment plays.

18 DEPUTY COMMISSIONER MESSNER: Absolutely,
19 absolutely not. Absolutely not.

20 COUNCIL MEMBER COHEN: Okay, and you—
21 you've—you've—have you ever heard a complaint that
22 has happened or I mean has anyone ever said, you know
23 that they—they feel like they're targeted for the
24 type of music that they--?

2 DEPUTY COMMISSIONER MESSNER: No, and-and
3 realistically if-if that's the complaint that a club
4 is playing a particular kind of music and, you know,
5 that's bothering us, if that's the complaint that's
6 coming in, not only would it not be approved, by the
7 Chief of Patrol, it wouldn't be recommended by the
8 lowest level, you know, in the process which is the
9 NCO or the FIO or any of them. That's just not a
10 basis for a march.

11 COUNCIL MEMBER LEVIN: Okay, I just-I
12 want-I'm still very skeptical that there's a need for
13 this type of enforcement and particularly when
14 there's no-when there's no report or instance of-of
15 violence taking place. You know, I don't-I don't
16 understand why the vast majority of these operations
17 could not be addressed through the normal channels of
18 enforcement, which again businesses, you know are
19 aware of. I mean pat of this is that that this
20 comes, you know, if this-if-if-if you have a multi-
21 agency response showing at-at 10:30 on a Friday,
22 that's a very unnerving rattling interaction with,
23 you know, with-with the city if you don't have any
24 instances, you just have, you know, if it's based on
25 noise complaints or somebody, you know reported you

2 or reported underage drinking or something like that,
3 which, you know, frankly I image this is much more
4 prevalent, you know, than any of us would want to
5 acknowledge. I mean I think that--that that's the
6 kind of thing that it probably happens--if that was
7 the case, you know, then there would probably be a
8 lot more. If it was for every underage drinking
9 instance, I imagine that like a lot of bars in
10 Manhattan would--would--you'd have a lot more marked
11 trades in Manhattan than you do if that were the
12 criteria. So--

13 DEPUTY COMMISSIONER MESSNER: Well, I
14 think--I think--I think that's why what we're saying is
15 this is a tool of--of last resort. It's not the
16 primary go-to tool. It doesn't prohibit any one
17 agency or multiple agencies from visiting the
18 location on their own in the normal course of their
19 functions that one thing doesn't have anything to do
20 with another. I think--I think at the end of the day
21 as we've mentioned, it's--it's a system that's been--
22 the use of which has been greatly reduced over the
23 years. 57 operations over the course of the year is--
24 is very low. I would argue if you look at the number
25 of locations visited compared to the number of

2 licenses issued, 12,000 licenses issued under 200
3 locations visited I think you would agree that that's
4 a very low number that we—I—I would argue that it is
5 not abused. It's actually used as a precision tool to
6 address complaints, conditions that where other means
7 that addressed it, it failed.

8 COUNCIL MEMBER LEVIN: and so my last
9 question is for FDNY actually. Is there—is there a
10 difference between the types of violations the amount
11 of violations the FDNY gives our during a M.A.R.C.H.
12 Operations than what they would normally give out
13 during a normal inspection. I think that question
14 would go for DOHMH as well

15 DEPUTY COMMISSIONER MESSNER: No, there
16 is a difference between the type of violation that we
17 issue during the M.A.R.C.H. Operations or any type
18 that we with inspections.

19 CHAIRPERSON LANCMAN: Okay, we've heard
20 some reports that that may not be case. So, if we
21 hear that in the testimony or in written testimony
22 we'll certainly communicate that with you.

23 MALE SPEAKER: Okay.

24 MALE SPEAKER: Similar with the Health
25 Department. We don't track quantitatively statistics

2 on M.A.R.C.H. Operations and the inspection results
3 from that, but we do ask—we're asked to participate
4 to ensure that establishments are properly permitted
5 the meet the food establishments sanitary
6 requirements, and uphold provisions for the Smoke-
7 free Air Act, and these inspections we don't—I don't
8 believe that we see a different in the violations
9 that we issue.

10 COUNCIL MEMBER LEVIN: I'm sorry, Mr.
11 Chair, one last question, does each operation is just
12 very—is one—is—I mean I'll just use raid as a—as a—
13 the specific instance. I s the operation a specific
14 instance or is an operation—like in other words is a—
15 can M.A.R.C.H. Operation include multiple
16 establishments on the same night.

17 DEPUTY COMMISSIONER MESSNER: I does. It
18 does. So, one operation the Commissioner testified
19 is 4 to 6 establishments.

20 COUNCIL MEMBER LEVIN: I see.

21 DEPUTY COMMISSIONER MESSNER: Up to 4 to
22 6, roughly on average 4 to 6 establishments and that
23 we don't actually get to visit all 4 to 6 because of
24 time constraints--

2 COUNCIL MEMBER LEVIN: I see, I see.

3 Okay.

4 DEPUTY COMMISSIONER MESSNER: --during
5 the course of it.

6 COUNCIL MEMBER LEVIN: Okay, okay so
7 there's there's some--so 57 is the number of
8 operations but the number of establishments visited
9 by the M.A.R.C.H. Task Force may be higher than that.

10 DEPUTY COMMISSIONER MESSNER: Well,
11 that's--that's why the numbers I'm--I'm giving you is
12 and to put it into context is out of 12,000 roughly
13 licensed establishments, we visited less than 200 in
14 2018.

15 COUNCIL MEMBER Levin: Okay.

16 DEPUTY COMMISSIONER MESSNER: So that's--
17 the 57 operation equates to less than 200
18 establishments issued.

19 COUNCIL MEMBER LEVIN: So that's 2%, the
20 2, a little less than 2%?

21 MALE SPEAKER: Less than 2%

22 COUNCIL MEMBER LEVIN: 1.8% like that.

23 MALE SPEAKER: Yeah.

24

25

2 COUNCIL MEMBER LEVIN: Okay. Alright,
3 I'll turn it back over to the chair. Thank very much
4 for your time.

5 CHAIRPERSON LANCMAN: This might have
6 been asked, but what--what is the role of the New
7 Night Mayor in--in all of this and are there times
8 where the--that office has ben invited to try to
9 mediate or address problems or concerns that--that
10 might be presented to--to the various agencies before
11 the M.A.R.C.H. Operation is conducted.

12 DEPUTY COMMISSIONER MESSNER: I mean I
13 can't speak in great detail about the--about the
14 functions of--of the Nightlife Mayor, but what I can
15 tell you is that when the office came--came to be, the
16 Police Department as well as other agencies
17 participated in the listening tour across the
18 boroughs with Nightlife--with Nightlife
19 establishments, and my understanding is that, you
20 know the role involves a regularly liaison with
21 establishments that operate throughout the city. Any
22 concerns that they may raise not only relative to
23 M.A.R.C.H. Operations but--

24 CHAIRPERSON LANCMAN: [interposing]
25 Right, but do you know--do you know if the department

2 has ever take the complaints and concerns and issues
3 that it has an prior to doing a M.A.R.C.H. Operation
4 at a given establishment said let's call the Office
5 of the Night Mayor and see if they can work it out.

6 DEPUTY COMMISSIONER MESSNER: I mean I
7 can't—I really can't say either way. I can't say
8 that we haven't but I can say that we have, but I can
9 look into it. Like I know the person that was part
10 of the listening tour that went around that that has
11 a regular means of communication. So, after the
12 hearing, I'll reach out to that individual and ask.

13 CHAIRPERSON LANCMAN: And the—in the
14 Patrol Guide order that—that gives the—the—the
15 guidelines for conducting these operations maybe it
16 would be a good idea to add a paragraph about and
17 prior to an operation consultation with the Night
18 Mayor. Just looking for ways to try to solve
19 problems. I'm a Council Member again. In my
20 district we've got problems with some locations. We
21 want the problem solved in the fastest way possible.
22 It would be good for everybody. Well, that's all the
23 questions that I have for you all. I want to thank
24 you very much.

25 DEPUTY COMMISSIONER MESSNER: Thank you.

2 CHAIRPERSON LANCMAN: I know that it
3 would be appreciated by the other witnesses if you
4 would maybe hang around and hear what they've got to
5 say, and I would appreciate it also. So, if you have
6 the time.

7 DEPUTY COMMISSIONER MESSNER: Sure. We'll
8 leave a representative from the department behind.
9 Thank you.

10 CHAIRPERSON LANCMAN: Thank you. Our
11 next panel Rob Bookman from the New York Hospitality
12 Alliance; Olympia Kazi from the New York City Artists
13 Coalition; Maria Bachi. Sorry if I'm spelling that--
14 saying that wrong, a proprietor of an establishment;
15 Deana Morra from Friends and Lovers; and Rachel
16 Nelson, a small business owner or representative.
17 [pause]

18 MARBA BARBEL: (sp?) Did you say Batchi?

19 CHAIRPERSON LANCMAN: [off mic] I'm
20 sorry. I didn't say correctly.

21 MARBA BARBEL: Maybe Barbel.

22 CHAIRPERSON LANCMAN: [off mic] Alright.

23 [background comments/pause]

24 Do you want us to start?

25

2 CHAIRPERSON LANCMAN: [off mic] Yes,
3 you're welcome. [pause] So, just do we have written
4 testimony from everyone? I have written testimony
5 from the New York City Artist Coalition. Does anyone
6 else have written testimony?

7 MALE SPEAKER: He does.

8 CHAIRPERSON LANCMAN: Oh, okay, they're-
9 they're gathering it up. [pause] Alright. Let's get
10 you sworn in get started. So could you raise your
11 right hand. Do you swear or affirm the testimony
12 you're about to give is the truth, the whole truth
13 and nothing but the truth?

14 PANEL MEMBERS: We do.

15 CHAIRPERSON LANCMAN: Thank you. Is
16 there any particular order that you'd like to go in?
17 You seem-you seem ready to go.

18 OLYMPIA KAZI: I can start. Yes.

19 [laughter]

20 CHAIRPERSON LANCMAN: We are going to put
21 the lock on five minutes.

22 OLYMPIA KAZI: Thank you.

23 CHAIRPERSON LANCMAN: No requirement that
24 you use the whole five [laughter] and just identify
25 yourself and get started.

2 OLYMPIA KAZI: Okay. So, thank you for
3 the opportunity to testify today. My name is Olympia
4 Kazi. I'm a member of the New York City Artist
5 Coalition. This first time I heard about these
6 multi-agency rights in the middle of the night and
7 how they target vendors of avalanche of times even
8 for things that—that the agents themselves have said
9 hey wouldn't hold in court, was in the founding
10 meeting of the coalition. We were coming together in
11 the aftermath of the Gosa Project where lives were
12 lost in the pursuit of experiencing community and
13 creative expansion. Since then, our small group of
14 volunteers is working to ensure the safety and the
15 very existence of the formal artist and community
16 driven back to its cultural spaces in New York City.
17 Into 1156 is the result our advocacy. We hope that
18 this is bills is the first and this big raids are
19 proven as problematic and barbaric (sic) as reports
20 from our members have indicated that the city of New
21 York will act. They will put an end to these raids
22 once and for all. NYPD has said that these raids
23 happen only at venues that have been flagged for
24 process of seeing an activity. They also claim that
25 the raid is a last resort after they're reached out

2 to to the owners and staff. Unfortunately the
3 testimonies you will hear today show otherwise.
4 Raids happen to vendors without having had any
5 thoughts for that matter, without having had any
6 problems with the local precincts or city agency
7 inspectors. Raids, which we get with as little as a
8 311 noise complaint or stolen phone. Nothing that
9 really warrants a raid. There is an informal
10 consensus that some precincts use such a raid to
11 target businesses owned and/or frequented by LGBTQ
12 and people of color. We've heard reports of
13 businesses being graded after refusing to consent to
14 ask by enforcement agents that they were in the gray
15 area of civil rights. Through a Freedom of
16 Information Request, we got some data for 2012 and
17 17-2017 and another testimony later will talk more in
18 detail, and I can answer also to some questions, and
19 they like-sort of like some of the questions we asked
20 earlier. Artist cultural space that's in our city
21 are already under threat by the lack of affordability
22 and philanthropic and governmental support. All the
23 work that we do to address those challenges by
24 joining the Small Business Advocacy Platform and by
25 collaborating with the Office of Nightlife and the

2 Department of Cultural Affairs will be all for naught
3 if we do not address this persistent threat of
4 criminalization. What good will it be if we get this
5 big sale? Even if we have then commercial rent
6 stabilization if operators have to live under the
7 threat of constant, you know, disruptive raids that
8 calls the laws of wage, jobs, and exorbitant costs
9 and fines even to close sometimes. Those mystery
10 mock agency raids some call them nightlife task force
11 and others march and NYPD from what I understand
12 today they may call it something else as a whole, but
13 basically there are many agencies sewing up and they
14 cause disruptions. Palisades a venue in Brooklyn
15 that was featured in in the New Yorker cover would
16 still exist today if it hadn't marched. (sic) For
17 all the venues that survived, they're right and
18 you'll hear from some here today. They see how it
19 impacts and they were stigmatized. Neighbors were
20 awakened, patrons were forced to leave, landlords
21 were alerted. People presume that something is
22 seriously wrong if you are raided. So, the
23 criminalization sat down and lots of grassroots
24 cultural spaces pushes our community father
25 underground and into unsafe environments. So, really

2 want to end that. So, I have some lines maybe that I
3 will submit in writing only and in conclusion I want
4 to thank you, Chair Lancman. I want to thank all our
5 co-sponsors Council Members Reynoso, Ampry-Samuel,
6 Rivera and Rose and especially, of course the Council
7 staff and Council Member Levin and Espinal for their
8 leadership. We believe that the enforcements must be
9 fair, proportional and responsive and we need strokes
10 not raids. Thank you. Under five minutes. [laughs]
11 [background comments]

12 DEANNA MORRA: I did write a testimony
13 but then I kind of changed it based on the
14 information I hear earlier. So, apparently I'm the
15 20 percentile.

16 CHAIRPERSON LANCMAN: [interposing] Can
17 you just move the--

18 DEANNA MORRA: Oh, thank you.

19 CHAIRPERSON LANCMAN: Is the red light
20 on?

21 DEANNA MORRA: I'm Deanna Morra from
22 Friend and Lovers--

23 CHAIRPERSON LANCMAN: Okay.

24 DEANNA MORRA: --in Crown Heights. So
25 clearly I'm in the 20th percentile of these march-

2 marches, which I don't understand. I have—I'm in
3 great standing with the Community Board. He NCOs
4 come weekly. I send them an email on a weekly basis
5 with any issues that we may or may not have had. I
6 also update them on security protocols. We now do
7 pat-downs. I paid \$3,000 to get AC cameras.
8 Whatever they asked I did. Yet, I still get marched.
9 I've been marched on twice. I know I was told I was
10 on the list before and they crossed my name off. I
11 don't really understand how that's possible. The
12 first time it happened, 25 men walked in in bullet-
13 proof sweat jackets at 2:45 in the morning. Not only
14 was it intimidating, but it was—I thought I was going
15 to be arrested, and someone with severe anxiety it
16 really can send you over the edge. So, not only did
17 it affect my mental state, but it just affected the
18 clientele and their perception of me and my staff did
19 not feel like they were in a safe environment. I had
20 to have meetings to reassure them that we were okay.
21 \$30,000 later we still got raided last December. It
22 was such a drastic difference in how I was treated.
23 The NCO shook my hand, said, Don't worry. You're
24 good. We'll be in and out in 15 minutes. Why was I
25 still raided if I was good. They just raided the

2 place at the corner so we know that they were bound
3 to come to us. Why? Because why would they walk by
4 us. It's my—that's how I perceived that. They were
5 done in less than 10 minutes. We were not issued
6 more than a small citation for—I don't really know
7 actually because I just received it in the mail and I
8 didn't open it yet because I wasn't ready to stomach
9 it this weekend. Nonetheless, the point is
10 transparency and the escalation plan. It's not
11 apples to apples here. I'm not here. I did not hear
12 a proper protocol that made sense to what my
13 experience has been. So, transparency would
14 definitely help in facilitating the conversation with
15 whoever is actually in charge because my NCO
16 constantly just says, It's above my pay grade. I
17 don't know what that means. So, I'm must—I'm here to
18 help. Thank you.

19 RACHEL NELSON: [background comments/
20 pause] Hi. My name is Rachel Nelson. I own three
21 bars in Brooklyn. I've been doing this for 15 years.
22 I made a mistake recently of renting a place that was
23 on the Naughty List. The Naughty List means that
24 you're open to more scrutiny than other places. A
25 M.A.R.C.H. raid comes arbitrarily, enforces laws that

2 happen. The Fire Department was there once. They
3 didn't enforce it. A M.A.R.C.H. comes. They do
4 enforce it. So, the fact they are saying the sort of
5 fairy tale depiction of the city's representation is
6 really a fairy tale of what happens. They come in
7 SWAT gear. They chase away your customers whether by
8 actual chasing them out or by the fact that they're
9 there I SWAT gear. They basically intimidate you and
10 the—the goal I believe is actually to intimidate you
11 out of business. This isn't a small thing. This
12 isn't—this isn't a thing that should happen in a
13 democracy. There are agencies. There's a Fire
14 Department, there's the Department of Health. As
15 Council Member Levin said all of these people come
16 and they come regularly. You're open to so much
17 scrutiny. Having a liquor license opens you up to
18 scrutiny from things you didn't even know existed
19 before you had a liquor license. So, I'm in good
20 condition. I'm on good terms with my NCO as well and
21 again, I actually have a decent relationship with the
22 precinct, but because the location I was at had
23 gunfights 15 years ago, we continued to get more
24 scrutiny as place that now has white walls and art
25 openings. We're a not-for-profit that runs a bar to

2 try to support ourselves in the ever expanding
3 expensive realm of New York City rents, compliance
4 and protocol. But there's no way for us to get out
5 from under the reputation of the former tenants. Now
6 in a democracy where is the room? Who do I call and
7 that's my biggest issue: Who do I call for
8 M.A.R.C.H.? What-if you Google M.A.R.C.H., there's
9 no--there's no way to Google M.A.R.C.H. There's no
10 directory in the city list of directories of oh
11 here's M.A.R.C.H. Even when you call the Fire
12 Department there is--when you say, Hey, can I speak to
13 the office in charge of M.A.R.C.H. they can't tell
14 you where that office is. They can't direct you. So,
15 my problem is once you're on the Naughty List, how do
16 you get off? Once you're--once you've--it's been
17 decided you're bad, how do you become un-bad? Even
18 when you've decided--even when you've done everything
19 you can. Now, here's the thing: Everything is about
20 compliance now. We've gotten rid of the Cabaret Law,
21 thank God, but now everything is about, Is that exit
22 large enough? Is this that? Is this that? These
23 are things that are thousand and thousands and
24 thousands of dollars putting small businesses out of
25 business. You guys don't want our tax money or our

2 sales tax money that's fine because you're
3 M.A.R.C.H.ing us out of business. Now, the—the city
4 was talking about the fact that this actually only
5 happened to a small percentage of things, and I don't
6 know if it's a Task Force, a M.A.R.C.H. raid, a
7 Nightlife Task Force, but there's something going on
8 that nobody knows how to get in contact with and
9 nobody knows how to stop, and that shouldn't happen
10 in a democracy. I'm under the impression that this
11 doesn't happen to places that are chains, to places
12 that are wealthy, to places in gentrified
13 neighborhoods as often or to people who have power.
14 This seems to happen to artist run spaces, places of
15 color. I have a neighbor who doesn't like queer
16 people. We happen to be a queer bar. She calls 311
17 all the time. Apparently that makes us bad people.
18 So, in a democracy, what do you do? Who do you call?
19 I'm happy this is happening because really like I
20 think a lot of us of are at our wits end as to who we
21 can even contact to get off the M.A.R.C.H. list.
22 Thank you.

23 CHAIRPERSON LANCMAN: Thank you.

24 ROBERT BOOKMAN: Good morning. My name
25 is Robert Bookman. I am Counsel to the New York City

2 Hospitality Alliance, the largest not-for-profit
3 association representing thousand of restaurants and
4 nightlife establishments throughout the five
5 boroughs. Prior to that, I was counsel for 20 years
6 to the predecessor New Yorker Nightlife Association.
7 We are the organization that first started to work
8 with the NYPD 12, 13 years ago, and in addition to my
9 law practice for over 30 years, I have represented
10 thousands of nightlife establishments before state an
11 city agencies, this Council and the courts. I have
12 been intricately involved with this marked issue for
13 decades. Hospitality Alliance wholeheartedly
14 supports this common sense legislation. It will
15 provide the needed transparency we have called for
16 for over 20 years. Transparency to the a process that
17 remains controversial after all these years and needs
18 data and facts we can all share. We were very
19 pleased to hear that the NYPD also supports this
20 legislation. We value our ongoing communication and
21 working relationship with the NYPD. Since 2006 when
22 we began meeting with them regularly at the
23 encouragement of this Council and former Speaker
24 Quinn, we have made considerable progress on may
25 fronts. We joint—we wrote and published *Best*

2 *Practices for Nightlife Establishments* in 2007 and
3 two subsequent updated editions in 2011 and 2018.
4 Best Practices has become a model used all over the
5 country and the world. We together created the first
6 of its kind *Active Training Video* geared to bars and
7 clubs. We have jointly held numerous training
8 sessions for nightlife security, managers and owners.
9 The NYPD Crime Prevention Unit has included working
10 with nightlife establishments for the first time with
11 free daytime visits to help reduce crime in and
12 around nightlife establishments with practical help
13 with security cameras, customer awareness signage,
14 hooks for pocketbooks, things like that. This has
15 resulted in over an 80% reduction in the number of
16 summonses being issued to the industry today compared
17 to before our meetings 13 years ago. But one area we
18 still need to work on is M.A.R.C.H. and this
19 legislation provides the statistical basis for that
20 work. And by the way, while we are talking about
21 M.A.R.C.H., there are really multiple ways that
22 businesses can get multiple task forces, you know,
23 attacking them or coming at them. M.A.R.C.H. is of a
24 many. I think there's a lot of data about that
25 today, and we more—I want to make sure your

2 legislation covers. There's a Mayor's Office unit
3 that could also order, you know, and you don't know
4 who it is that's coming. So, I want to make sure
5 this legislation covers all inspections by multiple
6 agencies to a nightlife business so that we all can
7 have the real data shared, and we can then come to
8 the right conclusions about whether this is really
9 necessary any more. We think it's a troubling
10 vestige from a leftover prior era. It actually began
11 right after the Happy Land fire in 1990 where 87
12 people died in an illegal and unsafe club. That
13 tragedy resulted in was called the Social Club Task
14 Force, which looked—which ultimately did locate and
15 close down these unlicensed establishments. But as
16 government does after completing its work rather than
17 disbanding the task force, which was successful Mayor
18 Giuliani morphed it into M.A.R.C.H., which now
19 however was tasked with going after licensed
20 establishments not the illegal underground no liquor
21 social clubs. These are two very different types of
22 businesses, however. One of was illegal and
23 underground, the other that you're hearing from
24 owners today are open to the public. They're
25 licensed. They're easy to contact the owners.

2 Methodology may have made sense for the former
3 illegal social clubs, but it does—it did not and does
4 not for the latter. As an enforcement tool, I do not
5 think it's effective in advancing the underlying
6 problems that agencies might have with a particular
7 establishment. Yet, and—and I'll explain, you know,
8 it—it—a lot. In my experience when—when a location
9 is M.A.R.C.H.'d, whatever the underlying reasons are,
10 they are not addressed by coming in at 12:00 at night
11 with all these other agencies. They're finding sales
12 to minors. They're going to happen to walk upon a
13 fight, you know, you know, coincidentally. It has
14 been historically, in my opinion, a waste of
15 resources. I think the agencies that go to these—
16 with them believe it's a waste of resources the
17 Health Department was taken out of the M.A.R.C.H. as
18 a result of our—our meetings with NYPD over the years
19 saying they're coming during the day. They certainly
20 don't need to be at M.A.R.C.H. and we haven't seen
21 them for the most part in M.A.R.C.H. It is not my
22 experience that as a result of a M.A.R.C.H. you get
23 zero summonses. Quite the opposite. It is my
24 experience that you get a—a package of summonses, you
25 know, as the result of a M.A.R.C.H. most of which can

2 be accomplished [bell] during the daytime. I'll—I'll
3 wrap up. There have been improvements, however, even
4 in M.A.R.C.H. I do want to put historical
5 perspective here. When we started actually back in
6 2002, over 700 establishments were visited in the a
7 year. We're talking about 200 or so establishments
8 today, and I don't know if all those processes are
9 being used, but if they are if, you know, it is a
10 good—it is a good start. And just in concluding, Mr.
11 Chairman, I like your idea in your last question that
12 you asked, and now that we have a Mayor's Office
13 Nightlife and a Nightlife Mayor, this seems an ideal
14 position to add to that protocol that if they're not
15 getting anywhere with a particular location they
16 bring in the Mayor's Office of Nightlife, sit the
17 parties down, mediate to find out what the real
18 problem is. Let's address the real problem so we
19 don't have to waste a bunch of resources at night.
20 Thank you.

21 CHAIRPERSON LANCMAN: Thank you. Well,
22 I—I am glad that I thought of that idea.

23 ROBERT BOOKMAN: I'm glad you did, too.

24 CHAIRPERSON LANCMAN: Next.
25

2 MARVA BABEL: Good afternoon. My name is
3 Marva Babel Tucker and I'm the owner of Ode to Babel
4 in Brooklyn, New York in Prospect Heights. I'd like
5 bring Ode to Babel the forefront of the damage raid
6 M.A.R.C.H.s can do to a small business. I opened Ode
7 to Babel three years ago with my twin sister Miriam.
8 We launched with very little savings, and literally
9 some of our 401(k) with the idea of opening a
10 communal space in our neighborhood. As a native
11 Brooklynite, we lived in Crown Heights/Prospect
12 Heights for over 30 years. We saw our friends and
13 neighbors leave the community because of the effects
14 of gentrification. With those changes, the Brook—the
15 Brooklyn that we'd known all our lives were also
16 changing. The neighborhoods spots were closing and
17 being replaced with owners and patrons that did not
18 reflect the neighborhoods I grew up in. Miriam and I
19 started to bring back our Brooklyn by opening a safe
20 space to enjoy and literally live out loud. We
21 opened Ode to Babel. Our space has grown organically
22 over the three years, and we have garnered lots of
23 regulars and new patrons daily. We enjoy music,
24 dancing and a culmination of people of people
25 including our LGBTPOC community converging in good

2 spirits, beautiful and peacefully. Our popularity
3 has translated into distain by some of our neighbors,
4 neighbors that are new to the community and frankly
5 would prefer to see us silent literally and
6 figuratively. The congregating—the congregating of
7 black and brown bodies in the energy of LGBT
8 community does not fit well with the image they
9 literally bought into. They want us to be quiet,
10 closed and unseen into other neighborhoods that they
11 don't really care about. The fight and their weapon
12 of choice is 311 and 911 calls to bombard, to bombard
13 the board with complaints and pressure. As a person
14 of color, I don't need to go into the dangers of
15 using police presence as a weapon against other
16 people of color, but this is exactly what is being
17 done. On October 20th, our venue was M.A.R.C.H.'d.
18 Our cozy 750 square foot lounge/bar full of wonderful
19 patrons dancing on a Friday evening became
20 interrupted with 50 officers in full, right, gear,
21 and various agencies ranging from NYPD, the DOH and
22 the SLA and every agency in between M.A.R.C.H.'d
23 through our 750 square foot bar. 30 agents inside
24 and an other 20 agents and officers standing outside
25 in front of our—of our venue. We were a spectacle, a

2 visual that could tarnish the reputation of a small
3 business because of assumptions that could be made by
4 a passerby both walking, driving or looking out of
5 their window, patrons that will never step foot in
6 into our small establishment as we try to continue to
7 grow. A spect—a spectacle that has been interpreted
8 and could be concluded to be some insidious illegal
9 activity but, of course, it was not. It was a
10 standard harmless raid. As our loyal patrons stood
11 in disbelief as officers ask the music to stop, our
12 patrons continued to dance in silence but with
13 defiance and support of Ode to Babel. As agents
14 scurried throughout our venue drafting up tickets,
15 which are financial things that hurt my small
16 business, but was necessary to validate their visit,
17 I wanted for the M.A.R.C.H. to end and finally when
18 it did, I finally—I received a multitude of fines
19 that I fought and were dismissed. The raid had come
20 and gone, but the financial burden, the mental stress
21 and the distress for me as a small owner and a mother
22 with small children that literally lived directly
23 above my bar has remained. The M.A.R.C.H. must end
24 and to continue on just to answer a point you made
25 earlier today, I am kind of—kind of appalled that out

2 of 57 M.A.R.C.H.s that my small 5-750 square foot
3 space sas literally M.A.R.C.H.d. It's kind of
4 personal. (sic) There is 12,000 establishments and
5 they choose my bar, and I know a lot of others,
6 including the people here are predominantly people of
7 color bar patrons, and how come we are the ones
8 sitting here in front, and these are the type of bars
9 that are targeting. We don't have to act like that's
10 not true. It's completely true and accurate, and I
11 know other bar owners who are experienced with
12 M.A.R.C.H. and raided-raids. So, it's not a
13 coincidence.

14 CHAIRPERSON LANCMAN: Okay. Thank you
15 very much. I know that Council Member Levin has
16 questions for--

17 COUNCIL MEMBER LEVIN: This is for the
18 two business owners that have experienced-I don't
19 know if-I don't know if Rachel you've also
20 experienced M.A.R.C.H. but-

21 RACHEL NELSON: [off mic] I guess it's
22 not officially M.A.R.C.H.

23 COUNCIL MEMBER LEVIN: Okay, do you-do
24 you have any sense of-of what other than just
25 neighbors that with 311 complaints about noise or 311

2 complaints about people outside, do you have any
3 sense of why—why your establishments landed on this
4 list or, you know, if--?

5 RACHEL NELSON: Yes, I do. So, the first
6 time actually pulled the 311 records because they
7 said you have 311 calls, we had zero. We had
8 increased 311 calls in the area, but there was
9 another bar that opened that was not complying with
10 it—they're not—they don't care about the community,
11 but that's their issue. So, there was nothing that
12 said Friends and Lovers is making too much noise.
13 The place is completely soundproof. Like the DEP
14 came in and said, Holy cow, I can't hear anything
15 from the street. So, I know that—I called BS on it.
16 The second time we had an increase amount of theft.
17 Again, another bar is bringing a different type of
18 clientele. So, we had four wallets stolen in the
19 course of-of three months. The last time you said
20 that we had one more report last week. S o, I
21 couldn't ignore this. That's why we're here, but
22 don't worry. We'll be fast, and I said I don't know
23 what you're talking about. I don't have that report.
24 He said it happened Wednesday. Sorry, that was my
25 birthday party. I don't know. Any of my friends did

2 not lose their wallet. I'd like to see this report.
3 Fast forward two weeks late no report. Wait. Yes.
4 increased amount of theft was the trigger for the
5 second time.

6 MARVA BABEL: For us, I can—I honestly
7 know for a fact that was one particular neighbor that
8 is another business that has said to us we do not
9 like your business and we don't want you here. So, I
10 know that they are the ones who are using 311 because
11 we've been here for three years and the complaints
12 since they've opened this past summer has come out
13 of, right have just multi-been multitude and just—
14 It's just I know for a fact it's specific, but it's—
15 they know that they can close us down by what they're
16 doing. So, that's one and people wait for Uber. I
17 really can't tell people to not wait for Uber in
18 front of the space, and that's—I'm not a--

19 COUNCIL MEMBER LEVIN: Which is fairly,
20 you know, normal--

21 MARVA BABEL: [interposing] It is very
22 normal

23 COUNCIL MEMBER LEVIN: --course of
24 business for an establishment--

25 MARVA BABEL: [interposing] Yes.

2 COUNCIL MEMBER LEVIN: --that's open at
3 night. I mean the--the--it--it--I'm sorry that this is
4 happening to your businesses. I--I hope that your
5 businesses, you know, are able to move, you know, get
6 by and move past this, and--and continue to thrive,
7 and certainly consider my office a resource, and I'll
8 coordinate with the Office of Nightlife but, you
9 know, we--we greatly appreciate you being here and
10 telling your stories because you're putting yourself
11 out there, and--and so that--that--that takes courage,
12 and so I want to thank you for doing that, and--and we
13 look forward to continuing to work with you guys on--
14 on not only getting this bill passed, but--but
15 hopefully more efforts in that regard.

16 OLYMPIA KAZI: May we add--may we add one
17 thing for the record?

18 CHAIRPERSON LANCMAN: [off mic] Yes.

19 OLYMPIA KAZI: So, NYPD asked
20 particularly the--the, you know, the data that we had
21 the NY--the New York City Artist Coalition. Now our
22 data is there is their data. [laughs] They gave us
23 that data. It is scrambled, but we made it available
24 right away so there is we have already shared with
25 Council and we're happy to share with anybody else,

2 and we're going to give you more details late, but if
3 they're disputing that they're-that they're disputing
4 themselves upon it, they don't know what they're
5 doing. They weren't able to answer many of their
6 specific questions. So, let's do these bill and
7 let's move forward. [laughs]

8 CHAIRPERSON LANCMAN: [off mic] Okay.

9 MARVA BABEL: Thank you.

10 COUNCIL MEMBER LEVIN: Thank you. so
11 much. [background comments/pause]

12 LEGAL COUNSEL: Folks, we're just going
13 to take a 2-minute pause. Next panel Mr. Weaver from
14 the Artist Coalition, Mr. Muchmore; Mr. Barclay, Ms.
15 Pelly, Jamie Burkhart-Sugarman and Tara McMannis.
16 Thank you. [background comments/pause]

17 CHAIRPERSON LANCMAN: Alright. If you
18 all will raise your right hand and get sworn in,
19 we're going to get started. Do you swear or affirm
20 the testimony you're about to give is the truth, the
21 whole truth and nothing but the truth?

22 PANEL MEMBERS: [in unison] I do.

23 CHAIRPERSON LANCMAN: Good. We're going
24 to put two minutes on the clock. Unless anyone
25 objects, we'll just start from my right, and work our

2 way around the table. How's that? Great. So, sir,
3 you're up. We'll start with this end.

4 PATRICK WEAVER: My name is Patrick
5 Weaver, but I am reading testimony written by Brian
6 Abelson. It's pretty long. So, I'm going to try to
7 get through important parts of it, but I've submitted
8 written testimony. My name is Brian Abelson and I
9 live in City Council District 34. On June 6, 2017 I
10 filed a series of Freedom of Information requests
11 seeking data on M.A.R.C.H. raids. The text of these
12 inquires are publicly available online via MuckRock--
13 there's the URL there--a service I use for managing
14 these requests. Unsure which agency to solicit
15 information from, I sent the same letter to NYPD,
16 FDNY, Department of Housing, Department of Buildings
17 and SLA, FDNY. DOH rejected my request each stating
18 that the documents I requested were NYPD's
19 possession. Similarly, SLA responded saying that
20 they were not in possession of relevant documents or
21 that they would be able--unable to access them. DOB
22 has acknowledged my request and indicate on January
23 8, 2018 that there were--that they were working on it,
24 but have not produced any documents despite reminders
25 I've sent every two weeks since then. On March 3,

2 2018, the NYPD responded to my letter with two
3 documents. The first was a PDF entitled *Criteria for*
4 *Selecting a Location into the Multiagency Response to*
5 *Community Hotspots Operation*. The document has
6 previously been reported by the journalist Liz Pelly
7 of the Bachelor (sic) who published the story on
8 March–February 12, 2018. The second is a spreadsheet
9 entitled Copy of March Program 3. My testimony will
10 focus primarily on the data contained in this
11 spreadsheet and the knowledge I gleaned from it. The
12 spreadsheet contains 2,300 rows with the columns for
13 the addresses of inspection–inspection date,
14 Environmental Control Board and DOB violation
15 numbers, and a column name Access 1, which seems to
16 indicate the outcome of the inspection though I can't
17 be sure since the NYPD did not respond to my follow-
18 up request for additional details on its meaning.
19 Importantly, the spreadsheet does not represent a
20 list of inspections, but a list of violations that
21 resulted from inspections that they said in the case
22 that no violations resulted from an inspection, there
23 is a single row containing just [bell] the address of
24 the inspection, the inspection date.

2 CHAIRPERSON LANCMAN: So we have the
3 written testimony, right?

4 PATRICK WEAVER: Yep.

5 CHAIRPERSON LANCMAN: That's good.

6 PATRICK WEAVER: Thank you.

7 CHAIRPERSON LANCMAN: Next.

8 TARA MCMANNIS: Hi. My name is Tara
9 McMannis. I've been living in Brooklyn and making
10 art for 18 years. I've lived in lofts, I've partied
11 in warehouses, and I work in nightclubs that are all
12 gone because of raids. I don't know which ones are
13 M.A.R.C.H. raids, but in all the cases it was at
14 least the Fire Department and the Police Department
15 storming in. Some were illegal licensed bars. Some
16 have been artist housing where they throw parties.
17 The one thing they have in common is the element of
18 surprise. When your at a club on a Saturday night
19 you don't expect firefighters and police officers
20 barging in with flashlights, illegal-illegally
21 searching my purse. It incites panic. You would
22 think that there's a fire, violent crime. I've seen
23 bars emptied so fast when they see uniforms. I've
24 seen bartenders, door people, food vendors all
25 arrested. I've seen vend-patrons arrested for

2 standing too close to the bar. Where is the fire?
3 Where is the emergency? Storming a venue on a busy
4 night and making hasty arrests is as dangerous as
5 yelling fire in a crowded theater. Is it worth
6 creating a stampede to arrest the bartender working?
7 I've helped dozens of artists deal with evictions.
8 They wake up to firefighters brandishing axes, making
9 threats to use it at their doorstep. I've helped
10 them pack their entire lives into storage units.
11 They have three days during business hours to get out
12 of their artist lofts. You know, authorities come
13 completely prepared but we're not. They're ready to
14 make arrests. They have their fines. They've done
15 their research through our social media. They know
16 the violations already. Some pay to get in, pay for
17 drinks, and the break out their badges. Some come in
18 through the fire exits using vital fire and life
19 safety procedures to come in through the back door.
20 While we're coming together to share our—with people
21 and continue to live our lives and to work jobs, we
22 have no idea. Why not let spaces that have
23 violations [bell] let them numb.

24 CHAIRPERSON LANCMAN: [off mic] Thank
25 you.

2 JAMIE BURKHART: My name is Jamie
3 Burkhart. I'm a member of the New York City Artist
4 Coalition. I'm on—I'm here on behalf of the city's
5 cultural communities to ask for talks not raids. We
6 need transparency on the multiagency response to
7 community hotspots. M.A.R.C.H. raids and NYC that
8 share beloved, diverse neighborhood cultural spaces.
9 We are the city that gave birth to the Velvet
10 Underground, Nobel Laureate, Bob Dylan, Mombo and Hip
11 hop. My life as advocate began with the—began with
12 the loss of another, my friend Nick Gomez-Hall was
13 one of the 36 people killed in Oakland's Ghost Ship
14 tragedy. From the minute I heard he was gone, I know
15 that they were all gone. I was filled with shock and
16 then grief. Our response was safety. We facilitated
17 fire safety walk-throughs and workshops. Our study
18 groups for the Fire Department's FD-Fire-Fireguard
19 Certification had a 100% exam pass rate. We
20 advocated and created the New York City Office of
21 Nightlife to support small diverse cultural spaces.
22 M.A.R.C.H. raids in New York City are a legacy of
23 Mayor Rudy Giuliani and are not relevant today.
24 Giuliani M.A.R.C.H. raids were used in tandem with
25 the discriminatory 1926 No Dancing Cabaret Law to

2 shut down diverse culture. When you shut down small
3 cultural spaces, working to operate safely and in
4 compliance, you force New Yorkers underground into
5 ill-fitting environments. Prevent this and save
6 lives. A single—in a single M.A.R.C.H. raid as many
7 as 40 armed agents representing six New York City
8 agencies and the State Liquor Authority's storming
9 small businesses in SWAT like gear at peak operating
10 hours to traumatize customers, maximize fines and
11 force diverse neighborhood spaces out. The fallout
12 is loss of jobs, dreams, more empty storefronts and a
13 painful signal to New York's emerging and newly
14 arrived cultural communities that you are not welcome
15 here. The shutdown of every space is a grave and
16 egregious loss. NYPD Operations Order No. 27 from
17 2014 about M.A.R.C.H. raids states: Do not alert
18 patrons affiliated with the establishment, its
19 patrons or community members of the ongoing
20 investigation operation. If you see something, say
21 something. Provide support. Don't keep it secret.
22 We need civil discourse not night raids. Will the
23 Office of Nightlife testify today? Use the Office of
24 Nightlife [bell] with the New York City Artist

2 Coalition's liaisons and cultural establishments.
3 Inform spaces with problems so we can solve them.

4 CHAIRPERSON LANCMAN: Thank you.

5 ANDREW MUCHMORE: My name is Andrew
6 Muchmore. I operate a small bar and music venue in
7 Williamsburg, and I also operate law firm in
8 Williamsburg that caters in part to hospitality
9 clients. I believe the purpose of M.A.R.C.H. is
10 worthwhile, but there's a serious problem with
11 proportionality and oversight. They're effectively
12 is no oversight because it's a multi-agency body and
13 having scores of uniformed officers swarm on a small
14 establishment is extremely disproportionate. The
15 Council should understand that the cost of such raid
16 for simply smaller establishments, especially ones
17 that are run by artists or non-profit organizations
18 could be catastrophic. The Administrative Code is so
19 complex if you send a dozen enforcement officers in
20 from different agencies they'll be able to write
21 enough summons for almost any establishment to put it
22 out of business. The Health Code is inordinately
23 complex. I've always had a A on my own establishment
24 yet every year we have to pay more than \$1,000 in
25 fines. The Zoning Resolution is particularly

2 problematic. The, you know, dancing was previously
3 prohibited in most of the city, and the description
4 of any place on certificate of occupancy will never
5 fully describe everything that takes place in it.
6 For instance, there is no zoning category or use
7 group or legislative chamber. So, if—if you're in a
8 room, first of all there are no rooms that have only
9 a single purpose. Every room is used for lots of
10 purposes, but if you do not exactly comply with your
11 certificate of occupancy, that can be a basis for
12 fines that are catastrophically expensive to correct
13 because you also have to hire an architect and go
14 through the Department of Buildings. You have
15 accessory uses, but the Department of Buildings keeps
16 changing its interpretation of what it considers an
17 accessory use. I had a client that recently was
18 forced to close their nightlife establishment in
19 Williamsburg for a number of reasons, but one issue
20 that they had experienced was the Department of
21 Buildings decided that it was no longer an accessory
22 use to allow the consumption of food and alcohol
23 outdoors if the—in an area that is—can legally be
24 occupied in conjunction with the bar and restaurant
25 business. They decided it was now a primary use, and

2 what was previously permitted under the certificate
3 of occupancy was no longer permitted. If you look at
4 the index of uses in the Zoning Resolution [bell]
5 they're simply too complex for people to
6 realistically comply with, and common sense is
7 required and the enforcement is—the Mayor—Governor
8 Cuomo recently cited the example of a lemonade stand
9 that was shut down by the Department of Health, and a
10 7-year-old boy trying to sell lemonade for a quarter.
11 Some—some logic has to be used in enforcing these
12 laws, and I think coordination with the Office
13 Nightlife would be very helpful in ensuring that
14 M.A.R.C.H. does not exceed rational bounds of—of
15 necessary enforcement. [pause]

16 LIZ PELLY: It's like death [coughs].
17 It's the Grim Reaper. It's a gotcha kind of thing.
18 It's the end for any venue that it happens to. It's
19 an economic hit. It doesn't make sense. It's
20 unpredictable. It's felt like—it makes people feel
21 afraid. It's censorship. These are just some of the
22 ways that the M.A.R.C.H. Task Force and its
23 operations have be described to me by New York City
24 musicians, venue's staff and other local business
25 owners. My name is Liz Pelly. I'm a journalist and

2 for the past decade I've been writing about music and
3 culture. I also participate in New York City's—
4 participate in New York City's communities. From
5 2014 to 2018, I was a collective member of the Silent
6 Barn, the long running artisan venue that shuttered
7 this past May. While I was involved in the Silent
8 Barn I became familiar with the concept of the
9 M.A.R.C.H. program. The Barn existed in two
10 different locations over the years, and the original
11 building was, in fact, shut down by a M.A.R.C.H. raid
12 in 2011. Many individual involved in running
13 independent venues in New York City are familiar with
14 M.A.R.C.H. to some extent. It's part of the
15 vocabulary of running your venue here, but its inner
16 workers are obscure even to many of the venues the
17 task force threatens. It's mystified style of
18 enforcement keeps venues and business owners living
19 in perpetual fear, and most know information about
20 the M.A.R.C.H. Operations is anecdotal or pieced
21 together from first hand experience. In 2017, I
22 decided I'd like to learn more about this opaque
23 secretive task force and write an article about it.
24 I spoke with members of communities and also filed
25 Freedom of Information Law requests receiving back a

2 2014 operations order that shed the smallest beam of
3 light on these complicated raids. I was struck by
4 the extent to which these raids prioritized secrecy
5 over productive conversation. Quote: "Do not alert
6 persons affiliated with the establishment, patrons or
7 community members to ongoing investigations and
8 operations, the procedure urges Community Affairs
9 Officers visiting venues. I learned as I listened to
10 conversation of communities of the continued pattern
11 when it comes to these operations. The secret nature
12 of the Task Force means that venues may not know
13 whether they're being raided by M.A.R.C.H. nor
14 neighbors aware of the gravity. [bell] of their 311
15 complaints. I just have a little bit more. One
16 Brooklyn venue-music venue employees are causing
17 multi-agency visits. The cops claim to be doing a
18 business investigation. A plain clothes cop made his
19 way behind the bar. Uniformed officer checked the
20 IDs of everyone there looking for underage drinker-
21 drinkers. Someone from the FDNY investigated the
22 whole place. Quote: "We were pretty much up to code
23 and yet all their customers were leaving one by one."
24 As it turns out, a new neighbor had been calling 311
25 to make noise complaints. Noise complaints are

2 listed in an official Music in New York City Report
3 from 2017, which cites them as a growing reason for
4 the shuttering of venues. In the past 15 years more
5 than 20% of New York City's smaller venues have
6 closed, the report states. When we asked why they
7 were there, they didn't even seem to know the
8 rhetoric they were supposed to use, the music venue
9 staffer told me. [bell] They were very much trying
10 to not give us information about what they were
11 doing, and I'll skip to the end. A lot of this is
12 from an article that I wrote that was published last
13 year that is online if anyone wants to read it. In
14 today's increasing isolated—increasingly isolated
15 culture and music is rare median that still has the
16 power to get individuals into rooms together to share
17 ideas, collaborate, sing, dance and be in space with
18 better human. Protecting the power of music from
19 commodification and exploitation it means securing
20 the ability for strong local communities to form from
21 the ground up in creating resources for longstanding
22 NYC artists. Here on the ground in New York that
23 starts with protecting the independent cultural
24 spaces and local businesses. Instead, the M.A.R.C.H.
25 program has historically treated artists and local

2 business owners like criminals instead of encouraging
3 safety.

4 CHAIRPERSON LANCMAN: [interposing] Sorry,
5 sorry, sorry, sorry. If this is an article you can--

6 LIZ PELLY: This is--it's the last
7 sentence.

8 CHAIRPERSON LANCMAN: Okay.

9 LIZ PELLY: Transparency is a step in the
10 right direction, but let's also consider something
11 more: Getting rid of M.A.R.C.H. raids altogether and
12 replacing it with programs that would promote safety,
13 conversation, community and culture. Thank you.

14 CHAIRPERSON LANCMAN: Thank you. Who is
15 next?

16 JOHN BARCLAY: Hi. My name is John
17 Barclay. I operate a bar in Brooklyn. I'm also a
18 co-founder of the Dance Liberation Network, an
19 organization that helped repeal the New York City
20 Cabaret Law. I want to use my time right now to
21 address some of the things that the gentleman from
22 the NYPD some of the claims he made, but first is
23 regards to the style of these visits or as most of us
24 call them, raids. It's super intense. It looks like
25 a--like a--like a counter--like a federal

2 counterterrorism raid. There's, you know, dozens of
3 people come in. They come in quick. They shine
4 flashlights in everyone's faces. The music is off,
5 lights are up all the way. It's—it's very confusing
6 and it's also terrifying. It looks like a Steven
7 Seagal movie or something. Something else I'd like
8 to bring up as he characterized it as a tool of last
9 resort, and said that, you know, businesses are given
10 a change ahead of time to correct whatever perceived
11 problem there is. I—I've been visited by—I've been
12 raided by M.A.R.C.H. and, of course, I was not
13 informed of any wrongdoing before this happened, and
14 in my experience, everyone I've talked to has a
15 similar story. Another thing is if you just—I just
16 don't think this is how law enforcement is supposed
17 to work. If you take the logic of the M.A.R.C.H.
18 Task Force, and you apply it to an entity that's non-
19 nightlife or just, you know, and a private
20 individual, it really sort of highlights the
21 absurdity because we're all breaking laws [bell] to—
22 oh, well, that was quick. Alright, I'm submitting.
23 Thank you very much.

24 CHAIRPERSON LANCMAN: Thank you.

2 ALAN SUGARMAN: Hello my name is Alan
3 Sugarman. I'm an attorney here in the city. I would
4 like the opportunity to file a written statement in
5 the next week or so, and leave it in the record.

6 CHAIRPERSON LANCMAN: Absolutely. We
7 check that and--

8 ALAN SUGARMAN: [interposing] Okay.

9 CHAIRPERSON LANCMAN: -and have it--

10 ALAN SUGARMAN: [interposing] Okay. So,
11 quickly—I'll use my couple of minutes. My first
12 thought was to abolish M.A.R.C.H., but that—I ran
13 into a problem there. I couldn't find any official
14 document showing that it had actually been
15 established. You're proposed legislation talks about
16 (A) The Office shall submit, and it refers to the
17 multi-agency response to community hotspots. After
18 diligent search of the city's website and Google
19 publicly, it's—there's no document that shows if it
20 was ever established. There are no guidelines.
21 There are no policies. There's nothing. Mayor
22 Giuliani probably the most authoritarian mayor we
23 have ever had. His efforts should not be the model
24 of what we do here in 2019, and I think it should be
25 abolished and if the Mayor wishes to reestablish it

2 or the City Council, let's reestablish it with the
3 proper declaration and a proper amendment of the-of
4 the city laws and the City Rules and Regulations.
5 This is really absurd. Quickly, first I'd like to
6 thank Mr. Muchmore who's here today for his efforts
7 that led to the ending of the Cabaret Law, but the
8 Cabaret Law is really in effect today in another way
9 through the Zoning Regulation, and I assume because
10 unless you're in Use Group 12-I'm over-simplifying-
11 you can't have dancing and if you can't have dancing
12 and it doesn't show up on your Certificate of-of
13 Public Assembly, you could be cited by M.A.R.C.H. So
14 M.A.R.C.H. is still fully enabled to do a lot other
15 stuff elsewhere in the city. So, just a couple of
16 specific suggestions. There should be central
17 reporting [bell] of what--the M.A.R.C.H. records.
18 There should be either sent--they shouldn't be on a
19 precinct-by-precinct. All the records should go
20 centrally. They should be required to videotape all
21 the raids and their body cams should be kept. The-
22 the record report should include the name of every
23 single participant in the raid, the name, agency, and
24 serial number, et cetera, and some people should
25 create a standard form. But I think it should be

2 abolished, then recreated and it should—they should
3 report to the Nightlife Commission and there should
4 be no raids unless approved by the Nightlife
5 Commission. Thank you.

6 CHAIRPERSON LANCMAN: Thank you very
7 much. So, you know, we have from the FOIL request,
8 the FOIL response, the NYPD Operations Order No. 27
9 issued on July 11, 2014, which, you know, is now a
10 public document. It's—it's out there, and it doesn't
11 establish an—an office. It just describes criteria
12 for selecting a location for inclusion into the
13 Multi-Agency Response to Community Hotspots
14 M.A.R.C.H. Operation. So, just this is--

15 ALAN SUGARMAN: I did not submit a FOIL.
16 I just did a search on NYC.gov, but this was created
17 in 1998. That appears in the records, and it was
18 created by Mayor Giuliani. There's no document
19 showing the establishment of this agency. In fact,
20 it was once called the Multiple.

21 CHAIRPERSON LANCMAN: Well, my-my-I'm-my
22 point is this is available now.

23 ALAN SUGARMAN: If I FOIL?

24 CHAIRPERSON LANCMAN: Well, this-this is
25 FOIL from the New York Artist Coalition, right?

2 LIZ PELLY: No, that's from my article.

3 CHAIRPERSON LANCMAN: From you?

4 LIZ PELLY: Uh-hm.

5 CHAIRPERSON LANCMAN: Okay, so-

6 LIZ PELLY: It's on my--

7 CHAIRPERSON LANCMAN: [interposing]

8 You've got this?

9 LIZ PELLY: Yes.

10 CHAIRPERSON LANCMAN: Then share it with
11 him, and we're going to make it part of our record,
12 and when it goes online, it will be visible in that
13 way. I'm just curious. For the-the-the idea that
14 these M.A.R.C.H. operations should be or officers
15 should have their body cams on. Just-just how do
16 the-the owners of establishments feel about because
17 then your-your patrons are going to be on the video.
18 Do you think that's a good idea or a bad idea? Any
19 thoughts on that? Okay. Go ahead.

20 MALE SPEAKER: I think it's a good idea.
21 I think that people tend to behave better when
22 they're being watched, and I would feel more
23 comfortable with officers having their cameras on.

24 CHAIRPERSON LANCMAN: Yes sir.

25

2 MALE SPEAKER: I also feel it would be a
3 good idea. I think if anyone saw how intense and
4 absurd this was that you guys would abolish it
5 immediately.

6 CHAIRPERSON LANCMAN: Okay . Anyone who
7 would have any objections to that to it being video
8 taped? No. Okay. Alright, thank you all very much.

9 MALE SPEAKER: Thank you.

10 CHAIRPERSON LANCMAN: Ladies and
11 gentlemen, that concludes our hearing. [gavel]

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C E R T I F I C A T E

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



Date March 8, 2019